CHAPTER 8

ACQUISITION
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8.70.00.00 DELEGATIONS

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8.00.00.00 – ACQUISITION

8.01.00.00 – ACQUISITION GENERAL

8.01.01.00 Function and Responsibility

The Acquisition Branch is responsible for the timely securing of those property rights necessary to the certification of a project. Certification, insofar as the Acquisition Branch is concerned, means that any and all interests in the property adverse to State's use have either been cleared or the documents or legal process which will legally authorize entry by the Department have been secured.

Private property or interests therein will be acquired in accordance with Article I, Section 19 of the California Constitution.

"Sec. 19. Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation."

8.01.02.00 Government Code Requirements

In addition to the constitutional requirement, acquisition of private property for public use is also to be in accordance with sections of the Government Code entitled "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended," (Uniform Act). Compliance with the Department's policy of paying just compensation should be assured when the constitutional and Government Code requirements are adhered to by the Acquisition Agent in dealing with the owners.

8.01.02.01 Real Property Acquisition Practices

7267. In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the public programs, and to promote public confidence in public land acquisition practices, public entities shall, to the greatest extent practicable, be guided by the provisions of

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Sections 7267.1 to 7267.7, inclusive, except that the provisions of subdivision (b) of Section 7267.1 and Section 7267.2 shall not apply to the acquisition of any easement, right of way, covenant, or other nonpossessory interest in real property to be acquired for the construction, reconstruction, alteration, enlargement, maintenance, renewal, repair, or replacement of subsurface sewers, water lines or appurtenances, drains, septic tanks, or storm water drains.

8.01.02.02 Appraisal and Negotiation

7267.1.

(a) The public entity shall make every reasonable effort to expeditiously acquire real property by negotiation.

(b) Real property shall be appraised before the initiation of negotiations, and the owner, or his designated representative, shall be given an opportunity to accompany the appraiser during this inspection of the property.

8.01.02.03 Offers, Value, and Appraisals

7267.2. Prior to adopting a resolution of necessity pursuant to Section 1245.230 and initiating negotiations for the acquisition of real property, the public entity shall establish an amount which it believes to be just compensation therefor, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established, unless the owner cannot be located with reasonable diligence. The offer may be conditioned upon the legislative body's ratification of the offer by execution of a contract of acquisition or adoption of a Resolution of Necessity or both. In no event shall such amount be less than the public entity's approved appraisal of the fair market value of the property. Any decrease or increase in the fair-market value of real property to be acquired prior to the date of valuation caused by the public improvement for which the property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant, shall be disregarded in determining the compensation for the property. The public entity shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

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8.01.02.04 Prior Notice to Move

7267.3. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling, assuming a replacement dwelling will be available, or to move his business or farm operation, without at least 90 days' written notice from the public entity of the date by which such move is required.

8.01.02.05 Continuation of Possession on Rental Basis

7267.4. If the public entity permits an owner or tenant to occupy the real property acquired on a rental basis for a short term, or for a period subject to termination by the public entity on short notice, the amount of rent required shall not exceed the fair rental value of the property.

8.01.02.06 Coercion

7267.5. In no event shall the public entity either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

8.01.02.07 Institution of Condemnation Proceeding

7267.6. If any interest in real property is to be acquired by exercise of the power of eminent domain, the public entity shall institute formal condemnation proceedings. No public entity shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

8.01.02.08 Uneconomic Remnant

7267.7. If the acquisition of only a portion of a property would leave the remaining portion in such a shape or condition as to constitute an uneconomic remnant, the public entity shall offer to acquire the entire property if the owner so desires.

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8.01.02.09 Indemnity Clauses in Right of Way Contracts

Government Code Section

Indemnification of Grantor Includes Railroads

14662.5. In any agreement entered into whereby the State obtains a grant of easement, lease, license, right of way, or right of entry (including without limitation, a right of way, or right of entry on or over property of any railroad), the state agency or its director entering into the agreement on behalf of the State may agree to indemnify and hold harmless the grantor, lessor, or licensor and may agree to repair or pay for any damage proximately caused by reason of the uses authorized by such easement, lease, license, right of way, or right of entry agreement.

8.01.03.00 Negotiating Procedure

All acquisition discussions shall be directed to accomplish the end result that the property owner receives just compensation which is also just and fair to the public; that every courtesy, consideration, and patience is extended to the property owner, and to foster a feeling of confidence and respect by the property owner toward the Department of Transportation and its employees. All offers shall represent the best and most current estimate of market value determined through sound, approved appraisal and acquisition practices.

Prior to any discussion as to the terms of the Right of Way Contract and the compensation to be paid, the property owner should be given full information as to the following:

A. The role of the Department and its acquisition functions.
B. The necessity for the proposed transportation improvement.
C. Project design and how the proposed improvement will affect the property.
D. The ability of our appraisal staff and the honest and sincere effort that has been made to determine the market value of the property. During the course of acquisition discussions, agents must remember that they are representing the interests of the public as well as that of the property owner. Care should be exercised at all times to protect the interests of the property owner, particularly if the owner may be unfamiliar or inexperienced in real estate transactions and real estate values.

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If during the course of discussions for the purchase of the property, conditions or characteristics are discovered which were not available to be properly considered in the appraisal, these matters shall be fully considered and evaluated before acquisition of the property is continued.

Prior to conducting any acquisition discussion, the Acquisition Agent should be familiar with the following referenced material:

A. Acquisition Chapter of the Right of Way Manual.
B. Housing and Community Development (HCD) Guidelines, Article 6 (Exhibit 8-EX-1).
C. 23 CFR 710.101 through 710.603 and 49 CFR 24.101 through 24.108.
D. Sections 301 and 302, Title III, Uniform Real Property Acquisition Policy Act (Exhibit 8-EX-2).

Section 6194(a) of the HCD Guidelines, 2nd paragraph, dealing with rental rates based upon financial means, is neither the policy nor procedure of the Department. Again, any conflict in these guidelines is to be resolved in favor of the Uniform Act (Government Code Section 7260, et seq.). The HCD guidelines have been supplied for information purposes and are not to be construed as establishing a policy or procedure at variance with the Uniform Act.

The Acquisition Agent shall be familiar with Departmental policy relating to the acquisition of property and, in particular, the following statements of policy.

A. All discussions for the acquisition of property or an interest therein shall be directed to result in the payment of just compensation.

B. The Department shall make every reasonable effort to expeditiously acquire property through agreement with its owner.

C. The property or interest therein shall be appraised prior to the initiation of discussions leading to its purchase.

D. A prompt offer to acquire the property shall be made.

E. The full amount of the appraisal shall be offered when price is first discussed.

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F. When acquiring real property subject to a lease, determine if there is a need to segregate the lessor's and lessee's interests prior to making a written offer.

G. The property owner shall not be permitted any option privileges of repurchasing either land or improvements that the Department may subsequently declare to be excess property. No such obligation will be included in any right of way contract. No oral or written representation in this respect shall be made.

H. The Acquisition function shall be conducted in such a way and manner as to assure that no person shall, on the grounds of race, color, sex, national origin, or disability, be denied the benefits to which the person is entitled, or be otherwise subjected to discrimination, in compliance with Title VI of the 1964 Civil Rights Act and related statutes.

I. Agents who prepare appraisals shall not negotiate for the acquisition of parcels they have appraised except as noted in Section 8.01.08.00 and the Appraisal chapter.

J. Agents shall not negotiate for any property in which they or their relatives, friends, business associates or others with whom they are closely associated have any personal or financial interest.

K. The Agent assigned to acquire a property shall maintain a timely written record (parcel diary) of all contacts with the owner or owner's representative and any tenants or lessees.

L. In completing and reporting a transaction, the Acquisition Agent shall prepare a complete written explanation (Memorandum of Settlement) which will leave no doubt in the mind of the reviewer that all elements of the transaction were given adequate and equitable consideration.

8.01.04.00 Assignments

The Agent assigned parcels for acquisition will review the appraisal with the Senior Right of Way Agent-Acquisition and the appraiser. A field review with the appraiser will be made, if necessary, so the agent will have the benefit of all information used by the appraiser for determination of values.

The DDC-R/W or the Acquisition Branch Chief will ascertain that the agent has all of the information necessary to conduct and complete negotiations for

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the orderly and efficient acquisition of the right of way. This information shall include, but not be limited to:

A. Current title reports.
B. Approved appraisal.
C. All factual data compiled by the Appraisal Branch for preparation of the appraisal.
D. Necessary right of way maps, plans, profiles, cross sections, and construction details.
E. Adequate time to study the parcels in the field.

8.01.04.01 Acquisition by Mail, Electronic Mail, or Fax

When warranted by cost and good business considerations, the Districts may accomplish acquisition through the mail, electronic mail (e-mail), or fax—especially the acquisition of noncomplex parcels.

For example, where the appraiser of a noncomplex $10,000 or less parcel also acts as the Acquisition Agent, the initial inspection of a property with the owner and the initial offer (if made to the owner at the same time as the initial inspection) will, of course, take place in the course of a personal contact with the owner. The District, however, may consider conducting any subsequent negotiations with the owner by mail, e-mail, or fax.

If a property owner resides in the State but in a county outside of the District, and it is not practical for the agent to make a personal call, a letter may be addressed to the DDC-R/W in whose District the property owner resides. This letter shall contain details relative to the purchase, together with the necessary documents, to enable the DDC-R/W to assign an agent to handle the acquisition.

The District should always consider the complexity of the transaction prior to requesting that property be acquired by the District in which the absentee owner lives. This is primarily because the agent assigned the parcel will have personally inspected the property in the process of reviewing the appraisal and have more familiarity with it and the related comparable sales. This approach should be used only in acquisitions which do not involve relocation assistance and which are nominal in value. Individual cases otherwise qualified for handling by mail may require personal contact. In addition, if the property owner resides outside of the State, Initiation of Negotiation (first written offer) and the acquisition is to be carried out through the mail. A concurrent offer can also be made via e-mail, or fax. Any subsequent offers

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(revised offers) can then be made via e-mail, or fax. In transmitting the Contract and Deed, the agent is to express the terms and conditions of the transaction clearly and concisely and include maps showing the right of way requirements. See Section 8.01.11.00 for a discussion on the delivery of documents.

8.01.05.00 Acquisition Branch Responsibility in Certification Process

The Acquisition Branch must assure that all property interests affected by a project, except utility relocation, have been or will be secured. Arrangements must be made for the removal, relocation or protection of any building improvement or other obstruction. All of these steps must be performed within the limits of Departmental policy and in compliance with the Uniform Act. They must also be completed in time to meet the scheduled project certification date.

Prompt calls must be made on all property owners or interests which will be affected by clearance of the right of way. Early identification of design, construction or relocation problems should assure that ample time is available for their resolution.

For certification purposes, real property interests are secured by obtaining a properly recorded conveying document, Contract with possession clause, Order for Possession, Recordation of Final Order of Condemnation, Possession and Use Agreement, or Right of Entry. Bureau of Land Management Decisions, Department of Transportation (DOT) Easements, Forest Service Letters of Consent and Construction Permits qualify as conveying documents in the certification process.

The Branch Chief will establish lead time requirements which will allow time for the sending of a Notice of Intent. California Transportation Commission (CTC) action, suit preparation, service of summons and complaint, and Order for Possession procedures all require substantial periods of time which affect certification dates. There should be a clear understanding between the Branch Chief and Agents regarding problem areas, such as difficult or complex acquisitions, property owners unavailable for discussions, whether publication of summons is necessary, or difficult or complex acquisitions involving building relocation, cutting and refacing of improvements, or abandoned property within the right of way.

Essentially, the responsibility of the Acquisition Branch in the certification process is to document that all interests adverse to the Department's ability to

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enter and/or clear a property have either been secured or all such interests will be secured by a certain date based on an executed document or legal process.

8.01.06.00 Parcel Diary

The purpose of the parcel diary is to record all contacts and efforts used by the Department to acquire the assigned parcel through settlement and negotiation prior to litigation.

If an action in Eminent Domain is filed, the parcel diary will be turned over to the attorney assigned to assist in the presentation of the Department's position. Parcel diaries are protected, to a small degree, from the Public Records Act and should not be provided to the owners or their representatives per an informal request. However, the parcel diary can be entered into the court proceedings (including relocation assistance appeals) as evidence, especially when the agent or attorney refers to a statement in the diary about the offer. Therefore, it is imperative that remarks in the diary refer only to the negotiations and discussions with the owners/occupants, and do not include any comments or feelings that would cause embarrassment if they become a part of the court records.

The parcel diary is generally initiated by the appraiser. The Acquisition Agent must maintain the diary for each assigned ownership. It will reflect the offer and status of the Department's contacts and conversations with all interested parties. It will remain with the agent's individual parcel folder until the parcel is acquired and thereafter shall become part of the permanent parcel file.

All contacts with property owners, attorneys for State or owner, witnesses or other interested parties must be shown until the parcel is closed.

The form of parcel diary and detailed instructions regarding entries are shown on Form RW 7-1. Form RW 7-23 shall be used when a loss of goodwill claim is involved.

8.01.07.00 Separation of Acquisition and Relocation Assistance Functions

A clear separation must be maintained between the acquisition and relocation assistance functions except when using the single agent/ "caseworker" approach (Section 8.01.09.00). Departmental legal opinions have stressed that the enactment of the Uniform Act was not meant to be an

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expansion of just compensation, but a separate obligation of the displacing agency.

8.01.07.01 Waiver of RAP Benefits

Waivers of RAP benefits shall not be made a part of a negotiated acquisition settlement. Waivers for reimbursement of moving costs when an owner retains items of realty as provided in Section 8.06.03.00 are not involved herein. See Section 8.06.22.00 for procedures where RAP benefits do not accrue.

8.01.08.00 Separation of Acquisition and Appraisal Functions

The Departmental policy is to avoid assignments which may result in conflicts of interest. An agent shall not act as both the appraiser and acquisition agent of real property where the cash to grantor exceeds $10,000 and/or there is significant Construction Contract Work (other than replacement of existing facilities such as road approaches, fencing, irrigation pipelines, etc.). This $10,000 limit may be exceeded by the use of nonsubstantial administrative settlements (see Sections 7.01.05.00, 8.02.02.00, 8.03.08.00, 8.50.01.00, and 10.01.13.00 for single agent, under $10,000 process).

If the total fair market value of a parcel, including construction contract work, is $10,000 or less, the same person may estimate and acquire the required interest through the use of a Waiver Valuation. (See Valuation Summary Statement requirements, Section 8.02.00.00.) The Waiver Valuation is not an appraisal and cannot be used for condemnation purposes. Prior to requesting a Resolution of Necessity for condemnation, an appraisal report must be prepared and a copy of the approved report provided to the property owner/lessee. An Appraisal Summary Statement (8-EX-15A) and a Summary Statement Relating to the Purchase of Real Property or an Interest Therein (8-EX-16) must also be prepared and given to the property owner/lessee. See Sections 7.01.02.00, 7.02.13.00, 7.02.13.01, and 7.02.13.02 for a complete discussion of Waiver Valuation.

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8.01.09.00 Explanation of Relocation Assistance Program (RAP)

When negotiations are initiated with the property owner, or the owner's representative for any owner-occupied property, and upon receipt of the U.S. Residency Information (Form RW 10-44), the agent will explain the Relocation Assistance Program to the owner or representative. Tenants in possession under valid agreement will have the Program explained by the RAP agent. The Acquisition Agent must be familiar with the contents of the RAP Chapter.

At the option of the District R/W Office, the Acquisition Agent may implement a single agent/"caseworker" approach for nonresidential/business owner-occupied properties.

If the single agent/"caseworker" approach is used, the agent doing the combined acquisition and RAP work should be well experienced and trained in both functions, and have sufficient time to handle both transactions. In cases of complex nonresidential moves, it is desirable to have a highly experienced RAP agent or a specialist handle such cases.

Under the conditions outlined above, it would be acceptable to have an assigned Acquisition Agent handle simple tenant-occupied nonresidential/business moves as well.

The single agent/"caseworker" approach is most often utilized on parcels where the total fair market value, including construction contract work, is $10,000 or less. In these situations, the agent should be cognizant of relocation issues that may be encountered. See Section 10.01.13.00 of the R/W Manual for more information regarding relocation associated with the single agent process and the proper forms to be used. The agent's file should fully document all appraisal, acquisition, and relocation activities associated with the transaction.

8.01.10.00 Offers to Purchase Must Be Made Promptly

Federal, State, and Departmental policy require that a prompt offer be made to purchase property. In an active market, an appraisal may be outdated in a very short time. Failure to make prompt offers in such cases is not only inconsistent with proper acquisition procedures, but may lead to unnecessary reappraisal activity.

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All offers should be made within 30 days of the approval of the appraisal. If circumstances cause delays in making prompt offers, the parcel diary must contain appropriate entries to document the reason for that delay.

8.01.11.00 Offers and Documents Delivered to Owner

The Contract containing the offer should be handed to the property owner, or owner's authorized representative, by the agent at the first contact when price is discussed. In limited instances, an acquisition discussion could occur without handing the contract to the owner, i.e., lessee-owned improvements or lack of agreement as to ownership of improvements. When improvement ownership is established, a copy of the approved appraisal, Appraisal Summary Statement or Valuation Summary Statement and Summary Statement Relating to the Purchase of Real Property or an Interest Therein are to be delivered without delay. See Section 8.02.00.00.

In addition to the Contract, copy of the approved appraisal report, Appraisal Summary Statement or Valuation Summary Statement and the Summary Statement Relating to the Purchase of Real Property or an Interest Therein, the agent shall also deliver the following documents to the owner as applicable: Grant Deed, Easement Deed, Owner's Certification of Tenants (RW 10-1), Certificate of Occupancy and Receipt of Relocation Information (RW 10-25), Rental Escrow Instructions (Exhibit 8-EX-3), Rental Agreement (Exhibit 8-EX-4), Appraisal Cost Reimbursement Agreement (Exhibit 8-EX-6), Information Sheet for Owner(s) Regarding Property Tax Relief (Exhibit 8-EX-49), and the Department's "Your Property Your Transportation Project" Brochure. The agent must verify that the property owner has received the Title VI Civil Rights information. Appropriate entries shall be made in the Parcel Diary and the information supplied if the property owner has not received it.

All occupancy certifications must be completed at the time of Initiation of Negotiations (ION) to establish eligibility for relocation benefits. Certifications obtained along with a copy of all RAP documents presented at the ION are to be forwarded to the RAP Senior within two working days of the ION (see Manual Section 10.01.12.05). Diary entries on the correct form are to be included with the above documents. Certification of vacant unimproved land is also needed even if there is no personal property stored on the property. This will ensure that the RAP Senior is informed that there are no relocation benefits associated with a particular property. If the property owner will not sign the occupancy certifications, a complete diary entry to that effect must be made.

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An Offset Statement should be secured, if feasible, on properties occupied by tenants who own or claim ownership in some of the improvements. See Section 8.04.15.00.

If Rental-Escrow instructions are secured, copies of such instructions are to be delivered to the Relocation Assistance Branch subsequent to the ION and to the Property Management Branch immediately after the Contract has been accepted on behalf of the State by the DDC-R/W, or delegate. If the property owner has received rent for vacated units, as described in Section 8.01.31.00, a reconciliation of such payments and Rental-Escrow instructions shall be made in order to avoid conflicts and ensure that State payment ends at close of escrow or date of possession.

When structural improvements are within or partially within the right of way, the initial offer will be on the basis of purchase of the improvements. The property owner *may* then be given the option to either retain improvements or arrange for their relocation in lieu of purchase. See Sections 8.06.07.00, 08.00 and 09.00.

The Acquisition Agent will provide a copy of the approved appraisal and Summary Statements to parties having an interest in the property. These statements shall show values of the property required, damages, if any, and the total payment. If the value of the appraisal is changed, approved revisions shall be provided in a timely manner. See Section 8.01.12.01. Administrative settlement offers or independent condemnation appraisals do not require revised Summary Statements. See Section 8.02.00.00, et seq., for a detailed discussion on Summary Statements.

When it becomes necessary to transmit offers by mail, e-mail, or fax, as in the instances described in Section 8.01.04.01, or when an owner or authorized representative demands that the offer be presented in writing, the offer shall be stated in the following manner:

A. In instances where no condemnation action has been filed: "Enclosed is a Right of Way Contract (in duplicate), in the amount of $_____, which contains all of the terms and conditions of this transaction."

B. In instances where a condemnation action has been filed: "In order to dispose of pending litigation, we hereby offer you $_____ to settle the above-named parcel."

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8.01.11.01 Administrative Methods to Avoid Acquisition of Excess Parcels

To avoid acquiring low-valued, fragmentary excess parcels and carrying such parcels in the excess lands inventory, the Districts may offer the following incentive to property owners as a nonsubstantial Administrative Settlement: Whenever uneconomic remnants have an after-value of $5,000 or less, the property owner may retain the uneconomic remnant remainder and be paid as if the Department had acquired it as excess land.

Acquisition Agents are encouraged to exchange excess lands adjoining or near the acquisition parcel at time of acquisition. If necessary, excess land can be exchanged subject to a temporary construction easement required to construct the Department's project. See Manual Sections 8.12.01.00, et seq., for further procedures regarding Exchanges and Abandonments.

8.01.12.00 Property Owner's Right to a copy of the Department's Appraisal

Section 102(b) of Streets and Highways Code reads as follows:

> "For any property that the department is acquiring by, or under threat of, eminent domain, the department shall, in a timely manner, provide a copy of all appraisals it performed or obtained for the property to the property owner. If appraisals that are performed or paid for by the department are first provided to the property owner, the appraiser shall provide a copy of those appraisals to the department."

This statutory right will be complied with by giving each property owner a copy of the approved appraisal at the ION. Approved appraisal revisions, if any, will also be provided to the property owner in a timely manner. A parcel diary entry is to be made indicating the property owner was provided with a copy of the department's approved appraisal, and revisions, if any.

If a segregable property interest is appraised, such as for lessee owned improvements, machinery and equipment, crops, timber or mobile homes, the owners of these segregable interests shall receive an Appraisal Summary Statement along with a copy of the pertinent information contained in the approved appraisal for their respective property interest valuation.

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The above procedures are also applicable for any appraisals approved in lieu of staff, as well as appraisals performed or contracted by Local Public Agencies for work on the State Highway System. However, these procedures do not apply to independent or staff reports prepared for condemnation, nor do they apply to Loss of Business Goodwill Appraisal Reports.

8.01.12.01 Owner Initiated Appraisals - Appraisal Cost Reimbursement Agreement Procedures

Pursuant to Code of Civil Procedure Section 1263.025(a), "a public entity shall offer to pay the reasonable costs, not to exceed five thousand dollars ($5,000), of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of eminent domain, at the time the public entity makes the offer to purchase the property. The independent appraisal shall be conducted by an appraiser licensed by the Office of Real Estate Appraisers." It should be noted that as of July 1, 2013, the Office of Real Estate Appraisers is now known as the "Bureau of Real Estate Appraisers" (BREA).

To comply with this statutory requirement, all offers made to owners will include a written notice indicating they are eligible to receive payment/reimbursement of up to $5,000 for the actual reasonable costs of an independent appraisal ordered by the owner of a property the Department intends to purchase under threat of eminent domain. The Department's written notice is contained under item number 5 in the Summary Statement Relating to the Purchase of Real Property or Interest Therein (Exhibit 8-EX-16) which is provided at the time of the ION. The payment/reimbursement of reasonable costs is subject to a number of conditions that are also outlined in Exhibit 8-EX-16.

When a copy of the property owner's appraisal is provided to the Department, the Acquisition Branch will review and determine if the new data warrants further consideration by the Appraisal Branch (see Section 7.10.01.00). If so, the Appraisal Branch should then offer a written response to the Acquisition Agent regarding its impact on the Department's appraisal.

To seek payment, the owner will submit the required information/documentation and enter into an Appraisal Cost Reimbursement Agreement (Exhibit 8-EX-6) with the Department. Upon review of the owner's information/documentation, if it is subsequently determined by the Region/District to pay the owner for the actual reasonable cost associated with obtaining an appraisal, the Acquisition Agent will then process the

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payment. Guidelines to process the Appraisal/Cost Reimbursement Agreement, which outline the documents required to request payment, and the specific coding requirements in order to track and capture these costs to the Department, are also attached to Exhibit 8-EX-6.

In the event a property owner requests that the Department pay their appraiser directly, (as opposed to reimbursing the property owner), the Regions/Districts have the option of using Exhibit 8-EX-6A. Guidelines to process this Appraisal Cost/Reimbursement Agreement, and making payment directly to the owner's appraiser, are the same as those guidelines used for Exhibit 8-EX-6.

8.01.13.00 Use of Primary or Alternate Appraisal Reports

The District may pursue negotiations with a property owner on the basis of either the primary or alternate appraisal, provided both have received unqualified approval.

The decision to use the alternate must be justified and documented in the file. See Section 7.03.03.00 for a discussion of Alternate Appraisals. Approval as to value only, or other limiting language, is not considered as unqualified approval.

8.01.14.00 Current Status of Market Value

The Acquisition Agent, in discussions with property owners or owner's representative, should solicit information such as sales which the owner may be relying on to support an opinion of value.

Whenever pertinent information is obtained that suggests a change in value on the property to be acquired, the Acquisition Agent shall supply such data to the Appraisal Branch with a request that the appraisal be reviewed and updated as necessary. The analysis of such sales data is the function of the Appraisal Branch. In an active real estate market, the Appraisal Branch should be supplied with any new data so investigation and analysis of such is reflected as soon as feasible in revision of appraisals.

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The Appraisal Branch will analyze the new data and determine its applicability to unacquired parcels. If the Appraisal Branch determines adjustment is not warranted, the Acquisition Branch will be notified. If the Appraisal Branch determines adjustment is necessary, the following action will be taken:

Depending upon time and available personnel, the appraisal will be either revised and submitted for approval, or a Memorandum of Adjustment made and furnished to the Acquisition Branch.

8.01.15.00 Negotiating with an Attorney or Third Party

Unless otherwise authorized by the property owner, all acquisition discussions shall be with the owner. When an attorney has been retained by the property owner, acquisition discussions will generally be with the attorney. In some instances, an attorney will consent to further discussions between the agent and property owner. Since variations of this are probable, the agent should attempt to establish clear guidelines with the attorney, in writing, for such discussions.

If the property owner employs someone as a representative to conduct discussions, care must be exercised in establishing the extent of the authority of the owner's representative. Such authority or agreement must be in writing from the property owner.

Whether dealing with an attorney or other type representative, it is essential that clear ground rules are established since no two such acquisitions involving third parties are identical. The Acquisition Branch may sometimes find it desirable or necessary to involve the Regional Legal Office in communicating with the property owner's attorney.

8.01.16.00 Exchange of Noncontiguous Land or Land Yet to be Acquired

All exchanges are subject to approval by the CTC. Excess real property may be used in exchange for all or part consideration for other property required for State Highway purposes. Exchanges of land in right of way transactions should be limited to those cases where the excess real property is contiguous to the remaining property owned by the grantor of the property being acquired. However, noncontiguous excess real property or property yet to be acquired can also be proposed for exchange in a Contract. A copy of the Region/District's authorization will be included in the MOS. Finding "A" or "B" situations are the most acceptable type exchange. It is Departmental policy

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to dispose of excess property by public sale whenever possible. Exchanges are justified if sale of an excess parcel to the general public would be injurious to the interests of the abutting owner or if damages are minimized by an exchange and the grantor's property is rehabilitated to permit the highest and best use. For a complete discussion of this topic, see Section 8.12.00.00.

8.01.17.00 Request for Appraisal Review Prior to Commencement of Eminent Domain Proceedings

The District must ensure that the outstanding offer reflects current market value. The Departmental policy is to make every reasonable effort to acquire property expeditiously and pay just compensation. During the negotiation process, the agent should be able to determine if an adjustment in the appraisal could lead to a settlement. Prior to commencing eminent domain action, the agent will provide the Appraisal Branch with all pertinent information which has been obtained and which may have an effect on the market value of the property.

At least 14 days prior to the mailing of the Notice of Intent, the Acquisition Branch shall submit a "Request for Confirmation of Market Value" (Exhibit 8-EX-5) to the Appraisal Branch to ascertain whether the staff appraisal represents current market value. The Appraisal Branch will review and either confirm or revise the valuation of parcels to be included in a condemnation suit and report their findings to the Acquisition Branch. Regardless of whether there is a change in value, the date of value shall always be updated. The only exception would be if the most recently approved staff appraisal has a date of value which is within six months of filing the condemnation lawsuit. See also Sections 7.10.10.00 and 8.01.19.00.

8.01.18.00 Appearances by Property Owners Before the Transportation Commission

Initiation of the condemnation process, as it affects a property owner, commences with the mailing of the Notice of Intent (Notice). See Form RW 9-1 and Section 9.01.04.00.

The Notice advises the property owner that the State intends to seek authority from the CTC to institute eminent domain proceedings. Authority is the Resolution of Necessity (Resolution) adopted by the CTC. This gives the Department the right to file a condemnation action and, subsequently, with the approval of the Superior Court, take possession of the property.

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The property owner has the right to contest the adoption of the Resolution. The Notice informs such owner what steps are to be taken to exercise that right. (See Section 9.01.06.00.)

Property owners must file a written request to appear before the CTC within 15 days of the mailing of the Notice [CCP Section 1245.235(3)]. Upon receipt of the owner's request to appear, Headquarters will instruct the District to conduct a Condemnation Evaluation Meeting (see Section 9.01.07.00). The participants at this meeting will be the District Director, Deputy District Directors from Design and Right of Way, and the owner and/or their representative(s). This meeting should be limited to the appropriate functional managers, the Single Focal Point, and the Headquarters Design Coordinator. Other staff should be available on standby or by phone to be called upon as deemed appropriate to provide supplemental project information to the participants, if necessary. The Deputy District Director of Right of Way will chair the meeting. The Chair reminds the owner the CTC will only consider issues of project need, project design, and necessity of purchasing the owner's property; the CTC will not consider issues of compensation.

District management will have the opportunity to hear and discuss the issues of both sides regarding the acquisition of the subject property. This may result in the District modifying its requirements, resulting in agreement, or confirming their position.

If this review does not result in agreement and the District's recommendation is to proceed with the project, District Design in coordination with Right of Way will prepare an Appearance Information Sheet (AIS) and a Resolution of Necessity Fact Sheet (Fact Sheet) which will be sent to the Headquarters Chief, Division of Design (DOD) for processing, with a copy to HQ Chief, Division of Right of Way and Land Surveys (R/W&LS). Suggested formats for the AIS and Fact Sheet can be found in Appendix JJ of the Project Development Procedures Manual. This submittal serves as the District's request to HQ to schedule the Condemnation Review Panel (Panel) to begin review of the project in pursuit of a Resolution of Necessity. After the Panel has reviewed the facts presented in the AIS, a decision will be made by the Division Chiefs of both HQ DOD and R/W&LS, whether or not to proceed to a Condemnation Panel Review Meeting (see Section 9.01.08.00) by the Condemnation Review Panel. The Panel will consist of representatives from HQ R/W&LS (as Chairperson), Legal, and DOD. The R/W panel chairperson will designate a R/W staff person to serve as the secretary to the Panel. As with the District Condemnation Evaluation Meeting, the owner and/or their representative will present their position as to why the property should not be

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acquired by the Department and the District will present the project scope and project impact.

After this review, the Panel will make either a recommendation to the District for action to resolve the problem or to the Chief Engineer to proceed to the CTC to secure a Resolution. The determining factor will be whether or not the District has complied with all of the requirements necessary in designing the project and in attempting to acquire the property in question. The date selected for presentation to the CTC will be governed by the completeness of the AIS and Fact Sheet, whether or not the matter is to be elevated by the Panel, and the time required for the Panel to perform its function in relation to the monthly cutoff dates for submitting agenda items (with supporting documentation) to the CTC.

The CTC is limited in its consideration by Section 1245.230 of the CCP to the following three conditions: (1) the public interest and necessity require the project; (2) the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and (3) the property described in the resolution is necessary for the proposed project.

Section 1245.230 of the CCP also requires that an offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record.

At the CTC meeting, property owners or their representatives may raise questions regarding the acquisition during the presentation of the arguments opposing adoption of the Resolution. As such, it is imperative the information contained in the AIS and Fact Sheet be up to date, complete and factual.

The District Condemnation Evaluation and Condemnation Panel Review meetings shall be conducted separately to afford the District every opportunity to discuss the project and to negotiate a settlement with the property owner. The District Condemnation Evaluation meeting must be held far enough in advance of the Condemnation Panel Review meeting to allow adequate time for the District to consider and evaluate recommendations discussed at the District meeting. Results of all evaluations are to be included in the Appearance Information Sheet (AIS) and the District's presentation during the Condemnation Panel Review meeting.

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The Chief Engineer has delegated the District Director the authority to combine the District Condemnation Evaluation and Condemnation Panel Review meetings for those projects where the property owner's issues are not related to the project's design. When this authority is exercised, the District Director shall provide in writing to the Chief Engineer, Attn: Chief DOD, a notice of the decision to combine the meetings and verification that the property owners' issues are not design related. The District will be responsible for notifying the Panel secretary to coordinate the Panel's participation at the combined meeting. The District also assumes the responsibility of preparing and finalizing the Appearance Information Package which includes the Panel Report (see Exhibit 9-EX-2), and to prepare the District Director or Deputy District Director to present the Department's draft CTC presentation to the Chief Engineer at the Resolution of Necessity Dry Run (Dry Run) held in Headquarters. The Single Focal Point will coordinate the District's handling of the necessary deliverables and will be responsible for assessing potential risks for the District. The Chief Engineer will determine at the conclusion of the Dry Run presentation if the Resolution is ready to move forward to the CTC for consideration. The Panel Report, which is approved by the Chief Engineer, is the Department's authorization to proceed before the CTC to obtain the Resolution of Necessity. The District is required to meet the Office of CTC Liaison's predetermined deadlines for submittal of documents and presentations so book items can be finalized for the CTC's agenda (refer to current year Preparation Schedule).

Specific details regarding the Resolution of Necessity Process, procedures for performing the District Condemnation Evaluation Meeting and the Condemnation Panel Review Meeting, along with outlines and suggested formats for the AIS and Fact Sheet are found in Chapter 28 of the Project Development Procedures Manual as well as the Headquarters Division of Design Intranet page (internal Caltrans link) regarding Resolutions of Necessity.

8.01.19.00 Use of Staff Independent or Fee Appraisers

Once the decision to proceed with condemnation is made, the Appraisal Branch will be requested to complete Exhibit 8-EX-5, "Request for Confirmation of Market Value," including page 2 regarding "Employment of Appraiser."

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This procedure is intended to ensure:

A. That the staff appraisal is revised, if market data justifies such a revision, so current market value offer can be made to the property owner *before* condemnation is started; and

B. That qualified *staff* personnel are used whenever possible in lieu of independent fee appraisers, in accordance with State Personnel Board rules.

8.01.20.00 Payment of Out-of-Pocket Expenses

The Department may reimburse property owners for expenses incurred in development of a property, when development is interrupted by acquisition, provided certain criteria are met and a review and investigation of the validity of the claimed expenses supports such payment. When an owner requests payment for such expenses:

A. The property owner will be requested to complete and sign two copies of Exhibit 8-EX-7, "Claim for Payment of Expenses Actually Incurred." One copy should be retained by the owner, and one copy for the District Right of Way files. Upon receipt of the property owner's claim, the Acquisition Branch must verify the validity of the out-of-pocket expenses claimed for payment.

B. In addition to verification of the expenses, the review and investigation will identify the expense items that are reimbursable by the State, e.g., map checking fees, building permit fees, architectural plans, materials, services, etc. The investigation will also identify those items which are not reimbursable and the reasons therefor.

C. During the course of the investigation, the Acquisition Branch shall request the Appraisal Branch and, if necessary, the Regional Legal Office to assist in the review and provide a written response as to the reasonableness of the expenses claimed. Development plans will be reviewed to determine whether they are reasonable for the proposed development and contribute to the market value of the property. This review may also reveal whether any expense item claimed might have already been considered and included in the approved appraisal (see Chapter 7, Section 7.05.06.00).

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D. A payment based on the total of the recommended expenses may be authorized by the Region/District on an administrative basis. Agents must check the current R/W Planning and Management Delegation of Authority matrix to determine who in the Districts and Regions may authorize such payments.

   Claims for these types of expenses may also be made on unacquired parcels when negotiations have been suspended on routes which are deleted. If the property owner's financial outlay meets the criteria of a contribution to the value of the property and subsequently the materials, services, plans, etc., cannot be used as a result of our actions, or lack thereof, then such claim should be processed (and coordinated with the Regional Legal Office in cases involving abandonments or the elimination of contractual obligations) on the same basis as though the State were completing the acquisition of the property.

8.01.21.00 Impounded Funds Held for Tax Payments

Lending institutions may, as part of monthly real estate loan payments, require sufficient funds to accumulate in an impound account for payment of property taxes. When the agent determines that a lending institution is impounding funds for tax payments on the parcel being acquired, the agent should advise the grantor to contact the lending institution and arrange for a refund of the pro rata share of such impounded funds.

8.01.22.00 Notification to Property Owner Regarding Tax Liability and Property Tax Relief

Sections 5084, 5085 and 5086 of the Revenue and Taxation Code provide procedure for the collection or cancellation of real property taxes on property being acquired under authority of eminent domain statutes. See Sections 8.04.24.00 and 8.04.26.00.

While the Revenue and Taxation Code authorizes payment of unpaid taxes and current taxes out of escrow or out of the award in an eminent domain action, some tax collecting agencies may not, after notification by the District, place a demand for such taxes. These tax collecting agencies may prefer to have such taxes transferred to the unsecured roll for eventual payment, or in the case of a partial acquisition with subsequent segregation, the unpaid or current taxes are billed with future tax bills. Also, see Section 8.66.04.00.

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The property owner should be advised that unpaid or current taxes may be paid out of escrow if the tax collector places a timely demand or they may be transferred to the unsecured roll for subsequent payment. Notification to the tax collecting agency of our acquisition and the availability of funds should eliminate any State liability imposed by the Revenue and Taxation Code.

Payment for property being acquired must not include payment for any tax—delinquent, unpaid or current.

The agent should explain to the grantor that the area conveyed to the state in a partial acquisition will be segregated and not subject to future liability by the local taxing agency.

When the grantor retains improvements, they should be informed that when the improvements are removed from the secured property roll and transferred as personal property to the unsecured property roll, they will be assessed as the personal property of the grantor. Grantor should be advised that personal property taxes are their obligation and are generally included as a separate item on the tax bill. See Section 8.06.11.00.

The property owner should be advised that Section 2(d) of Article XIII A of the California Constitution and Section 68, Revenue and Taxation Code generally provide that property tax relief shall be granted to any real property owner who acquires comparable replacement property after having been displaced by governmental acquisition or eminent domain proceedings. Exhibit 8-EX-48 lists guidelines prepared by the State Board of Equalization and Exhibit 8-EX-49 is an informational sheet to be reproduced and given to owners.

8.01.23.00 Refund of Prepaid Current Taxes

The taxpayer whose property is to be acquired is entitled to a refund of prepaid current taxes which would have been subject to cancellation, if unpaid. The person who paid the taxes must request the refund after the close of escrow. The Acquisition Agent shall inform the grantor (taxpayer) that any refund will be paid only after the grantor personally applies to the City or County Tax Collector.

For disposition of prepaid current taxes on property acquired by Eminent Domain, see Sections 8.04.24.00 through 8.04.26.00.

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8.01.24.00 Grantor's Obligation to Pay Personal Property Tax

Property owners should be advised of their obligation to pay personal property taxes. These personal property taxes are generally included as a separate item in the tax bill.

8.01.25.00 Title Services on Low Valued Parcels

Normal title services may be waived for parcels where the indicated value will be $25,000 or less, except where it is prudent to utilize those services or as a condemnation proceeding requirement. The potential existence of parcels falling into this value range should be identified early by joint effort of the Right of Way Engineering personnel with the Appraisal and/or Estimating staff(s).

Ownership and legal descriptions of these properties may be obtained by staff personnel from the public records or by title company Statement of Record Ownership. In either event, the Acquisition Agent shall make a reasonable attempt to determine what items, if any, should be taken subject to and what items may be so detrimental as to require clearance. Provision must be made for the payment of any delinquent taxes on a total acquisition. One of the standard indemnification clauses should be included in the contract. See Section 8.04.04.00. Waiver of normal title services does not mean the Acquisition Agent should not make a reasonable effort to eliminate title exceptions which may be detrimental to State's title.

8.01.26.00 Payment for Parcels Appraised as Nominal

When the total appraised value of all property rights or interest to be acquired from an ownership is $2,500 or less, the "Market Value of Required Property" may be shown as "Nominal" on the parcel appraisal page. Districts have the authority to offer up to $2,500, but not less than $500 on parcels appraised as "Nominal." A minimum value offer of $1,000 is required prior to submitting a request for a Resolution of Necessity.

The District will determine the amount to be offered prior to the first call on the owner. The determination of the amount to be offered will be a judgmental decision based on both a project basis as well as the classification (title, size, etc.) of the acquisition.

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Alternately, when the compilation on the appraisal page shows a figure less than $2,500, the offer will be that figure as a minimum, but not less than $500. Also, see the Appraisal Chapter (Section 7.02.14.00).

8.01.27.00 "One Call" Draft Purchase Order (DPO) Process

Payment to grantors may be expedited by using the Draft Purchase Order (DPO) Process, when settling a low-valued transaction of $10,000 or less, after the basis for just compensation has been established with either an approved appraisal or a Waiver Valuation. The grantor may be paid during the initial call with a DPO. The interest acquired must be $10,000 or less, and only one DPO may be issued per parcel.

DPOs should be limited to "One Call" transactions, including payment to the grantor. However, unusual circumstances may lead to up to three calls, if necessary.

The agent must obtain a DPO from the fund custodian. The agent and the grantor must countersign the DPO. The DPO, along with the payment package, must be submitted to Right of Way Accounting as soon as possible, but not later than five working days after issuance of the DPO. Any questions regarding the DPO procedures should be directed to the Region/District R/W Planning and Management Senior.

8.01.28.00 Administrative Authorizations

Administrative authorizations deal with Independent or Staff Independent Appraisal Reports. The reports are initially reviewed and analyzed by the Appraisal Branch and a Report Analysis (Exhibit 7-EX-18) is prepared (see Sections 7.10.11.00 and 9.05.11.00). Thereafter, the Report Analysis is sent to the Acquisition Branch so the necessary authorization for its use may be secured. A memorandum recommending authorization should be prepared by the Acquisition Branch and approved by the appropriate level R/W Manager in the Region/District, or HQ, depending on delegations. A copy of said memorandum will then be transmitted to the attorney assigned to the case and made part of the file. Authorizations $500,000 over the approved appraisal amount must be approved by the HQ Chief Office of R/W Project Delivery. To determine the maximum amount Regions/Districts may authorize, reference should be made to the current Delegation of Authority matrix. See Exhibit 8-EX-17 for a sample authorization memorandum. This exhibit can be modified accordingly depending on whether or not

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authorization to use said Independent or Staff Independent Appraisal Report comes from the Region/District, or HQ.

8.01.29.00 Administrative Settlements

Prior to the filing of an eminent domain suit and the hiring of an independent expert witness/appraiser, property may be acquired through settlement at a payment which varies from an approved appraisal through the Administrative Settlement process. When the difference between the approved staff appraisal and proposed settlement is $500,000 or less, the increase is considered Nonsubstantial. When the difference between the approved staff appraisal and proposed settlement is more than $500,000, the increase is considered Substantial. A Substantial increase requires the prior authorization and approval of HQ R/W. Reference should be made to the current Delegation of Authority matrix to determine the maximum amounts Districts and Regions may approve.

Any increase must be based on and be supported by the guidelines contained in 49 CFR 24.102(i). The final offer of compensation required by Code of Civil Procedure, Section 1250.410 (see the Condemnation Chapter) is to be made in anticipation of protecting the Department against payment of attorney's fees and related costs. It also must be supported by the guidelines in the CFRs.

When an administrative settlement is reached on owner-occupied residential property, the RAP staff must be notified so that any necessary adjustment to the Price Differential Benefit may be determined.

Administrative settlements are to be distinguished from administrative authorizations. Administrative authorizations involve the use of Independent or Staff Independent Appraisals. Administrative settlements are based on factors other than those which are used as market value premises in the preparation of an appraisal. Administrative Settlements are not to be used in lieu of an updated appraisal report. All of the guidelines included in the CFRs are pertinent. However, the more commonly used guidelines in determining whether an administrative settlement should be made are:

A. All available appraisals, including owner's appraisal.

B. Recent court awards for similar properties.

C. Acquisition Agent's recorded information.

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D. Range of probable testimony in trial. (Trial Risks)

E. Opinion of legal counsel, where applicable.

F. Trial cost when considered with other information.

Requests for approvals of Substantial administrative settlements are to be submitted to the Acquisition Section of HQ R/W utilizing Exhibit 8-EX-50. A supporting memorandum or documentation (legal memorandum, where applicable) is to be attached as necessary. If time does not permit a memorandum, the form may be faxed for conditional telephone approval. Approval may take the form of a range of acceptable values. When settlement on conditional approvals is made, the District must submit a memorandum as discussed above, or a confirming memorandum containing the justifying details within 10 to 15 working days. Approved administrative settlements are to be incorporated into the Memorandum of Settlement.

It should be noted that all administrative settlements involving Railroads, regardless of the dollar amount (with the exception of those parcels defined under Section 8.01.26.00), require HQ approval and submittal of Exhibit 8-EX-50 with the Region/District's recommendation for settlement.

Exhibit 8-EX-50 may be used to justify and/or approve Nonsubstantial administrative settlements.

8.01.29.01 Legal Settlement Recommendations

A. Once an Eminent Domain Suit has been filed, an Expert Witness has been hired, AND a settlement that exceeds the amount of the approved staff appraisal is proposed based upon new appraisal data from said witness, the settlement will be considered a LEGAL SETTLEMENT subject to the requirements of 23 CFR 710.105 and 710.203 and Department procedures pertaining to a LEGAL SETTLEMENT. All LEGAL SETTLEMENT recommendation memoranda shall be written by the attorney assigned to the case. All Substantial LEGAL SETTLEMENTS are approved by HQ R/W and are not delegated. The Regions/Districts are authorized to approve Nonsubstantial LEGAL SETTLEMENTS (see Section 8.01.29.00 for definition of Substantial vs. Nonsubstantial administrative and legal settlements).

   In processing payment for LEGAL SETTLEMENTS, the Attorney's Legal Settlement Memo must be received and approved prior to the actual disbursement of any funds. However, as an expedient, issuance of a

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check by Accounting (Form RW 9-20) should be requested as soon as settlement is confirmed.

B. All other settlements that exceed the amount of the approved staff appraisal will be considered ADMINISTRATIVE SETTLEMENTS and subject to the requirements of 49 CFR 24.102(i) and Department procedures pertaining to an ADMINISTRATIVE SETTLEMENT.

C. Additional information regarding delegated authority for Administrative/Legal Settlement can be found at the following Intranet sites (for Department use only):
    - Delegated Authority – Administrative/Legal Settlements (internal Caltrans link)
    - Legal Right of Way Procedures Regarding Retention of Expert Witness Appraisers, Presubmission Conferences, and Requests for Settlement Authority and Approval in Eminent Domain Cases (internal Caltrans Link)

8.01.30.00 Easements in Limited Vertical Dimension

The Department may acquire easements in limited vertical dimension (aerial easement). Typically, this occurs when a proposed structure passes over land on which the surface use is to continue. The conveying document will contain conditions which limit, for safety or other reason, the uses to which the property under the structure may be put or the present use continued. (See Page 12 of Exhibit 6-EX-2.) Changes or modification to the standard limiting conditions can be approved by the Region/District with the concurrence of the Regional Legal Office. The legal description attached to a Notice of Intent advising owners of our intention to secure a Resolution of Necessity must contain all of the limiting conditions.

8.01.31.00 State Rental of Residential or Commercial Units Prior to Acquisition

The Relocation Assistance Program allows the payment of benefits to qualified rental displacees as soon as the initiation of negotiations, or settlement, has been made to the property owner. When the displacee vacates the property pursuant to such a payment but prior to acquisition of the property by the State, acquisition problems may be created. During the period that negotiations are underway, the property owner may feel it necessary to re-rent the property to provide an income stream, sometimes at lower than market rental rates. This can leave the Department with additional

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relocation assistance payment costs and work that can delay project delivery.

In certain circumstances, vacant residential or nonresidential units may be rented by the Department prior to acquisition to keep the units vacant and thus to expedite project delivery and minimize relocation assistance costs. This procedure is especially useful in regard to multiresidential properties, mobile home spaces, ministorage units and similar properties.

Districts are encouraged to use the provisions of this section when anticipated savings will be substantial and/or when project delivery schedules indicate it will be necessary. When it is clear that units should be rented under the provisions of this section but for some reason this cannot be accomplished, consider obtaining an early Order for Possession.

8.01.31.01 Arranging for Pre-Escrow Rentals

Acquisition must obtain the written approval of the DDC-R/W prior to instituting this procedure on any project. This approval will also be the authorization to institute a "No Re-rent" policy after acquisition. (See the Property Management Chapter.)

An estimate of the potential relocation benefits by type of unit affected, along with other justifying material, will be prepared by RAP. It will be a part of the written authorization. It must show that using this procedure will expedite project delivery and/or minimize overall costs to the Department. Consider the estimated lead time on the project and the aggregated rental cost to the State versus the estimated relocation expenses which could be incurred if the units were not rented by the Department.

8.01.31.02 Initiating Rental Agreement

Districts will offer to enter into rental agreements concurrently with Initiation of Negotiations (ION) in cases where pre-escrow rents are approved. This procedure should also be applied where master tenants are operating properties such as mobile home parks under leases with the owners.

The Rental Agreement format set forth in Exhibit 8-EX-4 will be used. It will be prepared in advance of the ION and presented to the property owner(s) with the other acquisition documents when initiation of negotiations is made. Payment of rents may be set up in the rental agreement in two ways:

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A. Accumulation of rents owed during the rental period, and payment at close of escrow.

B. Periodic payments during the rental period. This provision will normally be used when the fiscal condition of the property owner is such that a single delayed payment at close of escrow is not acceptable.

The existing rent schedule for the units shall be continued. If there is no existing schedule, the rental amount shall be set by the Appraisal or Property Management Branch.

8.01.31.03 Paying and Accounting for Pre-Escrow Rents

These rental payments are considered to be acquisition costs, not relocation assistance costs. FHWA participates in these costs, provided they are properly documented and billed. Payments made prior to acquisition may be expedited by completing the Acquisition Invoice (Form RW 8-17) and attaching the documents listed on the form. Allow 30 days for processing payments. The rental agreement must provide for proration of rents that are paid/owed at close of escrow.

A copy of Form RW 8-17, with the attachments, will be placed in each parcel file for which rental payments have been made. It will be included as an attachment to the MOS. Districts should minimize the rental period by allowing for a reasonable negotiation period and then initiating the condemnation process.

Schedules for payment of pre-escrow rent (payment packages) are submitted to District Planning and Management offices.

Pre-escrow rent transactions are considered administrative settlements. The MOS and Federal Participation Memorandum (Form RW 8-16) must reflect the full cost of acquisition including all pre-escrow rents. The total amount of pre-escrow rents is entered on the 'Rent' line of Form RW 8-16. The Federal Participation Memorandum Form should not reflect the schedules for pre-escrow rent payments made prior to close of escrow. Therefore, the amount of pre-escrow rents paid should be entered on the 'Other' line in parenthesis to indicate to R/W Accounting to subtract that amount. A full explanation of pre-escrow rent aspects of the transaction must be included in the MOS.

Where rental payments are made in advance of escrow, a tabulation of all payments made, by amount and date, will be maintained in the parcel file.

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A copy of this tabulation will be included in the MOS as page 3A—Recapitulation of Pre-escrow Rents.

Schedule packages for pre-escrow rents to be paid prior to the close of escrow will be reviewed in the same manner as other schedule packages. After the schedule is forwarded to Accounting for payment, the supporting documents and a copy of the schedule will be maintained in the parcel file and accumulated as periodic payments are made. When the acquisition payment package is forwarded, the accumulated materials will be used in the review to ensure that the MOS and Federal Participation Memorandum include all pre-escrow rent payments made.

8.01.32.00 Acquisition Offers and Relocation Assistance Benefits on Parcels for Projects Not Funded

All offers for acquisition of rights of way and relocation assistance benefits on projects not supported by budgeted funds should be withdrawn. This does not refer to offers on parcels which have been approved as hardship or protection.

Sample letters to be used for the withdrawal of offers from owners and, when applicable, tenants occupying such properties are included as Exhibits 8-EX-9, 8-EX-10, and 8-EX-11. The sample letters refer to the right to appeal the withdrawal of relocation benefits. Such appeal will be to the Relocation Assistance Program Appeals Board in Sacramento. An application to reinstate an acquisition offer should be directed to HQ R/W.

8.01.32.01 Acquisition Offers on Parcels for Projects Where Funding is Uncertain or Delayed

When Right of Way Capital funding for projects is uncertain or delayed, either of the following clauses shall be used in all Right of Way Contracts to avoid future liability due to lack of funds. The Regions/Districts have the option of using either clause below, one of which allows for the payment of interest until funding is available, or the other provides for cancellation of the transaction.

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Supplemental interest payment clause due to funding constraints:

"It is understood and agreed that to complete this transaction, sufficient funds must be made available to the State by the [*insert appropriate funding body/authority, i.e., United States Government and/or the California State Legislature, Local Transportation Authority, etc.*]; therefore, the close of this escrow may be delayed until sufficient funds are appropriated. It is further understood that, in the event the transaction funds have not been deposited into escrow within 120 days of the State's execution of this agreement, interest shall accrue on the amount shown in Clause [*insert appropriate clause number, i.e., 2, 2(A), etc.*] above commencing 120 days after the State's execution of this agreement until the close of escrow controlling this transaction. The rate of interest will be the rate of earnings of the Surplus Money Investment Fund and computation will be in accordance with Sections 1268.350 and 1268.360 of the Code of Civil Procedure. The parties further agree that they will not institute a claim or legal action to seek damages, costs, fees, or any other remedies associated with the delay of escrow where the delay results from the lack of appropriated funds necessary to close escrow."

Cancellation clause due to funding constraints:

"It is understood and agreed that to complete this transaction, sufficient funds must be made available to the State by the [*insert appropriate funding body/authority, i.e., United States Government and/or the California State Legislature, Local Transportation Authority, etc.*]; therefore, the close of this escrow may be delayed until sufficient funds are appropriated. It is further understood that, in the event the transaction funds have not been deposited into escrow within 120 days of the State's execution of this agreement, either party may cancel the agreement at any time subsequent to the expiration of the 120 days by giving written notice to the non-canceling party. Written notice shall be delivered by first-class mail as follows: [*insert mailing addresses if not already included elsewhere in agreement*]. The parties further agree that they will not institute a claim or legal action to seek damages, costs, fees, interest, or any other remedies associated with either the delay of escrow or the cancellation of this contract, and that cancellation is the sole remedy in the event either party exercises its rights under this clause."

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8.01.33.00 Filing of Right of Way Contracts and Other Papers in Official Files

All correspondence, memoranda and other papers or data relating to a particular right of way transaction shall be placed in the proper official office file for such transaction. This shall also include executed but unapproved contracts which have been superseded by new contracts. Where a project has a Federal Aid Project Number, the contract, deed and all other documents and correspondence in the parcel file must have the project number listed thereon.

8.01.34.00 Review of Acquisition Parcel Files

The Regions/Districts are responsible for ensuring compliance with Federal, State, and Departmental policies and procedures. Review of Acquisition parcel files is the responsibility of the District Acquisition Senior. The Senior may use the acquisition checklist (Exhibit 8-EX-12) as a guide to the items which are the most sensitive. The checklist is not intended to include all items which may be the subject of a review.

8.01.35.00 Reimbursement of Litigation and Transfer of Title Expenses – Appeal Process

Federal regulations require that property owners be reimbursed for expenses incidental to the transfer of property as well as specified litigation expenses. These are enumerated in 49 CFR 24.106 and 24.107. FHWA also requires that property owner have an appeal process available if reimbursement or direct payment by the State is unavailable. The expenses listed under 24.106(a) are paid by the State as part of our normal process. The Code of Civil Procedure, Section 1265.240, prohibits the State from paying the expenses listed in 24.106(a). A procedure is in place for reimbursement of expenses listed in 24.106(a). Those listed in 24.107(a), (b), and (c) are paid at the direction of a court order. There does not appear to be an area under which owners would have expenses borne by themselves. However, property owners shall be advised that if they have incurred any of the expenses listed for which they have not been reimbursed, they have the right to appeal to the Director of the Department for reimbursement. To qualify for reimbursement, such expenses must have actually been incurred, be reasonable, and not at the option of the owner.

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8.01.36.00 Hazardous Waste

It is the *policy* of the Department, in the development of transportation projects, to fully consider all potential aspects of hazardous waste (HW) sites. Where one is involved, we must ensure that adequate protection is afforded employees, workers, and the public both during and after construction. See Section 8.16.00.00 for a complete discussion on how Acquisition is to handle Hazardous Waste and Hazardous Materials. See Section 7.04.12.00, et seq., for Appraisals' involvement.

It is the Department's policy to not pay for the cleanup of HW generated by other responsible parties. Any property known or suspected to be contaminated with HW will not be acquired or possession taken until:

A. The suspected site has been sufficiently investigated to the point of providing a reasonable assurance that no significant problem exists; or

B. The confirmed site has been cleaned up by the responsible party prior to possession by the Department; or

C. A determination has been made that the HW will cause no impediment to the construction of the proposed project or to the anticipated subsequent use by the Department and the public; or

D. The estimated cost of the cleanup has been reflected in the appraisal and acquisition process in those cases where the Department will do the cleanup work.

Exceptions to this policy must follow the approval process outlined in Section 8.16.01.01 and be approved by the Department's Chief Engineer.

A material is hazardous if it poses a threat to human health or the environment. A hazardous material has one or more of the following general characteristics:

A. flammable

B. corrosive

C. toxic

D. reactive (subject to spontaneous combustion)

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Hazardous material becomes hazardous waste when no longer of use and is to be discarded.

8.01.37.00 Incentive Payment Program

On June 12, 2014, the Division Chief of Right of Way and Land Surveys signed a memorandum implementing an acquisition incentive payment program. This memorandum is included as Exhibit 8-EX-29. Regions and Districts must adhere to the requirements of the memorandum and use the following clause in the Right of Way contract when incentive payments are used on a project:

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

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8.02.00.00 - APPRAISAL SUMMARY STATEMENTS AND VALUATION SUMMARY STATEMENTS

8.02.01.00 General

Appraisal Summary Statements and Valuation Summary Statements consist of a form and transmittal letter. The letter describes certain legal rights of the owner and lessees having a compensable interest in the property being acquired. The form sets out some specific financial data relative to land, improvements and damages.

All owners and tenants having a cumulative compensable interest of $10,000 or more in land, buildings, structures, other improvements located on the real property to be acquired, must receive both an Appraisal Summary Statement (Exhibit 8-EX-15A) and Summary Statement Relating to the Purchase of Real Property or an Interest Therein (Exhibit 8-EX-16) on the first acquisition call when price is discussed [49 CFR 24.102(e)].

All owners and lessees having a compensable interest in land, buildings, structures, other improvements, or a business located on the real property to be acquired, must also receive both an Appraisal Summary Statement and Summary Statement Relating to the Purchase of Real Property or an Interest Therein, or if the parcel is valued using a Waiver Valuation, then both a Valuation Summary Statement (Exhibit 8-EX-15C) and Summary Statement Relating to the Purchase of Real Property or an Interest Therein must be provided on the first acquisition call when price is discussed.

The Summary Statement Relating to the Purchase of Real Property or an Interest Therein shall be modified depending on whether an Appraisal Summary Statement or Valuation Summary Statement is utilized. When an Appraisal Summary Statement is used, item 4 of Exhibit 8-EX-16 will refer to the "Appraisal Summary Statement." When using the Valuation Summary Statement, item 4 of Exhibit 8-EX-16 will refer to the "Valuation Summary Statement," and the word "valuation" should appear in items 4.a. and 4.b.

Appraisal and Appraisal Summary Statements must be prepared and the offer made prior to proceeding with a condemnation action.

Exhibit 8-EX-15B covers "Loss of Goodwill." Depending on whether or not this "Loss" has been appraised will determine which statement needs to be checked.

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When a Loss of Goodwill appraisal report is either approved or authorized, a statement indicating the amount of the loss shall be delivered at the time of initiation of negotiations for such loss. While a "business" is not an interest in real property, the Summary Statement Relating to the Purchase of Real Property or an Interest Therein shall be delivered to cover other aspects of the acquisition. In some instances, consultation with the Legal Division may be advisable prior to offering the amount of the Loss of Goodwill Appraisal.

8.02.02.00 Statement Types

Appraisal Summary Statements are to be used for appraisal reports only, whether full narrative or memorandum format. When an appraisal report was not prepared or when a Waiver Valuation was prepared, then the Valuation Summary Statement must be used. All Appraisal Summary Statements for the purchase of real property, or interest therein, are to be on a single basic form (Exhibit 8-EX-15A) with the data provided varying dependent upon the type of property and the appraisal approaches utilized. If lessees or other interest(s) are involved, they are to be appropriately identified in the space provided for "Owner."

NOTE: Federal regulations require that the Summary Statement identify any separately held ownership interest in the property, such as a tenant-owned improvement, and indicate that such interest is not covered by the offer. In such cases, appropriate information is to be added in the space available at the bottom of page 3 of Exhibit 8-EX-15A, and the bottom of page 1 of Exhibit 8-EX-15C.

All Valuation Summary Statements for the purchase of real property or interest therein, valued at $10,000 or less, using a Waiver Valuation or other non-appraisal process, are to be on a single basic form (Exhibit 8-EX-15C) with the data provided varying dependent upon the type of property, and the valuation approaches utilized. If lessees or other interest(s) are involved, they are to be appropriately identified in the space provided for "Owner."

The Appraisal Summary Statement (Exhibit 8-EX-15A) and Valuation Summary Statement (Exhibit 8-EX-15C) shall also include a mandatory paragraph entitled "Summary of the Basis for Just Compensation" (see Sections 7.02.03.00 L., 7.02.12.00, and 7.02.13.00).

This paragraph prepared by the appraiser is to be included verbatim by the Acquisition Agent following item 3, under the "Basis of Valuation" section of the summary statement.

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Exhibit 8-EX-15B is for Loss of Goodwill Appraisal Summary Statements.

8.02.03.00 Lessee's Interest

At the initiation of acquisition discussions for an ownership which is subject to a lease, and prior to making any offer, the Acquisition Agent will confirm the ownership of the improvements as between the parties with an offset statement. (See Section 8.04.15.00 and Exhibits 8-EX-18A and 8-EX-18B.)

Determination of compensation to be paid for any improvements shall be as a part of the real property to be acquired. This is notwithstanding the obligation of the tenant to remove any improvements at the expiration of the lease.

Separate Appraisal Summary Statements or Valuation Summary Statements and Right of Way Contracts will be delivered to the lessor and lessee at the time initiation of negotiations are made. Sections 8.04.15.00, 8.04.15.01, 8.04.15.02, and 8.04.15.03 must be reviewed prior to preparing summary statements.

Each Appraisal or Valuation Summary Statement in a Lessor/Lessee Acquisition will indicate which improvement, machinery, equipment or improvements pertaining to the realty is claimed or owned by each of the parties.

8.02.04.00 Revised Offers

When the appraisal or Waiver Valuation is revised, the owner and/or lessee will be provided with a new Appraisal Summary Statement or Valuation Summary Statement, reflecting the revised appraisal or Waiver Valuation.

8.02.05.00 Expert Witness Appraisals for Condemnation Purposes

Expert Witness appraisals, whether prepared by staff or independent appraisers, are obtained for litigation purposes. These are privileged, and Appraisal Summary Statements will not be required.

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8.03.00.00 - RIGHT OF WAY CONTRACTS AND CONTRACT APPROVALS

8.03.01.00 Form of Right of Way Contracts

Right of way transactions are usually completed through use of the approved form, appropriate insert sheets and approved clauses. (Forms RW 8-3 through RW 8-5.)

Special agreements with other public agencies, railroads, etc., may require the use of a special form in lieu of a Right of Way Contract.

All Contracts should consist of standardized clauses, primarily. Most aspects of acquisition are covered by use of the appropriate standard clauses.

The wording of the clauses should not be altered unless absolutely necessary. If situations arise which require modification of these clauses or use of special clauses, the Memorandum of Settlement (MOS) will explain and justify the special wording. A minimum of two signed copies of the Contract shall be secured from the grantor.

Revisions, deletions, additions, or attachments to the Contract shall be initialed by the grantor(s) and the Agent.

8.03.02.00 Contract Obligations

The Contract must include all the terms and conditions mutually agreed upon and reflect a complete agreement on all matters involved in the acquisition. No obligation other than those set forth in the Contract will be recognized and the performance of those terms and conditions relieves the State of all other obligations or claims.

The State can enter into a contractual obligation involving a contingency occurring more than three years after acceptance of the Contract only in exceptional cases.

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8.03.03.00 Amendments to Right of Way Contracts

Changes required by either the State or State's grantors may require revision of portions of approved contracts. Such revisions are to be accomplished by an amendment to the Contract. The format for an amendment is shown as Exhibit 8-EX-19.

8.03.04.00 Canceling or Superseding Signed Right of Way Contract

A signed Contract (regardless of approval status) may be superseded or canceled and returned to the grantor only with the written consent of the DDC-R/W or Supervising Agent in charge of the Acquisition Branch. If the Contract has been scheduled for payment, a letter with reference to the appropriate schedule number should be sent to the title company informing them that the State's warrant should be returned to the Disbursing Officer in Sacramento. The District should advise HQ R/W that the Contract has been canceled or superseded and the title company has been instructed to return the warrant. This procedure applies only to those cases where the Contracts are being canceled and superseded and not to Contracts to be amended.

Where an entirely new Contract is being substituted for a prior Contract, the following clause is to be used.

> "This Right of Way Contract shall supersede, cancel, and void all terms and conditions of that certain Right of Way Contract heretofore entered into between the parties hereto on (date)."

8.03.05.00 Acquisition from an Employee of the California State Transportation Agency

Where the grantor is an employee of the Agency, the Agent, in preparing the Contract, shall make a notation immediately after the grantor's name indicating Civil Service Title and place of employment, e.g.:

John Doe
Senior Right of Way Agent
District 13
Department of Transportation

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8.03.06.00 Payment Clauses

The standard Contract contains a printed payment clause. There are a number of different situations which may require specialized payment clauses. A series of specialized clauses are in Section 8.05.00.00 under .04, .05, .09, .10, .11, and .13.

8.03.07.00 Contracts Which Require Approval by HQ R/W

The only transaction that requires HQ R/W approval is one in which a commitment is made by the State to acquire private property for private use. For this type of transaction, a transmittal memo must accompany the contract submitted to HQ R/W for approval, providing background data on the transaction.

8.03.08.00 Contracts Approved by District Office of Right of Way

The District may approve all Contracts with the exception of those specifically requiring HQ R/W approval as listed above and listed in the current District delegations. Prior to acceptance of the Contract on behalf of the State, one copy of the signed Contract must be certified as to availability of funds by the Division of Accounting.

The MOS and signed Contracts, including the one certified by the Division of Accounting, shall be processed for acceptance as follows:

A. For parcels with less than $25,000 cash to grantor, the MOS shall be recommended for approval by the Acquisition Agent and approved by that agent's Senior. The same Senior will approve the Contract by signing, on behalf of the State, both copies of the Contract previously signed by the grantor. Parcels which would otherwise qualify under this provision except that a nonsubstantial administrative settlement has pushed that cash to grantor to over $25,000 can be processed in the same way; however, the administrative settlement must be approved in accordance with the provisions of Manual Section 8.01.29.00.

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B. For parcels with more than $25,000 cash to grantor:

1. The MOS shall be recommended for approval by the Acquisition Agent and the Senior Agent Acquisition Branch.
2. If the Contract meets all of the criteria set forth above, the Supervising Agent for Acquisition or the DDC-R/W will approve the Contract by signing, on behalf of the state, both copies of the Contract previously signed by the grantor.

These are the minimums required and no further delegations should be made. Any District Director may wish to retain the right to accept the Contract on behalf of the State. An executed copy of the Contract is mailed or delivered to the grantor after acceptance.

A signed copy of the MOS and a reproduced or conformed copy of the Contract will be forwarded with the schedule package to the Division of Accounting. Scheduling procedures may be initiated as soon as the Contract has been accepted by the district.

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8.04.00.00 - TITLE EXCEPTIONS

8.04.01.00 General

Normally, a preliminary title report is obtained on every property to be acquired. There are instances, however, where no report will be obtained or just a "Statement of Record Ownership" will be obtained. Then, it is incumbent on the Appraiser and the Acquisition Agent to examine the county records to determine the condition of title. This would include vesting information, liens, encumbrances, easement, covenants, conditions and restrictions, leases, reservations, taxes, assessments, bonds, trust deeds, mortgages, contracts of sale and bonds. Every effort to secure clear title for the State must be made. Items which cannot be cleared will have to be taken subject to in the Contract.

The preliminary title report must be analyzed to determine which exceptions will be cleared and which will remain and title to be taken subject to the encumbrance. All encumbrances which will appear as exceptions in State's policy of title insurance must be included in the Contract in sufficient detail to be readily and adequately identified. Those involving the public record should include the appropriate book and page or date and instrument number.

Since the property owner will be obligated to deliver title to the State as specified in the Contract, liens and encumbrances not listed must be cleared before payment is made. The Acquisition Agent should assist the property owner in clearing title of such liens and encumbrances.

If an encumbrance affects a portion of the grantor's land other than that being acquired by the State and it cannot be eliminated, the encumbrance must be shown in the Contract and proper explanation included in the MOS.

All encumbrances adverse to State's title must be cleared unless adequate reason clearly justifies taking title subject to such encumbrances. Consider both the actual and potential effect of each exception on State's title. Any title encumbrance or subordinate interest to be cleared by separate Contract must be taken subject to in the Contract with the fee owner. This will provide a basis for clearance of the encumbrance or interest as a separate transaction even though the separate transaction is being processed concurrently with the parent transaction.

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8.04.02.00 Clearance of Unrecorded Interests

The standard form of title insurance policy insures the title to the property predicated on matters disclosed only by the public records. The Acquisition Agent must assume full responsibility and do those things necessary for protecting the State against loss due to any matters affecting the title which do not appear of record.

The law provides that a buyer is bound by the constructive notice afforded by the public records and such notice to which buyer is exposed. A purchaser is deemed to have notice of such interests as would be disclosed by an investigation of ground conditions. Some items which inspection of the property should disclose are:

- Parties in possession under an unrecorded deed or contract of purchase;
- Community driveways, pole lines, pipe lines, irrigation ditches, or roadways indicating easements or rights of way which do not show in the title report;
- Streams, lakes, rivers, or oceans which may affect boundaries;
- Overlapping or encroaching improvements;
- Violations of restrictions or zoning ordinances.

Although the title company normally insures against loss sustained by reason of a forgery, the only precaution they ordinarily take to justify such insurance is the requirement of a statement of identity from the grantor. A policy of title insurance insures the State against loss sustained by reason of a forgery only to the amount of the insurance.

8.04.03.00 Instruments to Clear Title

Standard right of way forms should be used to clear or eliminate interests affecting title. If there is no standard form, ask the title company for an acceptable instrument. If State's grantor agrees to clear a subordinate interest, the instrument may be in favor of such grantor rather than the State. The Contract shall specifically obligate grantor to eliminate such interest at grantor's sole cost and expense.

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Whenever a subordinate interest is cleared by Quitclaim Deed in favor of State and no payment is to be made to the interest holder, the District will insert the following words:

"without any demand for monetary or other consideration" immediately after the printed words,

"do hereby release and quitclaim to the State of California" as stated in the preamble of Quitclaim Deed forms.

8.04.04.00 Grantor's Indemnification

Where the State is acquiring title subject to exceptions of a questionable nature, the appropriate indemnification clause must be in the Contract. The MOS must contain sufficient information supporting the acceptance of title subject to defects and imperfections. If the exception is specifically listed under Paragraph 2(A) of the Contract, use Clause 1, otherwise use Clause 2.

1. "In consideration of the State's waiving the defects and imperfections in the record title, as set forth in Paragraph 2(A), the undersigned Grantor covenants and agrees to indemnify and hold the State of California harmless from any and all claims that other parties may make or assert on the title to the premises. The Grantor's obligation herein to indemnify the State shall not exceed the amount paid to the Grantor under this contract."

2. "In consideration of the State's waiving the defects and imperfections in all matters of record title, the undersigned Grantor covenants and agrees to indemnify and hold the State of California harmless from any and all claims that other parties may make or assert on the title to the premises. The Grantor's obligation herein to indemnify the State shall not exceed the amount paid to the Grantor under this contract."

See also Section 8.01.02.09 (Government Code Section 14662.5).

8.04.05.00 Covenants, Conditions and Restrictions

Title may be taken subject to the conventional, general, or individual type of tract restrictions, provided the nature and effect are known and considered. Unusual covenants or conditions which restrict land for a specific use, such as park purposes, school purposes, railroads, etc., shall be considered particularly as to a possible forfeiture of title upon breach or violation.

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Conveyances to clear such reversionary interests should be secured as necessary.

8.04.06.00 Easements – General

All easements are to be considered as to both the present and future effect on property being acquired. The location of the easement in relation to the part taken is to be determined prior to preparation of the Contract. If an easement constitutes a present or future adverse interest in the part taken, it should be eliminated by appropriate instrument prior to scheduling if possible. Where the nature of the easement does not warrant the cost in time and effort to eliminate, it should be handled in conformance with Sections 8.04.01.00 and 8.04.04.00.

8.04.07.00 Easements – Gross or Appurtenant

All easements in favor of third parties for personal or business use, such as driveways, roads or pipelines, whether in gross or appurtenant, should be cleared prior to scheduling. If payment is to be made to clear an easement, this must be taken into consideration in the transaction with the fee owner. This clearance should be done concurrently with the fee acquisition.

Elimination of easements in gross which can be arranged through one transaction covering the entire project may be delayed if it is advantageous from the standpoint of efficiency or expediency.

The effect and intended disposition of such easements must be reported both in the MOS and schedule letter. It is incumbent on the DDC-R/W to see that all such easements are satisfactorily cleared prior to certifying the project for construction.

Interests not cleared prior to the close of escrow must appear as an exception in the Contract since they will also appear as exceptions in the Policy.

8.04.08.00 Easements – Blanket

The interest of easement holders in so-called "blanket" or "floating" easements should be cleared if the choice of location has been exercised. Such easements affect title to the entire property and will be shown as encumbrances in title policies unless eliminated by proper conveyance. Title Company agreements to eliminate such easements should be in writing and the information included in the schedule letter and escrow instructions.

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8.04.09.00 Easements – Obsolete

Easements or rights that are discovered by either observation or inquiry to be obsolete, abandoned, extinct and of no present or future adverse effect are nonetheless to be listed in the Contract and a brief but adequate explanation included in the MOS.

8.04.10.00 Utility Easements

Public or private utility easements may or may not have a facility located (overhead, surface or underground) therein. Clearance or elimination of these facilities from the right of way being acquired will be the responsibility of the Acquisition and/or the Utility Relocation Branch.

The elimination of a private easement and clearance of any facility located therein is the responsibility of the Acquisition Agent. This is usually done by Quitclaim Deed with an obligation in the Right of Way Contract to secure a replacement easement, if necessary. Relocation (i.e., an irrigation pipeline) may be provided for by payment in the Contract. If the facility is to be removed and use discontinued, it may be desirable to have removal by the road contractor. Relocation of a private facility may be handled by or with the assistance of the Utility Relocation Branch.

If the easement is public (easement in gross), first determine whether a facility exists within the easement. Visual inspection should suffice for surface and overhead facilities. The Utility Coordinator must consult with the vestee of the easement to assure that no other facility exists in the area.

The Acquisition Agent and the District Utility Coordinator must jointly determine whether to take title subject to the easement where no facility exists. The utility company may have plans to use the easement for a future facility. Taking title subject to the easement will thus create a situation in which additional costs will have to be borne by the State. The Utility Coordinator should enter into an agreement with the company recognizing such future use.

The Acquisition Agent cannot assume that when a public utility easement exists on property to be acquired, the disposition of such easement is the sole responsibility of the Utility Coordinator. The Utility Coordinator must be advised of the existence of any easement without a facility, including its dimensions, so that a reasonable determination may be made whether to take title subject to the easement or if discussions between the utility company and Utility Coordinator are necessary.

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The District Utility Coordinator will arrange for relocation of all facilities installed in public utility easements. The substitute easement will be acquired either by the company or the Department at the request of the company. If acquired by the Department, the location shall be agreeable to the company. This replacement area is subject to the same controls and clearances that apply to regular highway rights of way, including hazardous waste clearances.

Acquisition of right of way from a utility company involves a variety of approaches, i.e., fee or easement; vacant, site or corridor; improved site or corridor; replacement right of way; and consent to condemnation for exchange.

The Acquisition Agent should be thoroughly knowledgeable with the procedures involved in acquiring right of way from a utility company. Reviewing appropriate sections of the Utility Procedure Chapter will provide insight. Discussions with the District Utility Coordinator are essential.

8.04.11.00 Judgments, Attachments, Mechanics' Liens, Etc.

Appropriate releases or satisfactions of all such exceptions are to be secured and filed or recorded. Quitclaim deeds are not effective in eliminating such liens. Refer to the Titleman's Handbook and discuss these matters with the title company to determine the proper procedures.

8.04.12.00 Release of Liens Under Unemployment Insurance Act

A. A release of lien shall be requested by letter addressed to the Employment Development Department (EDD), Attention: Tax and Collection Section, 800 Capitol Mall, Sacramento, California 95814. The letter shall contain the reason for the request, the legal description of the property and the amount of the consideration. A copy of the title report and the escrow instructions shall be attached to the letter.

B. Tax Collection Section (EDD) will forward a demand for the delinquent amount to the escrow company handling the transaction. After satisfaction, a release of lien will be recorded in the county in which the lien was recorded.

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C. When it is necessary to condemn land encumbered by lien(s) of the EDD, the District shall, prior to filing the complaint, forward a letter to the Chief, Tax Collection Section, at the above address informing of our proposed condemnation action. The letter shall indicate the legal description and appraised value of the land and include a copy of the title report. The Chief, Tax Collection Section, will immediately determine EDD's interest in the land, if any, and telephone the Agent with the results of such determination. This procedure should eliminate naming EDD a defendant in any condemnation action.

8.04.13.00 Court Actions

Title may be taken subject to the State's pending condemnation action. Elimination of other court actions is generally required.

8.04.14.00 Consent to Dismissal and Deposit Waiver

In all instances involving right of way on which the State has filed a condemnation suit, *it is imperative that the dismissal clause be included in the Right of Way Contract*.

8.04.14.01 Dismissal Clause

"The undersigned Grantor(s) hereby agree(s) and consent(s) to the dismissal of any eminent domain action in the Superior Court wherein the herein described land is included and also waive(s) any and all claims to any money that may now be on deposit in said action."

8.04.15.00 Negotiating Clearance of Lessee Interests

The interest of a lessee or other legal occupant, e.g., tenant, is cleared through either a Quitclaim Deed running to the lessor or to the State or through the eminent domain process. Leases that are in effect must either be eliminated or assigned to the State. If they appear in preliminary title reports as exceptions but are no longer in effect, they will be eliminated if possible. Title companies will generally disregard a lease which is no longer in effect on receipt of conclusive evidence. This type of evidence is usually provided by the owner of the property. An explanation and justification must be included in the MOS on any lease that is impossible to eliminate will be listed as an exception in the Contract.

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When the State must take assignment of the lease, the Agent shall obtain "Lessee Offset Statement" signed by the lessee. This sets forth the pertinent facts of rental payments made to the lessor, credits the lessee claims, if any, etc., (a sample "Offset Statement" is shown as Exhibit 8-EX-18A and 8-EX-18B).

Sufficient information is to be set forth so that the State will have full knowledge of any offsets, claims or defenses under the lease that are inconsistent with those of the lessor. This information may dictate terms of the Contract or escrow instructions covering the transaction. Exhibit 8-EX-20, "Assignment of Lease-to-State," should be attached to grantor's copy of the lease and executed by grantor upon delivery of the lease to State. An Offset Statement should also be utilized to clarify ownership of realty. This would be appropriate regardless of whether the tenant is a lessee or month-to-month occupant.

Whenever there is any question as to the interpretation or intent of the conditions in a lease which is being assigned to the State, the District should submit a copy of the lease to HQ R/W and/or the Regional Legal Office for review and advice before concluding the transaction.

A lessee may have a compensable interest in improvements which they have installed on the property. The lessee must be offered the salvage value of lessee owned improvements or the value they contribute to the property, whichever is greater. This would apply provided the lease does not call for them to be owned by the lessor at the end of the lease. Agreement between the lessee and lessor as to ownership of the improvements is essential. The lessee will be given a separate offer for the improvements, provided the lessee secures a written waiver of interest from the lessor. If agreement is not reached, an unsegregated statement of value is to be made to all of the parties.

The staff appraiser will ascertain ownership of improvements and segregate values in the appraisal. Either the offset statement or some other written confirmation as to ownership must be secured prior to settlement. The lessee shall not be deprived of payment for improvements on the property when the State acquires the leased fee. Based on State and Federal Court cases, the State should not attempt to assume the rights of a lessor and cancel a lease to avoid payment for improvements.

Settlement of lessor/lessee interests separately is a permissible procedure. It may not be feasible without agreement between the lessor and lessee. Usually disagreement occurs over either the ownership of improvements or

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the existence of a bonus value in a leasehold interest. The lessee may lose the right to a bonus value because of a condemnation clause in the lease.

A lessee, in relocating a business, may prematurely vacate the premises and in so doing, give up or waive valuable rights. The Agent should ensure through early contact that the lessee is fully informed so the lessee does not inadvertently forfeit rights to compensation for relocation benefits or possible loss of goodwill.

Acquisitions which involve lessor/lessee relationships call for thorough analysis by the Agent. Such acquisitions may have variations that cannot be covered by broad or general rules. The following statements may prove helpful in minimizing difficulties with these acquisitions.

8.04.15.01 Offset Statement

A document completed and signed by the lessor and lessee which sets forth lease information, such as length of lease, amount of rent, how rents are paid, prepaid rents or any claim for offsets for rent and ownership of improvements, shall be considered part of the realty.

8.04.15.02 Ownership of Improvements

If not segregated in the appraisal, the ownership of improvements should be ascertained prior to initiation of negotiations and in any event, confirmed. If ownership cannot be resolved, an unsegregated statement of value is to be made to each of the parties. The appraisal should identify those improvements of which ownership is in dispute.

8.04.15.03 Unsegregated Statements of Value

If the lessor and lessee are unable to agree regarding ownership of improvements on the property, then an unsegregated statement of value shall be made. The owner/lessor should be given a reasonable time in which to resolve disputes as to ownership. If there is no agreement, then parties who are to receive Appraisal Summary Statements or Valuation Summary Statements shall have an entry on the Statement that the amount set forth is the value of the required property and that the Statement has been prepared in such a manner because ownership of some part of the property has not been resolved. Care should be exercised when parties are given Appraisal Summary Statements or Valuation Summary Statements prepared in this manner. The Agent shall ensure that the parties understand the meaning

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and content of an unsegregated statement of value and why it is being handled in this manner.

The District, and specifically the Senior Acquisition Agent and Agent, should not hesitate to consult with the Legal Division or HQ R/W at the earliest time feasible on areas not covered here or for assistance or interpretation of these guidelines.

This section has dealt primarily with the termination of the interest of an occupant of property other than the fee owner. The Agent must recognize that these occupant interests often involve leasehold interests, lessee-owned improvements, possible loss of goodwill, relocation benefits and relocation of business. The Agent should have a full understanding of the acquisition procedures as they involve relocation assistance and realize that settlements must not include a duplication of payment.

8.04.15.04 Bonus Value in a Leasehold Interest

If noted in the appraisal, the terms of the lease must be carefully reviewed. A condemnation clause in the lease could eliminate the lessee's bonus value. This situation may have to be resolved in court.

8.04.15.05 Value of Improvements

Lessees are entitled to the value their improvements contribute to the property or their salvage value, whichever is greater, provided the lease does not call for ownership rights to transfer to the lessor in the event of condemnation.

8.04.15.06 Presumption of Interest

A lessee or tenant in possession is to be presumed to have some interest in the property until the contrary is established.

8.04.15.07 Acquiring Lessee Interest Separately

A lessee interest may be acquired separately provided the lessor agrees in writing that the items covered in such settlement are not claimed by the lessor.

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8.04.15.08 Lessor's Right to Cancel Not Available to State

After acquiring the leased fee from the lessor, the State shall not attempt to use any lease cancellation clause to acquire improvements at less than their salvage value or contributory value, whichever is greater.

8.04.15.09 Premature Vacation

A lessee should be cautioned regarding the potential consequences involved if a premature vacation of the property occurs. At or about the initiation of the appraisal process and prior to initiation of negotiations, the lessee may find it desirable to relocate. In this circumstance, the district shall advise the lessee that relocation payments cannot be made until initiation of negotiations have been made to acquire the property. Occupants must be made aware that they may lose RAP eligibility if they move before the initiation of negotiations. However, there are exceptions in the event a Notice of Intent to Acquire has been issued. See Section 10.01.08.01.

8.04.15.10 Bonus Value Not to Be Offered to Lessee

If a bonus value is shown in the appraisal, the Agent is not to offer it to the lessee. Ultimately, the lessor and lessee will either agree as to its existence and value or the court will decide. The bonus value in a leasehold interest is included in the appraisal for the guidance of the Acquisition Branch and may be helpful in discussions with the owner/lessor. It may be suggested to the lessor that because of the terms of the lease, the lessee's interest may be more than a compensable interest in the improvements.

8.04.15.11 Condemnation Clause

A lease may contain what is commonly referred to as a "condemnation clause." This clause usually provides that in the event the property is taken under the actual or potential exercise of eminent domain, the lease shall terminate; lessee will pay prorated rent to the date of vesting or possession by condemnor; and lessee has NO claim to the compensation paid to the lessor by the condemnor. In a partial acquisition, the lease may provide the lessee with the option to terminate the lease or continue in occupancy with a proportionate reduction in rent. Since there are many variation and clauses in use, it is essential that a copy of the lease be secured for analysis. It may be appropriate for the Acquisition Senior to secure advice from the Legal Division.

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8.04.16.00 Clearance of Adverse Interests When Acquiring Access Rights Only

In cases involving acquisition of access rights only, relinquishments or subordinations are to be secured from all parties whose interest would be detrimental to the achievement of access control. Ordinarily, these include trustees and beneficiaries under deeds of trust; mortgages; lessees; holders of liens, the foreclosure of which would either nullify or jeopardize the rights being acquired by the State; vendees in agreements to convey; and holders of easements or rights of way of any kind whose ability to utilize and enjoy such easements or rights of way would be materially diminished or damaged by State's acquisition of access rights to the subject property.

Where clearance of a specific interest hereunder is deemed not feasible or necessary, an explanation of the circumstances and justification for nonclearance is required. (See Section 8.65.06.00 for provision for CLTA endorsement.)

8.04.17.00 Clearance of Oil, Gas, Other Hydrocarbon and Mineral Interests in Fee Acquisitions

The Department does not generally acquire these interests when rights of way are being acquired in either a proven or potential bearing area. If local conditions or records indicate either actual or potential bearing land, the Deed Clause DM-4 should be included in deeds to the State describing any portion of such land. This will reserve the rights to the current holder of them.

When a fractional interest appears as an exception to the description of land to be acquired, the interest shall be shown as an exception in the deed to the State. If the owner of the land is also vested with a fractional interest and desires to retain same, the DM-4 Clause shall be included in the deed. The deed to the State should be definite as to which fractional interest is excepted from a description and which fraction is being reserved by the fee owner. A Quitclaim Deed to the surface rights and containing the DM-4 Clause is used to secure fractional interest of other than the fee owner.

A reasonable effort should be made to secure such rights. If the owner or owners cannot be located, completion of the acquisition of the required right of way need not be held up. Consider the potential risk to the State in not clearing such interest. If the risk is not material, title may be accepted by the State subject to such interests.

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8.04.18.00 Clearance of Oil, Gas, Other Hydrocarbons and Mineral Interest in Easement Acquisitions

In clearing these interests in easement acquisitions, use the same procedure as in fee acquisitions except the description in easement deeds to the State will not contain the outright exception of interests vested in the fee owner of the land. The DM-4 Clause will be used in the easement deed from the fee owner of the land.

8.04.19.00 Clearance of Oil, Gas, Other Hydrocarbon and Mineral Leases

When property is encumbered with a lease, a Quitclaim Deed containing the DM-4 Clause should be obtained to eliminate surface rights of lessees. Leases which endanger the present or future integrity of rights being acquired shall be cleared if the lease is active and if production of products is either present or prospective.

Community leases may not be canceled as to any portion without the consent of all parties in the lease.

If an operating well or mine is to be acquired, it will be necessary to clear all community lease interests in the facility and the surface rights to the affected portion of the leasehold by Quitclaim Deed and Contract.

If operating facilities are not affected, a Quitclaim containing the DM-4 Clause should be secured from the lessee. Such a Quitclaim Deed will not cancel the community lease of record as to the property acquired by State, but will provide evidence of lessee's consent and should be recorded.

If the lease has lapsed, either by time or by its terms, product has never been produced or operation has been abandoned, and clearance could be done only with difficulty or major expenditure of time, title may be taken subject to the effect of such lease. A full explanation of the conditions and reason for nonclearance of the lease shall be included in the MOS and schedule letter. The Contract must show that title is to be taken subject to the lease.

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8.04.20.00 Reservation for Operating Company Facilities Through Product Fields

When the acquisition of right of way (1) through proven operating fields where the operating company has a long-term lease which specifically provides that the lessee has surface rights including installations of pipelines, power lines, etc.; or (2) where the company owns the land in fee, where the location is not a proven or potential field, use the appropriate deed clause(s) reserving company's rights. See the R/W Engineering Chapter.

These clauses shall not be used in acquiring right of way through undeveloped fields where the company owns fee title. In such areas, the product potential that may possibly exist can be developed without these reserved rights. In some instances, the lessee's rights under a lease are limited solely to the subsurface rights; therefore, before consenting to the use of these clauses, examine the terms of the lease to ascertain the extent of lessee's rights.

Where unusual conditions exist, modify the above-cited clause to reasonably fit the actual conditions.

Where the company is operating existing pipelines or other facilities pursuant to a prior right, such pipelines or other facilities shall be covered in the customary manner by joint use agreement.

8.04.21.00 Royalty Interest

Although royalty interests have been construed as an interest in the land itself, the multiple fractions into which royalty interests are commonly divided preclude their elimination. If deeds to the State contain our reservation clause, royalty interests may be ignored. The Contracts should show such interests as exceptions to which the State will take title.

8.04.22.00 Reservation by Grantor

Even though ground conditions or record title disclose no activity or exceptions, the DM-4 Clause may be inserted in the deed to the State at grantor's request.

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8.04.23.00 Real and Personal Property Taxes

These are defined and discussed in full detail in the Titleman's Handbook. The appropriate chapters should be reviewed and the Acquisition Agent should be familiar with this information. All Contracts shall contain the statement when permanent rights are acquired:

> "Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow."

8.04.24.00 Tax Procedure - Acquisition of Entire Parcel

A. Delinquent taxes. The owner will be required to convey title free and clear of all delinquent city and county taxes. Delinquent taxes will normally be paid out of the escrow and supported by a bill from the taxing agency(ies). If the amount of the delinquent taxes exceeds the market value of the required property, the District may either:

   1. Request the tax collecting agency to make the property available for sale and the District may then make a fair and reasonable bid. Or,

   2. Request the tax collecting agency to accept a partial payment of the delinquent (unpaid) taxes in an amount mutually agreed on, but not exceeding the appraised value. Remaining delinquent taxes would be transferred to the unsecured roll in accordance with Section 5090 of the Revenue and Taxation Code.

B. Current Taxes. Sections 5085 and 5086 of the Revenue and Taxation Code provide for the payment of current taxes.

   1. If title passes to the State between the lien date (first day of January) and the day prior to the beginning of the tax year, inclusive, neither the property owner nor the public entity that acquired the property is liable for taxes which, for description purposes, may be called "precurrent." It is permissible to take title subject to "precurrent" taxes. See Section 5085 of the Revenue and Taxation Code.

   2. If title passes during the tax year (normally July 1 to June 30 inclusive), that portion of current taxes including "delinquent"

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current taxes and any penalties and costs allocable to the part of the tax year ending on the day before the date of apportionment shall be paid through escrow at the close of escrow or from the award in eminent domain. If any of the current taxes are unpaid for any reason, they shall be transferred to the unsecured roll and are collectible from either the person from whom the property was acquired or the public entity that acquired the property.

Current taxes, penalties and costs allocable to the part of the tax year that begins on the date of the apportionment shall be canceled and are not collectible either from the person from whom the property was acquired or from the public entity that acquired the property.

C. Refund of Prepaid Taxes. Section 5096.7 of the Revenue and Taxation Code requires the taxing agency to refund any prepaid taxes in excess of the prorated amount due for the portion of the tax year prior to acquisition.

D. Procedure with Tax Collecting Agencies and Escrow Agent. Unpaid taxes which have been transferred to the unsecured roll are not the responsibility of the acquiring agency if timely written notice was given the tax collecting agency that funds are available for the payment of such taxes in an escrow or out of an award in eminent domain.

The District should notify the tax collecting agency of the impending purchase concurrently with sending the escrow letter. If any taxes are due and payable, a demand should be submitted to the escrow agent by the tax collecting agency. The escrow letter should advise the escrow agent there may be a demand for unpaid taxes and such demand is to be honored. The tax collecting agency should be notified that escrow is anticipated to close on or about a certain date.

8.04.25.00 Disposition of Taxes, Assessments, Bonds-Acquisition of Access Rights Only

If the acquisition is limited to access rights, it must be determined whether nonpayment of taxes, assessments or bonds would involve a risk of loss to the State.

Payment of either taxes, assessments or bonds is generally not required if the compensation is nonsubstantial. If the compensation is substantial, taxes, assessments and bonds are to be paid. Latitude is permitted as long as the

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interest of the State in the acquired access rights has been considered and protected. Cancellation or segregation of taxes on an access only acquisition is not required.

8.04.26.00 Tax Procedure - Partial Acquisitions

A. Delinquent Taxes. Unpaid or delinquent taxes should, in nearly all cases, be paid out of escrow or by the owner separately from, but prior to close of escrow. The owner must be required to convey title free and clear of all delinquent city and county taxes except in those rare cases in which we would take title subject to delinquent taxes.

   The following clause is to be included in all Contracts for clearance of delinquent taxes after the phrase "The State shall"

   > "Have the authority to deduct and pay from the amount shown in clause 2(A) above, any amount necessary to satisfy any bond demands and delinquent taxes due for any year except the tax year in which this escrow closes, together with penalties and interest thereon and/or delinquent and unpaid nondelinquent assessments which have become a lien at the close of escrow."

   This clause gives the State an option to have delinquent taxes from prior years paid from the escrow proceeds. This may not always be possible where the unpaid taxes exceed the payment to be made for the property.

   Title may be taken subject to delinquent taxes if the acquisition involves a small portion of a large holding and the remaining property is obviously adequate security for the tax lien.

B. Current Taxes. Taxes for the tax year in which the escrow closes shall be cleared and paid in accordance with Article 5, commencing with Section 5081 of the Revenue and Taxation Code. This includes a request by State to the tax collecting agency for segregation of taxes and providing the segregation request to the escrow agent.

   When a permanent easement is acquired in lieu of fee and as a partial acquisition, it will be in order to take title subject to current taxes.

   The Contract on acquisitions handled through an internal escrow should provide for payment of taxes if the tax collecting agency has indicated they will segregate and make a demand.

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8.04.27.00 State Inheritance Taxes

Effective June 9, 1982, Inheritance taxes were eliminated through the initiative process. The following instructions apply only to any tax liability prior to that date. The District should cooperate with and advise the State Controller's Office of the acquisition and proposed payment where there is a recorded lien. If the tax is only a possible lien, the Acquisition Agent should assist the grantor in preparing the appropriate Inheritance Tax Declaration Form obtained from the State Controller's Office, Inheritance and Gift Tax Division.

8.04.28.00 Federal Estate and Gift Taxes

Title may be taken subject to Federal Estate and Gift Taxes.

8.04.29.00 Federal Income and State Income Taxes or Sales Tax Liens

Federal income tax liens must be paid by the grantor prior to close of escrow. On partial acquisitions, a partial release of tax lien should be secured covering the property being acquired. For details, contact the nearest office of the Internal Revenue Service.

8.04.30.00 Disposition of Assessments on Entire Acquisitions

All special assessments, such as irrigation district, water conservation district, drainage district, sanitary and lighting district, etc., shall be paid in full including any future and as yet unpaid installments owed by grantors. If the assessments are for the next tax year only, title may be taken subject to such assessments if the District has the reassurance of the assessment-levying body that our request for cancellation of such assessments will be honored.

Should the assessment-levying body not agree to cancellation, the procedure will be to require payment of such assessments by grantors as a contractual obligation in order to deliver title to the State free and clear of such assessments.

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8.04.31.00 Disposition of Assessments on Partial Acquisitions

Title may be taken subject to such assessments if the remaining property is adequate security for the assessment. The obligation to pay off such assessments will usually be a continuing obligation of grantor. No request for cancellation shall be made unless the District has the reassurance of the assessment-levying body that a request for cancellation of such assessments will be honored. When title is taken subject to assessments which cannot be canceled, it should be made clear to grantor that:

A. State's acceptance of title subject to unpaid assessments does not mean State assumes responsibility for either the payment or subsequent cancellation of such assessments,

B. Required payment of assessments is not made a part of the contractual obligation of grantor, as between grantor and the State,

C. State's payment for the part acquired is made only on that basis and grantor's obligation to pay such assessments to the levying body is not relieved by reason of State's acquisitions.

Cancellation of assessments will not normally be made by the levying body because such a procedure would involve readjustment of their entire assessment schedule.

When title is taken subject to assessments, the following clause must be included in the Right of Way Contract:

> "The parties hereto agree that State, in acquiring title subject to unpaid assessments as set forth herein, is not assuming responsibility for payment or subsequent cancellation of such assessments. The assessments remain the obligation of the grantor; and, as between State and grantor, no contractual obligation has been made requiring their payment."

8.04.32.00 Franchise Tax Board Withholding

Where the grantor has an out-of-State address and the property has a value over $100,000, the following clause will be included in the Contract:

> "Under Section 18662, Subdivision (e), of the California Revenue and Taxation Code, a person who sells California real property worth more than

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$100,000 and has a last known street address outside of California at the time of transfer of title, is required to pay tax equal to 3-1/3 percent of the sales price."

Unless an agreement between the California Franchise Tax Board and the grantor of the real property states otherwise, the tax shall be withheld from the escrow proceeds and transmitted to the California Franchise Tax Board.

No money is to be withheld if, during the taxable year of withholding and transfer, the grantor receives a homeowner's property tax exemption, or the sales price does not exceed $100,000.

A copy of Section 18662 of the Revenue and Taxation Code is hereby acknowledged to have been received by grantor.

8.04.33.00 Deeds of Trust-Mortgages

Deeds of trust and mortgages are to be reconveyed or released in full or part as appropriate. Title may be taken subject to a deed of trust or mortgage where a partial acquisition is a small part of a large parcel or of nominal value. An indemnity clause against potential loss by the State must be included in the Contract (see Section 8.04.04.00).

8.04.34.00 Lost Notes or Deeds of Trust

Trustees usually require a surety bond for twice the amount of a Note or a certified copy and an affidavit in the prescribed form of the Deed of Trust that has been lost or destroyed. The payment of premiums on such surety bonds is the responsibility of the Trustor (Grantor).

8.04.35.00 Trust Deed and Mortgage Payment

Where deeds of trust or mortgages are to be cleared, the following clause will be included in the Contract:

"Any or all monies payable under this contract up to and including the total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said trust deed(s) or mortgage(s), shall, upon demand(s), be made payable to the mortgagee(s) or beneficiary(ies) entitled thereunder; said mortgagee(s) or beneficiary(ies) to furnish Grantor with good and sufficient receipt showing

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said monies credited against the indebtedness secured by said mortgage(s) or deed(s) of trust."

If the property being acquired has an owner occupied dwelling unit on it, add the following clause:

"The grantor will instruct (escrow agent's name) to obtain a copy of the promissory note(s) referenced above and deliver it(them) to State if grantor wants to be considered for an interest differential payment."

8.04.36.00 Prepayment Penalties

Land acquired for public use is exempt from prepayment penalties on mortgages and deeds of trust. Reference may be made to Section 1265.240 CCP when requesting either partial or full releases or reconveyances.

8.04.37.00 Home Improvement Loan Payment

The following clause will be included in the Contract when a Federal Home Improvement is to be cleared from the title:

"Any monies payable under this contract (and not demanded under the trust deed referred to above), up to the total amount of unpaid principal and interest, on the Federal Housing Authority Title Improvement Loan made to grantor through (Name of Bank) shall, on demand, be made payable to the persons entitled thereto. The above-mentioned lender will furnish grantor with a receipt showing said monies credited against the indebtedness."

8.04.38.00 Agreements or Contracts of Sale

If the parcel to be conveyed is encumbered with an agreement to sell, the interest of the party possessing the interest is to be cleared. A grant deed may be secured from the vendor to the vendee with a demand by the vendor for the use of this grant deed. The vendee will then execute the Contract, making provision for payment of the demand of the vendor, and a grant deed to the State. The two grant deeds are then processed concurrently in the State's escrow. This procedure, or the alternate of having vendor and vendee join in the execution of the Contract and deed, will serve to complete the terms of the original agreement.

The allocation of funds may be provided for in the Contract or by separate escrow instructions between the parties. One of the following clauses will be

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included in the Contract when Agreements of Sale are to be cleared from the title.

8.04.38.01 Payment Not Yet Determined

"Any or all monies payable under this contract, up to and including the total amount of unpaid principal and interest on the Agreement of Sale dated _____ between _____ Vendors, and _____ Vendees, shall, upon demand, be paid to the vendor. Vendor shall furnish vendee a proper receipt showing said payment has been credited to the above Agreement of Sale."

8.04.38.02 Payment Predetermined

"$_____ of the total monies payable under this contract shall be paid to _____, Vendor, to apply to the unpaid principal and interest on the Agreement of Sale dated _____, between Vendor, and _____, Vendees. Vendor shall furnish Vendee a proper receipt showing said payment has been credited to the above Agreement of Sale."

For instructions on Cal-Vet Loan property, see Section 8.22.00.00.

8.04.39.00 Financing Statements

The Uniform Commercial Code, Division 9, makes provision for the filing of Financing Statements with the Office of the Secretary of State or the County Recorder depending on the collateral. This is to protect the holders of security interest in personal property. Financing Statements have replaced crop and chattel mortgages, and when recorded, should be reflected in the title report obtained by the State.

Local filing is specified for the following types of collateral:

- If the collateral is crops or timber to be cut, filing is in the Office of the County Recorder in which the land involved is located.

- If the collateral is consumer goods, filing is with the Office of the County Recorder of the county where the debtor resides. If the debtor is an organization, the county for filing is the county of its "chief place of business." If the debtor is a nonresident of this State, filing is with the Office of the County Recorder in the county where the goods are kept.

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The Department is interested in the existence of Financing Statements when equipment and/or machinery used in commercial, manufacturing, or industrial operations is purchased under the provisions of Section 1263.205 of the Code of Civil Procedure.

The debtor and creditor may regard this as personal property, is used as collateral and may be considered to be a fixture and part of the realty under the above Code section.

When manufacturing, industrial, or commercial machinery and/or equipment is being acquired as defined by Section 1263.205, the District will send Form UCC-3 (Exhibit 8-EX-21), Request for Information, in duplicate to the Secretary of State, Uniform Commercial Code Division, P.O. Box 1738, Sacramento, California 95808, to ascertain if Financing Statements are on file affecting said items. If the owner is doing business under a name different from that in which the property is vested, then both names will be furnished and a Form UCC-3 will be prepared for each name. An exempt stamp referring to Government Code Section 6103 should be placed to the right of the return address on Form UCC-3 to relieve the Department from payment of fees.

The Agent will assist in securing the release or termination along with the demand of the secured party if a secured interest develops. This is accomplished by the filing of Uniform Code Form UCC-2 (Exhibit 8-EX-22) with the Secretary of State or the County Recorder dependent upon the type of collateral. It should be filed prior to the close of escrow.

Any Contract involving property subject to a "Financial Statement" will have the following clause to provide for payment of obligations covered by the "Financial Statement."

> "Any and all monies payable under this contract, subject to the demands made by superior lienholders, up to and including the total amount due on financing statements, if any, shall, upon demand, be made payable to the holder thereof, said holder to furnish debtor with good and sufficient receipt showing said monies credited against the indebtedness secured by said Financing Statement."

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8.04.40.00 Procedure for Securing Partial Releases from Federal Land Bank

Mortgages and deeds of trust held by the Federal Land Bank may be partially released upon proper application by the property owner using Federal Land Bank Form 95 entitled "Application for Partial Release." The "Application for Partial Release" should be directed to the Manager of the Federal Land Bank Association for the particular region. The Federal Land Bank Associations can grant partial releases, consent to easements, authorize removal of improvements, gravel, borrow dirt, timber, trees and vines.

If questions arise as to policy concerning unusual features of a transaction, the Manager of the local Land Bank Association should be contacted.

In condemnation cases, the Federal Land Bank will be served or mailed the appropriate condemnation documents and information at the Regional Federal Land Bank Office.

8.04.41.00 Improvement Bonds

Public improvement bonds are a first lien against real property, being prior to mortgages and trust deeds, and should be considered in all acquisitions.

Bonds are to be cleared and eliminated as a lien against the property in all entire acquisitions or partial acquisitions constituting a major portion of the whole.

Where the remainder of the property in partial acquisitions is ample security for payment of the bond, title may be taken subject thereto. A clause setting forth the future obligations of the grantor must be included in the Contract to indemnify the State in the event of possible foreclosure proceedings (see Section 8.04.05.00). Under foreclosure of a bond, fee title will vest in the bond owner, and the State would not have title to the right of way, even though a grant deed was acquired from the original property owner.

The State is liable for the payment of assessments if it acquired property after the date of filing of a copy of the map of an Assessment District with the County Recorder. A lien is created even though an improvement contract has not been awarded and the amount of assessment has not been determined. It is anticipated that during the time between the creation of the lien and the date the amount of assessment is known, purchasers of comparable properties will be acquiring subject to the future assessments. The effect of the lien on properties being acquired for the State should be

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considered as part of the appraisal process. If the market indicates that other purchasers will be paying the assessments in addition to the purchase price, this will provide the basis for the State to follow a similar procedure. The appraisal should contain sufficient documentation through verification of sales and other interviews to support the appraiser's conclusion. This information will assist the Acquisition Branch in acquiring properties subject to this type of lien.

If the District Office of Right of Way has bills for the payment of assessments and the State is liable as outlined above, payment should then be scheduled. The schedule should include the following:

A. A copy of the bill showing the amount and billing agency.

B. The date of recording of the Deed to the State, effective date of possession, or the date of recording of the Final Order of Condemnation, whichever is applicable.

C. The date of recordation of the Notice of Assessment, Notice of Award of Contract, or the date of filing of the Assessment District map, whichever is applicable.

8.04.42.00 Tax Identification Numbers

The Department is obligated under Internal Revenue Code Sections 6041 and 6045 and State Revenue and Taxation Code Section 18802 to report payments for real estate transactions. Information required includes the grantor's Tax Identification Number (Social Security Number or Federal Employer Identification Number). Title Companies routinely collect this information for the Department in formal escrows by using IRS Form 1099-S.

For internal escrows, the Department utilizes the Payee Data Record (Accounting Form STD-204). The Acquisition Agent must secure separate forms for each grantor, with the following exceptions: (1) where transferors are husband and wife at the time of closing, a single form is sufficient, and (2) where the transferor is a partnership, a single form for the partnership should be prepared rather than for the individual partners. Payee Data Record forms should be included with every claim schedule package. Failure to secure this information may result in either no check being prepared or 31% tax withholding. Questions concerning the use of Payee Data Records should be addressed through the R/W Accounting liaison for your Region/District.

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8.05.00.00 - ESCROW PROVISIONS

8.05.01.00 Escrow Identification

When a title company escrow is to be utilized, the following clause shall be included in the Contract:

> "This transaction will be handled through an escrow with (name and address of title company), their No. (Escrow Number.)"

8.05.02.00 Escrow and Title Fees-State Acquisitions

The following clause will be included in all Contracts following the phrase "The State shall":

> "Pay all escrow and recording fees incurred in this transaction, and if title insurance is desired by the State, the premium charged therefor."

8.05.03.00 Escrow and Title Fees-Director's Deeds

Whenever a Director's Deed is involved in an exchange transaction, the State will not pay any additional title service fees unless it is specifically part of the consideration in the Contract. Except as noted below, there should be no documentary transfer taxes involved as the conveyance to the grantor is in lieu of other consideration for the State-acquired parcel.

The possible exception to payment of documentary transfer taxes is when the Director's Deeded property exceeds the consideration for the property to be acquired, and a net consideration is to be received by the State. Under such circumstances, the Contract should clearly identify which party is responsible for payment.

8.05.04.00 Payment-Title Company Escrow

Where payment is to be made into escrow, the following clause will be included in the Contract:

> "Pay the undersigned grantor(s) the sum of $_____ for the property or interest conveyed by above document(s) when title to said property vests in the State free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes except:"

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8.05.04.01 Property Loss During Escrow

So the grantor may have notice of who bears the risk of loss if the property is materially damaged during the escrow period, the following clause will be included in Contracts for improved property:

> "Should the property be materially destroyed by fire, earthquake or other calamity without the fault of either party, this contract may be rescinded by State; in such an event, State may reappraise the property and make an offer thereon."

8.05.05.00 Payment (No Formal Escrow-Internal Escrows)

Title companies do not normally handle escrows involving mobile home purchases and certain other type transactions. The District will act as the escrow holder in these cases. The following clause will be used in the Contract to clarify this aspect of the transaction:

> "This transaction will be handled through an internal escrow by the State of California, Department of Transportation, District _____ Office, (address, city and ZIP Code.)"

Where payment will not be made through a title company escrow, the following clause will be included in the Right of Way Contract:

> "Pay the undersigned grantor(s) the sum of $_____ for the property as conveyed by (grant, easement or quitclaim) Deed No. _____ when title to said property vests in the State free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes except:"

8.05.06.00 Release of Liability-Executors, Administrators, Guardians

Where title is being acquired through an Executor, Administrator, or Guardian and the Contract is executed prior to Superior Court confirmation of the sale, the following clause may be used in the Right of Way Contract:

> "It is understood and agreed that this contract is being signed by _____ Executor/Administrator/Guardian of the _____ at the request of the Department of Transportation, STATE OF CALIFORNIA, prior

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to the presentation of the subject matter hereof to the Superior Court of _____ County, and that neither said person or estate nor _____, as Executor/Administrator/Guardian acquire any liability or responsibility by reason of such signing and that the provisions of this contract are all and each of them, subject to the confirmation of the Superior Court of the County of _____, State of California."

8.05.07.00 Dedication by Executors, Administrators, Guardians-Probate Code Section 587

Whenever it is for the advantage, benefit, and best interest of the estate, and those interested therein, the executor or administrator may, either with or without consideration: (1) dedicate or convey any real property of the estate or interest therein to the State or any county or municipal corporation, or the United States of America or any agency or instrumentality thereof, for street or highway purposes, or any other purpose; (2) dedicate or convey an easement over any real property of the estate to the State or any county, municipal corporation, public district, any person, firm, association, or public or private corporation, or the United States of America or any agency or instrumentality thereof; or (3) convey, release, or relinquish to the State or any county or municipal corporation any access rights to any street, highway, of freeway from any real property of the estate, upon order of court based upon the petition of the executor or administrator or of any person interested in the estate, and after notice is given by the petitioner in the manner specified in Section 1200.5 of the Probate Code.

8.05.08.00 Deeds from Executors, Administrators, Guardians

Deeds from the above must be executed and acknowledged in their official capacity and must be accompanied by a proper order of the court authorizing execution of the instrument. The Order must be referred to in the instrument by saying it was executed pursuant to and in conformity with the Order in the matter of the estate in question, giving the probate case number, and stating that a certified copy of the Order has been recorded, is being recorded along with or is made a part of the deed to which reference is thereby made (see Miscellaneous Deed Clauses in the R/W Engineering Chapter).

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8.05.09.00 Delayed Payment Clause

The following clause shall be included in the Contract where the owner requests that payment be delayed and where such payment is to be made in excess of 90 days from the date of Contract. Explanation for use will be included in the Memorandum of Settlement (MOS):

"It is understood and agreed that State, at the request of the undersigned grantor(s) shall not make payment of the amount set forth in Clause _____ above until after _____ unless grantor(s) request(s), in writing, payment at an earlier date."

"In consideration for such delayed payment grantor(s) agree(s) that should the condition of the improvements located on the property described in the above-referenced document be materially changed, excepting normal wear and tear, or be removed from the property prior to the above date, this agreement shall be voidable at the option of the State and the subject of further negotiations."

8.05.10.00 Fractional Payment Clause

Where grantor desires to divide payment between parties, the following clause shall be used:

"It is agreed that the net proceeds of the amount payable under Clause _____ above shall be divided as follows:

One-half to _____
One-half to _____ (or in appropriate fractions)
The odd cent, if any, to be paid to _____."

8.05.11.00 Donation-No Cash Payment by State

Use the following clause in lieu of the normal payment clause where the property is being donated or there is no cash consideration being paid, e.g., the consideration involved an exchange of land, or the performance of construction contract work.

"Accept delivery of property or interest conveyed by above document(s) and record same when title can be vested in the State free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes, except:"

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If the property is conveyed by donation, the following clause must also be included:

"It is agreed that the property conveyed by document No. _____ is being donated to the State by the undersigned grantor(s). Grantor(s), having initiated this donation, has/have been informed of the right to compensation for the property donated and hereby waive(s) such right to compensation."

8.05.12.00 Cost-to-Cure Damages

Use the following clause when a cost-to-cure damage payment is being made. It is to eliminate misunderstandings. The wording used to describe the work must clearly specify each item.

"It is understood and agreed by and between the parties hereto that included in the amount payable under Clause 2(A) above is payment in full to compensate grantors for the expense of performing the following work: (Insert the cost-to-cure items which grantor is being paid to correct.)"

8.05.13.00 Payment Where Deposit Money Previously Withdrawn

If a condemnation action has been filed and the Security Deposit withdrawn by grantors, the following payment clause will be included:

"Pay the undersigned grantor(s) the sum of $_____ less the sum of $_____ heretofore withdrawn by grantor(s) from the State's security deposit in the action entitled People vs. _____, _____ County, SCC No. _____ for the property or interest conveyed by above document(s) when title to said property vests in the State free and clear of all liens, encumbrances, assessments, easements, and leases (recorded and/or unrecorded), and taxes except:"

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8.06.00.00 - IMPROVEMENTS AND EXCESS

8.06.01.00 General

The State generally acquires all of the improvements within the right of way required. Often the grantor may want to retain certain improvements and relocate them or State must acquire improvements on remainder property. Each situation requires careful consideration and must be covered by appropriate contract clauses. Also, the appraisal must reflect the appropriate valuation analysis.

Relocation as used in this Chapter is an acquisition concept where improvements are moved from the required property to a replacement, substitute, or remainder property. Improvements pertaining to the realty which an owner has severed from the real estate prior to an acquisition agreement are converted to personal property. As such, they are to be handled under the Relocation Assistance Program.

8.06.02.00 Miscellaneous Realty Items Acquired

Where there are items that could be easily removed or create possible misunderstandings as to acquisition, such as well pumps, water softeners, television antennas, wall-to-wall carpeting, venetian blinds, drapes, etc., the following clause will be included in the Contract:

> "It is understood and agreed by and between the parties hereto that payment in Clause 2(A) above includes, but is not limited to, payment for _____ which are considered to be part of the realty and are being acquired by the State in this transaction."

8.06.03.00 Miscellaneous Realty Items Retained by Grantor

Where the owner is retaining items considered part of the realty, the following clause will be included in the Contract. In these cases, the Memorandum of Settlement (MOS) should indicate the monetary credit being received by the State due to retention of any such items.

> "It is agreed that grantor shall retain and remove the following items considered as realty (e.g., wall-to-wall carpeting, TV antenna, evaporative cooler, etc.). It is further agreed that the items retained by grantor will be removed upon termination of any rental agreement

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between grantor and State or on the day after date of recordation of the Deed conveying title to State, whichever date is later. If grantor fails to remove said items within the time limit specified, said items shall become the property of the State to dispose of as it sees fit."

"With respect to the payment of the sum stated in Clause 2(A) above and other valuable consideration, receipt of which is hereby acknowledged, the grantor hereby agrees no other rights will accrue under the Federal and State Uniform Relocation Assistance Acts (42 U.S.C. Section 4601, et seq.; Government Code Section 7260, et seq.) to receive reimbursement for the expense of moving and/or reinstallation of the above item(s)."

8.06.04.00 Machinery and Equipment - Removal or Acquisition - Improvements Pertaining to the Realty

The initial offer where properties contain machinery and/or equipment which are classified as improvements pertaining to the realty must be made based on purchase of such at the approved appraisal amount. If settlement cannot be effected on this basis, an offer may be made based on retention of the machinery and equipment at its in-place value, less salvage. The owner then assumes the cost to relocate and reinstall. The agent must explain that this is an acquisition concept and that relocation assistance is available as a right and the retention at in-place value less salvage is merely an alternate acquisition approach which is entirely optional.

When this type of machinery or equipment is severed from the real estate by the owner prior to agreement, it becomes personal property. Its value is deducted from the appraisal offer and the RAP compensates for the relocation and/or reinstallation of such personal property.

Contracts covering either purchase or removal of machinery and/or equipment shall clearly state that the consideration set forth in the Contract includes payment for either purchase or removal and reinstallation. This applies whether the machinery and equipment is grantor or lessee owned. The owner, therefore, must have the options clearly explained so that the decision made is fair, equitable and in conformance with State and Federal requirements.

If machinery and equipment is purchased by State and the former owner purchases such items at public auction, the terms of such sale or purchase will require the purchaser (former owner) to bear the cost of its removal and installation at a different location.

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When the grantor or the lessee desires to retain, remove, and/or reinstall items which are considered as realty or improvements pertaining to the realty on the basis of payment for their in-place value, less salvage value, use the following clause:

> "The undersigned grantor (lessee) is retaining the following listed equipment (specify each and every item being retained). Grantor (lessee) acknowledges that payment in Clause 2(A) above includes the in-place value of the retained equipment, less its salvage value. It is understood and grantor (lessee) agrees that retention, cost of removal and cost of reinstallation of such equipment is included in the payment herein made and grantor (lessee) acknowledges no further payment of any kind will accrue."

The Contract shall list those items which the grantor may remove and the time allowed for removal. Any items to be acquired by the State should be clearly identified as to number, make, and type.

8.06.05.00 Acquisition of Personal Property

When acquiring motels, hotels or furnished apartments, it may be necessary to acquire the furnishings to prevent the eviction of tenants who would be unable to continue to occupy the premises if the furniture is retained and removed by the fee owner.

The appraisal of these types of properties will contain an inventory and estimated market value of the furnishings.

Whenever the State acquires personal property, the Contract must specify and identify the items being acquired. If the items are numerous, a separate inventory will be made part of the Contract. The inventory must describe each item so it can be readily identified. The manufacturer's number must be given if available, as well as brand name or model. Acquisition of personal property must be authorized by the DDC-R/W or delegatee.

8.06.06.00 Exchange of Improvements

An improvement may be exchanged as whole or part consideration with proper economic justification (see Section 8.12.06.00).

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8.06.07.00 Relocation of Improvements – General

Whenever structural improvements are partially or totally within the required right of way, the owner may, at the option of the District, be given the choice of either (1) relocating the improvement in lieu of purchase, (2) having State purchase the improvement, or (3) retaining the improvement. The determination must be based on economic feasibility. The Agent should advise the owner to consider whether relocation in lieu of purchase or retention is a desirable alternative to State's purchase of the improvement. If the appraisal does not contain estimates and the owner indicates the desire to retain or relocate the improvements in lieu of purchase, the Agent should then formally request that estimates be made.

It is essential that the contract be specific as to the items which the owner will retain and remove and those which will become the property of the State. The amount to be paid by the State should be adequate to compensate the owner for all reasonable costs and risks involved.

When payment for moving cost is to be made directly to the owner, it is extremely important that the amount be based on the best and most reasonably competitive moving bids obtainable from qualified contractors. The acquisition agent must see that such bids are obtained. When moving costs represent small sums of money, the District may submit its own detailed estimate prepared by the Appraisal Branch to substantiate the contract payment. When the moving costs represent substantial sums of money, the Acquisition Branch shall endeavor to secure at least two outside bids.

When property is acquired well in advance of construction and the consideration includes payment for rearrangement of improvements on the grantor's remaining property, or payment has been made for replacement of improvements on remaining property, the following clause shall be used in **BOTH** the Contract and Deed:

> "It is agreed that the consideration for this conveyance includes all costs that have been or may hereafter be incurred by the grantors herein, or their successors or assigns, for the relocation or rearrangement of any and all improvements that are located on the remaining property of grantors and the grantors, for themselves and their successors or assigns, hereby waive any and all claims for damages of whatever nature that may hereafter accrue to said remaining property by reason of the construction of the highway improvement in the manner proposed, including any damages that have or may hereafter arise to such

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remainder in the event said existing or future improvements are not relocated or rearranged."

"It is further agreed grantor has been compensated for those improvements (specify them) lying within the right of way and which grantor will replace on the remaining property."

8.06.08.00 Owner Relocation of Improvements

Relocating in lieu of purchase is based on bids secured by the owner or the agent. This option generally has the State involved in assisting the owner in the structure relocation, providing guidance as to local requirements relating to ordinances or permits, etc. The agent should assist in ensuring that the relocation bids cover all the costs involved. If the owner wants to relocate a structural improvement and it is economically feasible, then the following clause shall be used:

"It is agreed that payment in Clause 2(A) above includes funds for the relocation and reestablishment of (here identify the improvement), it being understood the improvement is to be relocated and reestablished by the grantor at State expense. Grantor acknowledges that no payment is made for the purchase of the improvement, it being understood that payment for relocation and reestablishment precludes purchase price."

8.06.09.00 Owner Retention of Improvements

Retention of structural improvements by the grantor relieves the State of any responsibility for their removal and clearing of the site. The grantor/owner of the improvements assumes the entire obligation of improvement removal and site clearance.

If payment to the owner is the in-place value of the improvement less its salvage value as determined by the Appraisal Branch, then no relocation and reinstallation costs are to be made. The retention cost is normally the amount estimated to be bid at an auction. If the owner is compensated for the improvements in-place value less its salvage value, use clause in Section 8.06.04.00 and substitute the name or type of improvement for the word "equipment."

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8.06.10.00 Removal Time Limitations

If either relocation or retention is part of the settlement, it is advisable to conclude the transaction on the basis the improvement is relocated or removed by the owner as quickly as possible. Structural improvement removal should normally be completed in a 60-90 day period. There may be exceptional cases where it will be appropriate to have improvements remain for a longer period. The file should contain documentation supporting such decision.

The Contract shall specify a date by which the improvements are to be removed and provide for clearance of the site. A portion of a payment shall be withheld to cover State's cost if the owner fails to perform. The amount should protect the State and provide sufficient funds if the State has to pursue other courses of action to clear the right of way.

The Contract must provide that any structural improvement remaining on the property subsequent to 90 days after close of escrow will result in the State charging market rent for such improvement and the land previously purchased from the grantor.

In either relocation or retention, the Contract shall specify that title to the improvement remains with the grantor/owner and the State is not responsible for any damage due to Act of God or nature, fire or vandalism.

"Piecemeal" removal of portions of a structural improvement which leaves the structure in an unrentable condition will not be allowed.

Relocation assistance benefits, while not part of terms of the Contract, may have some influence on the eventual settlement. Close coordination with RAP is essential to ensure that owner and State are fully protected.

8.06.11.00 Tax Liability

The following clause will be used whenever improvements are retained by the grantor:

> "It is understood that the undersigned grantor retains full responsibility and liability for all delinquent and current taxes on building improvements hereinabove reserved."

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8.06.12.00 Improvements Retained by Grantor – Entire Acquisition

The following clause will be used in the Contract:

"The grantor reserves the right to remove the hereinafter described improvements located on said property on or before _____. Upon exercising said reserved right, grantor covenants and agrees to remove all combustible materials and other rubbish upon completion of moving operations, leaving only concrete foundations and concrete flatwork in place; provided, however, that all mudsill steel tie bolts and reinforcing steel protruding from said remaining concrete foundations shall be removed or sheared at all exposed surfaces of the concrete foundation; and in the event there are holes or basements under any of the buildings removed, upon completion of moving operations the undersigned grantor shall construct temporary barricades around the holes or basements, to the satisfaction of the State, for the purpose of protecting pedestrians or animals from falling into such holes or basements."

"The said improvements, which the grantor reserves the right to remove, consist of: _____.

"$_____ of the total payment provided for under Clause 2(A) hereinabove shall be withheld by the State until said improvements, including combustible materials and rubbish, have been removed from the premises and until all of the conditions above have been complied with within the time limit set forth above.

"If said improvements are not removed in their entirety, at the grantor's expense on or before said date for any reason whatsoever, the right to remove said improvements shall terminate and the State shall dispose of said improvements as it may see fit and the grantor hereby agrees that the State shall retain the sum of $_____ as liquidated damages and costs to the State for removing the improvements."

Where utility service lines to buildings other than those being reserved by the grantor are affected, it will be necessary to add the following to the first paragraph in the above clause:

"In the event any utility service lines to other buildings are disconnected, destroyed, or otherwise impaired in any way by reason of the removal of said improvements, grantor, at grantor's own cost and expense, shall

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provide such other buildings adequate, substitute utility service lines in lieu of those affected."

8.06.13.00 Improvements Retained by Grantor – Partial Acquisition (Sufficient Remainder for Setback)

The following clause is to be used in these cases to relocate improvements situated in the right of way area. The amount to be withheld shall be sufficient to remove, but not reset, the improvements from the right of way area and dispose of combustible materials and other rubbish.

"The grantor reserves the right to remove the hereinafter described improvements located in the right of way area on or before_____. Upon exercising said reserved rights, grantor covenants and agrees to remove all combustible materials and other rubbish from within the right of way area upon completion of moving operations, leaving only concrete foundations, and concrete flatwork in place; provided, however, that all mudsill steel tie bolts and reinforcing steel protruding from said remaining concrete foundations shall be removed or sheared at all exposed surfaces of the concrete foundations; and in the event there are holes or basements under any of the buildings removed, upon completion of moving operations the undersigned grantor shall construct temporary barricades around the holes or basements, to the satisfaction of the State, for the purpose of protecting pedestrians or animals from falling into such holes or basements."

"The said improvements, which the grantor reserves the right to remove, consist of: _____. $_____ of the total payment provided for under Clause 2(A) hereinabove shall be withheld by the State until such improvements, including combustible materials and rubbish, have been removed from the right of way area and until all of the conditions above have been complied with within the time limit set forth above."

"In the event said right of way area has not been cleared of said improvements on or before said date, the State, or its authorized agent, is hereby granted the right to enter upon the adjacent property of the grantor for the purpose of moving said improvements clear of the right of way and onto grantor's adjacent property without incurring any liability or responsibility for the location or condition of said improvements, and grantor hereby agrees that the State shall retain the said sum of $_____ as liquidated damages and

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costs to the State of removing said improvements from the right of way area."

8.06.14.00 Improvements Retained by Grantor – Partial Acquisition (Insufficient Remainder for Setback)

The following clause is used in these cases. Where improvements have salvage value, the amount to be withheld shall be sufficient to guarantee cleaning up the premises. If improvements have no salvage value, the amount withheld shall be sufficient to cover State's out-of-pocket cost for removal or demolition in clearing the right of way area.

"The grantor reserves the right to remove the hereinafter described improvements located in the right of way area on or before_____. Upon exercising said reserved right, grantor covenants and agrees to remove all combustible materials and other rubbish within the right of way area upon completion of moving operations, leaving only concrete foundations and concrete flatwork in place; provided, however, that all mudsill steel tie bolts and reinforcing steel protruding from said remaining concrete foundations shall be removed or sheared at all exposed surfaces of the concrete foundations; and in the event there are holes or basements under any of the buildings removed, upon completion of moving operations the undersigned grantor shall construct temporary barricades around the holes or basements, to the satisfaction of the State, for the purpose of protecting pedestrians or animals from falling into such holes or basements."

"The said improvements, which the grantor reserves the right to remove, consist of: _____. $_____ of the total payment provided for under Clause 2(A) hereinabove shall be withheld by the State until said improvements, including combustible materials and rubbish, have been removed from the right of way area and until all of the conditions above have been complied with within the time limits set forth above."

"If said improvements are not removed in their entirety, at the grantor's expense, on or before said date for any reason whatsoever, the right to remove said improvements shall terminate and the State shall dispose of said improvements as it may see fit. State, or its authorized agent, is hereby granted the right to enter upon the adjacent property of the grantor for the purpose of removing said improvements from the right of way area, and grantor hereby agrees that the State shall retain the said

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sum of $_____ as liquidated damages and costs to the State of removing said improvements from the right of way area."

8.06.15.00 Improvements Retained by Grantor – Partial Acquisition (Greater Portion of Building in Right of Way Area) Right to Remove Entire Building

In these cases, where improvements have salvage value, the amount to be withheld shall be sufficient to guarantee cleaning the premises after completion of moving or demolition operations. If improvements have no salvage value, the amount withheld shall be sufficient to cover State's out-of-pocket cost for removal or demolition in clearing the right of way area. The following clause applies:

"The grantor reserves the right to remove the hereinafter described improvements located in the right of way area on or before_____. Upon exercising said reserved right, grantor covenants and agrees to remove all combustible materials and other rubbish from within the right of way area upon completion of moving operations, leaving only concrete foundations and concrete flatwork in place; provided, however, that all mudsill steel tie bolts and reinforcing steel protruding from said remaining concrete foundations shall be removed or sheared at all exposed surfaces of the concrete foundations; and in the event there are holes or basements under any of the buildings removed, upon completion of moving operations the undersigned grantor shall construct temporary barricades around the holes or basements, to the satisfaction of the State, for the purpose of protecting pedestrians or animals from falling into such holes or basements."

"The said improvements, which the grantor reserves the right to remove, consist of: _____. $_____ of the total payment provided for under Clause 2(A) hereinabove shall be withheld by the State until the improvements, including combustible materials and rubbish, have been removed from the right of way area and until all of the conditions above have been complied with within the time limit set forth above."

"If said improvements are not removed in their entirety from right of way area at the grantor's expense, on or before said date for any reason whatsoever, the right to remove said improvements shall terminate and the State shall dispose of said improvements as it may see fit. State, or its authorized agent, is hereby granted the right to enter upon the

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adjacent property of the grantor for the purpose of removing said improvements from the right of way area, in which event title to that portion of the building described as a (type of building) and located (location or address) resting on or supported by the remaining property of the grantor is thereon conveyed to the State, and the State is granted the right to remove said improvements in their entirety, to dispose of as it may see fit, and grantor hereby agrees that the State shall retain the said sum of $_____ as liquidated damages and costs to the State of removing said improvements from the right of way area."

8.06.16.00 Improvements Retained by Grantor – Partial Acquisition (Small Portion of Building in Right of Way Area) Right to Cut Off Building

Use the following clause in these cases. The amount to be withheld shall be sufficient to cover the cost of cutting the building on or near the right of way line, installing temporary bracing to the remaining portion of building, constructing temporary closure, and cleaning the premises.

"The grantor reserves the right to remove the hereinafter described improvements partially located in the right of way area on or before_____. Upon exercising said reserved right, grantor covenants and agrees to remove all combustible materials and other rubbish from within the right of way area upon completion of moving operations, leaving only concrete foundations and concrete flatwork in place; provided, however, that all mudsill steel tie bolts and reinforcing steel protruding from said remaining concrete foundations shall be removed or sheared at all exposed surfaces of the concrete foundations; and in the event there are holes or basements under any of the buildings removed, upon completion of moving operations the undersigned grantor shall construct temporary barricades around the holes or basements, to the satisfaction of the State, for the purpose of protecting pedestrians or animals from falling into such holes or basements."

"The said improvements, which the grantor reserves the right to remove, consist of: _____. $_____ of the total payment provided for under Clause 2(A) hereinabove shall be withheld by the State until the improvements, including combustible materials and rubbish, have been removed from the right of way area within the time limit set forth above."

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"If said improvements are not removed in their entirety from the right of way area, at the grantor's expense, on or before said date for any reason whatsoever, the right to remove said improvements shall terminate and the State, or its authorized agent, is hereby granted the right to enter upon the adjacent property of the grantor for the purpose of severing and removing those portions of the improvements situated in the right of way area and may dispose of all such improvements or portions thereof situated in the said right of way area, in such manner as it may see fit, and grantor hereby agrees that the State shall retain the said sum of $_____ as liquidated damages and costs to the State of removing said improvements from the right of way area."

8.06.17.00 Improvements Retained by Grantor – Garages and Service Stations

The following clause is for use when grantor retains service stations, garages, and underground gasoline and oil storage tanks. The amount to be withheld shall be sufficient to guarantee the removal of the tanks and the cleaning of the premises.

"The grantor reserves the right to remove the hereinafter described improvements located in the right of way area on or before_____. Upon exercising said reserved right, grantor covenants and agrees to remove all combustible materials and other rubbish upon completion of moving operations, leaving only concrete foundations and concrete flatwork in place; provided, however, that all mudsill steel tie bolts and reinforcing steel protruding from said remaining concrete foundations shall be removed or sheared at all exposed surfaces of the concrete foundations; and in the event there are holes or basements under any of the buildings removed, upon completion of moving operations the undersigned grantor shall construct a temporary barricade around the holes or basements, to the satisfaction of the State, for the purpose of protecting pedestrians or animals from falling into such holes or basements."

"The said improvements, which the grantor reserves the right to remove, consist of: _____. Gasoline and oil storage tanks shall be removed in their entirety, any and all contaminated soil shall be removed and disposed of in accordance with existing regulations and the holes backfilled with suitable material and compacted. The Fire Prevention Bureau shall be notified before removing tanks."

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"$_____ of the total payment provided for under Clause 2(A) above shall be withheld by the State until said improvements, including combustible materials, contaminated soil, and rubbish, have been removed from the right of way area and until all of the conditions above have been complied with within the time limit set forth above."

"If said improvements are not removed in their entirety, at grantor's expense on or before said date for any reason whatsoever, the right to remove said improvements shall terminate, and the State of California shall dispose of said improvement as it may see fit, and the grantor hereby agrees that the State shall retain the said sum of $_____ as liquidated damages and costs to the State of removing said improvements."

8.06.18.00 Service Connections – Improvements to be Moved by Grantors-Partial Acquisitions

The following clause must be included in the Contract:

"It is understood and agreed that the above payment to grantor also includes any and all costs of grantor for relocation or extension of utility service connections to the buildings so relocated.

"In the event any utility service lines to other buildings are disconnected, destroyed, or otherwise impaired in any way by reason of the removal of said improvements, grantor, at grantor's own cost and expense, shall provide such other buildings adequate substitute utility service lines in lieu of those affected."

8.06.19.00 Relocation of Improvements by State

Whenever a Contract provides for the relocation or installation of improvements by the State, the Contract must be specific in describing the work to be performed. The District's estimate of the cost involved shall be incorporated in and made part of the MOS (see also Sections 8.10.02.00 and 03.00 and the RAP Chapter).

Sketch maps showing the proposed work should be made a part of the Contract.

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When there are service connections to be replaced, the following clause must be in the Contract:

> "It is understood and agreed that all utility service connections to the buildings to be relocated shall, without cost to the grantor, be extended to said buildings in the new location."

8.06.20.00 Permission to Enter Grantor's Land for Improvement Removal

Acquisition of improvements, which straddle the new right of way line, requires the use of the following clause without exception:

> "It is understood and agreed between the parties hereto that payment shown in Paragraph 2A above includes payment to grantor for certain improvements located partly within and partly without the right of way area.
>
> "Said improvements consist of: _____. The State, or its agent, is hereby granted the right to enter upon the remaining property of the grantor for the purpose of removing said improvements."

Note: If desired by the grantor, the following may be added:

> "It is further agreed that the State or its agents will remove said improvements on or before_____."

8.06.20.01 Improvements and/or Removal of Buildings Straddling the Right of Way Line

When buildings and/or improvements are straddling the right of way line and the State and/or its authorized contractor needs to enter private property in order to modify/remove buildings or other improvements, a Temporary Construction Easement (TCE) is required. In the event eminent domain is initiated, the Acquisition Branch must advise Right of Way (R/W) Engineering on the appropriate Condemnation Improvement Removal Clause and/or Condemnation Improvement Severance Clause to be used in the legal description. (See Sections 6.12.08.00, 6.12.08.01, and 6.12.08.02).

If it is discovered during the acquisition phase a TCE is/was required for improvements which straddle the right of way line, the R/W agent in consultation with the appraiser, R/W Engineer, Project Engineer, and

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Construction Resident Engineer will establish the need for the TCE. Like all project requirements, prior to submitting a request for a Resolution of Necessity, the TCE shall be designed, mapped, and included in the Department's approved appraisal and subsequent offer to the property owner. (See Section 9.01.09.00, Legal and Policy Requirements).

8.06.21.00 Partial Acquisition of Residential Property with Owner/Occupant Displaced but Owner Requests Retention of Remainder

There may be times when the owner will want to retain a remainder even though the owner is displaced. The appraisal will have been prepared on a primary total acquisition basis because the remainder was considered to have little market value. If the owner requests retention of the remainder, an alternate partial acquisition appraisal will have to be prepared. It must not be used as the basis for a revised offer until the RAP Branch has had the opportunity to calculate the RAP benefits. This is essential to preclude the possibility of making an excessive purchase differential payment.

Since this particular subject could develop into several variations, a general instruction is not possible. Individual cases will require careful analysis and the assistance of the RAP section to avoid the circumstance of either withdrawing an offer or having an insupportable offer accepted.

8.06.22.00 Acquisition of Uneconomic Remnants and Excess Acquisition

Occasionally, when properties are partially within the right of way, the owner will request that the entire property be purchased. Categories of acquisition of the excess are:

Category 1. Uneconomic Remnant [May be condemned (see Section 9.01.12.00 Specific Statutory Authority)]

a. in the market
b. to the owner
c. due to construction costs or large damages

Category 2. Excess Acquisition

No RAP accrues to the excess area.

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These categories are discussed in Appraisal Chapter Section 7.03.04.00. If the purchase is made under Category 2, the following clause must be included in the Right of Way Contract:

> "It is understood and agreed that the purchase of the entire property described in Grant Deed No. _____ is at the sole request of and as a convenience to the undersigned grantor and relocation assistance benefits will not accrue since this is not a State initiated displacement."

RAP benefits may accrue to tenants. See the RAP Chapter for discussion relating to acquisition of remainders by voluntary transactions or condemnation initiated with the consent of the owner.

In those cases where management considers acquiring the remainder as excess, it must be kept in mind that excess land and improvements thereon are not eligible for federal participation. Damages to the remainder in excess land acquisitions are eligible. The acquisition cost of the excess is not eligible.

For uneconomic remainder and excess land acquisition, the Appraisals Branch will prepare a primary appraisal and an alternate appraisal. If the need for acquiring excess becomes apparent only after the original appraisal is completed, the alternate appraisal must be requested by the Acquisitions Branch. (See Sections 7.03.04.01 and 8.50.04.01.)

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8.07.00.00 - WATER WELLS

8.07.01.00 Wells – General

Water wells are handled in several different ways. The existing well must be properly abandoned and a new well provided where necessary. Abandonment procedures are discussed in the Property Management Chapter and should be reviewed by the Acquisition Agent. Their acquisition must be discussed in the Memorandum of Settlement (MOS) and the proper notification sent to the Project Engineer for inclusion in the Resident Engineer's file. The replacement of an existing well can be done by a cash payment to the grantor or by the State contracting for the drilling of a replacement well. Both are discussed below.

8.07.02.00 Cash Payment with State Option

Where the State is paying the owner for drilling a replacement well the following clause may be used in the Contract. The agent shall make certain that the State is supplied with copies of all the standard quantity tests on both the existing well and the new well so an accurate record may be established.

> "It is agreed that payment in Clause 2(A) includes the sum of $_____, as the cost to grantor for (description of well drilling work to be performed) on grantor's remaining property and that said sum of $_____, is based on the bid obtained from (Name of Company).
>
> It is further agreed that it is the intent of the parties hereto that the grantor be reimbursed by the State for the drilling of a well that will produce a quantity of water equal to, or greater than, that produced by the existing well. The quantity of water produced by the old well and the new well shall be ascertained by standard orifice tests to be secured by the grantor and complete copies of the results of the tests supplied to the State.
>
> If the grantor has one well drilled to a depth as deep as or deeper than the existing well, which fails to produce a satisfactory water supply, the State may, at its option elect to use either or both of the following alternatives:
>
> 1. Amend this Contract to provide additional monies and authorization to grantor to proceed with other attempts to produce a satisfactory water supply on grantor's remaining property.

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2. Withhold authorization to the grantor to proceed with further attempts to produce water and enter into an Amended Contract for the purpose of reimbursing the grantor for the loss or depreciation in market value to the remaining property served by the water supply resulting from the lack of, or decreased quantity of, water available. If the amount of such loss or depreciation in the market value cannot be determined by agreement between grantor and State, the State will then bring appropriate legal proceedings for the purpose of ascertaining the same, and will pay the amount ascertained by such legal proceedings, together with the grantor's legal costs in such proceedings.

It is further agreed that if the State is not notified in writing prior to _____ of the failure of said new well on grantor's remaining property to produce a quantity of water equal to, or greater than, that produced by the existing well, the payment of said sum of $_____ shall be considered as full payment by the State for the existing well and grantor waives any and all future claim for compensation."

8.07.03.00 State Contract

If neither a cash settlement nor the well clause above are satisfactory, the following clause may be used:

"The State shall drill a well on the grantor's remaining property that will produce a quantity of water equal to, or greater than, that produced by the existing well. The quantity of water produced by the old well and the new well shall be ascertained by the standard orifice test, and the grantor shall be supplied with complete copies of the results of said tests.

If the State drills one well to a depth as deep as, or deeper than, the existing well, and which fails to produce a satisfactory water supply, the State may, at its option, elect to use either or both of the following alternatives:

1. Proceed with other attempts to produce a satisfactory well on grantor's remaining property.

2. Discontinue all further attempts to produce water.

If the State, within a reasonable period of time, drills a new well or subsequent well which produces no water or a lesser quantity of water than that from the existing well, and thereafter discontinues further attempts to produce additional water, the State shall reimburse the grantor for the loss

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of depreciation in market value to grantor's remaining property resulting from the decreased quantity of water available therefor. If the amount of such loss or depreciation in the market value cannot be determined by negotiations between grantor and State, then State will on written notice from the grantor, bring appropriate legal proceedings for the purpose of ascertaining the same, and will pay the amount ascertained thereby, together with the grantor's legal costs in such proceedings.

If the State drills a well or wells that produce the required volume of water, but are so located or so numerous as to result in a measurable loss or depreciation in market value to grantor's remaining property, the State shall reimburse the grantor for such loss in the manner provided for in the paragraph next above."

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8.08.00.00 - ACCESS AND ENCROACHMENT PROVISIONS

8.08.01.00 Access – General

Access rights are to be acquired in accordance with the approved plans and as shown in the approved appraisal. Should there be a change, the valuation premise will have to be reviewed to determine if there are any changes warranted. On the Interstate System, the State cannot add any points of access to or exits from approved projects without FHWA approval.

8.08.02.00 Interim Access – Without Frontage Road

Where interim access is to be allowed prior to freeway construction, the following clause will be included in the Contract:

> "It is recognized that the freeway construction on the property hereby conveyed may be deferred, and it is therefore agreed that the undersigned grantors, or their successors in interest, shall have access to their remaining property, over the property hereby conveyed, in the same manner as they now enjoy until such time as the new freeway construction is commenced."

8.08.03.00 Interim Access – Frontage Road

Where interim access is to be allowed prior to frontage road construction, the following clause will be used:

> "Until construction of the proposed frontage road, the grantor(s) shall have access by means of (number and width of openings) (right or left) of (kilometer post or kilometer posts, post mile or post miles) from grantor's remaining property to and from the existing State highway or freeway, provided that all rights reserved in this paragraph shall terminate when construction of the frontage road is commenced."

8.08.04.00 Landlocked Parcels

The following clause shall be included in the Contract and Deed in each case involving the retention of a landlocked remainder by a grantor.

This clause may be revised, if necessary, to meet special situations.

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"It is agreed that grantor's remaining property is landlocked, and without any direct access to the freeway or to any public or private road, and grantors hereby relieve grantee of any liability to provide access to the remaining landlocked property."

8.08.05.00 Encroachments on Federal Aid Highways

The State shall not add any points of access to, or exits from, approved projects on the Interstate System without prior Federal approval. Federal legislation and regulations also indicate that all real property, including air space, within the right of way boundaries of a project shall be devoted exclusively to public highway purposes. Exceptions can be made, however, wherein temporary or permanent occupancy or use of the right of way, including air space, is permitted for nonhighway purposes which includes a reservation of surface or mineral rights; provided, however, they are first approved by FHWA. FHWA will determine if such occupancy, use or reservation is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic thereon.

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8.09.00.00 - RENTAL AND POSSESSION PROVISIONS

8.09.01.00 Clauses for Grace Period, Early Vacation and Rent Confirmation

A. Contracts with owner-occupants of residential units who wish to remain in occupancy after close of escrow will contain fair market rental provisions and shall have the following clauses included in the Contract:

> "It is agreed that the grantor(s) shall have a 15-day grace period commencing on the day following the date of recordation of the deed conveying title to the State. It is agreed that commencing on the day following the expiration of the grace period and thereafter, the State will rent the property to the grantor using the State's standard form of Rental Agreement."

If desirable, the rental rate may be included in the Contract by adding the following:

> "The rental rate shall be $_____ per month subject to all the terms and conditions as contained in said rental agreement, including the right of either party to cancel and terminate such rental agreement upon written notice as specified in said rental agreement. Said rental rate shall remain in effect for a period of at least one year, if the property is available for occupancy for that period, and subject to the right of the State to establish a new rental rate after one year if the property remains available for rent."

B. If early vacation of an owner-occupied residential unit is necessary, use the following:

> "It is agreed that grantor(s) shall, on the day following the expiration of the fifteen day grace period, vacate and deliver the above-described premises vacant to the State and in good order and condition, without further notice, and immediately thereafter deliver the keys thereto to the Department of Transportation (address) and also pay all closing utility bills up to and including the date of vacation.

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In the event, however, grantor(s) does (do) not vacate the premises, grantor(s) agree(s) to pay the State at the rate of $_____ per day for use and occupancy of said premises beginning the day following the recordation of the deed conveying title to the State; and the acceptance of such payment by the State shall in no way create a new tenancy between the parties.

In the event grantor vacates the premises prior to the recordation of the deed conveying title to the State, the State is hereby granted possession to use, occupy, or rent the property as it sees fit."

C. If the grantor insists on written confirmation of the rental rate to be charged for continued occupancy after State takes title to the property, the following clause will be included in the Right of Way Contract:

"It is agreed State will rent the property to grantor, using State's standard form (Rental or Lease Agreement) commencing the day following the close of escrow. The (Rental-Lease) rate shall be $_____ per month subject to all the terms and conditions in said (Rental-Lease) agreement, including the right of either party to cancel and terminate said agreement upon written notice as specified in said (Rental-Lease) Agreement. Said (Rental-Lease) rate shall remain in effect for a period of at least one year, if the property is available for occupancy for that period. State has the right to establish a new (Rental-Lease) rate after one year if the property remains available for occupancy."

8.09.02.00 Delivery of Property Vacant at Close of Escrow

If early vacation of owner-occupied, nonresidential property is necessary, the following clause will apply:

"It is agreed grantor(s), on the day following the date title vests in State, will vacate and deliver the above-described property to State in good order and condition without further notice and immediately thereafter deliver the keys thereto to the Department of Transportation, (address), and also pay all closing utility bills up to and including the date of vacation."

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8.09.03.00 Delivery of Property Vacant After Close of Escrow

Where the owner desires to retain possession of the property beyond the date of close of escrow, the following clause will be included in the Contract. [The Memorandum of Settlement (MOS) must indicate the consideration the State is receiving for granting such occupancy.]

> "It is agreed that grantors shall deliver the above-described premises vacant to State on or before _____ days after the date of recordation of the deed conveying title to State, in good order and condition, without further notice, and immediately thereafter deliver the keys thereto to the Department of Transportation (address) and also pay all closing utility bills up to and including the date of vacation."

8.09.04.00 90-Day Notice of Intention to Take Possession

It is Department policy to schedule construction projects so that no persons lawfully occupying real property required for highway or related purposes shall be required to move from their home, farm or business location without at least 90 days' prior written notice from the State or other political subdivision having the responsibility for such acquisition. (Refer to the RAP Chapter for details.) See the Condemnation Chapter for a discussion on Orders for Possession.

8.09.05.00 Eviction by State

The State must either own the property or have legal possession under an Order for Possession (OP) before eviction proceedings can begin. Acquisition must work closely with Relocation to assure that State and Federal procedures are fully complied with. Property Management should be consulted with on how to proceed with evictions since procedures can vary by local jurisdiction.

8.09.06.00 Lease Warranty Provision

Where the owner claims that tenants occupy the property being acquired on a month-to-month tenancy, the following clause will be included in the Contract:

> "Grantor warrants that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the grantor

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agrees to hold State harmless and reimburse State for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of grantor for a period exceeding one month."

8.09.07.00 Rent Proration and Security Money Collection for Other Than Owner-Occupied Single Family Residential Properties

The following clause will be included in the Contract where property is tenant occupied:

"The grantor(s) shall retain possession of the property conveyed up to and including the date of recording of the deed conveying title to State upon compliance by the grantor(s) with the conditions of this contract. All rents and all security money collected by grantor(s) applicable to any period thereafter shall be paid to the State. Either party hereto collecting rents or security money to which the other party is entitled shall forthwith pay such amount to the other as is necessary to comply with the provisions of this clause."

8.09.07.01 Rent Proration by Escrow Agent

If the District desires that rent be prorated by the escrow agent through use of separate Rental-Escrow Instructions made a part of the Right of Way Contract, use the following clause:

"The grantor(s) shall retain possession of the property conveyed up to and including the date of recording of the deed conveying title to State upon compliance by the grantor(s) with the conditions of this contract. All rents and all security money collected by grantor(s) applicable to any period thereafter shall be paid to the State in accordance with the terms and conditions of the Rental-Escrow Instructions attached hereto and made a part hereof. Either party hereto collecting rents or security money to which the other party is entitled shall, in the final settlement of this contract, pay such an amount to the other as is necessary to comply with the provisions of this clause."

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8.09.07.02 Definite Rent Proration Date Established

If grantor insists on a definite date for proration of rents, the following clause may be used:

> "All rents shall be prorated as of (date). All rents derived from said property up to and including said date shall be paid to the grantor(s), and all rents derived thereafter shall be paid to the State of California. If any rentals on said property have been or are collected by the undersigned grantor(s) for any period beyond said date, the undersigned grantor(s) shall immediately refund such rentals to the State.
>
> All security money collected by the undersigned grantor(s) shall be paid to the State of California."

8.09.08.00 Grantor Retaining Temporary Possession

The following clauses may be used where it is advantageous to allow the grantor to retain possession and use of the property, e.g., avoidance of crop damage payment, control of noxious weeds, agricultural land without an independent water supply or property not capable of independent use. Prior approval of the DDC-R/W must be secured before either of these clauses are included in any Contract.

It is essential in the use of either of these clauses that complete justification be included in the Memorandum of Settlement (MOS). Without justification, it is tantamount to a gift of State property.

> "Until such time as the State elects to take possession of any or all of the property acquired herein, the grantor shall have the use and enjoyment of its surface in the same manner as now used, except that in no event shall any advertising sign of any nature whatsoever be placed upon or allowed to remain on the property. Grantor agrees to keep the premises in a neat and clean condition.
>
> The grantor agrees that no improvements other than those already on the property, shall be placed thereof; and the planting of any crops, trees, or shrubs, or alterations, repairs, or additions to existing improvements which may hereafter be placed thereon are at grantor's risk and without expectation of payment if removed by the State."

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Where temporary possession is being allowed and the land is improved with an orchard, or similar enterprise, the District should use the following clause which provides for good husbandry practices, including pest control.

> "It is agreed that the undersigned grantor(s) shall harvest the existing _____ crop on that portion of grantor's property being acquired by the State. It is further understood that said crop shall be harvested on or before_____ and, if not harvested by said date, shall become the property of the State to dispose of as it may see fit. The undersigned grantor(s) agree(s) to cultivate and maintain the existing crop in conformance with the practices of good husbandry, including pest control, up to and including date grantor(s) harvest(s) said crop.
>
> It is further understood that this property shall be used only for the purpose of maintaining and harvesting the crop on the subject property.
>
> Upon the failure of the grantor(s) to comply with any condition or provision of this agreement, the authorization to harvest said crop by the grantor(s) shall immediately cease and possession shall be taken by the State."

8.09.09.00 Right of Entry-Waiver Clause

All Rights of Entry shall be restricted to only those circumstances which are exceptional or emergency in nature [49 CFR 24.102(j)]. Complete documentation for such action and approval must be contained in the acquisition file.

The only exception to the above referenced requirements are those Rights of Entry for transactions between other Federal, State, and Local (County, City) governmental agencies.

Rights of Entry prior to initiation of negotiations involve emergency projects or situations which constitute a hazard to the traveling public, or additional areas required during construction of the transportation facility and are not in conflict with the environmental document related to the project. The normal appraisal and acquisition process must not be unduly delayed after the securing of a Right of Entry prior to the initiation of negotiations.

Whenever the content of a Right of Entry is revised or modified from the standard form, approval of Legal must be obtained prior to submitting the Right of Entry to the owner for execution.

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The Right of Entry - Long Form (Exhibit 8-EX-23) and Possession and Use Agreement (Exhibit 8-EX-25) contain a standard clause waiving the owner's right to appear before the California Transportation Commission.

This clause must be included since omission of the clause would provide the owner with the right to question the validity of a project which may be under construction or completed at a time when a Resolution of Necessity may be sought. In limited instances, the Right of Entry - Short Form (Exhibit 8-EX-24), which does not include the waiver clause, may be used. There may be circumstances in which the Right of Entry will not be used. This could occur in emergency situations where there is an immediate danger to life, property, or the highway facility. Under such circumstances, the Department may rely on its Police Power.

The use of a Right of Entry is only appropriate in those situations where the State would ultimately acquire the needed interest by eminent domain proceedings. Whenever it becomes necessary to institute such proceedings on parcels under the State's possession by Right of Entry or Possession and Use Agreement, there is no need to mail the Notice of Intent.

8.09.09.01 Possession and Use Agreement

The Possession and Use Agreement provides the legal right for the State to possess and use the owner's property prior to the execution of a Right of Way Contract, and, at the same time, allows the owner to receive just compensation for the State's possession and use of the parcel.

Use Exhibit 8-EX-25 for the Possession and Use Agreement. The Possession and Use Agreement requires that the State record a Memorandum of the Agreement (Exhibit 8-EX-35) and deposit funds into an escrow account to allow the owner to withdraw funds. Refer to Sections 8.60.00.00 through 8.68.00.00 and Exhibit 8-EX-36 for more detailed instructions. The process should include proper notification of the owner on the withdrawal of funds. It is critical that lien holders be notified that an escrow and sale are pending to ensure the owner does not withdraw funds that will be needed to satisfy any liens against the property.

8.09.10.00 Construction Permits and Permits to Enter and Construct

When temporary rights are needed to perform work for grantor's benefit, a Permit to Enter and Construct or Construction Permit may be used. These documents provide no permanent right to the State and may be used when

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the State would not condemn the rights secured. See Exhibits 8-EX-26 and 8-EX-27.

8.09.11.00 Temporary Easements

Where State must enter adjoining property for temporary use during construction, the appropriate right is a Temporary Easement. This is also the right to be acquired through eminent domain when negotiations fail.

8.09.12.00 Indemnification by State

Where rights of a temporary nature (material agreements, detour easements, drilling permits, etc.) are required, and the property owner or other party to the agreement requests to be indemnified by the State for any damage caused by reason of the uses authorized by such agreement, the following clause may be used:

> "State agrees to indemnify and hold harmless (name of other party to agreement) from any liability arising out of State's operations under this agreement. State further agrees to assume responsibility for any damages proximately caused by reason of State's operations under this agreement and State will, at its option, either repair or pay for such damage."

Easements for slope purposes, whether temporary or permanent, are not considered as being "temporary" for the purposes of this section.

8.09.13.00 Right of Possession

Where possession is required and no Order for Possession has been obtained, add the following clause to the Contract:

> "It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by the State, including the right to remove and dispose of improvements, shall commence on the date the amount of funds as specified in Clause 2(A) herein are deposited into the escrow controlling this transaction. The amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date."

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8.09.13.01 Right of Possession – Internal Escrow

Where possession is required and no Order for Possession has been obtained, add the following clause to the Contract for those transactions handled through an internal escrow:

> "It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by the State, including the right to remove and dispose of improvements, shall commence on the date the amount of funds as specified in Clause *2(A) herein are paid to the grantor(s). The amount shown in Clause *2(A) herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date."

*If using RW 8-4 Right of Way Contract – State Highway – Temporary Easement, specify Clause 2.

8.09.14.00 Confirming Date of Possession

Whenever State has secured an Order for Possession or a Right of Entry and settlement is by Contract, the contract shall include the following clause:

> "It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by the State, including the right to remove and dispose of improvements, commenced (effective date of Order for Possession or Right of Entry) and that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including damages, if any, and interest from said date."

See the R/W Engineering Chapter for deed clause where an Order for Possession or Right of Entry has been obtained.

8.09.15.00 Confirming Vacation in Hardship Acquisitions

The following clause is only to be used in hardship acquisitions. Although it should be adequate to accomplish the stated objective, the District should use extreme care in implementing it. Under Government Code Section 87261(b)(3), the District must be able to assure the grantor (who, upon acquisition, becomes eligible for benefits under the Relocation Assistance Act) that within a reasonable period of time prior to displacement,

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comparable replacement housing will be available. Further, Section 6042 of the Department of Housing and Community Development (HCD) Guidelines requires that the displacee be actually offered replacement housing before forced to vacate the property. For this reason and because eviction can only be used as a last resort, the 90-day notice should be served on the grantor only after having been given a reasonable number of offers of a replacement dwelling [HCD Guidelines SS6042(d), 6058].

> "It is understood and agreed between the parties hereto that the sole reason for the State's purchase of the subject property at this time is to alleviate a hardship condition presently suffered by the grantor(s) and that said hardship can only be cured by the grantor(s) selling and vacating the premises. It is, therefore, confirmed by the parties hereto that the grantor(s) has (have) received notice of the State's intent to serve a 30-day Notice to Vacate and that said Notice to Vacate will be served either (1) after the close of escrow or (2) after 90 days from the date of said notice of intent to serve the 30-day eviction notice. Grantor(s) will deliver the premises vacant to the State in good order and condition without further notice and will immediately thereafter deliver the keys to the premises to the Department (District Office address) and also pay all closing utility bills up to and including the date of vacation."

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8.10.00.00 - CONSTRUCTION OBLIGATIONS

8.10.01.00 General

Construction contract obligations require the State to do certain work on grantor's remaining property to avoid payment of damages. This work can range from construction of fences and irrigation facilities to replacement of structures. As such, the conditions must be completely described in the Contract and discussed in the Memorandum of Settlement (MOS). Project Development and Construction must be notified in writing of these obligations. Appropriate entry clauses must be included in the Contract.

8.10.02.00 State Performed Work

The following clause shall, in all cases, be the last paragraph of any clause in a Contract where the State will move, relocate, or reconstruct buildings or fences, pipelines, cattle passes, etc.:

> "All work done under this agreement shall conform to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner. All structures, improvements or other facilities, when removed, and relocated, or reconstructed by the State, shall be left in as good condition as found."

8.10.03.00 Permission to Enter Grantor's Land for Construction Purposes

When it is necessary to enter onto owner's remainder property to perform construction contract work on facilities for owner's use, the following clause will be included in the Contract. This clause can be used with appropriate modification to allow entry for more than one type of construction work. It is not necessary to repeat the clause for each and every entry requirement.

> "Permission is hereby granted to State or its authorized agent to enter on my/our land, where necessary, to (relocate or reconstruct road approaches, cattle guards, trails, pipes, culverts, etc.), as shown on the attached map(s) and as described in Clause(s) _____ of this Contract.
>
> I (we) understand and agree that after completion of the work described in Clause(s) _____, said facility(ies) will be considered as

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my/our sole property and I (we) will be responsible for its/their maintenance and repair."

8.10.04.00 Road Approach Within State Highway Right of Way

When it is necessary to perpetuate existing private roadways which lie partially or entirely within highway right of way, the following clause will be included in the Contract:

> "At no expense to the grantor(s) and at the time of highway construction, construct road approach(es) _____ of Engineer's Station(s) _____, Department of Transportation Survey between _____ and _____. Upon completion of construction of said road approach(es) it/they will be considered as an encroachment under permit on the State highway and is/are to be maintained, repaired and operated as such by grantor(s) in accordance with and subject to the laws of the State of California and the rules and regulations of the Department of Transportation of said State."

Since the Permit Section must be aware of all encroachments within the highway right of way, a copy of the Contract shall be forwarded to the District Permit Section. They may feel it necessary to issue a Standard Encroachment Permit in lieu of using the Contract as the permit. If so, the agent should assist the Permit Section in obtaining any necessary signatures, however, the permit should be issued without charging any fees.

This same clause should be used where pipelines or conduits are being installed within the highway right of way as encroachments. The clause would have to be revised to suit this type of installation. Again, a copy of the contract should be provided the Permit Section.

8.10.05.00 Property Monuments

The Land Surveys unit will notify the Right of Way Project Coordinator when it is discovered through project survey work that a property monument will be impacted as part of a project's proposed construction. The R/W Project Coordinator will share this information with the appropriate R/W unit that will be handling the acquisition. If during the negotiations the property owner expresses a desire to have the property monument(s) replaced, the R/W Agent will handle each request on a case-by-case basis. Where it is determined that compensation will be provided, it will be handled via an

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administrative settlement. If it is determined that compensation is in order for the destroyed monument, the R/W Contract must expressly provide that the grantor has received payment in full and the State is released from any additional obligation in regard to property monuments. The following clause may be used:

> "Grantor understands and agrees that the amount to be paid under Clause 2(A) includes payment in full to compensate Grantor for the destruction of his/her property monument(s). Grantor releases and holds the State harmless from any additional obligation or liability with respect to this(these) monument(s)."

8.10.06.00 Divided Highway Crossovers

No obligation is to be assumed in any Contract or Judgment to install crossovers in a median strip. Any such obligation would be contrary to highway design and safety standards.

8.10.07.00 Fruit Trees Within the Right of Way

Because of potential problems involving disease or insect infestation, the Department should not maintain fruit bearing trees as such within the right of way. Where conditions justify, this procedure may be modified to allow trees to remain solely for shade or ornamental purposes. This may involve removing extra trees so that spacing will conform to highway standards. The maintenance forces will be responsible for necessary spraying and care of the trees.

When right of way is being acquired through orchard land in anticipation of future construction, the Contract may provide for the owner to retain the responsibility for the care of the trees, including harvesting, pest control, proper cultivation, pruning, etc., pending highway construction (see Section 8.09.08.00). If the grantor is not desirous of retaining this obligation, the District should immediately arrange for removal of the trees as soon as feasible after close of escrow.

8.10.08.00 Fencing – Access Control

The Project Development Procedures Manual classifies fencing either as "freeway" or "property" depending on whether the fence is used for access control or to serve the abutting property owner's needs. Freeway fences are placed within the right of way to act as physical barriers to enforce access control. Property fences are privately owned and maintained to serve the

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abutting property owner's needs. Although they are the property of the owner, certain types of fences may satisfy access control requirements.

No condition shall be included in the Contract which would limit State's right to construct access control fences or barriers within the right of way of any access controlled highway.

8.10.09.00 Installation of Property Fence

Where it is the State's obligation to either build or relocate a property fence, a clause must be in the contract patterned after the following:

The State shall:

> "Install 2 foot 7 inch +/- wire mesh and three lines of barbed wire fastened to metal posts spaced at _____ foot intervals or spacing to conform to standard specifications for this project along and immediately adjacent to the State highway right of way line, but on the undersigned grantor's remaining property, and extending from (left or right of) Engineer's Station _____ to Engineer's Station _____.

8.10.10.00 Payment in Lieu of Construction Obligation Covering Fencing

If grantor insists on payment to perform fence installation, the Contract must expressly provide that grantor has received payment in full to do the work and that the State is released from any obligation in regard to fencing. The following clause is to be used:

> "It is agreed that included in the amount payable under Clause 2(A) above is payment in full to compensate grantor for the expense of installing fencing between (left or right of) Engineer's Station _____ and Engineer's Station _____. The grantor releases the State from any obligation to construct said fencing."

In some instances, it will be appropriate to withhold funds to ensure construction of the fencing.

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8.10.11.00 Construction of Sidewalks

Under no circumstances shall any obligation be assumed to construct or pay for sidewalks except as a replacement or as an offset against other consideration owed to the grantor. Where frontage roads are to be connected to local streets that would otherwise dead-end at the freeway, and where such intersecting streets have sidewalks, it will be in order to construct sidewalks along the frontage roads. Such sidewalks are considered to be a replacement of existing facilities and, as such, are not right of way obligations.

8.10.12.00 Approval of Change Orders

The Construction Department will submit to the DDC-R/W, for approval, all change orders covering the performance of work which is in fulfillment of a right of way obligation. It shall be the responsibility of the DDC-R/W to investigate and determine if the work proposed in the change order is proper.

If the work proposed by the change order is a right of way obligation, the DDC-R/W will note approval on the yellow copy of the change order. In the event the work involves a right of way obligation not covered by a Right of Way Contract, then a letter of explanation shall be prepared by the DDC-R/W and submitted to Office of Construction Engineer along with the change order.

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8.11.00.00 - TRANSVERSE INSTALLATION OF PRIVATE IRRIGATION FACILITIES WITHIN FREEWAY RIGHT OF WAY

8.11.01.00 General

Whenever a partial acquisition severs grantor's property and it is necessary to maintain irrigation facilities to permit operation of the remaining lands on each side of the freeway, procedures set forth in the following paragraphs apply.

8.11.02.00 Classification of Crossings

Type "A" consists of pipeline facilities of 305 mm in diameter or less and all high-pressure pipelines.

Type "B" consists of pipeline facilities in excess of 305 mm in diameter and low-pressure pipelines.

Type "C" consists of open irrigation ditches which are converted to a pipeline facility to be installed transversely within the freeway right of way.

8.11.02.01 Type "A"

A reservation will be made in the conveyance to the State on behalf of the grantor which will permit the installation and maintenance of privately-owned irrigation facility within a State-owned conduit. The conduit will traverse the full width of the controlled access right of way (less than full width of the right of way will be permitted in special cases). It will remain the property of the State with the obligation to maintain and replace. The State shall not be liable for any betterments, changes or alterations in the conduit made by, or at the request of the grantor for the grantor's benefit.

The State shall install the required irrigation pipeline within the conduit at State expense; however, the irrigation pipeline shall become the property of the grantor and it will be the grantor's obligation to repair and replace the subject pipeline. This right to maintain and repair facilities existing within the conduit is limited to performing such maintenance and repair from outside the freeway right of way. The grantor shall have no right to traverse or use the freeway right of way for maintenance or repair of these facilities, except where the conduit does not extend to the freeway right of way. In those

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cases, an encroachment permit shall be granted to the grantor to provide for maintenance and repair between the freeway right of way and the conduit. A condition covering this situation shall be included in the Contract.

The Contract clause to be used in cases of Type "A" pipelines is as follows:

> "At no expense to the grantor, and at the time of construction, furnish and install (type, size of pipeline) under and across the roadbed at Engineer's Station_____. Grantor understands and agrees that, upon the completion of said work of installation, said (pipeline) shall become the property of the grantor and it will be the grantor's obligation thereafter to maintain and repair said (pipeline).
>
> It is understood that at no expense to the grantor, the State shall install across the roadbed at Engineer's Station _____ a conduit within which the above-mentioned pipeline shall be installed. It will be the State's obligation to maintain and repair the conduit.
>
> In no event shall the State be liable for any betterments, changes or alterations in the conduit made by or at the request of the grantor for grantor's benefit."

8.11.02.02 Type "B"

A reservation will be made on behalf of the grantor in the conveying deed which will permit the installation and maintenance of privately-owned underground irrigation facility within the State highway right of way. The State shall install a conduit within the right of way area reserved to the grantor for the full width of the controlled access right of way (less than full width of the right of way will be permitted in special cases). The conduit will be the property of the grantor with the obligation on the grantor to maintain and replace the conduit.

The portion of the conduit within the highway right of way shall have a diameter 152 mm greater than the diameter of the pipe required. This will permit the grantor, at a later date, in the event a replacement is necessary, to pull in a pipe of sufficient size to replace the existing facility.

The grantor's right to maintain and repair the facilities existing within the State right of way is limited to performing such maintenance and repair from outside the freeway right of way. In no instance shall the grantor have the right to traverse or use the freeway right of way for maintenance or repair of the facilities except in those cases where the conduit has additional diameter

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and does not extend to the freeway right of way. Then, an encroachment permit shall be issued to the grantor to provide for maintenance and repair of these facilities between the freeway right of way and the oversize conduit. A condition covering this situation shall be included in the Contract. The Contract will include the following clause in the case of Type "B" and "C" pipeline crossings:

> "At no expense to the grantor, and at the time of construction, furnish and install (type, size of conduit) under and across the roadbed at Engineer's Station _____. Grantor understands and agrees that, upon the completion of said work of installation, said (conduit) shall become the property of the grantor and will be the grantor's obligation thereafter to maintain and repair said (conduit)."

8.11.02.03 Type "C"

All requirements listed under Type "B" facilities apply to Type "C." The Contract will include the clause in Section 8.11.02.00. Also, the following requirements apply to Type "C." The Contract will provide that the grantor shall keep the irrigation pipeline, placed within the freeway right of way, free and clear from obstructions, debris and other substances, so as to ensure the free passage of water in the pipe.

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8.12.00.00 - EXCHANGES AND ABANDONMENTS

8.12.01.00 General

Subject to approval by the California Transportation Commission (CTC), excess real property may be used in exchange for all or part consideration for other property required for highway purposes. Exchanges of land in right of way transactions should be limited to those cases where the excess real property is contiguous to the remaining property owned by the grantor of the property being acquired. Noncontiguous excess real property exchanges must have the prior approval of HQ R/W. A copy of the authorization will be included in the Memorandum of Settlement (MOS). Finding "A" or "B" situations are the most desirable type of exchange.

It is Department policy to dispose of excess property by public sale whenever possible. Exchanges are justified if sale of an excess parcel to the general public would be injurious to the interests of an abutting owner, or if damages are minimized by an exchange and the grantor's property rehabilitated to permit its highest and best use. See the Excess Lands Chapter.

8.12.02.00 Exchanges of Superseded State Highway Right of Way

When all or a portion of a State highway has been superseded by a change in location and is no longer necessary (including need for bike paths, vista points, and roadside rests, etc.) and title to the right of way is easement only (either prescriptive or by easement deed), and said highway is not to be relinquished to the county, it may be vacated or disposed of in accordance with Section 118 of the Streets and Highways Code (S&H Code) (see Section 8.12.10.00). A superseded right of way may be retained in the State Highway System when its use changes solely to such as a bike path, vista points, and roadside rests, etc. Under these circumstances, the highway is not to be vacated (see Section 104, subdivision (j), S&H Code).

The District will not contractually obligate the State to vacate an easement without first complying with the requirements of Streets and Highways Code, Sections 2381, 8313 and 8330.5. These sections require contact with local agencies having jurisdiction over the areas. Section 8340 of the S&H Code allows the reservation of easements for utility purposes prior to vacation.

When title to such superseded right of way is owned in fee, the State may convey title to a private individual only by Director's Deed. Saleable

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segments of such right of way may be used in exchange the same as any other fee-owned property.

8.12.03.00 Appraisal for Exchange

Excess real property, or an interest therein, proposed for exchange shall be appraised in accordance with Chapter 7. The appraisal shall be approved in accordance with current delegations. This requirement will not apply to parcels acquired specifically as substitute parcels for public utilities, government-owned land or railroads.

The appraisal report of exchange property shall, however, be assigned a Register number for filing and reference purposes. In lieu of a Register number the District may use the number assigned to the Director's Deed.

8.12.04.00 Acquisition and Exchange of Excess

The State may acquire land in excess of its needs by authority of Sections 104.1 and 104.2 of the S&H Code and exchange it for other property needed for highway purposes. Title is to be taken in the name of the State and conveyance from the State will be by Director's Deed. Acquisition of excess land must be in accordance with Sections 1240.150 and 1240.410 to 1240.430, C.C.P.

The acquisition agent is responsible for the completion of the identification, pro-rata cost, and inventory value sections of the Excess Land Inventory and Disposal Record (see Excess Lands Chapter). Refer to the discussion on preparation of MOS in Section 8.50.00.00. Where excess lands are included in an Order for Possession, an Excess Land Inventory and Disposal Record is to be prepared at the time the Order is filed and immediately forwarded to the appropriate Branches.

In an exchange transaction consummated simultaneously between the State and two landowners (from each of whom State will acquire right of way), it is permissible to take title to excess land in the name of a title company, or one of such owners. For example, all of A's lot is purchased; A conveys one-half to the State for right of way and the other half to B, or to the title company who conveys to B, as all or part consideration for B's granting a right of way to the State. In such cases, the Contracts and the MOSs must clearly show the basis of the entire transaction, including the extent of allowance which the State is receiving for the exchanged property and its cost to the State.

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The Contract with the grantor of the property to be exchanged, and with the grantor who is to accept the exchanged property, should be submitted simultaneously for approval. In all cases other than simultaneous exchange transactions, title shall be taken in the name of the State.

8.12.04.01 Commitment to Convey Excess Prior to Acquisition

When entering into an agreement obligating the State to convey excess land yet to be acquired by the State, the following clause will be used in the Right of Way Contract:

> "If, for any reason, the land described in Clause No. _____ hereinabove is not acquired by the State of California, prior to _____, 19__, or if the land so described is acquired by the State, but is subsequently found to be necessary for a public highway or other public purposes, the State shall, in that event, pay the undersigned grantor, and grantor agrees to accept, the sum of $_____ in lieu of the State conveying the real property described in Clause No. _____ and grantor agrees to release and forever discharge the State of California from any further obligation on this account."

Obligations to convey excess land not yet acquired should be carefully considered since the owner of the excess need not convey it to the Department and may also prevent its acquisition in a condemnation proceeding.

8.12.05.00 Land Exchange

The Contract must contain the following clause in these transactions:

> "Subject to approval by the California Transportation Commission, deliver to Grantees (designating them as joint tenants, or tenants in common, or whatever is desired), a good and sufficient Director's Deed, properly recorded, to the following described property, free and clear of all liens and encumbrances except taxes and special assessments, if any, easements, restrictions and reservations of record***."

or

> "Subject to the approval by the California Transportation Commission, deliver to Grantees (designated them as joint tenants, or tenants in common, etc.), a good and sufficient Director's Deed, properly recorded, to the property outlined in red on the sketch attached hereto and made a

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part hereof free and clear of all liens and encumbrances except taxes and special assessments, if any, easements, restrictions and reservations of record***."

When necessary to reserve access rights, add the following to the above:

"*** and excepting and reserving therefrom access rights from said property to be conveyed along and across a line (here insert description of line), said line also being the _____ line of the State highway. It is understood that the State in no way will be obligated to pay escrow charges, title insurance fees or documentary transfer taxes incurred in the conveyance to the grantor referred to above."

NOTE: It is imperative that any defects in the title of the State be listed in the contract under the exceptions in the above clause so that the State will not be obligated to convey a better title than it possesses.

As to taxes, it is important, prior to conveyance, to have the taxes canceled. The reconveying of title into private ownership will have the effect of reviving the tax lien unless the proper procedure for cancellation has been taken while the property is under State ownership.

If it is decided not to cancel the taxes, then the agreement to deliver the deed should specifically call attention to the fact that taxes may be a lien and the State does not guarantee title in that regard.

In many instances, it will be necessary to insert reservations or exceptions in the Director's Deed. The most common instance would be the reservation of access rights where the lands being conveyed adjoin a freeway. Reservations of oil and mineral rights will not apply to exchange transactions where grantors are conveying all oil and mineral rights to the State. However, if grantor reserves the mineral rights, then the State shall do likewise.

Care should be taken to see that any necessary restrictions are included in the Director's Deed, not only concerning access rights, but to protect sight distance, possible setback lines, etc.

The District shall arrange for the recordation of the Director's Deed before delivery to the grantee. The State may pay recording fees as part of the consideration in exchange transactions.

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8.12.06.00 Improvement Exchange

The following special procedures will apply where a building improvement is to be exchanged in a right of way transaction as whole or part consideration for land being conveyed to the State for highway purposes:

A. The District shall prepare an improvement disposal report, in duplicate, covering the building improvements involved, which report will clearly justify the proposed exchange value.

B. Upon execution of the Contract, a bill of sale for such building improvements shall be delivered to State's grantor.

C. The building improvement exchanged shall be removed from State property within 60 days after title to the improvement passes to the grantor.

The exchange of building improvements shall be used only in cases where the State will receive full credit in the exchange for the amount of the market value of such improvements.

Where State-owned improvements are to be exchanged for required right of way, the following clause will be included in the Contract:

> "The State shall deliver to _____ a bill of sale for the (description and address of building being exchanged) located (legal description, if same is not too long) ***."

This clause shall be followed by a provision which will ensure the removal of the improvements by the grantor, i.e., forfeiture of title to the improvement or a withholding of a portion of the monies payable under the contract. See Section 8.06.12.00 for a clause which can be modified to fit this situation.

8.12.07.00 Exchanges with No Monetary Consideration

Where excess real property or interest therein is used in exchange and no monetary consideration is received as a credit against any payment made to the State's grantor, a monetary evaluation of any benefits or savings accruing to the State (such as an offset to severance damages, substitute access to avoid buy-out, etc.) shall be provided in the MOS to assure State is receiving consideration commensurate with the value of the property to be conveyed.

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8.12.08.00 Payment by Grantor

Where the exchange will involve a payment to the State by the grantor the following clause will be included in the Contract:

> "In consideration of the proposed recordation and delivery by the State of the Director's Deed referred to in Clause _____, it is agreed between the parties herein that the undersigned grantors shall deposit with the Department of Transportation the sum of $_____. Said deposit will be made at District _____ Office located at _____, within ____ days after State, by certified mail, notifies grantors that this Right of Way Contract has been accepted by the State as evidenced by the signature of the District Director or the delegated representative on the copy of the contract delivered with said notification.
>
> In the event grantors do not deposit said sum within the time period specified, then the State is relieved from any and all obligations to deliver said Director's Deed and shall pay $_____ for the property conveyed by Document No. _____."

8.12.09.00 Release of Liability-Director's Deed

Where the exchange conveyance will be by Director's Deed and the grantor insists on the privilege of entering upon the land in advance of the date the Deed is recorded, the following clause must be in the Contract:

> "In the event the grantor elects to enter upon the land to be conveyed by Director's Deed under Clause _____, in advance of the recording of said Director's Deed, the State is to be relieved from all liability and all claims for damages by reason of any injury to any person or persons, or property of any kind whatsoever and to whomsoever, from any cause or causes whatsoever, while on the area to be conveyed as described herein.
>
> The grantor herein further understands and agrees to indemnify and save harmless the State from all liability, loss, cost and obligation on account of or arising out of any such injury, however occurring.
>
> It is further understood that this agreement shall not in any way imply or be construed to grant any additional rights of possession, occupancy, or use of said property until recordation of the Director's Deed as provided in Clause herein.

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It is further understood that if this transaction is not completed under the terms of this contract, any improvements which the grantor may erect or cause to be erected shall become the property of the State, which shall have the right to use or dispose of said improvements as it may see fit."

8.12.10.00 Vacation

Vacation is the complete or partial abandonment or termination of a public right to use a street, highway, or public service easement. A State highway may be vacated only by the CTC. If the CTC determines that a public service easement is no longer needed by the public, the Department may dispose of the property through the vacation process. As an alternate to vacation, the Department may elect to dispose of the property as provided in Section 118 of the S&H Code.

There may be instances when disposal through vacation or other procedure is not acceptable. Examples of this are when all access to an adjoining property would be cut off or if there are public utility facilities in place which are in use and which would be affected by such disposal or vacation. Additionally, the Department is required, by statute, to advise local agencies prior to vacation. See Section 8.12.02.00 for statutory references.

The DDC-R/W will determine the method of disposal. Disposal under Section 118 should, in most circumstances, be at market value. There may be exceptions and consultation with Legal and HQ R/W may be necessary.

When an easement is vacated as part of a right of way transaction and if grantor requests confirmation of such vacation, the following clause may be used in the Right of Way Contract:

"Upon completion of the project designated as _____ and opening the same to public travel, there will be presented to the California Transportation Commission the customary form of resolution and favorable recommendation of the Department of Transportation covering vacation of the portion of the existing highway across the grantor's property superseded by the new construction."

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8.13.00.00 – EXECUTION OF DOCUMENTS

8.13.01.00 General

Deeds and other documents must be prepared to show the names of grantors or other parties identical to that disclosed by the record (i.e., title report), except where a change of name by marriage or otherwise is encountered. This must be shown by an appropriate recital in the caption.

If the grantor conveys under a form of name different from that under which title was acquired, such variation must be accounted for in the caption of the instrument by showing both the name under which the grantor presently is conveying, as well as that under which title was acquired.

Signatures and acknowledgements must be in agreement with the names of grantors or other parties appearing in the caption or the body of the instrument. All parties named as grantors must sign and the signatures acknowledged.

Improper executions may be cured by Curative Statute. See the Title Handbook for further discussion.

8.13.02.00 Property Vested Separately

When title is vested or record at the "separate property" of either a husband or wife, only the signature of the vestee need be obtained. The deed caption, however, should disclose the marital status of the grantor. This should be discussed with the title company to satisfy its requirements.

8.13.03.00 Property Not Vested Separately

Unless property is explicitly vested of record as separate property, it may not be assumed that it is actually separate property.

If record title is vested in a married woman and not explicitly "as her separate property," the assumption should not be made that it is her separate property. In such cases, the husband's signature to Deed, Contract and other required documents should be formally solicited. If the husband refuses to join, no coercion should be attempted, but his reasons for refusing should be stated in the MOS. The title company should be requested to provide assurance in writing that it will insure State's title on a deed executed only by

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the wife, and such assurance transmitted to the DORW at the time of scheduling.

8.13.04.00 Declaration of Homestead

Both spouses must personally execute and personally acknowledge deeds conveying property subject to Homestead (Section 1242 of Civil Code). Conveyances of homesteaded property otherwise executed are void. No power of attorney or acknowledgement by subscribing witness may be used. The curative act as to defective acknowledgements is not applicable to homesteaded property.

8.13.04.01 Liens on Homesteads

If money judgments or other liens have been entered or recorded after recordation of a Declaration of Homestead, do not presume such judgments or liens are ineffective because of the existence of the homestead. Consult with the title company prior to contacting owners. If the title insurer is willing to insure against judgments or liens because of the homestead, its agreement to do so should be obtained in writing. Liens in favor of a governmental agency are never defeated by a Declaration of Homestead.

8.13.05.00 Partnership

The caption of a deed from a partnership should show "Blank and Son, a partnership, composed of John Blank, and Henry Blank, partners." Such should be signed, "Blank and Son, a partnership by John Blank, partner, by Henry Blank, partner."

Spouses of partners need not join with partners in deeds or other instruments affecting property of a partnership if title is vested in the partnership name. If the title is vested in the names of individual partners, their spouses should join in the execution of deeds.

8.13.06.00 Fraternal, Religious or Charitable Corporations and Organizations

Instruments from these organizations are executed in conformity with the by-laws and constitutions of such groups. Resolutions of authority to execute such instruments and copies of by-laws must be obtained from the controlling body, such as a board of trustees or directors and a copy of such resolution, certified or attested to by its secretary, must be secured.

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8.13.07.00 Corporations

Deeds from corporations must be executed in corporation form. The name of the corporation must appear in the signature. The authorized officers, usually the president or vice-president and secretary or assistant secretary must sign on behalf of the corporation. A special resolution of authority from the Directors should be secured if the president or vice-president does not sign. The corporate seal must be affixed, unless the officers have been specially authorized to execute without the seal. The seal must show the name of the corporation, the state and date of incorporation. The name of the corporation on the seal must agree with the name of the corporation in the deed.

If the corporation is one whose articles of incorporation do not specifically provide for acquisition or sale of real property, our title insurer may request a special resolution of authority to convey from the corporation's board of directors. If the title company requests such a resolution, it is to be supplied.

The capacity of defunct, dissolved or suspended corporations to convey title is contingent upon the various dates on which the consecutive laws controlling their status became effective. Consult the title company as to its requirements in passing a deed from any such corporations.

8.13.08.00 Proof of Termination of Joint Tenancies

A joint tenancy is terminated upon the death of one of the joint tenants and title vests in the surviving joint tenant. However, proof of death of the deceased joint tenant must be recorded to provide continuity of record title. Such proof is provided by:

A. Recording a certified copy of the death certification accompanied by an affidavit identifying the decedent as a former joint tenant, provided the deceased was a resident of this State;

B. Special proceedings under Sections 1170 to 1175 Probate Code, and the recording of the decree obtained;

C. The issuance of letters testamentary or of administration in probate proceedings upon the estate of the decedent, provided an affidavit of identity is recorded referring to these proceedings rather than to a death certificate.

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8.13.09.00 Minors Without Legal Guardians

In the case of nominal land value or a donation of small areas vested in a minor where a guardianship has not been established, a deed from a presumptive guardian or guardians, describing them as such in the caption, maybe obtained provided prior approval of the DDC-R/W or Supervising Right of Way Agent, Acquisition Branch is obtained.

Where a presumptive guardian signs for the minor, the Contract must include as an exception to State's title the fact that a legal guardianship has not been established for the person and estate of the particular minor.

See Section 8.05.06.00 and 08.00 for deeds from minors through a guardian.

8.13.10.00 Power of Attorney

Deeds executed under a power of attorney must be executed as "Vestee by Agent, his/her Attorney-in-fact", and the signature of the attorney-in-fact must be subscribed in attorney's own hand. The power of attorney must be recorded in the county in which the land in question is situated. The sufficiency of such power of attorney should be confirmed by the title insurer prior to relying upon its validity.

8.13.11.00 Political Subdivisions

Documents from cities, counties or other political entities must be executed by the proper officer or officers, and supported by a proper resolution from a governing board or body authorizing the execution of the documents. A seal should be affixed. This procedure applies to the execution of Deeds, Contracts, Joint Use Agreements, etc.

8.13.12.00 Incompetent Persons

No person, either legally adjudged incompetent or who is incompetent in fact without legal adjudication, may execute a Deed. In all such cases, a legal guardian must be appointed and an order of the court authorizing execution of the Deed must be obtained (see Miscellaneous Deed Clauses in the R/W Engineering Chapter).

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8.13.13.00 Signature by Mark

Persons unable to provide a signature to a document may sign by mark. The name of the party must be subscribed near the mark by one of the two required witnesses to such signature by mark. Deeds so executed may be acknowledged as if a signature had been subscribed by the party personally. The following clause is advisable:

> "_____, being unable to write, made his/her mark in my presence and I signed his/her name at his/her request and in his/her presence.
>
> _____
>
> Additional Witness _____"

A deed executed by mark with only one witness is good as between the parties. Two witnesses are necessary to allow recordation. Where two other witnesses are not available, the Agent may sign as an additional witness.

8.13.14.00 Signature by Foreign Script

Such signature should show a witness opposite the signature and state: "Witness to signature of _____ who signs in (Hebrew, etc.)." Acknowledgement may be in the usual form.

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8.14.00.00 – ACKNOWLEDGEMENTS

8.14.01.00 General Recordation Requirements

Proper acknowledgement of documents is a necessary prerequisite to recordation. All Deeds to the State are to be properly acknowledged.

Effective January 1, 1995, subscribing witnesses are no longer accepted as a form of acknowledgement on grant, easement, or quitclaim deeds, as well as mortgages, deeds of trust, or security agreements (Assembly Bill No. 3600, Chapter 587, Statutes of 1994).

The Agent can do much to ensure that acknowledgement certificates will be properly executed by notaries. If the document is being transmitted to grantors by mail, the names of the grantors should by typed in the Certificate of Acknowledgement the same as the Deed is to be executed. The correct acknowledgement form should be attached to the document before it is transmitted.

Preliminary precautions such as cited above and an occasional "assist" from the Agent can save time and effort in completing a transaction.

8.14.02.00 Parties Authorized to Take Acknowledgements

Acknowledgements may be taken only by officers specified in the Civil Code. The specified officers include:

A. A notary public at any place within the State.

B. A county recorder, county clerk, court commissioner, judge of a municipal or justice court and a clerk of a municipal or justice court within the county or city and county in which such officers were elected or appointed.

C. Officers of the Armed Forces per Section 1183.5 of the Civil Code. This section sets forth the requirements regarding acknowledgements by officers of the armed forces of the United States for military personnel and their spouses. If questions arise concerning the validity of an acknowledgement by military personnel, the District should seek the advice of the title company that will handle the escrow.

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8.14.03.00 Acknowledgement Form

Acknowledgements made in California must be in the form and manner prescribed by the Civil Code. The All-Purpose Acknowledgement is to be used whenever a signature is directly acknowledged by a Notary. To obtain a copy of the most recent All-Purpose Acknowledgement, go to the California Secretary of State website.

8.14.04.00 Certificate of Conformity for Foreign Acknowledgements

Acknowledgements made outside California and which deviate in form from that prescribed by the Civil Code of California, should be accompanied by a certificate of conformity as set forth in Section 1189, Civil Code, which reads:

> "Provided, however, that any acknowledgment taken without this State in accordance with the laws of the place where the acknowledgement is made, shall be sufficient in this State; and provided further, that the certificate of the clerk of a court of record of the county or district where such acknowledgment is taken, that the officer certifying to the same is authorized by law so to do, and that the signature of the said officer to such certificate is his true and genuine signature, and that such acknowledgment is taken in accordance with the laws of the place where the same is made, shall be prima facie evidence of the facts stated in the certificate of said clerk."

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8.15.00.00 - LOSS OF GOODWILL

8.15.01.00 Acquisition Function When Owner Claims Loss of Goodwill

8.15.01.01 State Law Requirements

Both Federal and State law provide that just compensation must be paid for private property which is taken for public purposes. A separate part of State law provides that in certain cases, an owner of a business may be compensated for the loss of goodwill. That law requires that the owner of a business conducted on the property taken, or on the remainder if such property is part of a larger parcel, shall be compensated for loss of goodwill if the owner proves four items. These are set out in the clause in 8.15.03.00.

Within the meaning of this article, "goodwill" consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.

8.15.01.02 Recoverability

Goodwill loss is recoverable only to the extent it cannot reasonably be prevented by relocation or other efforts by the business owner to mitigate. The law places the burden on the business owner to prove the loss.

A copy of the goodwill information sheet (Exhibit 8-EX-30) will be given to each business owner as an attachment to the Appraisal Summary Statement (Exhibit 8-EX-15B). Depending on whether or not this "Loss" has been appraised will determine which statement needs to be checked on the Appraisal Summary Statement.

8.15.01.03 Definition

For the purposes of this section, a "business" is defined as:

A. A commercial or mercantile activity engaged in as a means of livelihood;

B. A commercial, sometimes industrial, or nonprofit enterprise;

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C. A particular field of endeavor - patronage.

The operation of residential, nontransient, rental housing units (SFR, duplexes, apartments) is not considered as being a business. However, the operation of housing units where rental is ordinarily billed on a daily basis (i.e., hotels, motels) is to be considered as a business.

A farm is not generally considered as a business unless there is an on-premise full time, retail, commercial operation involving products grown or developed on the property. A seasonal retail fruit stand operation would not typically be considered as a business.

8.15.01.04 Claim for Loss

During the acquisition of real property interests required for a project, two situations may arise with respect to claims for the loss of goodwill. They are:

A. The operator of a business on the property demands an offer prior to any settlement; or

B. The operator of a business on the property agrees to defer the determination of any loss of goodwill until after settlement.

In either case, an estimate of the loss of goodwill or the evaluation of documentation submitted by the business owner will be made by the Appraisal Branch. The results will be used by the Acquisition Agent to conclude the transaction, recognizing any "in-lieu" payments that may have been or will be made under Relocation Assistance.

Sections 8.15.04.00 and 05.00 must be reviewed and followed to the extent possible to ensure that payments for loss of goodwill do not include either relocation assistance in-lieu payments or reestablishment payments made or being made by the Relocation Assistance Branch. The Acquisition Branch must maintain clear lines of communication and responsibility with the Relocation Assistance Branch to ensure duplication of payment is avoided. Review the Relocation Assistance Chapter sections dealing with loss of goodwill, reestablishment costs and in-lieu payment.

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8.15.02.00 Settlement Includes Full Compensation for the Loss

When an owner of a "business," defined above, accepts a settlement for land, improvements and damages as well as compensation for the loss of goodwill, the following clause will be included in the Contract:

> "It is understood and agreed between the parties hereto, that included in the payment under Clause 2(A) above, is the amount of $_____ to compensate grantors for any and all loss of goodwill. Grantor (business owner) agrees and acknowledges that the statute which authorizes this payment also provides that compensation for such loss will not be duplicated in the compensation otherwise awarded to the owner."

8.15.03.00 Settlement with Deferment of Claim for Loss

When the owner of a "business" accepts a settlement for land, improvements and damages and is agreeable to deferring compensation for the loss of goodwill, the following clause will be included in the Contract:

> "It is understood by the undersigned grantor that the laws of the State of California permit the owner of a business located on property, all or a portion of which is to be acquired for a public improvement, to be compensated for the loss of goodwill to the business provided the owner of the business established that:
>
> 1) The loss is caused by the acquiring of the property or the injury to the remaining property.
>
> 2) The loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill.
>
> 3) Compensation for the loss will not be included in payment under Section 7262 of the Government Code. (Relocation Assistance Program.)
>
> 4) Compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.

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It is further understood and agreed that the undersigned grantor, as required by State law, shall make the State tax returns of the business available for audit solely for the purpose of assisting and determining the amount of compensation to be paid for the loss of goodwill. It is understood that payment under Clause 2(A) above does not include compensation for the loss of goodwill, if any.

It is further understood and agreed that compensation, if any, for the loss of goodwill shall be payable to the undersigned grantor at a later date following the establishment of proof of such loss. Claims for such loss must be submitted to the Department of Transportation at _____, by *_____ Date _____."

It is further understood and agreed that, if grantor and the Department cannot reach agreement on compensation, if any, for the loss of goodwill by (**_____ Date _____), the Department shall file a declaratory relief action in superior court for the purpose of determining compensation, if any, for loss of grantor's business goodwill. It is understood that the sole issues to be determined in any declaratory relief action will be those contained in Code of Civil Procedure Section 1263.510 including the amount of compensation, if any, for grantor's loss of business goodwill and that no other issues will be raised by grantor therein or in preliminary proceedings thereto challenging the public use or necessity of the project, or the utilization therefor of grantor's property."

*Two years from date of right of way contract.

**Three years after date of right of way contract (to allow one year for appraisal and negotiations after receipt of claim).

8.15.04.00 Payment Adjustments

The following clause will be used when payment is made subsequent to RAP payments for either in-lieu, move related, or reestablishment expenses.

"It is understood and agreed that the payment made for loss of goodwill as herein provided has been adjusted to reflect and avoid duplication of payments already made under either an in-lieu payment, move related payment, or a business reestablishment expense claim."

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8.15.05.00 Payments Made Prior to In-Lieu, Move Related, or Reestablishment Payments

In some instances, a Goodwill report will include costs to reestablish the business at a new location or revise and reestablish certain features of the business on the remaining property. If these reestablishment costs are in a Goodwill report and the amount of the loss of goodwill is offered and accepted, then the contract covering the payment for the loss shall identify these reestablishment items. Inclusion of any of these items in the contract is essential if the Relocation Assistance Branch has not compensated a business owner for in-lieu, move related, or business reestablishment costs. If they are not identified by type in the contract, the probability exists that such costs may be duplicated by Relocation Assistance payments. In the situation described above, use the following clause with only the applicable items (1 through 8):

"It is understood and agreed that payment for loss of goodwill herein includes, but is not limited to the following:

1) Moving and related expenses such as:

   a. Transportation of personal property.
   b. Connection to available nearby utilities from the right of way to improvements at the replacement site.
   c. Modifications to personal property.
   d. Storage of personal property.
   e. Licenses, permits, fees and certifications.
   f. Professional services.
   g. Relettering and reprinting.
   h. Feasibility surveys in connection with the purchase or lease of a replacement site.
   i. Impact fees for one time assessments for anticipated heavy utility usage.
   j. Other items that the Department considers moving and related costs.

2) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

3) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

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4) Construction and installation costs for exterior signing to advertise the business.

5) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

6) Advertisement of replacement location.

7) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:

   a. Lease or rental charges.
   b. Personal or real property taxes.
   c. Insurance premiums.

8) Other items that the Department considers essential to the reestablishment of the business."

Use of this clause should ensure that duplication of payment is avoided and the grantor/business owner is made aware what the payment covers. Any of these eight items specifically identified in a Goodwill report may make portions of such item(s) eligible for Federal participation.

Items 1 through 8 are portions of items contained in the revised Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs, Section 24.304. Their inclusion herein neither implies, nor should any reestablishment costs be limited to, any preconceived or predetermined amount of Federal participation. An appraiser may determine, for example, that exterior signing may cost $2,500. This may not necessarily be excessive. The relocation assistance payment of $1,500 is federally reimbursable, while the additional amount of $1,000 is not. See the Appraisal Chapter.

Items 1 through 8, listed above, are not guidelines for the preparation of any report dealing with loss of goodwill. They may or may not be a part of such report. The sole purpose for their inclusion is to assist in the process of ensuring that duplicate payments are not made by the Acquisition and Relocation Assistance Branches which is to ensure that we comply with the law. It is essential, therefore, that when a payment is to be made for Loss of Goodwill, the Acquisition Branch supervisor or the Acquisition Agent shall contact the Relocation Assistance Branch to ascertain whether relocation payments have been made, are in the process of being made or will be made after the claimant relocates. A Contract will be prepared using the appropriate clauses set out above, depending on the situation. In each of these

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situations, Acquisition and Relocation Assistance must advise each other regarding the status of payments on claims when Loss of Goodwill/in-lieu payments are involved. When Loss of Goodwill is settled, the appropriate contract, or stipulation if the claim is contested, must be provided to the Relocation Assistance Branch.

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8.16.00.00 - HAZARDOUS WASTE

8.16.01.00 General

Hazardous Waste (HW) is of great concern to the Department and the California Transportation Commission (CTC). The Department must not acquire property contaminated with HW without adequate prior investigation and proper contractual and valuation safeguards.

Decisions on follow-up investigation to determine cleanup costs must be made as soon as possible to allow for timely certification of a project and to avoid limiting the Department to the option of (1) delaying the project or (2) acquiring property with possible contamination. To achieve this, it is critical that Project Development, Right of Way, and the HW Advisor coordinate their activities.

Properties required for right of way which either contain or are suspected to contain HW may be acquired only after the established conditions and procedures have been complied with. Some HW acquisitions may require HQ approval by the Chief Engineer (see Section 8.16.01.01). Once contamination is known, the property owners shall be advised of their responsibility under the law to clean up all identified HW. The preferred procedure is to not acquire property in its contaminated state, and all efforts possible should be extended to obtain cleanup prior to acquisition.

As a normal rule, HW problems must be dealt with at the earliest stage of the project as is possible. If HW is discovered during the acquisition process:

A. R/W is to immediately advise District Project Development, in writing, with a copy to the District HW Coordinator.

B. Project Development will inspect site and advise:

    1. R/W to proceed with acquisition if, in their opinion, no significant problem exists and further investigation is unnecessary; or

    2. HW Coordinator will contract for further investigation to determine if contamination exists and, if so, the nature and dimension of the waste. Further investigation by a contractor to determine costs of cleanup may be necessary.

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C. Project Development may advise R/W to proceed, because it is in the best interest of the State to acquire property as potential HW contamination risks and costs are low or the problem can be handled with engineering methods during construction. This decision to acquire is made by Project Development and must be fully documented in the parcel file with a copy attached to and made a part of the MOS. Prior approval of HQ R/W is not required.

   The appropriate clause must be included in the Right of Way Contract (see Sections 8.16.02.00 through 8.16.06.00).

D. If further investigation is necessary, Acquisition will continue contact with owner(s)/operator(s) to advise of the process being pursued and to obtain necessary permits to enter.

   When testing is complete and cleanup costs are known, the appraisal must be revised to reflect the effect contamination and required cleanup has on market value.

E. Settlements, whenever possible, are to be based on cleanup prior to acquisition using the primary appraisal. Settlements made where cleanup occurs after acquisition are to be handled as follows:

   1. Offers made prior to obtaining a revised appraisal will be made contingent on cleanup and shall be confirmed in writing. When the appraisal has been revised to include an alternate, considering the effect on the market value, the current offer must be withdrawn and a new offer made.

   2. If settlement is reached based on the Department doing the cleanup based on the primary appraisal, the amount of the estimated cleanup shall be withheld and the appropriate clause will be included in the Right of Way Contract (see Section 8.16.03.00). Prior written approval of District Project Development and appropriate documentation are required.

   3. If settlement is not reached where money is withheld, it may be necessary to acquire based on the alternate appraisal wherein the Department is purchasing the property as is, after the consideration of cleanup is reflected in the acquisition offer. Again, prior written approval of District Project Development and appropriate documentation in the file and in the MOS are required. The appropriate clause will be included in the Right of Way Contract (see Section 8.16.03.00 Alternate Clause).

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4. Where settlement cannot be reached and the property owner will not clean up the property, it may be necessary to file a condemnation suit and obtain an OP. The appraisal must be revised to include an alternate that reflects the effect of the HW on market value. The current offer must be withdrawn and a new offer made prior to filing an action. The Approval Process for acquisition of HW contaminated property (see Section 8.16.01.01) will be required when the net value of the property after deduction for hazardous waste cleanup is $0 (or the cost of cleanup exceeds the fair market value of the property) and the parcel is to be presented to the CTC for approval of a Resolution of Necessity.

8.16.01.01 Approval Process for Acquisition of Hazardous Waste Contaminated Property

HQ approval by the Chief Engineer is required to purchase contaminated property when any of the following four conditions exists:

1. Remediation costs (excluding investigation costs) relative to the specific parcel are estimated to exceed $300,000, and;

    a) The estimated cost of remediation exceeds 50% of a parcel's appraised value as if clean, or

    b) The estimated cost of parcel remediation exceeds 10% of the total capital costs for the project (right of way and construction).

2. Contamination on the parcel has resulted in groundwater contamination requiring cleanup.

3. The net value of the property after the fair market value deduction for HW cleanup is $0 (or the cost of cleanup exceeds the fair market value of the property) and the parcel is to be presented to the CTC for approval of a Resolution of Necessity.

4. The parcel is or was a high risk site (such as a mining, milling, or salvage site – see Standard Environmental Reference Chapter 10 and Project Development Procedures Manual Chapter 18), or a site with previously known contamination that was closed meeting federal and state standards less stringent than those currently in effect.

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The District Project Engineer works with the Project Manager, District Right of Way, District Hazardous Waste Manager, and Legal, to complete the Request for Acquisition of Contaminated Property (Form ENV-0002) for Headquarters approval.

Once the Request for Acquisition of Contaminated Property (RACP) is completed and signed by the District Project Manager, Project Engineer, Hazardous Waste Manager, Legal and the District Deputy of Right of Way, a transmittal memo signed by the District Director is attached and the request and supporting information is sent to the HQ Chief, Division of Environmental Analysis (DEA), for review and processing. The Chief, DEA will then make a recommendation to the Chief Engineer, who then either approves or denies the District's request for the acquisition of contaminated property and signs a response letter. DEA Hazardous Waste will then send the Chief Engineer's response letter and attached RACP back to the District Project Engineer. If the acquisition is approved, the RACP and Chief Engineer's approval become an attachment to the Hazardous Materials Disclosure Document.

The District should allow at least 30 calendar days from DEA's receipt of a completed RACP for DEA's review, and approval or denial by the Chief Engineer.

Additional information regarding the Department's policies and procedures for Contaminated Property Acquisition, and the Exception Process for Contaminated Property Acquisition can be found in Chapter 10 of the Standard Environmental Reference and Chapter 18 of the Project Development Procedures Manual, as well as the following DEA website.

8.16.01.02 Permit to Enter

A detailed visual examination of the property to collect data for risk analysis can legally be performed without the need for a signed Permit to Enter, providing the property owner concurs. A Permit to Enter will be required for any physical testing to be done by the State to determine HW contamination.

The statutory procedure for obtaining a voluntary permit for testing, etc., is set forth in CCP 1245.010 and 1245.060. The statutes speak of consent, notice and compensation to "the owner of the property." "Owner" should be given a broad interpretation to include the holder of any interest likely to be affected by the testing, including, for example, a tenant in possession. All parties with an interest in the property should sign the entry form, where possible.

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The following guidelines and the Permit to Enter forms are based on consideration of the law and recent court decisions. Future legal actions may be compromised if required entry is not specific as to the proposed Department activity and specific as to location.

A. Voluntary permit to allow State to perform test. See Exhibit 8-EX-13 for underground tank testing and Exhibit 8-EX-14 to be modified as necessary for other testing.

B. Refusal of voluntary entry.

   1. Contact Legal Division for court order to enter property. This entry must be for specific testing and must identify exact locations for borings, etc.

   2. Any additional testing may necessitate further court orders which must also be obtained by the Legal Division, and must be specific and exact.

C. Payment for Permit to Enter

   Payment for a Permit to Enter is appropriate under the law. The amount to be paid will be determined in the same manner as if a nominal appraisal had been made and will be based on Section 8.01.26.00 for property rights valued at $2,500 or less. Documentation for the "Nominal" valuation will be in accordance with Section 7.02.13.01. In the event consideration is likely to exceed $2,500, a memorandum or concise narrative appraisal or "Waiver Valuation" will be necessary in accordance with the requirements set forth in Section 7.02.13.02.

8.16.01.03 Certificate of Sufficiency and Hazardous Materials Disclosure Document

R/W Engineering initiates the unsigned Certificate of Sufficiency upon submitting appraisal maps to Right of Way (see R/W Engineering Section 6.04.04.00). Preliminary appraisal work may begin at this time, but appraisal reports cannot be approved until the Certificate of Sufficiency is completed and signed (see Appraisals Chapter 7.04.12.01 Hazardous Waste General).

The Senior Design and Project Engineer approves and issues the Certificate of Sufficiency to Right of Way using the standard format (Exhibit 6-EX-9) with an approved Hazardous Materials Disclosure Document – Acquisition (HMDD-A)

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attached. Certificate of Sufficiency will include the parcel numbers of all properties contained in the appraisal report and the HMDD-A (Form ENV-0001-A) will identify any Hazardous Material consideration pertaining to those parcels.

A. A new HMDD-A will be required whenever the area of right of way requirements is increased.

B. Changes to right of way requirements will require a new Certificate of Sufficiency to be approved.

8.16.01.04 Contaminated Properties

Properties known or suspected to contain HW should be cleaned up by the grantor, to the satisfaction of Project Development, prior to the close of escrow. When this is not feasible or practical, the appropriate clause(s) listed below, depending on the situation, will then be included in the contract. New or special clauses drafted in the District or by an owner don't need approval of HQ R/W and Legal prior to being incorporated into a settlement contract.

Underground tank removals must be given a high priority and completed well ahead of construction.

8.16.02.00 Tested - No Contamination Found

When Project Development has advised Right of Way to proceed with acquisition, because the property has been examined and/or tested and no contamination has been found, the following clause will be included in the contract:

> "The acquisition price of the property being acquired in this transaction reflects the fair market value of the property without the presence of contamination. If the property being acquired is found to be contaminated by the presence of HW which required mitigation under Federal or state law, the State may elect to recover its cleanup costs from those who caused or contributed to the contamination."

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8.16.03.00 Tested - Contamination Found

When contamination has been found, the amount of cleanup costs for which the grantor is liable, shall be deducted from the settlement, and one of the following clauses will be included in the Contract:

(Preferred)

> "It is understood that the property being acquired has been used for _____ and that there is contamination of the soil and/or groundwater. Therefore funds in the amount of $_____ have been withheld from the Grantor by the State to be used for cleanup costs. If actual cleanup costs exceed the deducted amount, the Grantor will reimburse State for the additional costs. If actual cleanup costs are less than the amount withheld from grantor, the excess withheld will be refunded to Grantor."

(Alternate)

> "It is understood that the property being acquired has been used for _____ and that there is contamination of the soil and/or groundwater. The acquisition costs of $_____ reflect a deducted amount of $_____ to be used for the anticipated costs of cleanup of such contamination."

8.16.04.00 Not Tested - Present Owner's Hazardous Material Use

When Project Development has advised Right of Way to proceed with the acquisition and when the nature of the grantor's current or past operations and hazardous material use is known to all of the parties, the following clauses will be included in the Contract:

> "The acquisition price of the property being acquired in this transaction reflects the fair market value of the property without the presence of contamination. If the property being acquired is found to be contaminated by the presence of HW which requires mitigation under Federal or State law, the State may elect to recover its cleanup costs from those who caused or contributed to the contamination.

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It is understood that the property being acquired has been used for _____, and that there is a possibility of _____ contamination of the soil. The seller of this property, _____ warrants that it will be responsible for the costs of any mitigation required by any regulatory agency as the consequence of _____ contamination of the soil and/or groundwater.*

Seller hereby agrees to indemnify and hold harmless the State from any and all past, present and future claims, liabilities, obligations, or causes of action from any person or source arising out of or connected with hazardous materials on the property or HW on, in, or under the property which is the subject of this agreement."

_____

*Tailor for the particular acquisition.

8.16.05.00 Not Tested - Known Past Hazardous Material Use

When Project Development has advised Right of Way to proceed with the acquisition, and when the current use/operation has not been contaminated, and grantor says they have some knowledge that previous use/operations may have caused contamination, then the following clause will be included in the Contract:

"It is understood that the property being acquired in this transaction may contain HW requiring mitigation under State or Federal law to protect the public health. The acquisition costs reflect the fair market value of the property without the presence of contamination. If site cleanup is required on the property, the State may elect to exercise its right to pursue the responsible parties to recover cleanup costs from those who caused or contributed to the HW contamination on, in or under the property."

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8.16.06.00 Not Tested - Unknown Hazardous Material Use

When Project Development has advised Right of Way to proceed with the acquisition, and the possibility of HW is suspected, but the grantor(s) indicate no knowledge of present or past operations which could have resulted in contamination, the following clauses will be included in the Contract:

> "The seller hereby represents and warrants that during the period of Seller's ownership of the property, there have been no disposals, releases or threatened releases of hazardous substances or HWs on, from, or under the property. Seller further represents and warrants that Seller has no knowledge of any disposal, release, or threatened release of hazardous substances or HWs, on, from, or under the property which may have occurred prior to Seller taking title to the property.
>
> The acquisition price of the property being acquired in this transaction reflects the fair market value of the property without the presence of contamination. If the property being acquired is found to be contaminated by the presence of HW which requires mitigation under Federal or State law, the State may elect to recover its cleanup costs from those who caused or contributed to the contamination."

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8.17.00.00 – ACQUISITION OF MOBILE HOMES

8.17.01.00 General

Mobile homes which are non-DS&S and owner-occupied or cannot be moved from their present locations due to the manner in which they are affixed to the site may be purchased.

The District's Relocation Assistance Branch will be responsible at the appraisal stage for determining if a mobile home should be purchased.

The reasons underlying this decision will then be communicated to the Appraisal Branch in a memorandum request that the mobile home be appraised. This memorandum should be included in and become a part of the appraisal.

The acquisition of the mobile home will be handled by the District's Acquisition Section upon approval of the appraisal. A mobile home is personalty rather than realty and special procedures are required. The transfer of title is handled through the Department of Housing and Community Development (HCD). The HCD has a multiple page form (Form No. 9-S Bower) for use in handling the transfer. This form provides for Notice of Transfer, Bill of Sale, Authorization for Payoff, and Power of Attorney.

To convey title to a mobile home, the owner's signature must be obtained on the following:

- Right of Way Contract (original and one copy)
- Notice of Transfer (Form No. 9-S Bower)
- Bill of Sale
- Authorization for Payoff (if the mobile home is financed)
- A Power of Attorney form (from each owner)
- Certificate of Ownership (pink slip)
- Quitclaim Deed (if occupancy is by Lease)

The owner will have the Certificate of Ownership (pink slip) if the mobile home is free and clear. If the unit is subject to liens, owner will have the Green Trailer Registration Card. This will show both Legal and Registered Owner.

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The standard form Right of Way Contract (Form RW 8-3A) will be used with appropriate clauses added. The following clauses have been prepared especially for use in acquiring mobile homes.

8.17.02.00 Payment

This clause will be used to provide for payment and identification of the mobile home being acquired. It will be included as Item (A) under Clause 2 of the Contract. Clause 2 will read:

> "The State Shall pay the undersigned seller(s) the sum of $_____ for the x _____19___ trailer, said vehicle manufactured by manufacturer's vehicle serial number _____, and bearing State of California vehicle license plate number _____ within 90 days after title to said vehicle vests in the purchaser (State) free and clear of all liens, encumbrances, taxes, assessments and leases."

8.17.03.00 Transfer Fees

This clause will be used to clarify the fees to be paid by the State. It will be included under Clause 2 as Item (B):

> "Pay all fees and charges required by the State Department of Housing and Community Development in connection with the transfer of title to the vehicle to the purchaser (State), except as provided in Clause 2(C) of this agreement."

8.17.04.00 Lien Clause

This clause will be used to provide the State with authority to deduct and pay liens, encumbrances, assessments, taxes, delinquent registration or license fees from the consideration being paid. It will be included under Clause 2 as Item (C):

> "Have the authority to deduct from the amount shown in Clause 2(A) above, any amount necessary to satisfy any liens, encumbrances, assessments, taxes, delinquent registration fees, delinquent license fees on the vehicle or other property described herein and to be acquired by purchaser (State in this transaction)."

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8.17.05.00 Certificate of Ownership

This clause will be used to clarify the fact that the Certificate of Ownership is being delivered at the time of execution of the Right of Way Contract and grants the State the right to act on behalf of the seller(s) in completing the transfer.

> "At the time of execution of this agreement, the seller(s) shall deliver to the purchaser (State) the Certificate of Ownership to the above-described vehicle. In the event said Certificate of Ownership and/or other documents required to effect transfer of title to said vehicle is not available, purchaser (State) may act as seller(s)' Attorney in Fact to secure said Certificate and/or other documents on seller(s)' behalf."

8.17.06.00 Clearance of Lienholder's Interest

The Acquisition Agent must obtain a release of lien and demand from the lienholders if any exist. The lienholders should be informed that they will not be paid until the close of escrow. The following clause will be used to clarify that the lien will be cleared and paid.

> "Any and all amounts payable under this agreement up to and including the total amount of unpaid principal, interest, and unpaid charges due the lienholders named in the Bill of Sale, shall, on demand, be made payable to the person or persons entitled thereto. The lienholders to furnish seller(s) with good and sufficient receipt showing said monies credited against said indebtedness."

8.17.07.00 Miscellaneous Personalty Clause

When there are items that could easily be removed or create possible misunderstandings as to acquisition, such as carpeting, air conditioning, television antenna, etc.; the following clause will be included in the Right of Way Contract:

> "It is understood and agreed by and between the parties hereto that payment in Clause 2(A) above includes, but is not limited to, payment for the following accessories and appurtenances attached to the vehicle being acquired in this transaction:
>
> (List items.)"

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8.17.08.00 Closing Procedures

A MOS will be prepared and submitted with the signed Contracts. Upon approval of the Contract, the District can process the transaction through the HCD. Prior to presenting the forms to HCD, a decision must be made as to whether the State will rerent the mobile home to other than the occupant at the time of purchase. If the intent is to rerent, the Use Tax must be paid at the time the documents are presented to HCD for registration. If the mobile home is not to be rerented, a Certificate of Motor Vehicle Use Tax Exemption Form should be obtained from the Board of Equalization.

All of the forms signed by the owner with the exception of the Contract will be presented to the HCD for transfer of registration. In addition, the license plate of the mobile home will be delivered to HCD since an exempt plate will be issued upon the State becoming the registered owner. When the transfer is complete, payment to the owner and lienholders may be scheduled.

Since there will be no formal escrow, payment will be handled through an internal escrow as discussed in Section 8.05.05.00.

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8.18.00.00 – FEDERAL LANDS

8.18.01.00 General

With about 46 percent of land in California controlled by federal agencies, it is common for a project to require federal land. Caltrans may require temporary or permanent use of property that is owned by the United States and controlled by a federal agency. Rights of way, material sites or other interests in these lands are secured under appropriate federal statutes.

Generally, Caltrans will use Title 23 authorities to acquire federal land for highway purposes. Title 23 US Code (USC) Section 317 authorizes the U.S. Secretary of Transportation (the Secretary) to transfer federal land or an interest in land to a State Transportation Agency, or its local agency nominee, for purposes of a conventional Federal-Aid highway. Title 23 USC Section 107(d) authorizes the Secretary to transfer federal land or an interest in land to a State Transportation Agency for Interstate System right of way. Prior to transfer, the Secretary is to seek concurrence from the granting federal agency (GFA).

Under these authorities, Caltrans can obtain a highway easement without compensation for the federal land conveyed, but the land reverts to the granting federal agency. In California, this authority is delegated from the Secretary to the Administrator of the California Division of the FHWA. Importantly, if Caltrans uses Title 23 authorities for the transfer, then Caltrans' NEPA assignment applies and Caltrans is the lead agency for completion of the NEPA document. If Caltrans acquires federal land directly from a GFA using non-Title 23 authorities, then usually the GFA is the lead agency for the NEPA document. Regardless of whether Title 23 or another Federal Code is the authority for the transfer, Caltrans may reimburse the GFA for its staff time and processing costs under a reimbursement agreement provided by the GFA's federal authorities. If used, generally these reimbursement agreements are initiated during the environmental phase of a project.

Further procedures are outlined in 23 CFR 710.601 Federal Land Transfers, as cited herein. 23 CFR 710.601(b) allows that federal land transfers may be made directly to a "non-Federal owner for use for highway purposes." Subsection 23 CFR 710.601(c) provides that an eligible party may apply directly to the FHWA or the GFA.

Among the classifications of land involved are vacant or unpatented public lands, military reservations, national forest, Indian lands, power site and reclamation reservations, and surplus U.S. lands disposed of through the

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General Services Administration (GSA). Functional replacement of real property in federal ownership is discussed below in Section 8.18.04.01.

The federal statutes under which we acquire rights or interests in lands in federal ownership provide that the Secretary of the granting federal agency supervising the administration of such lands may agree to the appropriation under conditions deemed necessary for the adequate protection and utilization of the reserve.

8.18.02.00 Region/District FLT Coordinator

Each Region/District must appoint a Federal Land Transfer Coordinator (FLT Coordinator) who is the single point of contact between the FHWA and the Region/District. Regions may also designate a person in each district to deal directly with the granting federal agency. The Regional FLT Coordinator will be responsible for assisting the district staff and coordinating final review and approval from the FHWA.

The Region/District FLT Coordinator, or a District FLT Contact, initiates negotiations with the local office of the granting federal agency that has jurisdiction over the required parcel. The Region/District FLT Coordinator processes all requests to transfer permanent or temporary rights to Caltrans. The Region/District FLT Coordinator is responsible for the full review, final approval, and transmittal of all Federal Land Transfers to the FHWA.

8.18.03.00 Early Coordination

In the early planning stage, each affected governmental agency must be advised of Caltrans' proposed highway project so the impact of the transportation facility can be evaluated. RWLS will have notice of potential future Federal lands acquisitions from PID documents and project R/W estimates. The Region/District FLT Coordinator, or a District FLT Contact, initiates discussion with the granting federal agency at the earliest possible stage in development of these projects. Typically, this will be early in the environmental phase of a project, and the contact will be coordinated with district environmental staff who are preparing the environmental document. For USFS properties, the contact person will be the District Forest Ranger. The contact person for BLM properties will be the Resource Area Field Manager. The Commanding Officer is the contact person for military reservations.

The Region/District FLT Coordinator should have field discussions with personnel of the local or district office of the granting federal agency. The

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Region/District FLT Coordinator or Contact should request the attendance of the following people:

- Caltrans - Project Manager, Project Engineer, and environmental staff
- Granting federal agency - Field or Area Manager, Lands Officer, and an environmental specialist

The field meeting should provide the federal agency with maps and other data as early as possible. This allows the granting federal agency adequate time to analyze the impact of the proposed transportation facility on the federal ownership. Involving the granting federal agency in the early stages of the project should help identify potential problems and possible solutions. Early coordination will also help identify some of the conditions and stipulations that will need to be addressed in the FLT package (8.18.19.02).

The District FLT Contact and a District design engineer will determine the real property requirements and request maps of the proposed right of way needs. Where possible, construction details, access control and other pertinent data will be developed and, to whatever extent possible, resolved at the District and the local office of the granting federal agency. The District FLT Contact should identify granting federal agency's resources such as timber and materials that may affect the R/W certification.

8.18.04.00 Compensation for Federal Land Transfers

Transfers of U.S. lands to Caltrans for highway purposes under Title 23 authorities are generally made without the payment of compensation for the real estate (the GFA may still request reimbursement for staff time and expense through a separate agreement with Caltrans – these are usually executed during the planning phase). However, a few federal or quasi-federal agencies may require compensation because they are intended to be self-supporting or have a fiduciary responsibility to bondholders or other creditors. In these cases where federal land is acquired under the GFA's own authorities (that is, non-Title 23 statutes or regulations), usually fair market value compensation is paid according to Federal law.

8.18.04.01 Functional Replacement of Federal Facilities

The granting federal agency is entitled to compensation for those appurtenances to its facilities that will be removed or destroyed in connection with the highway project. Thus, a granting federal agency could require Caltrans provide substitute land and pay to construct comparable facilities.

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This is further addressed in 23 CFR 710.509 "Functional replacement of real property in public ownership" and 23 CFR 601(f) which covers FHWA participation in functional replacements.

Under 23 CFR 710.509:

§ 710.509 Functional replacement of real property in public ownership.

(a) General. When publicly owned real property, including land and/or facilities, is to be acquired for a Federal-aid highway project receiving grant funds under title 23, in lieu of paying the fair market value for the real property, the acquiring agency may provide compensation by functionally replacing the publicly owned real property with another facility that will provide equivalent utility.
(b) Federal participation. Federal-aid funds may participate in functional replacement costs only if the following conditions are met:
(1) Functional replacement is permitted under State law and the acquiring agency elects to provide it.;
(2) The property in question is in public ownership and use.;
(3) The replacement facility will be in public ownership and will continue the public use function of the acquired facility.;
(4) The acquiring agency has informed, in writing, the public entity owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement.;
(5) The FHWA concurs in the acquiring agency determination that functional replacement is in the public interest; and
(6) The real property is not owned by a utility or railroad.
(c) Federal land transfers. Use of this section for functional replacement of real property in Federal ownership shall be in accordance with Federal land transfer provisions in subpart F of this part.
(d) Limits upon participation. Federal-aid participation in the costs of functional replacement is limited to costs that are actually incurred in the replacement of the acquired land and/or facility and are: -
(1) Costs for facilities that do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and
(2) Costs for land to provide a site for the replacement facility.

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Under 23 CFR 710.601(f), FHWA participation in functional replacements of public land:

The FHWA may participate in the payment of fair market value or the functional replacement of impacted facilities under 710.509 and the reimbursement of the ordinary and reasonable direct costs of the Federal land management agency for the transfer when reimbursement is required by the Federal land management agency's governing laws as a condition of the transfer.

Refer also to Section 7.13.70.00.

8.18.05.00 Types of Rights of Interest from Federal Agencies

Caltrans may request the transfer of real property from a federal agency for permanent use as part of a highway project or a maintenance facility, or for a temporary use for construction purposes. Additional temporary uses might be for a disposal site, material site, or maintenance need.

The transfer may take the form of an easement, a use permit, a grant or patent. Types of federal land transfers are: Department of Transportation Easement - DOT Easement (New Construction or Perfection of Title), Right of Way Grant, Special Use Permit (SUP) or Free Use Permits (BLM), R.S. 2477 Rights of Way, and in rare cases, a federal land patent.

Transfers can be obtained from any federal agency, but due to their relatively large holdings in California, most sites required for highway purposes are requested from the Department of Agriculture's (USDA) United States Forest Service (USFS), Department of Interior's (DOI) Bureau of Land Management (BLM), or the United States Military Departments (Department of the Army, Department of the Navy, Department of the Air Force).

8.18.05.01 Direct Letter of Consent Procedure

For a Federal land transfer, a key step in the acquisition process is the request for a letter of consent from the GFA. As of June 28, 2017, the California Division of the FHWA provided special authority to Caltrans to request the Letter of Consent directly from the GFA. This is shown as Exhibit 8-EX-56 Direct Letter of Consent Correspondence Authority – Federal Land Transfer.

The FLT Coordinator requests the Letter of Consent by letter using Exhibit 8-EX-55 Request for Letter of Consent – Federal Land Transfer.

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The granting federal agency issues a Letter of Consent authorizing the appropriation of public land for highway purposes. Conditions and stipulations can vary for unique properties or sensitive areas. The Project Manager must approve the conditions and stipulations in the Letter of Consent before R/W Engineering prepares the DOT Easement. The DOT Easement contains certain clauses required by the FHWA, [49 CFR 21.7(a)(2)] relating to nondiscrimination, and includes all conditions and stipulations provided in the Letter of Consent. Caltrans can certify the project as soon as the Letter of Consent is obtained from the GFA as it functions like a right of entry.

8.18.06.00 Department of Transportation Easement (DOT Easement)

This is an easement over United States public land for the construction, operation and maintenance of a highway, and the use of the space above and below the established grade line of the highway pavement for highway purposes on, over, across, in and upon the required parcel of land.

A document known as a Department of Transportation Easement (DOT Easement) is prepared after the granting federal agency issues a Letter of Consent that appropriates a certain parcel of land for highway purposes. Caltrans requires a federal land transfer on all federal-aid projects on federal lands. The FHWA grants a DOT Easement on behalf of the United States, following the concurrence of the granting federal agency having control over the lands.

Sometimes there is a need to amend an existing DOT Easement, such as when the project area adjacent to the existing easement area needs to be incorporated into the project. Amending existing DOT easements is allowable using the same federal land transfer process. Example: Caltrans acquired a DOT Easement from the USFS ten years ago for a two-lane highway, and now the proposed four-lane project requires the acquisition of more land. Since Caltrans is proposing to change the highway's "footprint," a new DOT easement will be added to the existing DOT easement.

Conditions and Stipulations: The DOT Easement will include the required conditions and stipulations established by the granting federal agency. Caltrans entered into a Memorandum of Understanding with the USFS, which lists general stipulations. These additional requirements to be included in the DOT Easement will be listed in the Letter of Consent and must be approved by the FHWA.

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8.18.07.00 Perfection of Title

Caltrans, the FHWA, and USFS have agreed to perfect the title on all existing rights of way. The Perfection of Title process was designed so that Caltrans can convert USFS R.S. 2477 Rights of Way to recorded DOT Easements. The Perfection of Title process will eliminate most USFS R.S. 2477 Rights of Way. The Perfection of Title process has not been approved for use on properties controlled by BLM. See 8.18.20.00 for the Perfection of Title process.

8.18.08.00 "Rights of Way" Under R.S. 2477

When the State of California constructed a highway in the 1930's over public lands, titles were not recorded. "Rights of Way" were usually obtained for a small state-funded project over R.S. 2477 lands (Congressional grants to the states to build access roads across the federal ownership). The Region/District FLT Coordinator submitted an "Application for Transportation and Utility Systems and Facilities on Federal Land" to the granting federal agency to start the acquisition process.

The Congressional Grant of Right of Way (Revised Statutes, Section 2477, Title 43, Chapter 22, Section 932, U.S. Code Annotated) was repealed October 21, 1976. Roads which were constructed under authority of R.S. 2477 for which a grant of right of way was not secured should be applied for under the Federal Land Policy and Management Act of 1976 (Title 5).

8.18.09.00 Right of Way Grant

A Right of Way Grant is usually obtained for small state-funded projects over federal lands with no recorded title. To start the acquisition process, the FLT Coordinator will provide the granting federal agency with the Standard Form 299. The process will not require Caltrans to survey the construction area, but a detailed map will be required. The granting federal agency will obtain all environmental documents. Caltrans will obtain a Right of Way Grant and a Decision document from the granting federal agency. The Right of Way Grant document should be recorded. The Right of Way Grant should be applied for under the Federal Land Policy and Management Act of 1976.

8.18.10.00 Use Permit (Special Use Permit or Use Permit)

Sometimes, Caltrans only needs to obtain from the granting federal agency a temporary right to use their real property; e.g., environmental field work, material and disposal sites, or space for the disposal of construction materials,

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restoration work on a slide, or a seasonal location to conduct tests. For these types of uses that are not in the operating right of way, the granting federal agency will generally issue a permit. For some agencies (including the USFS) this is a Special Use Permit and for other agencies this is a Use Permit. Caltrans will provide the granting federal agency an application to start the acquisition process. If the terms and conditions are acceptable, the District Director or a designated representative executes the permit on behalf of the State. The permit provides for the conditions under which Caltrans occupies or makes use of the property.

Use Permits normally expire within ten years of the date the permit was issued. Renewals may require a new environmental document. The permit is not ordinarily recorded.

8.18.10.01 Use Permit Process

The process to obtain a Use Permit begins when the Region/District FLT Coordinator meets with the granting federal agency to discuss the project. After it is determined that the Use Permit is the appropriate document, the Region/District FLT Coordinator will:

- Coordinate with R/W Engineering to obtain a legal description to accompany the Use Permit application. For material sites, the application must describe the area of the materials source and the haul road by metes and bounds.
- Attach a plat or map adequately showing the area to be acquired.
- Provide the estimated cost and time schedule for the construction project.
- Include a copy of the Environmental document, plus any further supporting documents such as Coastal Zone Management (CZM) consistency determinations, archeology reports, Corps of Engineers permits, etc.

8.18.10.02 Material Sites

For guidance regarding the sale of mineral materials on BLM lands for use in Federal-aid highway projects, refer to Exhibit 8-EX-57, Mineral Materials Sales for Use in Federal-Aid Highway Projects. Note that US DOI legal opinions prohibit the free use of mineral materials for use in Federal-aid highway projects.

For other Federal agencies, note that the materials located on federal land (such as stone and earth) belong to the granting federal agency. Caltrans

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should recognize that unless otherwise stated, no interest granted shall give Caltrans the right to use or remove any such material for construction or other purposes. However, stone or earth removed from within the right of way in the construction of a project may be used elsewhere within the right of way for that project. The FLT Coordinator must ensure that all conditions and stipulations of the Letter of Consent are in Caltrans' Construction Specials. Also, the FLT Coordinator must ensure that Caltrans' Construction Specials do not give excess materials to the contractor.

8.18.11.00 Patents

If the U.S. land has been granted or patented to a private party but the United States retains some control of the property, such as mineral rights, Caltrans may get a government grant or a patent for its required use. These documents are rare, and the Region/District FLT Coordinator should contact their Legal Office immediately if the granting federal agency states that the transfer of the real property will be by way of a grant or patent.

A Patent is the closest document to a fee title that can be obtained from a granting federal agency. The time frame to obtain a patent is approximately two years. Caltrans should obtain a patent for maintenance stations on federal lands.

8.18.12.00 Federal Highway Administration (FHWA)

The FHWA is the appointed lead agency for all requests to cross federal property for a highway or a highway-related purpose. Though some federal agencies have their own statutory authority to transfer land to Caltrans without the FHWA's involvement, coordination with the FHWA is recommended.

The FHWA obtains approval from the granting federal agency, including the handling of any necessary arrangements for relocation or replacement of existing federal agency facilities such as USFS campgrounds. Caltrans is not responsible for this phase of right of way acquisition and no charge for expenditures incidental thereto should be made against right of way funds.

8.18.13.00 United States Forest Service (USFS)

The United States Forest Service (USFS) is an agency under the United States Department of Agriculture. Caltrans' need to traverse lands under jurisdiction of the USFS will be made under provisions of the Federal Highway Act of

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August 27, 1958 (23 USC Section 317). If the project is on the Interstate System, Section 107(d) will also be cited.

Right of way over National Forest Service Lands is covered by USFS approval of plans and specifications prepared by the FHWA. Caltrans is responsible for the acquisition or clearance of all private interests affected by the project, including mining claims and the relocation of existing utility installations. Caltrans also obtains material sites on privately owned lands when requested by the FHWA.

Section 104.4 of the Streets and Highways Code enables Caltrans to expend highway funds for the acquisition of privately-owned improvements placed on National Forest Service Lands under permit. Expenditures essential to the acquisition of such private interests constitute proper right of way charges.

8.18.14.00 Bureau of Land Management (BLM)

The Bureau of Land Management (BLM) is an agency under the US Department of Interior (DOI). Generally, Caltrans will follow the interagency agreement that the BLM and the FHWA executed in 1987 which authorizes the transfer of highway rights of way at no cost under Sections 107(d) and 317 of the Federal Highway Act. (According to recent legal opinions of the Solicitor's Office of the DOI, this agreement is still deemed to be in effect.) However, in certain situations Caltrans will utilize the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat 2766), Title 43 US Code Section 1737, which also authorizes the transfer of public lands for rights of way and other purposes. These situations include acquisitions which require a greater interest than a highway easement, or projects ineligible for Federal aid under Title 23. Under the FLPMA, Caltrans generally pays fair market value for the interests acquired.

Applications for material sites or uses other than rights of way shall be independent of applications for right of way. See Section 8.18.10.02 above.

8.18.15.00 Military Reservations

10 USC 2668 ("Easements for rights-of-way") gives military departments statutory authority for granting rights of way over lands under their jurisdiction. If Sections 317 and 107(d) of the Federal Highway Act are used to obtain the rights of way, the FHWA will be the lead agency. Applications for rights of way over military reservations should be initiated with the local commanding officer. Prior consultation with the FHWA is advisable since the FHWA may need to intervene if the military department does not readily grant approval.

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The military will only issue a limited DOT Easement with standard conditions and stipulations, though there may be a need to add or modify some of the conditions for a particular military base.

8.18.16.00 United States Fish and Wildlife Service (USFWS)

50 CFR Part 29 provides that where the land administered by the Secretary of the Interior through the USFWS is owned in fee by the United States, and the requested right of way is compatible with the objectives of the area, a permit or easement may be granted. Generally, the DOT Easement or Special Use Permit will be issued for a term of 50 years, or for as long as it is used for the purpose granted. The DOT Easement should recognize that unless otherwise stated, no interest granted shall give Caltrans the right to use or remove any material, earth, or stone for construction or other purposes. However, stone or earth removed from the right of way in the construction of a project may be used elsewhere along that right of way in the construction of the same project.

Caltrans may obtain the right to cross USFWS lands under the authority of the National Wildlife Refuge System Administration Act of 1966 as amended. Lands within the boundaries of a National Wildlife Refuge remain subject to the laws governing use and development of that refuge.

The USFWS will provide a DOT Easement or a Special Use Permit depending on Caltrans' need; however, the requests for transfer are made directly to the local/regional USFWS office and are time-consuming. Early coordination is necessary.

8.18.17.00 Other Federal Agencies

Bureau of Indian Affairs (BIA): Applications for right of way or interest in land on Indian Lands are submitted directly to the BIA per 25 CFR Parts 162 and 169. Transfer is effected by the BIA pursuant to its own authority. See 8.20.00.00.

Army Corps of Engineers: See 8.25.10.00.

United States Postal Service (USPS): Under the authority of 39 USC 411, reimbursement for property transferred to Caltrans for highway purposes is not compensable. Unusual issues related to the transfer of USPS lands should be referred immediately to the FHWA liaison.

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Federal Housing Projects: In the case of federal housing projects, negotiations should be carried on directly with the local housing authority. The housing authorities have power to grant easements rather than permits.

Veterans Administration (VA): 38 USC 5024 authorizes the VA to grant to Caltrans easements in and rights of way over lands under their control with terms and conditions it deems necessary.

General Services Administration (GSA): Surplus U.S. Government property is disposed of through General Services Administration, an independent agency of the Government. That agency notifies the State's Director of the Department of General Services of the availability of such property. The Department of General Services notifies transportation and other State agencies that the property is available. Any expression (or disclaimer) of interest by the State must be received by the General Services Administration within prescribed time and statutory limitations. Following an expression of interest in acquiring the property, or a portion thereof, for any of the purposes enumerated under Section 104 of the Streets and Highways Code, the Region/District FLT Coordinator should initiate a request for the transfer of the property in accordance with standard federal land transfer procedures.

In addition, special conditions to a federal land transfer may be required by GSA (41 CFR 101-47, Utilization and Disposal of Real Property), or that the federal land transfer be processed through the FHWA. The FHWA as the lead agency would work with the granting federal agency to agree on certain transfer conditions such as reversionary clauses. See Table 8-18-A.

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Table 8-18-A
PROCEDURES FOR APPROVING A TRANSACTION
WITH THE FEDERAL AGENCY "GENERAL SERVICES ADMINISTRATION (GSA)"

Step 1: Obtain a title report for the real property in question.

- Determine who owns the property as evidenced by the title report. Example: Held on behalf of the "United States of America, under the Jurisdiction of Customs and Immigration."
  Note: Determining how the property is currently developed and being used may help determine who has jurisdiction of the property.
- Contact GSA to determine if GSA will handle the real estate transaction for the other federal agency, or if the federal agency can enter into transactions on their own behalf. Example: United States of America, under the Jurisdiction of Customs and Immigration, Acting by and through General Services Administration.
  Note: If the property is held on behalf of the "United States, under the Jurisdiction of General Services Administration," then GSA is acting on their own behalf.

Step 2: Determine how the real property will be used for the proposed project.

- If the property will NOT be incorporated into the federal aid system (e.g., made a part of the State Highway System, included in the right of way), then the FHWA is not involved in the review/approval of the transaction.
  Note: Federal agencies transferring property rights for a transportation project do so under 23 USC (and then the FHWA is involved). Authority under other codes (e.g., 10 USC) usually means the federal agency and/or GSA are the decision-makers.

Step 3: Determine what property rights are needed.

- Fee, lease, or easement (aerial, temporary) will determine the type of document (DOT Easement, Permit, etc.) needed, and the process to obtain the document.
- Property rights through federal land for a federal aid system are USUALLY a DOT Easement and follow the standard procedures outlined in this manual section.
  Example: A permanent road easement from GSA to allow commercial trucks to leave a Port of Entry area and enter a CHP facility is NOT a federal land transfer, and GSA determines the process required to obtain a DOT Easement for the State of California. The intent of the parties is outlined in a Cooperative Agreement, followed by a Joint Use Agreement, and then finally a DOT Easement.

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National Park Service (NPS): Applications for rights of way or interests in lands of the NPS follow Title 36 CFR Part 14, Subpart D, "[Rights-of-Way] Under Title 23, USC (Interstate and Defense Highway System)" which governs non-Interstate highways as well. The standard FLT process applies except that the DOT easement must be agreed to by the NOP Director prior to issuance. The NPS will determine if use of the lands for highway purposes is consistent with its management program and if Caltrans agrees to measures necessary to maintain program values.

Federal Power Sites: Section 818 of the Federal Water Power Act (Title 16 USC Chapter 12, Sections 791a to 828c) provides that States may apply for highway rights-of-way across Federal power sites. Upon notice from the Secretary of Interior, the State shall have 90 days thereafter within which to file an application for reservation to the State or any political subdivision thereof, of any lands required as a right of way for a public highway or as a source of materials for the construction and maintenance of such highway.

8.18.18.00 Environmental Clearance

Requests for a federal land transfer may need an environmental document that assures compliance with the National Environmental Policy Act (NEPA) of 1969 (42 USC 4332, et seq.), the Historic Preservation Act [16 USC 470(f)], and Preservation of Parklands Act [49 USC 1653(f)]. Under the Caltrans' NEPA assignment from the FHWA, Caltrans is the lead agency and author of the NEPA document for Federal-aid highway projects. For further information on the NEPA assignment, refer to the Division of Environmental Analysis' websites:

- Internal site (internal Caltrans link)
- External site

Some agencies treat agency-to-agency transfers as undertakings that are not subject to review under Section 106 Historic Properties (NEPA); however, this is not always a correct assumption. If the USFWS transfers land to the National Park Service (NPS), then arguably there is no potential for effect on historic properties and therefore not subject to review. If BLM transfers land to Caltrans for highway purposes, then there is a potential to affect historic properties and is subject to review. If the 106 process indicates that there is a problem with historic properties, then it may be inappropriate to regard the project as categorically excluded.

Each granting federal agency needs to evaluate the proposed project to determine the potential impacts to their resources. During this period, Caltrans' Division of Environmental Analysis will need to prepare its analysis of the impacts to the natural resources which includes biological,

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archaeological and paleontological salvage (34 Stat. 225), and Native American concerns. Coordination with the granting federal agency's resource management may help identify impacts of mutual concern.

For USFS federal land transfers, a copy of the approved project report and environmental document that addresses fish or wildlife (as discussed with the California Department of Fish and Wildlife) will be transmitted to the USFS along with the maps of the proposed DOT Easement. The local USFS office may prepare an Environmental Analysis Report (EAR) and submit a copy of the "4(f) statement."

The granting federal agency will not provide the Letter of Consent until their office is satisfied with the environmental document. The Region/District FLT Coordinator may need to act as liaison between Caltrans' environmental branch and the granting federal agency's environmental office.

A DOT Easement for Perfection of Title will only require a Categorical Exclusion environmental clearance since there is no disturbance of land and no resources will be affected.

8.18.19.00 Federal Land Transfer Procedure to Obtain a DOT Easement

The procedures to obtain a federal land transfer are partly based on 23 CFR 710.601 as well as separate MOUs with some of the federal agencies.

The Region/District FLT Coordinator is a member of the Project Development Team and should be able to identify early on that the proposed project will require rights across U.S. land during the environmental phase. The Region/District FLT Coordinator will examine the construction details, access control and other pertinent data, and then determine the real property requirements and the type of federal land transfer required.

After determining the type of rights needed (permanent, temporary, materials only), the Region/District FLT Coordinator submits a request for a Letter of Consent for appropriation of real property via transmittal memo to the GFA with the Federal Land Transfer (FLT) Package (8.18.19.02). The request will contain a statement that the lands are necessary for the project, along with a copy of the environmental document and map application depicting the area to be acquired. The granting federal agency must approve Caltrans' construction plans before a Letter of Consent can be requested. The application requesting appropriation of real property shall be in accordance with 23 USC 317 or Section 107(d) for Interstate highways.

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The granting federal agency has four (4) months to respond to the FHWA's request for approval by issuing the Letter of Consent with stipulations for DOT Easement preparation.

Under the law, if the granting federal agency does not respond to the request for the Letter of Consent within four (4) months, the real property may be considered appropriated by the FHWA and transferred to the State for right of way purposes. In practice, the FHWA will work with Caltrans to obtain the GFA's consent prior to any appropriation of Federal land.

Note: Generally, the granting federal agency's executed Letter of Consent authorizes immediate entry under the terms contained in the letter. Much like a right of entry, the property is available to the State for certification and awarding for construction purposes. The District need not await preparation and recording of DOT Easement in order to certify the parcel is available. The Right of Way Certification can be executed based on the Letter of Consent.

After the Project Manager approves the conditions and stipulations in the Letter of Consent, the Region/District FLT Coordinator requests R/W Engineering prepare the DOT Easement. USFS may also require a statement about the disposition of any merchantable timber (8.18.19.06), the preparation and acceptance of a fire and clearing plan (8.18.19.05), and landscape and erosion control plans.

23 CFR 701.601 requires the acquiring entity to obtain legal sufficiency for the DOT Easement. This is Caltrans' attorney certifying that the DOT Easement meets the State requirements for form and procedure. The Region/District FLT Coordinator will ensure the DOT Easement has the following statement before submitting it to Caltrans' Legal Division for review and certification.

> *I, _____, Attorney at Law, State of California, Department of Transportation, and duly licensed to practice law in the State of California, hereby certify that this deed is legally sufficient for its stated purpose.*

_____ _____

Signature *Date*

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8.18.19.01 Preparation of the DOT Easement

The DOT Easement is prepared by Caltrans' Right of Way Engineering staff and shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(2) [requiring nondiscrimination and reversionary clauses], and the conditions and stipulations required by the granting federal agency. The DOT Easement must be prepared in a fashion that FHWA approves, or the FHWA will not execute it.

Right of Way will process the DOT Easement and deliver the Map Application to the proper county recorder for filing in the State Highway Book. The District FLT Contact will ensure the DOT Easement is sent to the Region/District FLT Coordinator who will review the package and forward it to HQ R/W&LS. HQ R/W&LS Liaison will obtain the legal sufficiency signature from Caltrans Legal on the DOT Easement.

After the attorney has returned the signed DOT Easement to the Region/District FLT Coordinator, it is transmitted along with the map (if applicable), a copy of the environmental document, and the granting federal agency's Letter of Consent to the FHWA for review and execution. The FHWA returns the executed DOT Easement to the Region/District FLT Coordinator, who will send it to the District FLT Contact to obtain the Region/District R/W Chief's notarized signature accepting the DOT Easement. The fully executed DOT Easement is then delivered to the proper county recorder for recordation. The R/W Engineer will also ensure the DOT Easement is properly posted in the State Highway Book. The District FLT Contact sends a conformed copy of the DOT Easement to the Region/District FLT Coordinator, who will send it to the granting federal agency with a transmittal letter and a copy of the transmittal letter to FHWA for their records. The District R/W Engineer posts the recorded DOT Easement to the State Highway Record Maps. The original recorded DOT Easement is retained in the district project file.

8.18.19.02 Federal Land Transfer (FLT) Package

The District Contact is responsible for preparing the initial information and documentation that is contained in the FLT Package. The Region/District Coordinator reviews the package, completes as necessary, and forwards it to GFA.

The FLT Package that is transmitted with the request for a Letter of Consent includes:

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1. Application Letter:
   - Purpose or reason for Transfer, description of the project, and location.
   - Interest to be acquired.
   - Granting federal agency's improvements on the site.
   - Description of the lands needed. (If a legal description is used, ensure it is marked as a draft.)
   - Total area to be transferred.
   - Federal Aid System reference/Federal-Aid project number.
   - Name and address of the granting federal agency having jurisdiction and the name of the local contact.
   - Necessary explanatory information.
   - Right of Way Certification Date
2. Map of the area to be transferred. (The map can be an appraisal map, base map, project map, or a map application.)
3. Environmental documents (NEPA and CEQA).

8.18.19.03 Map Applications

Map Applications show the required real property and are prepared by R/W Engineering in accordance with 6.09.01.00. The map must state the federal law under which the request is being made [e.g., 23 USC 317 and 107(d) if interstate].

A licensed surveyor or the R/W Engineer must sign the Map Application. If the Map Application is used instead of a legal description or a base map, it should be included in the FLT Package. The Map Application may be used with the DOT Easement instead of a written legal description. After Caltrans receives the GFA's Letter of Consent, the Map Application is filed in the State Highway Book.

Metes and bounds descriptions are not required; however, the maps must contain sufficient information to facilitate an accurate survey of the parcel on the ground. Since the maps are used in lieu of legal descriptions, they must be prepared in a manner that will provide for the transfer of title, which should include the following information:

- Location or index map showing the right of way plan for the related highway facility. This may be included on the detail sheet.
- Centerline and right of way limits.
- Found monuments are to be designated and should reflect pertinent data. The right of way must be tied to the existing land net.
- Legend for right of way requirements.
- Complete station reference for right of way angle points.

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- Areas of exclusion (private lands, etc.) must show recording information when precise location of boundaries cannot be defined on the map.
- Note: USFS requires an explanation of justification for the real property be stated on the map.

The parcel requirements may be shown with stippling or highlighted; however, map information must remain legible. The workmanship must be of such quality that legible copies may be made from the tracing.

8.18.19.04 Termination of a Federal Land Transfer

When the need for the real property or materials acquired by way of a federal land transfer no longer exists, Caltrans must give notice of that fact to the FHWA and to the granting federal agency. Such lands or materials revert to the control of the granting federal agency, or its assignee. The notice, in a form suitable for recording, shall state that the need for the lands or materials no longer exists for the purposes for which it was acquired [23 CFR 712.503(d)].

The federal land transfer will automatically terminate if Caltrans has not begun construction or use of the materials for highway purposes within 10 years of the date of the DOT Easement or permit (or less if agreed upon between the FHWA, the granting federal agency, and Caltrans).

The DOT Easement's stipulations and conditions refer to the reversion of control. The reversion must comply with 23 CFR 710.601(h), or the termination might not be accepted by the granting federal agency. Caltrans must restore the land to the condition that existed prior to the transfer. The granting federal agency must approve the restoration prior to the reversion of control.

Terminating a federal land transfer is initiated by sending a notice of the fact to the FHWA and the granting federal agency, which states that the need for the land no longer exists for the purposes for which it was acquired. The notice must include a Reversion Map. The appropriate CTC Resolution will be recorded in the appropriate county and the Vacation Map will be filed in the State Highway Book. The Reversion Map will then be sent to the granting federal agency.

The Region/District FLT Coordinator should meet with the granting federal agency, prior to construction, to obtain and agree upon the restoration plan. The Region/District FLT Coordinator must work with Project Development to ensure the restoration plan is included in the construction specials.

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8.18.19.05 USFS Fire Plan

The USFS may require a fire plan in the conditions and stipulations. The fire plan requires, as a general condition, that Caltrans and its highway contractor will comply with applicable forest fire rules and regulations of the State and the U. S. Forest Service. Specifically, the stipulation that a fire prevention and control plan, which has been prepared by the Forest Service and accepted by the District Director, will be in place prior to the start of construction. Caltrans shall cause its contractors to comply with all provisions of the fire plan. Requirements contained in fire plans prepared for the various national forests impose restrictive and costly conditions. Potential fire devastation justifies the utmost effort in prevention and control measures.

Conditions and requirements which would affect the contractor's operations and cost, such as those contained in both the letter approving appropriation and related fire plan, must be tied into contract specifications and brought to the attention of prospective bidders.

8.18.19.06 USFS Timber

The handling of timber on USFS acquisitions varies across the state depending on the District and National Forest. The most general case is given in the following paragraphs. Some Districts have agreements with a given National Forest to have the timber removed early and are licensed to be a party to the timber contract. Refer to your local Forest Supervisor's Office for applicable timber procedures for a given project.

The following is the typical stipulation used in LOCs and HED's from the USFS concerning timber:

> *The Forest Service will retain the right to any merchantable timber and all other resource materials not specifically appropriated, within the boundaries of the appropriation. The Highway Agent will notify the Forest Service which timber or other resource materials within the appropriation are scheduled to be removed and the Forest Service will determine whether a timber sale or other authorization for removal is appropriate.*

Often, the USFS will make arrangements for a contractor to remove the merchantable timber prior to the right of way certification. In that case, the Region/District FLT Coordinator will have to ensure that the PS&E include the requirement to remove timber that is in conflict with the project that the USFS

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either does not want or failed to remove. Caltrans is required to survey and mark the project area so the USFS can determine the timber that is impacted.

The preferred method is for USFS to obtain a timber cruise (i.e., estimate of the volume and value of the timber) and enter into a timber contract with a contractor. The USFS timber bid and removal process may require in the range of twelve months, but this work may be coordinated with the project's construction schedule. Caltrans should not be a party to the Timber contract unless it has the appropriate licenses. The USFS cost of the timber cruise may be a right of way expense or may be reimbursed through a separate agreement recovery agreement with Caltrans.

8.18.20.00 Perfection of Title Procedure

Each Region/District Deputy Director for Planning will develop a prioritized list of routes and provide it to their designated USFS representative. A copy of the list is also provided to the FHWA and to each Region/District FLT Coordinator. The Region/District FLT Coordinator will establish a team to verify in the field actual ground conditions that require deviations from the standard easement width designated for the route/corridor that will be identified in the legal description of the DOT Easement. The team should include:

- Caltrans: local Maintenance Superintendent and R/W surveyor
- USFS: District Ranger and their engineering or survey representative

Caltrans' District R/W Engineering Staff, in collaboration with Forest Service surveyors, will prepare the legal description for the DOT Easement. The description will reflect the fact that the highway exists in its present location. It must be sufficient to describe the right of way area required for the corridor and meet State of California and local county requirements for recordation. Intersecting Forest Service roads, trails, structures, and facilities are excluded. Waste and borrow sites permitted by Special Use Authorizations are also excluded.

The description will be in a format appropriate to the existing conditions as agreed upon by Caltrans' District R/W Engineering Staff and the USFS surveyors.

A copy of the description will be provided to the Forest Service for inclusion in its Letter of Consent. The parties will ensure that the legal descriptions in the Letter of Consent and the DOT Easement are a complete match and error

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free. Subsequently discovered minor errors, e.g., typographical errors or a reversed bearing, will not be cause for nullification of the DOT Easement.

The description may be incorporated into a National Integrated land system, which is a joint project partnership between the USFS and the BLM allowing land parcel information to be placed in a Geographic Information System (GIS) environment and into Caltrans' Digital Highway Inventory Photography Program (DHIPP).

The Region/District FLT Coordinator will notify the Regional Forester of Caltrans' request. A Letter of Consent, authorizing the appropriation of National Forest Service Land, will be prepared by the Forest Service Regional Office. The document will be signed by the Regional Forester or his/her designated representative and sent to the District. Under this expedited process, the Forest Service shall provide the Letter of Consent to Caltrans within 30 days of the request date.

Caltrans will prepare the DOT Easement, using the narrative legal description format, and forward it to FHWA for review. In accordance with 23 CFR 701.601(g), Caltrans' attorney must review the DOT Easement and sign the statement certifying it meets State requirements for form (18.18.19.00). All Caltrans actions shall be completed within 30 days of receipt of the Letter of Consent.

The FHWA Division Administrator shall forward the DOT Easement to the FHWA Western Legal Services Office for review. Upon determination of legal sufficiency, the FHWA Division Administrator shall execute the DOT Easement. All FHWA activities will be completed within 30 days of receipt of the DOT Easement.
The DOT Easement will then be forwarded to the Region/District FLT Coordinator for recording in the appropriate county of record. Conformed copies of the recorded DOT Easement will be provided to the FHWA and the Regional USFS for its right of way records.

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8.18.21.00 Notice of Right of Way Commitments on Forest Highway Projects

The Region/District must inform the FHWA of right of way commitments made on Forest Highway Projects. The Region/District Acquisition Senior must provide the following to the Region/District FLT Coordinator and the HQ R/W&LS Acquisition Senior:

A. One copy of the conditions included in any Right of Way Contract on a Forest Highway Project that lists the construction items to be performed in the fulfillment of a right of way obligation, and

B. A statement setting forth a full explanation as to interpretation of the clause itself, and

C. If the right of way has been acquired by condemnation and the judgment recites that certain construction must be performed, a memorandum setting forth the exact language contained in the judgment and a further explanation as to the actual work that must be performed.

8.18.22.00 Proof of Construction (BLM Only)

When construction is complete on highway facilities constructed across lands secured from the BLM, a certification of "Proof of Construction" is required. The District Construction Office should notify Region/District FLT Coordinator that the project is completed and ready for review. Region/District FLT Coordinator will confirm that the rights granted were utilized and construction was completed in accordance with the Letter of Consent granting the right of way. Both certifications will be prepared in triplicate and submitted by the Region/District FLT Coordinator to the appropriate BLM office.

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Dist.___ Co.___ Rte.___ KP (P.M.) _____ Bureau of Land Management
Serial No._____
I, _____, state that I am the District Director of Transportation, Department of Transportation, State of California, and that construction of certain highway under my direction and supervision was commenced on the ___ day of _____, 20___, and completed on the ___ day of _____, 20___, and that the constructed highway conforms to the map which received the approval of the Department of the Interior on the ___ day of _____, 20___.

_____
District Director of Transportation

Dist.___ Co.___ Rte.___ KP (P.M.) ____ Bureau of Land Management
Serial No._____
I, _____, certify that I am the (District Division Chief)(Regional Manager) for Right of Way for the Department of Transportation, State of California; and that the highway was actually constructed as set forth in the accompanying statement of _____, District Director of Transportation, and on the exact location represented on the map approved by the Department of the Interior on the ___ day of _____, 20___; and that the State has in all things complied with the requirement of the Act of August 27, 1958, granting rights of way for highways through public lands of the United States.

_____
District Division Chief/Regional Manager for Right of Way

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8.18.23.00 Typical Steps in the Federal Land Transfer Process

District FLT Contact (DFC) and Region/District FLT Coordinator (R/D FLTC) Responsibilities:

K Phase

Project Initiation Document

M000 – M010, Tasks: 150.xx

- Members of the Project Delivery Team identify involvement of Federal Lands using preliminary layouts and related project data.
- Probable Granting Federal Agencies, Federal regions, and Federal districts identified.
- Preliminary R/W estimate notes probable Federal involvement.

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0 Phase

Preliminary Approval & Environmental Document

M015 – M200, Tasks: 160 – 180

- INITIAL DISCUSSIONS WITH LOCAL GRANTING FEDERAL AGENCY (GFA):
- DFC and local GFA review maps, impacted resources, and temporary and/or permanent property rights needed.
- DFC participates in discussions with GFAs as to lead time, alternatives, impacts, and processing of right of way requirements on Federal land.
- DFC participates in the preparation of updated R/W estimates.

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Typical Steps in the Federal Land Transfer Process (Continued)

1 Phase
Ready to List
2 Phase thru R/W Certification
M200 – M410, Tasks: 185 – 225

- Design Engineer determines final R/W requirements.
- District R/W Engineering prepares location and parcel maps with draft FLT Deed and/or legal description.
- DFC and local GFA review final parcel maps, etc., as needed.
- DFC and PDT reach resolution of all issues with GFA.

- OBTAIN LETTER OF CONSENT:
- DFC prepares FLT Package requesting Letter of Consent (LOC) directly from the GFA.
- FLTC emails FLT package to GFA with signed cover letter, copies to FHWA, Local GFA, HQ FLTC.
- GFA issues LOC with stipulations and sends to DFC (Copies or forwards to FHWA, HQ FLTC).
- LOC functions like a Right of Entry - typical stipulations allow possession of, and construction on, the Federal parcel acquired.
- DFC issues Design Letter notifying PDT of limitations on use or possession of the Federal parcel(s) imposed by the stipulations in the LOC(s).
- FLTC/DFC confirm that stipulations limiting use or possession of the Federal parcels are included in the Special Provisions. This is done at constructability reviews of the plans and specifications.
- FLTC reports status of acquisition of Federal parcels for preparation of R/W Certification.

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Typical Steps in the Federal Land Transfer Process (Continued)

2 Phase
Post Certification R/W Tasks
3 Phase
Construction Contract Acceptance
M410 + M600 CCA, Tasks: 245 – 300

- PROCESSING AND RECORDING A DOT EASEMENT DEED:
- Project Construction Complete. M600 Construction Contract Acceptance.
- R/D FLTC requests R/W Engineering prepare final DOT Easement Deed with stipulations identified in the LOC.
- R/W Engineer submits DOT Easement with stipulations to FLTC.
- R/D FLTC sends DOT Easement package to HQ RWLS Liaison for HQ Legal sufficiency review & signature.
- After HQ Legal approves sufficiency of DOT Easement Deed, HQ RWLS forwards to FHWA R/W.
- FHWA R/W reviews and forwards to FHWA regional counsel for sufficiency review.
- FHWA regional counsel signs and sends to Cal. Division Administrator for execution. FHWA returns to District.
- DFC requests Region/District R/W Chief sign DOT Easement to accept property.
- DFC Records the DOT Easement & copy to District R/W Engineer.

- DISTRIBUTION OF COPIES OF RECORDED DOT EASEMENT:
- District R/W Engineer posts DOT Easement to the State Highway Record Maps.
- DFC sends conformed copy of DOT Easement to R/D FLTC and retains original in District file.
- R/D FLTC sends GFA conformed copy of DOT Easement, with copy to FHWA.

FLT Process Complete

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8.19.00.00 - MINING CLAIMS

8.19.01.00 Unpatented Mining Claims – General

An unpatented mining claim establishes an interest in land which will continue in existence until eliminated, whether by an appropriate conveying document, or by legal processes before a court of competent jurisdiction.

The claim creates a right good against all, including the owner of the underlying fee, usually the U.S. Government.

Certain land is withdrawn from mining operations and, a claim filed upon land withdrawn from entry may be found to be void. If valid "discovery" of valuable minerals is not established, the claim may be voidable. Only the Federal Government is allowed to void a claim for lack of discovery and, when this procedure is involved, it is expensive and time consuming.

A claim is neither void nor voidable solely because of the appearance of the claim. The claimant's interest is not to be disregarded on the contention that it has no pecuniary or market value.

8.19.01.01 Acquisition

Rights of way over unpatented mining claims shall be acquired by Right of Way Contract and Quitclaim Deed. It must be established that the person to be paid is the claimant. Every reasonable effort shall be made to obtain quitclaim deeds to the right of way from persons holding mining claims on public lands even though the claim may appear to be abandoned.

If, after due and diligent search, the District is convinced that a mining claim is actually abandoned and the owner cannot be located, a statement of the facts is to be submitted to the Division in support of the recommendation that title be taken subject to this outstanding interest.

If clearance of the claim cannot be accomplished by Contract and Quitclaim Deed, then condemnation shall be instituted.

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8.19.02.00 Mining Claims – How Established

Refer to Circular No. 2289 "Regulations Pertaining to Mining Claims Under the General Mining Laws of 1872." (Reprint of regulations is current as of July 15, 1971, as contained in 43 CFR.) Special reference is made to the following:

- Mining Claims-Recordation, Filing of Assessment Work and Notice to Intent to Hold Mining Claims-Published in Federal Register January 27, 1977.

- Location of Mining Claims Part 3830 - Published in Federal Register September 10, 1973.

- Mining Claim Occupancy Act Part 2550 - Published in Federal Register July 15, 1976.

- Public Law 94-579-October 21, 1976, cited as the "Federal Land Policy and Management Act of 1976."

All of these publications are available at local BLM offices. The acquisition agent is advised to consult with local BLM personnel for advice in the clearing of mining claims.

8.19.03.00 Loss of Locator's Rights

Mining claims are sold and otherwise disposed of in the same manner as other real property. However, the owner of the mining claim, until patent has been issued, has only a possessory right, which may terminate through failure to do the required annual assessment work or for other reasons. Section 2321 of the Public Resources Code of the State of California provides for suspension of relocation rights of any locator who fails to perform the required annual assessment work.

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8.20.00.00 – INDIAN LANDS

8.20.01.00 General

The Bureau of Indian Affairs approves transactions involving Indian lands. Indian lands are held in trust by the federal government as either "Tribal Lands" or "Allotted Lands."

8.20.01.01 Tribal Indian Lands

"Tribal Lands" are lands within the boundaries of an Indian reservation that are held in trust by the federal government for the Indian tribe as a community (25CFR169.1(d)). **UNALLOTTED TRIBAL LANDS HELD IN TRUST BY THE UNITED STATES MAY NOT BE CONDEMNED BY A STATE (23 CFR 107(a, d) AND 317).** Tribal land can be acquired with the authorization of the Secretary of Interior and consent of the proper tribe officials. Early involvement of the Bureau of Indian Affairs is essential.

8.20.01.02 Allotted Indian Lands

"Allotted Lands" are lands within a reservation which are apportioned and distributed in severalty to tribe members. Title to allotted lands is held in trust by the federal government for individual Indians (25CFR169.1(b)). Allotted lands may be condemned for any public purpose under the laws of the State or Territory where located (25USC357). Rights of way through allotted Indian land may be secured by map application. The Bureau of Indian Affairs should be consulted for the appropriate procedure. Prior contact with the Bureau is necessary before contact with individual Indians.

8.20.02.00 Preparation of Maps

The District prepares a tracing to show the width and length of the right of way required through or within the reservation or allotted lands. It also shows ties by bearings and distance to the nearest easily identified corner of an accepted public land survey from the initial and terminal points of the part of the road that is within the Indian lands. A sample tracing for application over Indian lands is included in the Right of Way Engineering Chapter (6-EX-1[G]).

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8.20.03.00 Processing of Application

When the Affidavit and Certificate are signed, the tracing and three prints are to be attached to an Application addressed to the Bureau of Indian Affairs, California Indian Agency.

The Application and maps, together with one set of layout plans should be delivered to the Agency Superintendent of the Reservation through which the highway passes. A letter to the Agency Superintendent stating the type of fences, road approaches and other construction details should be included.

The Application should follow Form RW 8-6, which will be prepared on regular letterhead and is used only for Indian lands.

Under Title 25, provision is made for the possible waiver of any of the stipulations in the form. Before submission of the Letter of Application for public highway to the Bureau of Indian Affairs, the District Office of Right of Way should confer with District Project Development to determine if any of the stipulations should not be included in the letter. It is also advisable for the District Office of Right of Way to discuss the Letter of Application and any omitted stipulations with the local office of the Bureau of Indian Affairs prior to its actual transmittal.

8.20.04.00 Payment of Assessed Damages

When the application is received by the Indian Agency, they will hold it until the amount of assessed damage is agreed upon.

Residents or allottees having an interest in the property are normally contacted by the Bureau of Indian Affairs for approval of the payment for the right of way.

The Indian Agency will advise the District by letter as to the total amount of the assessed damages and the terms and conditions under which the right of way will be granted. They will call for deposit of the assessed damages before the application is processed further.

A check is then issued and delivered to the Indian Agency. A receipt is to be obtained when requested by Accounting. The receipt is forwarded to Accounting. The payee in such cases shall be the "U. S. Department of the Interior, Bureau of Indian Affairs."

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8.20.05.00 Width of Right of Way Through Indian Lands

Right of way through Indian lands should have a width equal to that on the highway immediately adjacent thereto. Wherever possible, and particularly on roads within or adjacent to forests, parks, or recreational areas, the width should include additional setbacks as is now contemplated and provided for by the regulations of the United States Forest Service.

8.20.06.00 Memorandum of Settlement (MOS)

A Memorandum of Settlement (MOS) should be attached to the check., as there will be no contract executed in connection with the transaction.

8.20.07.00 Approval of Maps by Bureau of Indian Affairs

When the assessed damages have been deposited and the terms and conditions of the grant are accepted by the State, the Letter of Application and maps are forwarded by the Agency Superintendent to the Bureau of Indian Affairs, California Indian Agency. When approved, a Grant of Easement will be forwarded to the District by the Bureau.

8.20.08.00 Certificate of Completion

When construction of the related highway facility is completed, the District Construction Department should notify Right of Way by submitting a Certificate of Completion signed by the District Construction Engineer. (See Form RW 8-7.) It will be submitted to HQ R/W along with Form RW 8-8, signed by the District Director. HQ R/W will forward both forms to the Bureau of Indian Affairs.

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8.21.00.00 – PUBLIC LANDS – STATE

8.21.01.00 General

Rights of way and material sites on Sovereign lands of the State are authorized under Section 101.5 of the Streets and Highways Code. Rights of way over vacant School lands are authorized under Section 6210.3 of Public Resources Code.

8.21.02.00 Sovereign State Lands – General

Section 101.5 of the Streets and Highways Code authorizes the Department to acquire sovereign lands of the State that are needed for right of way or materials. Refer to that section for the details.

8.21.02.01 Preparation of Maps

The District shall prepare tracings in triplicate in standard layout size showing the area involved and clearly delineating the proposed right of way or material site. See the sample tracing in the R/W Engineering Chapter.

The tracings shall be prepared for the approval and signature of the District Director or the person authorized to sign such maps on the District Director's behalf.

Access control on rights of way over State lands shall be handled generally in the same manner as that affecting other public or private lands.

8.21.02.02 Procedure by the State Lands Division

The tracings are transmitted to the State Lands Commission with a letter of explanation and a copy of the Environmental Report.

A minimum of 120 days is normally required by the Commission in the processing of an application and approval.

Upon approval, two of the tracings are returned with an executed permit granting the right of way.

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8.21.02.03 District Closing Procedures

The District shall file the tracing in State Highway Map Book in the Office of the County Recorder of the county in which the land is situated as authorized by Section 128 of the Streets and Highways Code.

The reasonable value of the rights secured shall be scheduled for deposit into the State Parks and Recreation Fund.

A Memorandum of Settlement (MOS) will be prepared and transmitted to HQ R/W.

8.21.03.00 State School Lands – General

The State Lands Commission has the authority to grant easements and rights of way to the Department of Transportation to, or over, vacant school lands of the State (surveyed Sections 16 and 36 or designated in lieu lands). This is per Section 6210.3 of the Public Resources Code.

8.21.03.01 Acquisition of Rights of Way

This authority shall be used for securing rights of way over vacant school lands of the State. Rights of way secured under this authority are conveyed by a patent and the market value of such right of way must be paid into the State School Lands Fund.

8.21.03.02 Application Procedure

The District's submission of applications for rights of way over these lands shall include a map and a typed legal description. A sample map is included in the R/W Engineering Chapter.

Maps and description are transmitted to the Commission with a letter of explanation and an offer in the amount of the District's appraisal.

Upon approval, the State Lands Commission will authorize the issuance of a patent conveying the right of way to the Department of Transportation.

8.21.03.03 Recordation

The patent will be transmitted to the District for recordation.

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8.21.03.04 Purchase of Excess – State School Lands

In some instances, freeway construction over State School Lands may result in "landlock" or severe damage to remainder parcels.

If curative measures are not economically feasible, purchase of the entire parcel, or a portion thereof, may be justified.

If the District finds that fee acquisition of State School Lands in excess of net right of way and access requirements is indicated, HQ R/W, Acquisition Branch should be so advised at the time the appraisal is approved. A patent is also issued by the State Lands Commission whenever purchase includes excess land.

8.21.04.00 State Park Lands – General

When right of way across beach or park land is required, application shall be made to the Department of Parks and Recreation, for a Grant of Easement.

Easements are generally acquired by Transfer of Control and Possession (see Section 8.21.05.00).

Section 5012 of the Public Resources Code provides that the Department of Parks and Recreation, upon application by the proper authorities, may grant easements for public highways over and across State Park lands.

8.21.04.01 Condemnation Requirements – Fee Acquisition

In the event a greater title than an easement is required, it will be necessary to secure title by an action in eminent domain.

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8.21.04.02 Condemnation Procedure

When condemnation is necessary for acquiring right of way across State Park areas, the following will apply:

A. Confer with the Director of the Department of Parks and Recreation to agree on the right of way required and the plan for the highway to be located through the specific state park area involved. A signed memorandum will cover conditions deemed to be pertinent to the particular project and shall be approved by HQ R/W.

B. The Director of the Department of Parks and Recreation will present to the State Park and Recreation Commission the plan previously agreed on for the proposed improvements. Upon approval, the Director will forward a letter of approval to the District Director. The letter will constitute authority for the Department of Transportation to enter on the lands described and commence construction.

   (It is expected that such a letter will eliminate the necessity for securing an order for possession from the Superior Court after the filing of an action in eminent domain.)

C. Upon approval of the location, an action to condemn the right of way will be instituted by the Department of Transportation. The suit will name as defendants, among others, the Director of Parks and Recreation and the members of the State Park and Recreation Commission, as well as the Commission itself. Summons and Complaint will be served upon the Director of Parks and Recreation and upon the Attorney General. Ordinarily, the Attorney General will appear on behalf of the Commission and the other park officials named as defendants.

D. The District, upon service of a copy of the complaint upon the Attorney General, will accompany such complaint with a copy of the approved letter and agreement.

E. The Attorney General will file an answer on behalf of the Department of Parks and Recreation and the State Park and Recreation Commission and will set up in the answer, the conditions under which the highway is to be constructed, in accordance with previous agreement between the District and the Department of Parks and Recreation.

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F. The Attorney General and the attorney appearing for the Department of Transportation will agree upon and prepare a form of judgment containing such conditions as appear to be necessary to make effective the agreement for the location, construction, maintenance of the highway and will present the matter to the Superior Court and obtain a judgment and a final order of condemnation.

8.21.05.00 Transfer of Land Between State Agencies

Section 14673 of the Government Code provides that control or possession of land owned by the State may be transferred from one State agency to another State agency with the approval of the Director of General Services.

In such a transfer, the Director of General Services may authorize the payment of such considerations as deemed proper from available funds of the receiving agency to the transferring agency.

Upon request and without fee, the Recorder of each county in which any portion of land so transferred is located shall record any instrument executed for such a transfer.

The Department of General Services (DGS), Office of Real Estate Services reviews for the Director under legislative direction and is, therefore, entitled to be reimbursed for the cost of such services. The Department of General Services charges the grantee for the service since the grantee is the beneficiary of the transfer.

8.21.05.01 Transfer of Jurisdiction Procedural Instructions

In cases where the land to be acquired for highway purposes falls into the category of lands described in the preceding section, acquisition activities shall be handled in the same manner as the acquisition of private lands, except that no Right of Way Contract or Deed need be obtained. The instrument used, a "Transfer of Jurisdiction of State-Owned Real Property" (Exhibit 8-EX-32 or 8-EX-33), functions as both contract and deed. This instrument must contain all of the terms and conditions of the transaction, including a sufficient legal description and map of the property being transferred.

Transfers of Jurisdiction (TOJ) typically require long processing timelines, and as such, these transactions should be identified early-on in the Project

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Development process. TOJ parcels should also be assigned as one of the first orders of work when developing Project Delivery Acquisition Schedules.

Project delivery acquisition transactions with other state agencies (OSA) need to be addressed in all R/W Estimates at anticipated Fair Market Value (FMV). FMV Appraisals are required in all TOJ transactions in order to document just compensation payable to the OSA. These appraisals are subject to DGS review under Government Code Section 14673 (GC 14673).

Initiation of Negotiations (ION) are conducted with the local office of the OSA having current jurisdiction over the required R/W parcel(s). An ION with the OSA should include a typical presentation of detailed project mapping, design exhibits, R/W maps, copy of FMV appraisal, approved Environmental Clearance documents, project schedule information, etc. In addition, obtaining a Right of Entry (ROE) for R/W Certification purposes should always be discussed at the ION.

TOJ terms, conditions, and corresponding legal description(s) will typically require some level of negotiation with the OSA. Negotiation of TOJ content usually commences after execution of the requested ROE for R/W Certification and construction purposes. Negotiating final TOJ content, and the subsequent review, approval, and execution of the TOJ by all involved agencies, can take several months to complete. This is why securing a ROE is so critical in meeting R/W Certification timelines. The Department does not typically pursue condemnation activities to secure project delivery requirements from the OSA.

When all terms and conditions of the TOJ have been successfully negotiated, and when all legal descriptions and mapping have been finalized and approved by both state agencies, the assigned Region/District R/W Agent prepares a TOJ Template Package (sample contents noted directly below), and then routes this to the State/Federal Land Transfer Coordinator (FLTC) in HQ R/W, Office of Project Delivery:

1. Region/District Cover Letter addressed to OSA
2. Two "original" copies of TOJ, suitable for recording
3. DGS Checklist Information, including brief description of subject property, zoning, highest and best use, acreage being transferred, original acquisition date & source of funding, why transfer is necessary, and contact information for involved agency personnel.
4. R/W maps
5. County Assessor's parcel information/mapping

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6. FMV Appraisal, including photos, comparable sales information, and valuation analysis
7. Recorded documents originally conveying title of subject parcel to OSA
8. Approved environmental clearance documents
9. Copy of fully-executed ROE, if applicable

The State/Federal Land Transfer Coordinator in HQ R/W reviews the submitted TOJ Template Package for compliance with standard expectations, and then routes the entire TOJ Template Package to HQ Legal for review/approval prior to obtaining a notarized signature by the Right of Way and Land Surveys (R/W&LS) Division Chief. All Project Delivery TOJs require a legal sufficiency review by HQ Legal prior to execution by the R/W&LS Division Chief.

After legal sufficiency review and subsequent execution by the R/W&LS Division Chief, the HQ R/W State/Federal Land Transfer Coordinator transmits the entire TOJ Template Package to the Headquarters Office of the OSA (if located in Sacramento) for their review, approval, and notarized execution of both copies of the TOJ. After notarized execution by appropriate representatives at the OSA, the two executed TOJs and all other TOJ Template Package contents are returned to the assigned R/W Agent in the Region/District by the OSA. It is expected that the OSA will return two, executed/notarized TOJs and the entire TOJ Template Package, so that this package can then be routed in its entirety to DGS [and Department of Finance (DOF), as applicable] to facilitate their review, approval, and execution activities.

After execution and return of the TOJ by the OSA, the assigned R/W Agent, as a DGS-identified Agency Representative (AR) or Delegated Authority (DA), prepares and electronically transmits a DGS "Global CRUISE Request" and sends a hard copy of same and the entire TOJ Template Package to DGS' Real Estate Services Division (RESD) to facilitate the required review, approval, and execution of the TOJ by DGS RESD (and DOF, if necessary) as per GC 14673. The assigned R/W Agent in the Region/District will directly address any questions/concerns raised by DGS during their processing activities, and will personally coordinate any requested changes in legal descriptions and mapping with involved R/W Engineers in the Region/District. DGS will electronically bill the Region/District and Project Identification Number (through direct contact with HQ Accounting) for all DGS review/approval activities required by GC 14673.

After DGS processing activities, the entire TOJ Template Package is returned to the assigned R/W Agent in the Region/District, so that the fully-executed TOJ, with the attached notary acknowledgement forms, legal description(s),

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and map(s) can be recorded in all counties where the subject parcel is located. As per current direction from HQ Legal, all TOJs are to be recorded. After recording, the assigned Region/District R/W Agent retains the original, recorded TOJ in the Acquisition File and sends a conformed copy of the recorded TOJ to the OSA and confirms pending payment. A conformed copy of the recorded TOJ is also to be transmitted to the Region/District R/W Engineering Unit for Record Map purposes.

A conformed copy of the recorded TOJ is used to request payment of just compensation to the OSA via typical HQ Accounting payment procedures. Along with the TOJ, a fully-approved Memorandum of Settlement and Acquisition Invoice (with payment mailing instructions) are to be provided to HQ Accounting, similar to other acquisition-related transactions. Any expedited payment requests need to be explained on the Acquisition Invoice. Payments to the OSA will be transmitted via U.S. Mail unless other arrangements have been identified on the Acquisition Invoice and coordinated in advance with HQ Accounting.

Use of the Land Bank Exchange Account (LBEA), created through interagency agreement between the Division of Highways (now Caltrans) and the Department of Parks and Recreation (DPR), is currently available for use in making Project Delivery TOJ payments to DPR. Specific TOJ language referencing a LBEA payment can be found in 8-EX-32. All typical HQ Accounting payment procedures (as noted above) are to be followed when facilitating payments to DPR via the LBEA, including a specific notation on the Acquisition Invoice identifying that the LBEA is to be used to facilitate payment between the two agencies involved. The LBEA is only to be used in facilitating payments between Caltrans and DPR. Caltrans HQ Accounting is responsible for tracking and reporting all LBEA transactions on a quarterly basis.

A TOJ Process Flowchart, which outlines the above activities, is included in 8.21.05.02.

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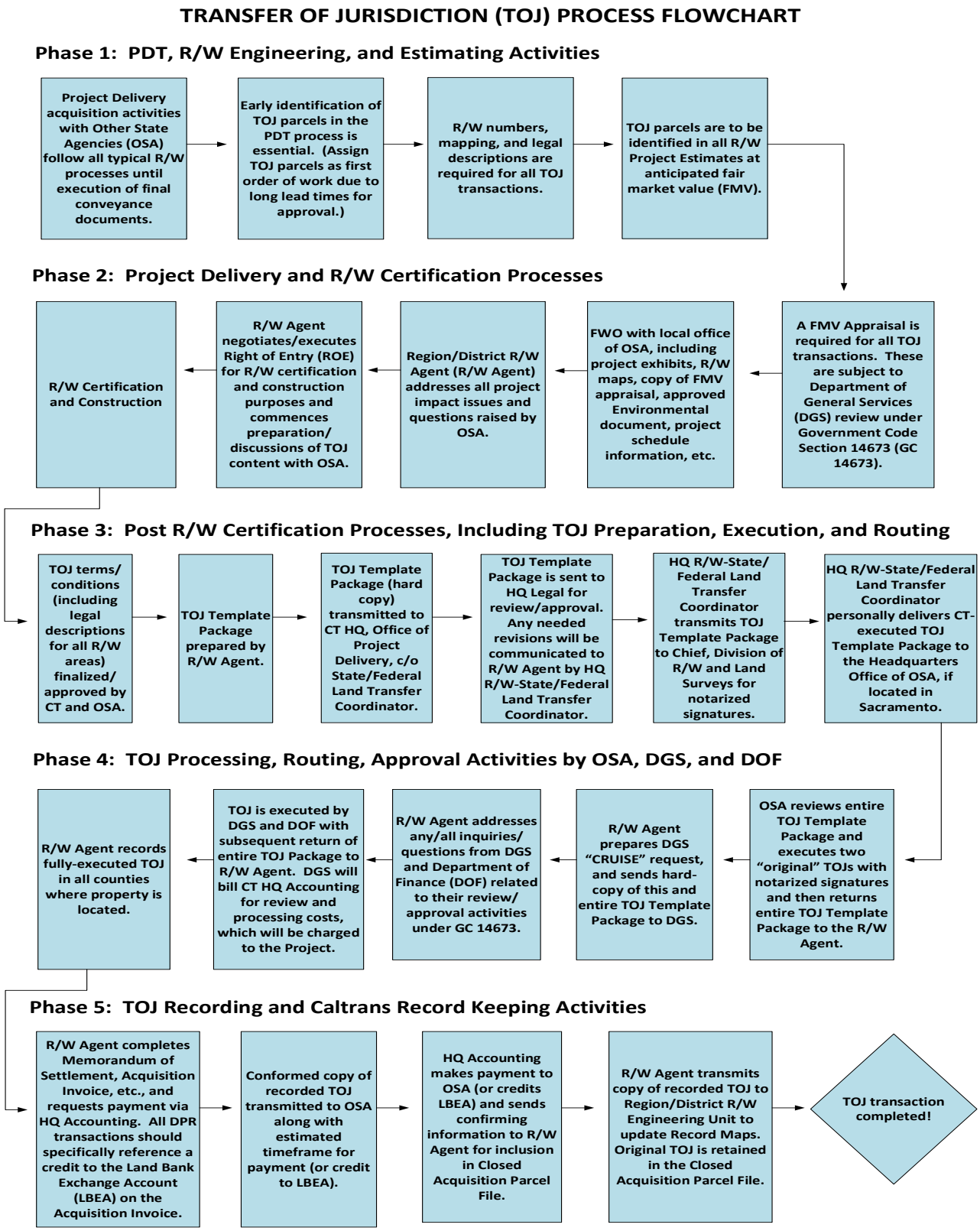
8.21.05.02 Transfer of Jurisdiction Process Flowchart



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8.22.00.00 – CALIFORNIA VETERANS' PROPERTY

8.22.01.00 General

Property purchased through provisions of the Veterans' Farm and Home Purchase Act is vested in the name of the State of California, Department of Veterans Affairs (DVA) and sold under Purchase Agreement to the veteran.

8.22.02.00 Acquisition Procedure

Where land required for highway purposes is vested in the DVA, the acquisition shall be handled in the same manner as acquisition of privately-owned lands involving an agreement of sale.

The Contract and Grant Deed shall be executed by the veteran (and spouse). The DVA will not execute these documents, but will convey directly to its vendee on its own form of deed after details of the transaction have been agreed upon with the veteran. On partial acquisitions, the DVA may join with the veteran in conveying the property to the State Department of Transportation. The Deed and Contract, in duplicate, should be signed by the contract purchasers as well as by the DVA.

The DVA shall be notified by letter of the necessity to acquire the property, with the request that a Deed from the DVA to State's grantor be deposited in escrow with accompanying demand for payment for use of such deed.

8.22.03.00 Scheduling Procedure

The schedule shall contain a certified copy of the Deed from the DVA to the veteran, in addition to the certified copy of the Deed from the veteran to the State, to complete the chain of title.

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8.23.00.00 – PUBLIC AGENCIES – JOINT POWERS AGREEMENTS

8.23.01.00 Joint Exercise of Powers Act

The Joint Exercise of Powers Act (Section 6500 et seq of the Government Code) provides for joint agreements by public agencies briefly outlined as follows:

A. Two or more public agencies, by agreement, may jointly exercise any power or powers common to the several contracting bodies. The term "public agency" is defined as including the Federal Government or any department or agency thereof, the State, an adjoining state, or any state department or agency, a county, city, public corporation, or public district of this State or an adjoining state.

B. The agreement will state the purpose or the power to be exercised, provide for the method to accomplish the purpose, and the manner in which the power shall be exercised.

C. Contributions from the treasuries of the respective parties may be made as provided in the agreement, and the funds may be paid to and disbursed by the agency or entity agreed upon. Personnel, equipment, or property of the parties to the agreement may be used in lieu of other contributions. The agreement shall provide for strict accountability of all funds and reports of all receipts and disbursements.

D. The agreement may be continued for a definite term of until rescinded or terminated and may provide for method of rescission or termination by any of the parties thereto.

E. The agreement will provide for the disposition, division and distribution of any property acquired as the result of such joint exercise of powers and the return of any surplus monies, after the purpose has been completed. If the purpose is the acquisition or operation of a revenue producing facility, the agreement may provide for repayment of contributions and for payment of sums derived from revenues of said facilities.

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8.23.02.00 Public School District Lands

Sections 39540-39545 of the Education Code cover the conveyance of lands for streets and highways. The conveyance requires a Resolution of Intent, Public Hearing and Adoption of Resolution. Therefore, adequate time must be allowed for these processes. The cited code references are contained in the Exhibits Section.

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8.24.00.00 – TAX-DEEDED LANDS

8.24.01.00 General

Division 1, Part 6, Chapter 8 of the Revenue and Taxation Code authorizes the Department to acquire by Tax Deed any property available for sale by reason of tax delinquencies. The Department may acquire by sale through agreement with the county, approved by the State Controller, all or any part of the Tax-Deeded property. If the property is not too large, the preferable procedure is to acquire the entire property.

8.24.02.00 Agreement to Purchase Tax-Deeded Lands

The agreement shall be with the Board of Supervisors of the county in which the property is situated and shall briefly set forth: (1) a description of the property that has been deeded to the State for nonpayment of taxes; (2) that the property is needed for State highway purposes; (3) the selling price the State agrees to pay for the property; and (4) that the cost of giving notice of said agreement will be paid by the State. An agreement is included as Form RW 8-9. The description should be exactly as the county tax collector and assessor have shown it with a reference to the number of the deed by which the property was deeded to the State, the first-year property tax was delinquent, the current assessed value and the selling price agreed upon.

8.24.02.01 City Property

The agreement must be approved by the city council if the property is located within a city and, in such instances, the agreement is first forwarded to the city for its approval as to selling price, together with property maps, etc. After the city council has approved said agreement it is returned to the District Office of Right of Way with proper resolution attached, attested to by the city clerk.

8.24.02.02 Approval Process

The agreement is recommended for approval by the DDC-R/W, and executed on behalf of the Department by the District Director. After execution by the District Director, the agreement is forwarded to the Board of Supervisors for approval and submission to the State Controller.

Upon approval by the State Controller, the County Tax Collector arranges publication of notice of the agreement once a week for at least three

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successive weeks in a newspaper published in the county, or if none, then by posting copies of the notice in three public places.

Not less than 21 and not more than 28 days prior to the effective date of the agreement, the tax collector mails a copy thereof, by registered mail to the last assessee, at the last known address.

Upon expiration of the period of advertising, the tax collector notifies the Department of the effective date of the agreement, which is 21 days after the first publication, encloses bills for the selling price of the property and the cost of advertising.

The State has 30 days from the effective date in which to make payment.

8.24.03.00 Payment Made from Revolving Fund

The payment for Tax Deed land and cost of advertising is advanced from the Revolving Fund.

8.24.04.00 Procedure by County After Receipt of Payment

Upon receipt of payment of the agreed selling price, plus the cost of advertising, together with affidavit of publication, the tax collector issues a Tax Deed to the State.

In addition to the usual provisions of a Deed conveying real property, the Tax Deed shall specify:

- That the real property was duly sold and conveyed to the State for nonpayment of taxes, which had been legally levied and were a lien on the property.

- The name of the purchaser.

Except as against actual fraud, the Deed is conclusive evidence of compliance with statutory provisions and otherwise has the same legal effect as a conveyance by deed to a private purchaser after sale of tax-deeded property.

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8.24.05.00 Recording of Tax Deed

Immediately upon receipt of the Tax Deed from the Tax Collector, the District shall forward the Deed to the County Recorder for recording in the same manner as any other Deed.

8.24.06.00 Moratorium Prohibiting Sale

A moratorium enacted by the Legislature prohibited the sale of those properties deeded to the State after October 6, 1942. This wartime provision made California statutes conform to the Federal Soldiers and Sailors Civil Relief Act, which withheld from sale or foreclosure property owned and occupied by persons on duty in the armed services. This moratorium was repealed by the 1949 Session of the Legislature, and all tax-deeded properties are now subject to sale. The Federal statute has not been repealed or amended and, therefore, the tax collector should be careful to avoid the sale of those properties which come under the provisions of the Federal Act. In some counties, the tax collector, for protection, requires an affidavit of the District Director or DDC-R/W, that the property was not owned by any person in the armed services of the United States.

8.24.07.00 Termination of Rights to Redeem

If not previously terminated, all rights to redeem the property are terminated on execution of the Deed by the tax collector and the Deed conveys to the purchaser all interest in the property.

8.24.08.00 Rescheduling Procedure

The schedule for reimbursement of the revolving fund shall contain a certified copy of the Tax Deed.

8.24.09.00 Securing Policies of Title Insurance

Title companies will usually refuse to insure title free and clear of the last assessee's interest until the purchaser (State) has been in possession for one year. Therefore, when one year has elapsed since the recordation of the Tax Deed, the District will request a policy of title insurance showing the property vested in the State free and clear of any reference to the tax sale.

Where the property is of nominal value and neither excess land nor access rights are acquired, the requirement of title insurance may be waived.

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Present procedure provides that the title insurance may be waived, at District discretion, on parcels valued at $2,500 or less.

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8.25.00.00 – MATERIAL SITES AND DISPOSAL SITES

8.25.01.00 Origin of Request

All requests for the purchase of material or disposal sites and the securing of agreements for use of material or disposal sites will originate with the Construction, Project Development, or Maintenance Departments. Such requests will be the authority to proceed with negotiations in accordance with the following procedures.

See the Appraisal Chapter and the Planning Manual for further information.

8.25.02.00 Expenditure Authorization for Material or Disposal Site Purchase or Use

The requesting department will notify the District Office of Right of Way of the issuance of a work order to prepare an appraisal report, purchase title reports, and other incidental expenses. When the appraisal report has been prepared and approved, this work order will be supplemented with an amount sufficient to complete acquisition.

Funds for the purchase of such sites are provided by specific vote of the California Transportation Commission (CTC) and it shall be the responsibility of the District to submit the request for Commission action.

8.25.03.00 Search of Title

The responsibility for determining the status of title will rest with the District. If there are any apparent complications in the ownership, the District shall obtain a title report prior to negotiations for the agreement.

8.25.04.00 Agreement Number

Each agreement for a material or disposal site shall be assigned an identifying number by the District.

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8.25.05.00 Form of Agreement

Material agreements shall be obtained in triplicate on the standard form "Grant of Right to Take Material for Highway Purposes" (see Form RW 8-10) or Grant of Right to Dispose of Material (see Form RW 8-11).

8.25.06.00 Payment to Owner's Agent

Frequently, agreements are subscribed to by a number of parties. Subsequently, when bills are rendered to support a claim schedule, all of the parties signing the agreement do not sign the bills, causing its rejection in the Controller's office. To eliminate this and assist in the saving of time and effort, the following clause should be used in the agreement when applicable.

"The undersigned 'Owner' hereby empowers and appoints _____ to act as agent for the undersigned 'Owner' to receive and collect any and all monies from the State of California which may become due and payable under the provisions of this agreement. The State of California is hereby authorized to forward any and all of said monies to the said agent at_____."

8.25.07.00 Payment for Agreement

The consideration for securing an agreement should be $150. This amount should be scheduled and paid to the owner. Payment will be financed from the function involved, such as maintenance or construction. This establishes a consideration and thus avoids the possibility of unilateral termination by the owner.

Where material is being taken from a commercial site, this section is not applicable.

8.25.08.00 Unit Price Payment Clause for Disposal Agreements

The standard form for a disposal agreement does not provide for any royalty. If it becomes necessary to pay a royalty, the following clause is to be included in the disposal agreement.

"The State agrees to pay, or cause to be paid, to the owner for all rights herein granted, a royalty of _____ cents per cubic meter or _____ cents per metric ton for materials deposited on said property. State shall have the option of electing one of the following methods of measuring the amount of materials

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placed upon the disposal site: (a) by cubic meter at point of delivery (b) by weight or (c) by cubic meter measured in place on the disposal site. Payment of royalty shall be based upon the amount of materials placed upon said property as determined by the method of measurement the State elects to utilize and said payment of royalty shall be made in accordance with the State's established procedure for paying such obligations. For the purpose of progress payments, owner shall be furnished monthly a statement showing the estimated amount of material placed during the month and the progress payments of royalty thereon shall be made in accordance with the State's established procedure for paying such obligations."

8.25.09.00 Nonstandard Agreements - Letter of Transmittal

All nonstandard agreements shall be submitted by a letter of transmittal from the District to HQ R/W for approval and execution.

8.25.09.01 Material Agreements

The letter of transmittal for material agreements should state:

A. The department initiating the request (Construction, Project Development of Maintenance);

B. Termini and status of the project on which the material is to be used (if a specially voted project, include a statement to that effect and the date of vote);

C. A brief justification of the royalty to be paid and a statement to the effect that diligent search has been made and no cheaper material of the quality desired can be found within economical haul distance of the project;

D. The average haul distance from the site to the project, or to that portion of the project on which the subject material is to be used.

E. That the District Office of Right of Way has investigated the possibility of acquiring the property in fee and has determined that the use of royalty basis for payment is more economical;

F. That the material site will not be excavated at a location where resulting scars will present an unsightly appearance from any highway.

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Reference should be made to any deviation from this procedure with appropriate explanation;

G. That the location of the site is not in violation of any environmental ordinance or zoning regulation;

H. Complete explanation of special clauses or alteration of clauses set out in the sample agreement.

8.25.09.02 Disposal Agreements

The letter of transmittal for disposal agreements should state:

A. The department originating the request (Construction, Project Development or Maintenance);

B. Termini and status of the project for which the disposal site is to be used;

C. A brief justification of the royalty, if any, to be paid and a statement to the effect that diligent search has been made and a more economical site cannot be found within economical haul distance of the project.

D. The average haul distance from the project to the site, or from that portion of the project to which the subject material is to be hauled;

E. That the District Office of Right of Way has investigated the possibility of acquiring the property in fee and has determined that the use of the royalty basis for payment is more economical.

F. That the disposal site will not present an unsightly appearance from any highway. Reference should be made to any deviation from this procedure with appropriate explanation;

G. That the location of the site is not in violation of any environmental ordinance or zoning regulations;

H. Explanation of any special clauses, alteration of clauses, or special conditions regarding compacting or conforming of the material or any feature which creates an economic advantage to the owner or places a liability on the State.

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8.25.09.03 Superseded Agreements

When an existing agreement is superseded, the letter of transmittal shall explain the reasons for the new agreement and provide a complete explanation of any variation from the original, especially as to termination date, royalty, and quantity of material. Also, the number of the original shall be set out in the letter for proper identification of the superseded agreement in HQ R/W files.

8.25.10.00 Material Sites Acquired Under Federal Highway Act

The Federal Highway Act of 1958 provides, under Sections 317 and 107(d), for the acquisition of rights of way, access rights, or sources of materials for construction of Federal Aid Highways including highways in the Interstate System. The pertinent portions of the cited statutes are included in Section 8.18.02.00, "Public Lands-Federal".

When the District needs to secure material from sites under the jurisdiction of the Department of the Army (Corps of Engineers) or Bureau of Yards and Docks (Navy and Marine Corps) and the commanding officer is amenable to the use of the material by the Department of Transportation, the District shall submit an application through HQ R/W in the form of a tracing, in duplicate, together with a metes and bounds description of the site. The application will then be processed through the Secretary of the U.S. Department of Transportation who will seek to obtain the approval for the removal of the material from the agency having jurisdiction of the site.

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8.26.00.00 – MUTUAL WATER COMPANY STOCK

8.26.01.00 General

Section 330.24 of the Civil Code and Article XII, Section 13 of the Constitution cover the laws applicable to mutual water company stock.

The District may acquire mutual water company stock only if ownership of such stock is necessary to provide a supply of water for the purposes listed below.

Mutual water company stock may be either appurtenant or not appurtenant to land. Stock of a mutual water company is not by its nature appurtenant but becomes appurtenant only when the particular corporation has made it so by:

A. Providing in its articles or bylaws that water shall be sold, distributed, supplied, or delivered only to owners of its shares and that such shares shall be appurtenant to certain lands;

B. By describing the lands in the stock certificates; and

C. By recording a certified copy of such articles or bylaws all as required by Section 330.24 of the Civil Code.

Ultimate disposition of acquired water stock differs depending upon whether it is appurtenant or nonappurtenant stock.

8.26.02.00 Determination If It Is Proper to Acquire Stock

Since a mutual water company may usually sell water to a State agency, it may not be necessary to acquire water stock. However, if the company will not sell to anyone other than its shareholders, the District must determine:

A. Will the property (or portion) being acquired be rented in such a manner as to utilize water during the interim period before construction?

B. Will water be required from the property for construction purposes?

C. Will water be required in connection with office, shop or maintenance activities?

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If water is required for any of the above purposes, the District will secure the water stock and arrangements shall be made with the company to reissue the stock in the name of the State until the need for water no longer exists.

8.26.03.00 Determination If Water Stock Is Appurtenant to Land

Whenever it is discovered that water stock is involved in a transaction, determine if the stock is appurtenant to the land we propose to acquire. This information may be available through the title company. If it can't, then the District shall do the following:

A. Make a determination as to whether the stock certificate describes any property, and if so, whether the property described is that which is proposed to be acquired;

B. Determine whether a certified copy of the articles or bylaws has been recorded; and

C. Obtain a correct copy of the current articles and bylaws of the company and of the stock certificates involved; then

Based on the District's research, review and analysis of the information obtained, a determination can then be made as to whether or not water stock is appurtenant to the land that is proposed to be acquired.

8.26.04.00 Disposition of Appurtenant Stock

If it is not necessary to acquire appurtenant water stock as outlined above, it shall be submitted to the secretary of the company to be canceled.

If appurtenant stock is acquired, see the Property Management Chapter dealing with water stock.

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8.27.00.00 – SPECIAL ACQUISITIONS

8.27.01.00 Parcels Acquired for Mitigation Purposes

Occasionally, properties are proposed to be acquired by the Department to mitigate environmental impacts created by transportation projects. The District is primarily responsible in the determination of who or what agency will hold title to mitigation parcels, when acquired. The process for accomplishing this, if not clearly defined, may result in the Department acquiring mitigation parcels in its own name and assuming unwanted maintenance and liability burdens. Once title is vested in the Department, it becomes difficult to transfer title to another agency or environmental group if no prior agreement as to final vesting exists. The Maintenance Branch is concerned regarding the type of maintenance and its volume of work when mitigation parcels are acquired in the Department's name.

Title to mitigation parcels should, if possible, be taken in the name of the appropriate Federal, State, local agency, or conservancy group to eliminate liability related to ownership and maintenance. This may or may not be the same agency which required us to undertake the mitigation process. It is essential that District take steps to ensure they are included in contacts with other agencies when the appraisal and acquisition processes relating to mitigation parcels are discussed or commitments are being made. Ownership commitments made during these discussions should be reduced to written conceptual agreements at the earliest possible date.

In some instances, it may be necessary for the Department to take title for an interim period to allow for habitat establishment on the mitigation parcel or to complete an assemblage of the entire mitigation site. In this situation, an interim or conceptual agreement must be utilized to ensure that the grantee will accept title once the habitat development has been completed, and it has been demonstrated that our mitigation efforts have been successful. In either instance, the conveying document shall contain a clause which provides that the title shall either revert to, or be conveyed to, this Department if the property is not used for the purpose for which it was acquired.

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8.27.01.01 Acquisition of Parcels Encumbered by a Conservation Easement

Occasionally, properties are proposed to be acquired by the Department which are encumbered by a conservation easement. As a result of Section 1240.055 of the Code of Civil Procedure, special care must be taken in the valuation (see Section 7.06.05.00) and acquisition of these types of properties. To ensure that project delivery commitments are met, long lead times for these parcels are required in the event the Department needs to proceed with eminent domain to secure the property rights needed.

In particular, CCP 1240.055 places additional Notice of Intent ("notice") requirements on the Department prior to seeking Resolution of Necessity. The specific notice requirements, required time frames associated with sending said notices, as well as the Department's obligation to respond to any comments received as a result of the notices, are outlined in detail in Section 9.01.04.01 (Notice of Intent to Adopt a Resolution of Necessity for properties that are subject to a conservation easement).

Given the above, it is imperative that these types of properties be identified as early as possible to allow sufficient time to carry out the proper appraisal, acquisition, and if necessary condemnation procedures.

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8.28.00.00 - DONATION

8.28.01.00 General

Donation is the voluntary conveyance of property, without compensation, for the improvement of a public project. Donation of real estate for highway purposes may be accepted at any time. See Sections 104.2 and 104.12 S&H Code.

8.28.01.01 Definitions

The following definitions apply to this procedure:

"right of way" - real estate required for State transportation purposes.

"donation" - the voluntary transfer of land title to the State at no cost or for less than full fair market value compensation.

"donor" - includes any person or nongovernmental entity that makes a donation of right of way for State transportation purposes. See Chapter 17, "Local Programs," for governmental agencies.

"dedication" - setting aside of property for public use in exchange for the granting of, for example, a building permit or zoning change variance for land use or to satisfy mitigation requirements resulting from an environmental review. Dedications are usually required through exercise of police power and without compensation.

"airspace" - real property rights above or below State highways that can be used for other purposes subject to any reservations, restrictions, and conditions necessary to ensure protection to the safety and adequacy of highway facilities and conforming to abutting or adjacent land uses.

"future airspace development rights" - the first right of refusal to enter into an airspace development lease, if the opportunity arises, at market rent to the landowner, based upon highest and best use of the site, subject to unanimous CTC approval of the economic terms of the lease.

"revenue share" for donors - that portion of revenue from an airspace development lease payable to a donor up to a maximum of 50 percent of total revenue.

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8.28.02.00 Donation Guidelines

A. Donations must be voluntary and owners must be advised of their benefits under the State and Federal Uniform Acts and of their right to compensation, relocation assistance benefits, and their right to receive an appraisal report of the market value of their real property being donated. Any proposed donation must have detailed analysis of actual and potential costs to the State. A financial resume shall be prepared to confirm that State will not incur obligation, or potential obligation, to pay more than the property is worth (RAP, Goodwill, Hazardous Waste Cleanup). Any release of compensation and/or benefits by the Grantor can only be accepted under special conditions on a case-by-case basis with appropriate confirmation and documentation that State and Federal regulations are not being violated.

B. All owners will be advised of the Department's policy of accepting voluntary donations, but the offer to donate must not in any way result from an act of coercion. The owner will be advised of this policy at the time of the first written offer.

C. Donors shall also be advised that they may contract to reserve certain airspace development rights and revenue sharing. Any development shall be subject to approval by the Department with any reservation, restrictions, or conditions that it determines necessary for highway safety. See Section 8.28.03.00.

D. Donations may be made at any time during the development of a prospective project. However, any document executed to effect donation prior to approval of the environmental clearance of the project shall clearly state that:

    1. All alternatives to a proposed alignment will be studied and considered.

    2. Acquisition of property shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and

    3. Any property acquired by gift or donation for projects covered by the Federal Highway Act, USC Section 323, shall be revested in the Grantor or successors if such property is not needed for the

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alignment chosen after public hearings, if required, and seven years after completion of the environmental document.

4. If the property is conveyed by donation, the clause in Section 8.05.11.00 must be included in the Right of Way Contract.

5. Donations will not be accepted until a hazardous waste assessment has been completed by the Environmental Branch. A copy of the hazardous waste assessment shall be kept in the parcel file for documentation. The Right of Way Contracts shall include the appropriate hazardous waste clauses. (See Section 8.16.00.00.)

E. Once the environmental and location process requirements are satisfied and regular right of way activity is underway, donations may be accepted by the acquiring agency as part of their regular acquisition program providing the restrictions referred to above are followed.

8.28.03.00 Reservation of Airspace Revenue and Development Opportunities

The basic operational guidelines are:

A. Donors of transportation rights of way MAY participate in future airspace development rights to that property. Any such airspace development shall be subject to the approval of the Department and the CTC and any reservations, restrictions, or conditions they determine necessary for the safety and adequacy of highway facilities and to assure conformity with abutting or adjacent land uses.

B. The Department shall share airspace development lease revenues pursuant to a negotiated contract with the donor including local or other governmental agencies.

C. Development rights and/or revenue sharing rights may be obtained only by contractual agreement when the right of way is acquired through donation and shall NOT be included as a provision of the Grant Deed. These rights must be spelled out in the Right of Way Contract pertaining to the State's acquisition of property.

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D. Where right of way is sold to the State at less than fair market value, donor's share of the airspace development lease revenue will be determined by the following formula:

$$A = B \times C \times D$$

Where:
A = Donor's revenue share.
B = Percentage of fair market value of parcel for which donor elected not to receive compensation.
C = Donor's potential maximum share of total revenue (50 percent).
D = Percentage of area of entire assembled airspace site generating the revenue.

E. Since sites may sometimes incorporate more than one donation, and the precise areas of individual developable sites will probably not have been determined at the time of the donation, reservation of future airspace development opportunities may ultimately be granted to several donors. Therefore, the opportunity to develop a site will be offered to all of the various donors. They will then have 180 days to respond to the Department in writing of their election to participate in developing the site. If a donor does not elect to participate, that shall be considered a waiver of any and all development opportunities. The Department will give each interested donor 180 days in which to submit an offer and proposal, with detailed economic terms. The offer and proposals will be analyzed by the Department. The one most advantageous to the State will be submitted to the CTC for approval of economic terms. A maximum of up to one-half of the lease revenue from the development will be distributed among the multiple donors. The share for each donor will be based on the proportion of square meter donated to the total square meter of the site and/or percentage of the donation.

F. Future airspace development opportunities and revenue sharing cannot be sold, assigned, or transferred unless otherwise specifically provided for by contract.

G. Negotiated contracts which provide for reservation of development opportunities must specify that a claim for inverse condemnation or any other claim will NOT be made if the transportation project is not built or a design change or future transportation project eliminates any potential airspace use.

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H. The contract will provide that total revenue available for sharing could be reduced if the FHWA should, at any time, require reimbursement.

I. The contract must make clear that leases will be based on fair market value taking into account the highest and best use of the property rights included and require CTC approval of the economics of the lease terms.

J. Leasing will be permitted only after the transportation project has been completed and will be conducted in accordance with existing Federal, State, local, and Departmental policies and procedures, including approval by the FHWA and CTC.

8.28.03.01 Processing

Signed transactions will be processed as follows:

A. All contracts which provide for reservation of development rights or revenue sharing will be reviewed by HQ R/W prior to their execution.

B. District Acquisition will notify the unit responsible for inventory of donations and R/W Engineering to ensure that right of way donated, sold at less than fair market value, will be designated as a donation on Right of Way Record Maps and will be entered on the donations inventory.

C. Airspace sites which were acquired through donation, or at less than fair market value, will be specially designated as such in the District Airspace inventory.

D. Development offer and proposal processing and selection, and airspace leasing and compliance monitoring, will be conducted by District Airspace staff as outlined in the Airspace chapter.

E. Division Airspace staff will coordinate with Division of Accounting for airspace development lease revenue share accounting and disbursements.

F. Division Acquisition will maintain a record of the number and nature of contractual agreements entered into pursuant to the above code sections and will prepare the biennial reports to the Governor and Legislature required by this legislation. Division Airspace staff will provide to Division Acquisition staff an accounting of revenue shared

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on an annual basis. This information will also be included in the Right of Way Annual Report.

Where appropriate, the following clauses must be included in a Right of Way Contract or Right of Entry for development opportunities or revenue sharing:

8.28.03.02 Statement Used in Lieu of Standard Payment Clause

See Section 8.05.11.00.

8.28.03.03 Contract Clause Where Donor to Retain Opportunity to Develop Airspace

"It is understood and agreed that in exchange for the conveyance referred to herein, the Department of Transportation shall notify Grantor, in writing, in the event airspace becomes available for revenue producing nontransportation development purposes. Grantor shall have 180 days from issuance of said notice to respond in writing with a lease development proposal. In the event Grantor does not respond within the allotted time or notifies the Department that the opportunity is declined, Grantor waives the right to develop and the Department may proceed to the open market in accordance with established procedures to obtain revenue producing ground leases." NOTE: THIS DOES NOT PERTAIN TO TRANSACTIONS WHERE DONATIONS ARE LESS THAN TOTAL VALUE.

8.28.03.04 Contract Clause Where Donor to Share Revenue

"In the event the Department enters into revenue producing airspace leases using the donated property referred to above, revenue shall be shared with Grantor in accordance with established Department procedures. When an available airspace development site consists of land that was obtained through donation from more than one donor, a competitive process in accordance with the most current established Department procedures at the time of development, will be used to select the developer. Revenue sharing, if applicable, will be applied in the same proportion as the square meter of the property donation bears to the square meter of the assembled airspace lease site. Grantor understands that, notwithstanding the above, State's share will be a minimum of 50 percent of revenue collected."

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8.28.03.05 Additional Clauses for Airspace Development Opportunities and/or Revenue Sharing Contracts

"Grantor hereby waives any claim for future inverse condemnation or damages or any other claim based on the Department's plan to build the transportation project or to change the design or review the project and thereby eliminate or reduce the potential for airspace leasing."

"Grantor understands that if the project for which the property is being acquired is constructed either totally or partially with Federal funds, the available lease revenue will be reduced in the event FHWA requires reimbursement."

"It is agreed and understood any and all opportunities may be exercised only by parties to this contract and may not otherwise be sold, assigned, hypothecated or transferred."

"Grantor understands and agrees that the opportunities to develop and/or share revenue as provided herein above, shall only become available in the event the Department adds said property to its airspace inventory."

"Grantor waives any claim for damages of any kind in the event the property is not added to said inventory."

"Airspace development leases will be allowed only after completion of construction of the transportation project and said leasing shall be conducted in accordance with existing Federal, State and Department Airspace laws, rules, regulations, procedures and policies in effect at the time of lease including approval by the FHWA and the CTC."

8.28.04.00 Local Match for Donations

The fair market value of donations received subsequent to the enactment of the Surface Transportation and Uniform Relocation Assistance Act of 1987 can be considered eligible as State or local matching funds whenever Federal funds participate.

The District may contract for an Independent Staff Appraisal to meet local match requirements. Section 146(a) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 provides that the fair-market value of land lawfully donated after April 2, 1987, and incorporated into the project

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may be used as credit toward the State or local matching share for a Federal-aid highway project. It does not apply to dedications or to donations made by an agency of the Federal, State, or Local government.

The fair-market value shall be established by an appraisal made in conformity with the provisions of 49 CFR 24.103 and 24.104 subject to the following conditions:

A. Increases and decreases in the value of the donated property caused by the project are to be excluded.

B. The appraisal shall not reflect damages or benefits to remaining property.

C. The fair-market value shall be established as of the date the donation becomes effective or when equitable title vests in the State, whichever is earlier. Donated land must be incorporated into the project to be eligible for credit purposes. All appraisals involving donations for credit to State or local matching funds must otherwise meet the same standards as normal acquisition appraisals.

D. In order to qualify for a "soft match," it must be a true donation, not an exchange of right of way for non-cash consideration. Also, the appraisal to determine the amount of credit does not include any severance damages to the remainder.

8.28.05.00 Donation Tax Information

IRS has indicated in the past that it will not rely solely on staff appraisals for donations of property exceeding $5,000 value which are to be claimed as charitable contributions for Federal tax purposes. The owner should be advised to check with his/her tax consultant, IRS, and/or the Franchise Tax Board if this or other questions of tax implications arise.

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8.29.00.00 – DEDICATION

8.29.01.00 General

Dedication is the setting aside of property for public use without compensation as a condition prior to the granting of a building license permit, or zoning variance for land use. Where development occurs or land use changes are proposed, the local agency, through its police powers, may require dedications to set-back limits. The property owner must initiate the request that triggers the dedication. Valid dedications can be accepted throughout the project development process.

The dedication process is initiated when an owner applies to a governmental entity for an action on the part of that agency that will enhance the value of development potential of the applicant's property. Where transportation facilities are impacted by this process and a logical connection can be established between the development or land use change and a transportation project, the Department should encourage local agencies to impose reasonable dedication requirements. This process will typically involve the Department's Transportation Planning Branch, with the Right of Way office acting in a review and advisory capacity.

8.29.02.00 Dedication Guidelines

A. Acceptance of dedicated right of way to previously established right of way limits under this process is an exercise of police power and does not require compliance with the Uniform Relocation Assistance and Acquisition Policies Act.

B. The value of dedicated property may not be used as a credit against the State or local agency matching share of Federal project funds.

C. Dedications must be accepted by the Department either formally with an acceptance document or informally by using the property for transportation purposes, e.g., through the encroachment permit process.

D. Prior to acceptance by the Department, property to be dedicated shall be subject to a hazardous waste assessment and a review of the condition of title. The acceptance document shall include the appropriate hazardous waste clauses. (See Section 8.16.00.00.)

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E. Dedications do not generally qualify under terms of Sections 104.2 and 104.12 S&H Code.

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8.30.00.00 – FUNCTIONAL REPLACEMENT

8.30.01.00 Functional Replacement of Real Property in Public Ownership

When publicly owned real property, including land and/or facilities, is to be acquired for a highway project, in lieu of paying fair market value for the real property, the State may provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility. This can be done when it is permitted under State law, in the best interest of the State and the State has informed the agency owning the property of its rights to an estimate of just compensation, based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement.

The functional replacement concept permits Federal participation in costs of acquiring an adequate substitute site if one is required and the construction costs of the replacement improvements which duplicate the function of the acquired improvement. This concept requires that the facility must be needed by the public, must be actually replaced and the costs to presently replace the facility or cure damage to it be actually incurred by the public agency. The functional replacement concept may also be applied to State-funded projects.

When the Department determines that functional replacement of real property in public ownership may be necessary and in the public interest, and the FHWA approves such determination before the acquisition, Federal funds may participate in the payment to the public agency for:

A. The functional replacement costs of the improvements required to be replaced exclusive of any but nominal betterments; and

B. The market value of the land acquired when the public agency has land upon which to relocate the facilities; or

C. The reasonable cost of acquiring a substitute site where lands owned by the public agency are not available for use in relocating the facility.

The reference above to "nominal" betterment should be clarified to the extent that costs of increases in capacity and other betterments are not eligible for Federal participation except those necessary to replace utility, those required by existing codes, laws, and zoning regulations, and those

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related to reasonable prevailing standards for the type of facility being replaced.

NOTE: The provisions of 23 CFR Subpart B, Section 710.509 should be reviewed to assure compliance with Federal regulations pertaining to Functional Replacement of Real Property in Public Ownership. Exhibit 8-EX-34 provides a suggested format for showing a summary of estimates or actual costs.

8.30.02.00 FHWA Approval Steps

Functional Replacements require FHWA approval. The FHWA is to be contacted during the concept stage regarding the possibility of a functional replacement when publicly owned real property, including land and/or facilities, is to be acquired for a Federal-aid highway project. Prior to the initiation of negotiations with the public entity, the Department and the FHWA will agree on the scope of property and project-related oversight and the required approvals prior to the initiation of the functional replacement (23 CFR 710.509).

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8.40.00.00 – OUTDOOR ADVERTISING STRUCTURES

8.40.01.00 General

Section 5403, Business and Professions Code, and Section 721, Streets and Highways Code, regulate outdoor advertising structures on highway right of way. Sections 5405, 5406, 5407 and 5408, Business and Professions Code, regulate advertising structures adjacent to any State highway included in the Interstate and Primary highway systems.

No new structures shall be placed on State-owned properties whether the properties are considered excess or being held for future highway use. Existing structures may remain on the theory that the property does not, at present, constitute a portion of the right of way, but is being held by the State for future use.

Removal or relocation of outdoor advertising company structures from right of way for Interstate or Primary highways to a location outside the area being acquired shall conform to the requirements of the above Code Sections.

8.40.02.00 Structures on Williamson Act Agricultural Preserves

Land placed in an agricultural preserve contract under the Williamson Act (Government Code Sections 51200-51295) is limited to agricultural uses. Other uses are prohibited by the terms of the contract. If the property being acquired has an outdoor advertising structure located in the acquisition area, the compensability status of the structure will have been determined prior to the commencement of appraisal.

Outdoor advertising structure placements will fall into one of the following two categories:

A. A structure placed on a property after the land is placed in an agricultural preserve is illegal and payment **must not** be made for its removal. Removal of such structure should be enforced by the county or the local entity as a party to the Williamson Act contract.

B. A Structure is in place when the property is placed in an agricultural preserve. Generally, payment is made for the removal of any structure

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located adjacent to an Interstate or Primary highway, if it was legally placed prior to November 6, 1978. This will have been cleared with the Legal Division prior to proceeding with the appraisal.

8.40.03.00 Acquiring Interests of Outdoor Advertising Company

The outdoor advertising company must have a written or oral agreement with the owner or lessee of the real property. The agreement must be in effect and authorize the structure to remain placed for a period of time beyond the date of State's acquisition. (The date of acquisition is considered to be the earliest of the following dates: the effective date of a Right of Entry, the day following the date of close of escrow for the underlying fee interest, or the date of issuance of summons when State acquires property subsequent to the date the summons was issued.)

A Quitclaim Deed and Contract will be obtained from the Company. The Contract will have the following clause:

> "Pay the undersigned grantor the sum of $_____ for the interest as conveyed by above document(s) when grantor's advertising structure(s) located
> _____
> _____ has (have) been removed. Said payment shall be made within 90 days following the date the Department of Transportation receives from the grantor a statement certifying to the removal of the structures.
>
> The undersigned grantor further agrees to remove the structure(s) not later than 10 days after receiving written notification from the Department of Transportation to do so. In the event the structure(s) has (have) not been removed by said date, the State of California, or its authorized agent, is granted the right to remove and dispose of the structure(s) as it may deem fit."

No written or oral commitments are to be made which makes structure removal contingent upon project certification or construction dates. If the structure is fully conforming to State and local law and would create no problems if allowed to remain in place for a period of time, then the site for the structure can be rented to the Company without loss of its right of compensation.

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If the structure is not fully conforming and/or its removal is imminent, no rental will be permitted and the Contract should provide for immediate removal of the structure.

Where the Company has only a leasehold interest, the Contract will have the following clause:

> "The undersigned grantor agrees that acceptance of the compensation to be paid under the terms of this contract constitutes a waiver of any rights to any other compensation to which grantor would otherwise be entitled and is in lieu of the just compensation that grantor might have received if the removal had been required by the Department of Transportation while exercising its right of eminent domain."

The Company may claim compensation on the basis of direct costs (see Appraisal Chapter and pertinent exhibit). They will have to submit an itemized statement of such direct costs to the Department. The company books and records will have to be made available for inspection or audit to justify these costs. Where historical direct costs are not available from the company's records, the company may estimate the amount of such direct costs. These estimates will be subject to verification by the Department.

The following clause will be included in the Right of Way Contract:

> "The grantor shall, upon request, make available for inspection or audit books or records pertaining to the historical or estimated direct costs of the structure(s) covered by this contract. Grantee's right to make said audit or inspection shall terminate four years after payment is made to grantor under this contract."

Where a structure is located on a total acquisition which is completely within the right of way or where the structure is located on that portion of a total acquisition which lies within the right of way, no relocation on the remainder will be permitted. The rates discussed in the Appraisal Chapter will apply.

When relocation cost for special builds, painted bulletins or urban rotate bulletins is based on a moving estimate from the sign company by use of rates in the Appraisal Chapter, the following clause will be included in the Right of Way Contract:

> "The grantor shall, upon request, make available for inspection or audit books or records pertaining to the cost attributable to the relocation of the structure(s) covered by this contract. Grantee's right to make said audit or

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inspection shall terminate four years after payment is made to grantor under this contract."

On partial acquisitions, if the structure is relocated under all of the following conditions (a) within one year after the date of initial removal, (b) at a new location within 457.32 meters of the old location, and (c) on any contiguous property owned by the Company's lessor at the time of initial removal, the Company shall be entitled only to the schedule of relocation allowances for structures pursuant to the Appraisal Chapter. Therefore, every Contract based on the assumption the structure cannot be relocated shall contain the following clause:

> "The undersigned grantor agrees that if the structure(s) is (are) relocated in a conforming location under a State outdoor advertising permit (a) within one year after the initial removal, (b) to a new location within 457.32 meters of the former location, and (c) on any contiguous property owned by the grantor's lessor or permittor at the time of initial removal, the grantor shall be entitled to only a relocation allowance." If grantor does relocate said structure(s) grantor shall, within 90 days following the date of such relocation, pay to the Department of Transportation the difference between the amount paid pursuant to Clause 2(A) above and the established relocation allowance."

Every effort should be made to make payment to the Company within 90 days after the date the Department receives, from the company, a certificate of removal of a structure and completion of such other forms as the Department may require in connection with the payment of compensation.

8.40.04.00 Structure Rentals

All structure rentals shall be prorated as of the day following the date the deed to the State is recorded or the day following the date the State secures legal possession, whichever occurs first. Fair rental rates will be charged for all structures allowed to remain within the right of way. The determination of the fair rental rate will be based on comparable rentals being paid in the general vicinity.

For structures located partially within the area being acquired, and being allowed to remain until notice to remove or relocate is given, the Contract shall provide for the appropriate proration of rental payment by the advertising company to both the State and grantor.

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8.50.00.00 – MEMORANDUM OF SETTLEMENT

8.50.01.00 General

All transactions concluded by Contract, stipulated, contested or default judgment, Transfer of Jurisdiction, or other special agreements must include a Memorandum of Settlement (MOS) Form RW 8-12. A short form MOS (Form RW 8-13) may be used provided the following conditions are unequivocally met: The cash settlement figure, including construction obligations, must be in accordance with the approved staff appraisal, no dollar limitation; the Deed and Contract must not contain any special clauses and title must not be taken subject to any encumbrance which would result in diminution of value of the property being acquired. The MOS shall be signed by the Acquisition Agent. Such signing will constitute the agent's assurance that the related transaction meets State and Federal requirements. The Senior Agent, Acquisition Branch, shall also sign the MOS. For those parcels with a value less than $25,000, the Acquisition Agent's supervisor, regardless of regular branch assignment, is authorized to approve an MOS. Individual districts may find it internally desirable for others, i.e., Supervising R/W Agent, Acquisition Branch; Deputy District Directors R/W, etc., to sign; however, as a minimum the MOS shall be signed by the Acquisition Agent and the Senior Agent, Acquisition Branch, for parcels in excess of $25,000. Scheduling procedures should be initiated as soon as the Contract, Amendment or other Agreement has been executed.

8.50.02.00 Preparation

The MOS must be prepared in sufficient detail so anyone reviewing the transaction will fully understand all phases of the acquisition and reasons for special clauses or other provisions included in the Contract. There should be no doubt that all the elements of the transaction were given consideration and the Contract and MOS totally reflect the agreement between the State and the grantor.

All applicable information must be inserted. Under the DOCUMENTS IN FILE portion, the appropriate boxes must be checked and those documents must be in the file. A complete description on how to prepare the MOS is included with the Form.

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8.50.03.00 Disposal Records

The Acquisition Agent may need to complete two documents that provide information on property acquired.

The Inventory and Disposal Record (Form RW 12-1) is used for accountability of improvements and personal property purchased through Right of Way transactions, and to record the discharge of such accountability at the time of clearance. See Sections 11.03.02.00 and 12.01.07.00.

The Excess Land parcel Acquisition/Disposal Summary (Form RW 16-1) must be completed when real property is acquired in excess of the property needed for a project. Data in the acquisition appraisal is used to provide the inventory value and the acquisition file provides information for the remainder of the form. Parts I, II, and III of the form should be prepared at the time the MOS is prepared and is attached as one of the DOCUMENTS IN FILE. The document is attached to the MOS with a copy forwarded to the Excess Land Senior. The information is used to create the history of the parcel in the Excess Land Management System (ELMS).

The Agent will provide all the required information to complete these forms in the MOS. The Forms should be prepared at the time the MOS is prepared. The Registration Number must be shown on the first page of the MOS next to the "Inventory and Disposal Record" under the "DOCUMENTS IN FILE" section.

Improvements acquired through condemnation proceedings should be listed in the same manner as those acquired by negotiation. The form should be prepared when an Order for Possession or Right of Entry is secured. It shall be the responsibility of the Agent assigned to the case to provide the necessary information.

8.50.04.00 Segregation of Acquisition Costs for Federal Reimbursement

The Acquisition Branch must segregate acquisition costs into federally eligible and ineligible items through the use of a precoded Federal Participation Memorandum (Form RW 8-16). The source of this information is the settlement and the segregation of settlement amounts as set forth in the MOS. A Federal Participation Memorandum shall be completed on all transactions which create obligations of capital funds, e.g., Contract or other agreement.

The Federal Participation Memorandum is not an encumbering document. Capital funds are ordinarily encumbered by one or more of the following

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acquisition documents: Right of Way Contract, Amendment to Right of Way Contract, Judgment, Stipulation, Transfer of Jurisdiction, Request for Transfer of Funds (to support an Order for Possession), Rental Agreement (Exhibit 8-EX-4), Possession and Use Agreement, or other agreement by which Right of Way agrees to pay monies to an owner or lessee.

Right of Way is responsible for accurate segregation of acquisition costs. The Federal Participation Memorandum is forwarded by Planning and Management to Accounting who records the costs into the accounting system (Advantage). Accounting is not to change any entry without prior consultation and approval of Right of Way. Ultimately, therefore, Right of Way has the sole and final responsibility to ensure that the capital costs are accurately charged or not charged to Federal funds.

A fully signed copy of the Federal Participation Memorandum shall be attached to and become part of every MOS in the Acquisition file.

On an Order for Possession (OP), a "Request for Transfer of Funds" (Form RW 9-19) provides for the segregation of values for Accounting to charge or not charge Federal funds. This "Request" shall also be forwarded to Accounting through Planning and Management. A copy of the "Request" must be included in the acquisition file with a copy of the R/W Capital Monitoring Report or equivalent. This will indicate if the deposit has been coded 090 or 090N.

When settlement occurs after the taking of an OP, Accounting must be advised if there was a withdrawal of the deposit by the owner or if there is a need to "reverse" a charge to Federal funds made when the transfer of funds occurred. Since there is a potential for double billing of Federal funds, caution should be exercised.

Proper entries must be made on the center portion of the Federal Participation Memorandum.

8.50.04.01 Federal Reimbursement Provisions

These are in 23 CFR 710.203 and 710.309. Items with the greatest potential for erroneous claims and requiring careful review include the following:

A. Federal authorization to proceed with right of way acquisition must be obtained prior to initiation of negotiations. If prior authorization is not obtained, all acquisition and related costs on that parcel are ineligible for federal reimbursement.

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B. Although the cost of purchasing an excess, uneconomic remainder is eligible for Federal participation, the Department has decided to no longer seek Federal participation. The cost of purchasing an "excess acquisition" is not Federally Participating. The Department will seek Federal participation for any and all damages attributed to an acquired excess parcel. (RWMC-132, December 22, 2003.)

   Buildings or other improvements straddling the right-of-way line, e.g., garage, landscaping, swimming pool, etc., are eligible. Itemization will normally coincide with the segregation of values on the Appraisal Page. A pro rata segregation between right of way and excess, as in the appraisal, or other applicable basis, shall be used. If design changes either reduce or increase the area of excess subsequent to appraisal, adjustments must be made at time of settlement. If changes in the area of excess occur subsequent to acquisition, the Right of Way Engineering Branch notifies Excess Lands Branch, by memorandum, of these changes. Changes in the area of excess, of necessity, require adjustment of the Excess Land Inventory. Accounting will make any necessary coding adjustments.

   District Planning and Management has the responsibility to coordinate these Right of Way activities with R/W Accounting.

C. Cost to acquire personal property is normally ineligible for Federal reimbursement. An exception is, if a landlord owns the personalty, e.g., furnished apartment, and if the furnishings are not acquired, a consequential eviction of tenants could occur by removal of the furniture by the landlord. Trade fixtures, equipment, machinery and other items installed for use on a property and within the right of way will be eligible if determined to be improvements pertaining to realty. There may be certain unique situations in which failure to acquire personal property may result in either relocation assistance benefits. In these unique situations, the District is cautioned that the prior concurrence of the FHWA shall be secured to preserve eligibility which would otherwise be lost. Mobile homes may be considered as either realty or personalty. If a mobile home cannot be relocated, i.e., not decent, safe, sanitary or not acceptable to another mobile home park, the only alternative is to offer to acquire and whether it is realty or personalty is not relevant, either as to the acquisition process or Federal eligibility. The FHWA has allowed participation in the cost of acquiring mobile homes which are in the right of way. If the acquisition involves a mobile home park and mobile homes are acquired which are on excess land, the guidelines in Section 8.06.22.00 should be reviewed to determine Federal eligibility. (See Section 7.03.04.00.)

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D. If legally compensable under State Law, Loss of Goodwill, interest and damages to remainders are eligible for Federal reimbursement unless otherwise noted.

E. Care must be exercised when segregating values into eligible and ineligible categories when an administrative settlement has been made. If ineligible items are monetarily identified, they are not to be claimed. If, with other items, they were considered as potential contributions to an adverse verdict, then they may still be eligible provided the settlement is reasonable for the real property acquired. Eligibility for reimbursement is achieved when no item adversely effects the amount of the settlement for eligible interests in real property, and in the judgment of the District, the payment for the real property acquired is reasonable. In a partial acquisition, an administrative settlement amount may be prorated between land, improvements and damages unless the file reflects the increase was limited to any one of these components. If a portion of the property acquired in a partial acquisition is excess, an ineligible proration must be made. In a total acquisition without excess, prorate the increase between the components individually as in the partial acquisition, discussed above. In a total acquisition, with excess, prorate the administrative settlement increase between right of way and excess unless there is a clear and positive indication the increase is related to an improvement within the right of way.

F. Certain costs encountered in the acquisition of a property are to be included as part of an administrative settlement. Specifically, these costs are: approved and authorized out-of-pocket expenses as outlined in Section 8.01.20.00 and rental payments as outlined in Section 8.01.31.00. These costs are eligible for Federal reimbursement and are to be listed as damages in a partial acquisition and included with the land payment in a total acquisition. If excess is acquired, prorate these costs between the right of way and the excess. State costs related to the trying of an eminent domain action, e.g., jury fees, reporter's transcript, filing fees, etc., while eligible for reimbursement have previously been entered into the accounting system (Advantage) and should not be listed in the Federal Participation Memorandum. Litigation fees, determined by the court, to be paid to defendant's counsel are ineligible. Defendant's costs in trying an eminent domain action are not eligible except as noted in 23 CFR 710.203(b)(1). Prior to settlement, funds may have been advanced to an owner/lessee in order to perform rehabilitative work when a partial acquisition is to be made. These costs, as well as those for architectural drawings, are

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eligible provided the costs are not in conflict with concepts in an approved or authorized appraisal.

G. The Appraisal Chapter provides guidelines for rounding of the appraised value of the required property. The practice is to round the total value of the required property.

In the settlement column of the MOS, the components (land, improvements, etc.) shall be rounded to the extent that their total will equal the rounded total of the appraisal or the settlement. As in any judgmental decision, reasonable care should be used, i.e., when excess is being acquired, the rounding should be reasonable so that Federal funds are not charged inappropriately.

The rounded components in the settlement column of the MOS shall be used in the preparation of the Federal Participation Memo. This procedure will be of significant assistance to R/W Accounting.

H. Care must be exercised to avoid charging Federal funds prematurely. A portion of a settlement, normally eligible, but not to be paid until a later time, is not to be charged to Federal funds until the payment is made. The typical example is when a portion of the payment is withheld until the grantor performs an act, e.g., removes an improvement, cuts and caps a waterline, etc. When funds are withheld, the Federal Participation Memorandum shall reflect this by checking the "Yes" box under item "C) withheld funds" along with the dollar amount, and, on the appropriate line, i.e., Improvements. Coding of withheld transactions will prevent charges to bill out for federal reimbursement.

When the condition that required the withholding of funds has been eliminated or complied with, Acquisition notifies R/W Accounting by submitting a supplemental Federal Participation Memorandum (RW 8-16) and a completed Acquisition Invoice (RW 8-17). The Federal Participation Memorandum must clearly indicate the adjustment to be made, (i.e., withholding). Additionally, include a statement in the Explanation Section of the form that the terms of the contract have been complied with (e.g., premises have been inspected and work performed).

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Care should be exercised to ensure proper scheduling and payment of the withheld amount, and appropriate charging of the expenditure to avoid a double billing situation. It is advised that the original RW 8-16 also be attached with the payment request package for the withheld amount.

I. Parcels acquired on either a hardship or protection basis, under a Federal-Aid Stage 1 Authorization, have specific eligibility requirements for Federal participation. See Section 3.05.05.03 Stage 1 Authorization - Hardship and Protection and Sections 5.03.00.00 – Hardship and 5.04.00.00 – Protection.

After the selection of a particular location, 23 CFR Section 630.106(c)(3) and (4)(d) allows authorization to proceed with R/W acquisition in hardship and protective buying situations. At the time of FHWA authorization, the Federal government does not provide federal funds for the hardship and protective acquisitions.

However, costs of approved hardship and/or protection parcels are eligible for future federal reimbursement. Therefore, R/W transactions for hardship and protection acquisitions must be coded as "eligible for federal aid." The Accounting System (Advantage) must record these hardship and protection acquisition costs as federally eligible so that Advantage may bill FHWA for future federal reimbursement.

J. If a construction contract obligation has been included in either the construction plans or the appraisal, or both, and the grantor requests payment in lieu of the State's contractor performing the work, as evidenced by a clause in the Contract, then such payment is to be listed under damages.

Conversely, a proposed damage payment may have been changed to a construction contract obligation. This change must also have been covered by a Contract clause, with appropriate explanation in the MOS and eliminating the applicable portion of the payment from the Federal Participation memorandum.

The Contract and MOS shall each reflect that the pertinent item is covered by either payment or construction contract obligation, but not both. The Federal Participation Memorandum will be limited to payments. The Agent must ensure that whenever any construction contract obligation is covered by payment, such obligation is eliminated as work to be performed by the contractor. If the acquisition is on a project which is federally participating but Right of

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Way costs are not, then any Right of Way obligation should not be made a construction contract obligation without an offset or credit to Federal funds.

K. If an exchange is involved, the gross cost to acquire the required property is to be reflected in the Federal Participation Memorandum, not as offset by the credit received for the exchanged property.

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8.60.00.00 – ESCROWS, TITLES AND SCHEDULING

8.60.01.00 General

All Right of Way transactions are processed through the Planning and Management Section. The Acquisition Agent is responsible for assembling all necessary documents for submission to the escrow company and the submission of the payment package to R/W Accounting. The entire parcel acquisition file shall be available for handling of scheduling, escrow, and closing procedures.

8.60.02.00 Progress Card

Some form of a Progress Card should be used to show the status of each individual transaction from the time the preliminary title report is ordered until parcel closure. Exhibit 8-EX-37 is a suggested form. Use is optional; however, the District should use some comparable tracking device to determine the status of acquisition of the ownership and its interests. The Integrated Right of Way System will provide most of this information, but not all of it.

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8.61.00.00 – PROCEDURE WITH ESCROW COMPANIES

8.61.01.00 Contents of Escrow Instructions

Instructions to the escrow company should be simple, clear, and accurately worded so no misinterpretation will occur. They should include the following items:

A. Proper identification of the property being acquired by reference to District, County, Route and Kilometer Posts (Post Miles); Parcel Number and the escrow company order number.

B. A list of enclosures necessary to the processing of the escrow (grant and quitclaim deeds, rental-escrow instructions, statement of identity, etc.).

C. A statement directing the escrow company to utilize all documents when the escrow company is in a position to close escrow and issue a Policy of Title Insurance in the amount specified in the escrow instruction letter, vesting title in the State, free and clear of all liens and encumbrances except as stated otherwise.

D. A statement indicating which of the title exceptions, listed in the title report, will be taken subject to by the State and shown on the Policy.

E. A request, when applicable, for the inclusion of an appropriate CLTA access rights endorsement in the Policy.

F. An instruction as to the disposition of taxes.

G. An authorization to pay the proper demands of lienholders from escrow, in accordance with the intent and terms of the Right of Way Contract and pay the balance to State's grantor.

Additional information shall be included in the escrow instructions as necessary to precisely represent State's intention as to the condition of title acceptable to State. See Exhibit 8-EX-38 Sample escrow letter.

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8.61.02.00 Agent's Responsibility to Provide Required Instruments

The Acquisition Agent must secure execution of the principal document conveying title and all necessary supporting documents and arrange for their delivery into escrow along with escrow instructions. This instruction will prevail regardless of the provision in escrow instructions that the grantor agrees to deliver any instruments required by the escrow agent. Even if it is the grantor's responsibility to deliver the required instruments, it still remains the duty of the Agent to see that such instruments are promptly executed and delivered into escrow.

After delivery of the executed deed to the Acquisition Agent, the District will arrange for certified copies of the grant deed for inclusion in the payment package. See Section 8.63.06.00 for the documents contained in a typical payment package.

8.61.03.00 Scheduling Payments

After the bills or vendor's invoices have been signed and certified copies of the grant deed and necessary related documents have been secured, the transaction will be scheduled for payment. (See Sections 8.63.00.00 through 8.63.07.00.)

8.61.04.00 Delivery of Warrants to Escrow Agent

When the amount is $2,500 or less, the warrant may be delivered to the District or directly to the Escrow Agent. The decision should be based on added workload caused by increased handling versus the interest income to be gained.

State warrants earn interest until they are cashed. State law requires the Escrow Agent to deposit the warrant within one business day after receipt. Warrants for amounts over $2,500 will therefore be delivered to the District. The District will then deliver the warrant to the Escrow Agent only after notification that the escrow is ready to close. This will maximize the interest that State will earn. See Exhibit 8-EX-39 for a sample letter.

The District must periodically check on all outstanding escrows to ensure that they are completed in as short a time as possible. The Agent is responsible for this follow-up and must assist the grantors in securing any documents necessary to close escrow.

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Escrow companies must not use their own funds to pay an owner at close of escrow. Therefore, transactions should not be scheduled for payment until the District and the company are reasonably certain when escrow will close.

The Highway Trust Fund, against which warrants are drawn, ceases to earn the Surplus Money Investment Fund Interest Rate when the warrant is written. The State Treasury does, however, earn interest until the warrant is deposited and honored. This is just further reason to not schedule payment until necessary.

In those rare instances when a State warrant has been cashed and the funds have earned interest, the escrow company should issue a check representing such interest. It will be delivered to the Accounting Officer. Accounting will deposit the check in Special Deposit Account unless they are able to credit the EA. Appropriate credit must be made to Federal Funds.

8.61.05.00 Warrants with Errors Lost or Destroyed

If warrants are in error, payees must be instructed to return the warrants to R/W Accounting. If the Schedule amount is incorrect, the Schedule must be corrected. See Section 8.63.10.00. If a District inadvertently receives a warrant that should have been mailed to a payee, contact R/W Accounting.

If a warrant is lost or destroyed after it has been delivered to the payee, the burden of securing a duplicate will rest with the payee. (Sections 17090 to 17095-Government Code.)

8.61.06.00 Warrants Delivered to District

A notification to this effect must be submitted with the original claim schedule payment package. R/W Accounting will make the necessary arrangements with the State Controller for the warrant to be mailed to the District for delivery.

The District may transmit the warrant to payee by first class mail or by the Title Company's free courier service when offered. The Acquisition Agent cannot handle the Controller's Warrant per SAM Sections 8080 and 8041.2.

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8.61.07.00 Authority to Change Escrow Instruction after Scheduling

Escrow instructions are not to be changed, modified or altered without the prior approval of the person who has approved the schedule.

8.61.08.00 Policy of Title Insurance

Where a Policy is to be secured, it should be ordered immediately following compliance with the closing procedures set forth in the escrow instructions. If the transaction involves low-valued property and a Policy is not being secured, a statement regarding condition of title will be included in the Memorandum of Settlement (MOS).

Where more than one working file is maintained in the District, these files will be merged into the main parcel file within 60 days following final payment, close of escrow or filing of the Final Order of Condemnation, and arranged in an orderly manner. This process shall commence in advance of the receipt of the Policy in accordance with Section 8.01.32.00.

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8.62.00.00 – ESCROW PROCEDURE WITHIN THE DISTRICT

8.62.01.00 Internal Escrow Procedure – Office Copies

Where a transaction is not handled by an outside escrow agent, all documents shall be processed through District Planning and Management for funding availability and proper coding, immediately after the Contract has been approved. The Agent is responsible for seeing that all documents are processed appropriately.

When deeds and other documents are approved, all office copies shall be conformed to the originals.

See Section 8.05.05.00 for a discussion on Internal Escrows.

8.62.02.00 Use of Acquisition Invoice (Form RW 8-17)

The Acquisition Invoice will show the distribution of funds in accordance with the demands filed in District Planning and Management, and provide for the payment of any other encumbrances or obligations which clearance is essential to delivering the title in accordance with the terms and provisions of the Contract. See Form RW 8-17.

If the Contract specified that a portion of the total payment shall be withheld until improvements are removed from the property by the grantors, payment for the amount withheld will not be scheduled until the improvements have actually been removed by the grantors. Appropriate entries must be made on Form RW 8-16. See Section 8.50.04.01, Item J.

8.62.03.00 Preparation of Closing Instructions

The title report will be processed by the District with closing instructions to show the disposition of each exception as explained in the Memorandum of Settlement (MOS). Exception handling in the Contract and MOS is to be identical. This information will be the basis for explanations in the schedule letter.

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8.62.04.00 Inventory of Documents

When the Acquisition Invoice is obtained, the closing instructions will be reviewed to determine whether all necessary instruments to clear title in the manner required by the Contract have been executed and deposited in the District office. If all required instruments are not deposited, the Agent shall follow through to ensure that the outstanding interests are cleared by securing such instruments.

8.62.05.00 Scheduling Payment

After the necessary instruments have been deposited, the transaction will be scheduled for payment. (For procedure, see Sections 8.63.01.00 through 8.63.12.00.)

8.62.06.00 Recordation of Documents – Payment to Grantor

After receipt of the warrant from the State Controller, the closing instructions shall be rechecked. When the District is satisfied that all requirements of the transaction have been complied with, the documents requiring recordation shall be delivered to the proper county recorder for recordation and the warrant forwarded to the grantor.

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8.63.00.00 – PAYMENT PACKAGE

8.63.01.00 Authority for Scheduling Payments

Approval of Contracts, Amendments, and Special Agreements creating right of way obligations constitute authority for scheduling payment of right of way obligations, provided Section 8.62.05.00 is complied with.

8.63.02.00 Federal Participation Memorandum (Form RW 8-16)

This form is to be completed on all settlements or agreements which create obligations of capital funds. Instructions for completing the form are included in the form section and Sections 8.50.04.00 and 8.50.04.01.

8.63.03.00 Preparation of Acquisition Invoice (Form RW 8-17)

This form is designed for use when requesting payment. (See Form RW 8-17.) The address of the payee or escrow agent should be shown in the section titled "Warrant/Check to be made payable to." The name of the grantor must be spelled exactly as shown on the Payee Data Record (STD 204).

When payment has been authorized to a party or parties other than the grantor, instructions for drawing the warrant under the caption "Warrant to be made payable to," follow a specific format. Contact your R/W Accounting Liaisons for clarification.

Under "FOR ISSUING CHECK: Mail By:"
Insert the date check is to be placed in the mail.

Under "PROPERTY ADDRESS OF PARCEL:" Add the actual address of the parcel (which may not be identical to mailing address provided under Warrant/Check to be made payable to). A copy of the MOS is not required in the payment package.

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8.63.04.00 Payee Data Record (STD 204)

A Payee Data Record (STD 204) is completed and signed by the payee. A payee may be an individual or many individuals, a business, or a governmental agency. Refer to instructions attached to form for explanation of the various types of payees.

8.63.05.00 Name of Payee on Acquisition Invoice (Form RW 8-17)

The name of the payee appearing on the Invoice must agree with the information on the bill. When the escrow agent's bill form is used, the payee will be shown on the Invoice in the following form:

"Tulsa County Abstract Company, Account of John J. Jones."

The term "escrow agent for" must not be used on the face sheet. The term "assignee of" must not be used unless accompanied by an assignment executed by the claimant.

8.63.06.00 Assembly of Payment Package

1. Federal Participation Memorandum (Form RW 8-16)
2. Right of Way Contract, 2 certified copies
3. Acquisition Invoice (Form RW 8-17) plus 1 copy
4. Deed, 2 certified copies
5. Interest computation sheet, if applicable, 2 copies
6. Payee Data Record (Form STD 204)

The Agent shall insert the escrow number on the Acquisition Invoice (Form RW 8-17) which will accompany the warrant mailed by the Controller.

8.63.07.00 Approval Signatures

The Federal Participation Memorandum (Form RW 8-16) shall be completed and signed by an authorized representative. The signature on the RW 8-16 shall represent a Right of Way confirmation that the payment is in accordance with the approved Contract.

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8.63.08.00 Verification of Vestee

Where the signatures and the grantors named in the caption of the deed to State differ from the vesting shown in the title report, a letter should be secured supplementing the title report to bring the vesting up to date and confirm the names of the grantors as shown on the deed.

When a deed is executed by parties in addition to those named as vestees in the title report, e.g., contract purchaser, spouse of vested owner, etc., the supplemental letter will not be necessary.

8.63.09.00 Bills for Right of Way Property Transactions

Bills from escrow agents (title companies or bank escrows) will include only the consideration for the deed and advances made for the account of the grantor. Charges for escrow services, for preparing or obtaining partial release or reconveyance, and other services furnished by the title company or bank shall be billed separately and scheduled with general service and expense bills.

8.63.10.00 Correction of Scheduled Amount

If, subsequent to scheduling by the District, a schedule amount is found to be incorrect, Accounting should be immediately notified so a request can be made to the State Controller's Office to withhold mailing of the related warrant. Accounting will advise Right of Way if additional information is necessary. After receiving an amended schedule, Accounting will correct the scheduled amount.

If the warrant has been mailed to the payee, the District should immediately contact the payee and arrange return of the warrant and rescheduling in the proper amount.

8.63.11.00 Special Schedules-Condemnation Deposits, Withdrawals, and Expert Witness Claims

Procedures involved in scheduling various condemnation deposits are found in Section 9 of the R/W Manual. Miscellaneous court deposits, i.e., jury fees, court reporter costs, are discussed in Section 8.68.02.00.

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8.63.12.00 Withheld Payments

If the Contract provides for relocation or removal of certain improvements, and monies are withheld pending the relocation or removal of said improvements, the payment package will indicate the sum withheld. The subsequent payment package covering the amount withheld will include a statement that the premises have been inspected and the work has been performed in accordance with the terms of the Contract. Such a statement is needed before a warrant will be issued. See Section 8.50.04.00, Item J, dealing with the timeliness of charging Federal Funds when a portion of the payment is withheld.

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8.64.00.00 – RECORDATION OF INSTRUMENTS

8.64.01.00 Acceptance Required

The Government Code provides generally that deeds or grants conveying real property, or any interest therein, to the State, a political corporation or governmental agency, shall not be accepted for recordation without the consent of the grantee, evidenced by its Resolution of Acceptance attached to the Deed or Grant, or by the written acceptance of an authorized officer or agent, whose authority is shown by an attached and certified copy of resolution.

All forms for Certificates of Acceptance of instruments on behalf of the State shall refer to Government Code Section 27281. See Exhibit 8-EX-41.

8.64.02.00 Execution of Certificate of Acceptance

Each person designated to accept conveyances on behalf of the State must have a power of attorney from the Director of Transportation. The power of attorney must be recorded in each county in the District. The District Director or delegatee has been authorized to certify to and accept conveyances on behalf of the State.

8.64.03.00 Deeds Containing Nonstandard Recitals

Regions/Districts have the authority to approve deeds which contain exceptions or reservations to the grantor or which impose an obligation on the State other than those set forth in the Right of Way Manual as standard clauses, or are contained in standard forms.

8.64.04.00 Deeds Affecting Unrecorded Interests

Generally, it is not necessary to record a deed affecting unrecorded interests. In certain cases, recordation of such deeds is necessary to protect the interest or title of the State. The deeds shall be processed, including acknowledgement, acceptance, and the caption, to allow future recordation, if necessary.

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8.64.05.00 Documents Entitled to Free Recordation

All Deeds, Conveyances or Transfers in which the State of California, or subdivision thereof, is the grantee or recipient of benefits are entitled to be recorded without charge. This includes all related instruments, i.e., Reconveyances and Releases; Orders of Court; Powers of Attorney; and any and all Deeds, Conveyances and Instruments of whatever kind, recordation of which is necessary in order to complete the chain of title to land or interest therein, being acquired by the State. Vacation and Relinquishments by the California Transportation Commission (CTC) are also entitled to free recordation.

Some Recorders have insisted upon fees being paid by the State for recordation of documents which would appear to qualify for free recordation. In these cases, the District should pay the fee by submitting it to the Recorder with a letter indicating payment is made under protest.

On all documents submitted to a Recorder for free recordation, a "State Business: Free" stamp is to be affixed and signed by an authorized employee. A suggested form of Free Recordation Stamp is as follows. Be sure to refer to the appropriate Government Code Section.

STATE BUSINESS: Free

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

DISTRICT DIRECTOR

By

_____

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8.64.06.00 Documents Not Entitled to Free Recordation

Deeds to individuals or corporations where the State is the grantor (Director's Deeds) are not entitled to free grantee recordation. These fees are to be paid by the State's grantee.

NOTE: In special cases such as exchange transactions, the State may pay recording fees as part of the consideration for the transaction (See Section 8.68.01.00).

8.64.07.00 Real Property Transfer Tax

Section 11922 of the Revenue and Taxation Code makes any deed, instrument or writing to which a governmental agency is a party exempt from any documentary transfer tax when the exempt entity of government is acquiring title. It is against State policy to pay documentary transfer tax either directly or indirectly.

8.64.08.00 Director's Deed Recordation

All Director's Deeds shall be recorded before delivery to the grantee. On recordation, the District shall report the recording data to HQ R/W on forms provided to the District with each package of executed Director's Deeds.

When the District has been advised that the sale has been approved by the CTC, the buyer shall be requested to submit a check to the District, made payable to the order of the County Recorder of the property county for the exact amount of the recording fee. Check and deed can then be forwarded to the Recorder and all State checks are eliminated.

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8.65.00.00 – TITLE REPORTS AND POLICIES OF TITLE INSURANCE

8.65.01.00 Title Vested in People – Sec. 233 Streets and Highways Code

This Section provides that all title acquired by the public to any real property, or interests therein, used for highway rights of way for a State highway is vested in the name of the People of the State of California.

8.65.02.00 Title Reports and Certification of Title

The term "title reports," for purposes of this manual, includes reports titled "Preliminary Title Reports" and "Litigation Guarantees."

A Preliminary Title Report is an offer to insure and issue a title policy with the listed exceptions. Most preliminary title reports contain a disclaimer stating that a preliminary title report is not a written representation as to the condition of title to real property and may not list all liens, defects, and encumbrances affecting title to the land. California Insurance Code Section 12340.11 states that "It is not a policy of title insurance but is only an offer to issue a policy of title insurance in the future for a specific fee, subject to the stated exceptions set forth in the Prelim." No contract or liability exists until the title insurance policy is issued.

A Litigation Guarantee guarantees the accuracy of interests in the property for purposes of a legal proceeding. It sets forth the current record of title and encumbrances on the real property at issue and identifies the parties who should be named in the lawsuit. The Guarantee insures against claims of lienholders, if there be any, who should have been but were not made parties to the action because they were not named in the Litigation Guarantee.

If a Preliminary Title Report is obtained, it must be upgraded to a Litigation Guarantee prior to condemnation. If a Litigation Guarantee is obtained, it must be updated to current status prior to condemnation.

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Title reports shall be required for all parcels except the following:

A. Parcels having a land value of $25,000 or less which do not involve access rights or improvements. The District may rely on an investigation of the condition of title as determined from County Assessor's and Recorder's records and other appropriate sources of title information.

B. Special cases involving donations of unimproved land valued up to $25,000 where improvements are not involved.

C. U.S. Government land controlled by either the Bureau of Land Management, Bureau of Reclamation, the Department of Indian Affairs, the U.S. Forest Service or U.S. Military Reservations.

D. All land owned by the State (not including Cal-Vet loan property vested in the State) such as State School Lands, or lands under the jurisdiction of the Department of Transportation, Department of Parks and Recreation, etc.

For those cases involving Items B, C, and D above, a R/W Agent will prepare a report titled "Certification of Title" (Form RW 8-14), addressing the same information as would normally appear in a title report. The certificate will be signed by the Acquisition Agent, or a Right of Way Engineer. If special circumstances warrant, title reports may be secured.

8.65.03.00 Use of Title Reports

Title Reports are used in the preparation of the following:

- Legal descriptions for deeds
- Appraisal Reports
- Right of Way Contracts
- Memoranda of Settlement
- Resolutions of Necessity Requests
- Summons, Complaint, and Lis Pendens
- Right of Way Schedules

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8.65.04.00 Service Contracts with Title and Escrow Companies

All services, including the issuance of preliminary title reports, litigation guarantees, and policies of title insurance, shall be in accordance with the terms of a service contract with a licensed Title and Escrow company. Title and Escrow contracts are required to be competitively bid.

- HQ R/W will furnish Region/District Right of Way staff with a copy of the model contract approved for use by the Division of Procurements and Contracts (DPAC).

- Region/District Contract Manager (Contract Manager) will prepare a Service Contract Request Form 360 (Form 360).

- Contract Manager will then forward the Form 360 to R/W Planning and Management for appropriate coding and required signatures.

  Contract Manager will electronically submit the completed Form 360 to DPAC.

- DPAC will notify the Contract Manager of receipt of the above submittal and the assigned contract number.

- DPAC will work with the Contract Manager to develop contract terms and a solicitation to advertise for the lowest responsive bid.

- After the solicitation is advertised, the Contract Manager can initiate contact with potential bidders to encourage their participation in the competitive bid process.

Service contracts will be issued for five-year periods. New orders for title services can only be placed against a Title and Escrow service contract during the first three years of the contract term. The last two years are available to close escrows and request policy of title insurance for parcels which have already had preliminary title work ordered during the first three years of the contract term.

A new five-year Title and Escrow service contract should be requested through DPAC approximately six months prior to the expiration of the new order period on an existing contract. This will ensure that a subsequent contract is in place at three years, so there will be no gap in ordering new title services.

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8.65.05.00 Certificate of Regularity

When the company calls for a Certificate of Regularity to establish sufficiency of probate proceedings, or other proceedings held outside the county in which the land is situated, the necessity of authorizing the procurement of such Certificates is discretionary with the Districts under any of the following circumstances:

A. When probate proceedings in question have been completed for 10 years or longer and the property in question was distributed by a Decree of Distribution. The Decree must be recorded in the Office of the County Recorder of the county in which the subject property is located.

B. When proposed payment by State for property is $2,500 or less. In all other circumstances, the Districts should authorize the procurement of such Certificates. The cost will be paid as part of the premium paid for the insurance of State's title.

8.65.06.00 Access Rights Endorsement Forms

A policy of title insurance, with the appropriate endorsement insuring relinquishment to the State of abutter's rights of access, must be secured on every transaction in which such rights are acquired.

The following endorsements have been approved and adopted by agreement between the Department and the California Land Title Association (CLTA) and its affiliated members:

A. CLTA Relinquishment of Abutter's Rights (Highway) Endorsement Form 106 is applicable to cases in which both fee title to land and access rights to and from grantor's remaining property are being acquired in the same transaction.

B. CLTA Elimination of Access by Condemnation Endorsement Form 106-C is a modification of Form 106 to show acquisition by condemnation rather than by executed instrument.

C. CLTA Relinquishment of Abutter's Rights (Highway) Endorsement Form 106.1 is applicable where access rights only are being acquired.

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D. CLTA Relinquishment of Abutter's Rights (Highway) Endorsement Form 106.1-C is a modification of Form 106.1 to show acquisition by condemnation rather than by executed instrument.

E. CLTA Relinquishment of Abutter's Rights (Highway) Endorsement Form 106.2 is a combination of Forms 106 and 106.1 and is to be used when State is taking a portion of the grantor's property in fee and the grantor is retaining land adjacent to the portion to be taken, but releasing access rights thereto. This form is also used when the owners of lands which abut upon land theretofore acquired for highway purposes are releasing their rights of access.

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8.66.00.00 – CLOSING PROCEDURES

8.66.01.00 Segregation of Taxes on Partial Acquisitions of Properties Which are Locally Assessed

When acquisition is by deed and no suit filed, a request to segregate taxes on a partial acquisition shall be instituted immediately upon recordation of the deed conveying the property to the State. If a condemnation suit has been filed, see the Condemnation Chapter.

8.66.02.00 Segregation of Taxes on Partial Acquisitions Which are State Assessed

Utility properties, such as railroad, power, and telephone companies, are assessed by the State Board of Equalization at Sacramento and the Board will make the necessary roll changes.

The cost of preparing the map and the other necessary changes in records, often make it advantageous for the utility company to pay the taxes on the area conveyed rather than ask for cancellation. Request for segregation of assessments should be initiated by the Utility Company and not by the Department. The request to the local authorities for the actual cancellation should also be made by the Utility Company.

Statutes relating to refund of prepaid taxes and proration and cancellation do not apply to properties assessed by the State Board of Equalization.

8.66.03.00 Request for Refund of Prepaid Current Taxes

The District shall maintain a procedure whereby the amount of prepaid taxes paid by the State, on properties acquired through eminent domain, is refunded by the appropriate tax collecting agency. See the Condemnation Chapter.

When possession is taken under an Order for Possession (OP) and the parcel is later acquired by deed, the controlling date for the tax refund is the effective date of possession as set forth in the Order. When there is no Order, the controlling date is the recording date of the deed to State, or recording date of the Final Order of Condemnation (FOC), whichever applies.

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8.66.04.00 Notice for Removal of Property from Tax Rolls

Exhibits 8-EX-42 through 8-EX-46 are suggested for use in requesting clearance or cancellation of taxes and the segregation of those taxes in the event of a partial taking and should be used where property is acquired by negotiation. Exhibit 8-EX-47 is to be used with property acquired by judgment. Whenever an OP has been secured, it will be incumbent on the District to notify the appropriate taxing authorities by letter of this fact.

Some city and county taxing authorities will require other types of notices. The District must arrange with them, what notice they require to remove property conveyed to the State from the tax rolls. Grantors will then secure the tax reduction to which they are entitled, and property conveyed to the State will be removed from the tax rolls.

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8.67.00.00 – FILING OF COMPLETED TRANSACTIONS

8.67.01.00 Filing of Recorded Documents and Policy of Title Insurance

Upon completion of the acquisition, all original recorded or unrecorded Deeds, Final Order of Condemnation and the Policy of Title Insurance are to be retained in the District. Memorandum of Final Title shall reflect the escrow closing date and what documents are in the file (Form RW 8-15).

8.67.02.00 Notation on Right of Way Record Maps

All Deeds, Final Orders of Condemnation, Joint Use and Consent to Common Use Agreements, Abandonments, Relinquishments and Special Use Permits shall have noted thereon that proper entry of the document has been made on the District Right of Way Record Maps. The District shall have a stamp prepared for this purpose (the stamp to contain information setting forth date of entry on maps and party making entry).

8.67.03.00 Donated Deeds to be Labeled

In cases of donation of right of way or other interests, the deed or document by which such interest was acquired shall be labeled "Donation" on its face, and the fact of donation shall be referred to in Form RW 8-15.

8.67.04.00 Documents Affecting More Than One Acquisition

When a given document (e.g., a quitclaim deed) affects more than one acquisition, the deed numbers of all parcels affected by such document should be shown on its face for purposes of reference and identification.

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8.67.05.00 Statements as to Conditions of Title

If, between the date of the Policy of Title Insurance and the date of completion of Memorandum of Final Title, a change in condition of title affecting any of the exceptions shown in the policy has occurred, Form RW 8-15 shall include an explanation.

If, for example, an easement shown as Exception 3 in the Policy has been cleared by quitclaim deed recorded after the date of issuance of the Policy, a statement to that effect shall be included.

8.67.06.00 Right of Way Closing Record

When final distribution of funds has been made, a closing statement shall be placed in the parcel file itemizing all charges deducted from the purchase price and certified as true and correct. The closing statement shall contain the following certification, which is to be signed by the escrow officer of the company handling the escrow:

> "This is a true and correct copy of the closing statement submitted to the named grantor at the time we forwarded the check in the amount of the balance shown on the closing statement."
>
> _____
> Title Officer

8.67.07.00 Certification of Completion of Acquisition

After all necessary documents have been received and acquisition completed on all the parcels in an Appraisal Report, the District shall prepare a Certificate of Completion. It will certify that all parcels in that report have been acquired, have found to be unnecessary, or have been disposed of in some other manner. A brief explanation is necessary for each parcel disposed of by other than acquisition. This certificate shall be signed by the DDC-R/W or delegate. The Region/District records must show the disposition of all parcels, including all advertising signs located on the parcels listed in approved appraisals.

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The certificate should be in the following format:

CERTIFICATE OF COMPLETION OF
RIGHT OF WAY ACQUISITION

Dist. ____ Co. ____ Rte. ____ KP (P.M.) ____ to KP (P.M.) ____ E.A. Termini (as shown in fiscal year Right of Way Program)

This is to certify that all of the parcels in the following appraisal report(s) have been acquired or otherwise accounted for:

Report No. ____ Date _____ No. of Parcels ____

_____
District Division Chief, Right of Way

Date _____

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8.68.00.00 – OTHER ACQUISITION PAYMENT REQUESTS

8.68.01.00 Payment Requests in Condemnation Cases

Payment for right of way may be made from capital outlay funds on court orders covering judgments in condemnation. The Districts are authorized to make such payment; however, Caltrans Legal should immediately advise District R/W of this action by FAX. Right of Way will process the payment request by RW 9-20 (Condemnation Check Request-Invoice). The RW 9-20 shall contain complete information with respect to the identification of the condemnation suit, county, route and kilometer post (post mile), suit parcel number, expenditure authorization number, and amount of deposit.
A receipt for the amount paid and a certified copy of the judgment shall be obtained from the county clerk.

8.68.02.00 Miscellaneous Court Deposits

Payment requests for jury fees, court reporter, etc., require supporting documents such as invoices. Payment requests are processed through the Planning and Management office. A receipt should be obtained at the time the payment is made. Where a deposit covering court costs is made, the clerk of the court should be informed that the State Controller requires an itemized voucher for the exact amount of the disbursement and, therefore, it will be necessary to substitute an itemized and receipted statement in triplicate for the original receipt after the case has been tried and the actual amount and nature of the disbursement has been determined.

The detailed receipted statement for the net amount of the expenditure will be scheduled for reimbursement of the Revolving Fund Account.

A court refund of any unused balance of a deposit will be sent to Accounting.

8.68.03.00 Deposit with Federal Housing Administration

All deposits made to the Federal Housing Administration, to cover appraisal expenses in connection with the securing of releases or reconveyances, will be advanced from the Revolving Fund Account, regardless of whether the cost of the appraisal is to be assumed by the State or by the grantor. Since

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the deposit required represents a fixed charge, no portion will be refunded. A receipt will be obtained for each deposit made.

Regardless of whether or not the State is to assume the expense, the Revolving Fund Account will be reimbursed by means of a claim schedule using the receipt as a voucher.
If the grantor is to assume the expense, the advance will be set up in accounts receivable.

8.68.04.00 Bid Deposits in Sales of Bankrupt Estates; Administrator's Sales; Payments for Tax-Deeded Lands

Advance payments or security deposits required in these three types of transactions will be advanced from the Revolving Fund Account and allowed to remain outstanding until final settlement has been determined and payment of any additional amount required has been made from the Revolving Fund Account. Then, the net amount of the expenditure will be scheduled for reimbursement of the Revolving Fund Account. Itemized receipts or vouchers must accompany reimbursement schedules.

See Sections 8.63.10.01 and 8.24.08.00.

8.68.05.00 Payment of Notary and Recording Fees

Notary fees may be advanced from the Revolving Fund Account when the fee is part of the consideration for property acquired or to be acquired. This has particular reference to donations of right of way by grantors, but is not necessarily limited to such cases if the assumption of the fee by the State is a part of the consideration for the execution of the deed or other instrument conveying or clearing title to property. The fact that the notary and recording fees are a part of the consideration must be specifically stated on the invoices when it is scheduled. The claim must be supported by a receipt from the notary. (See Section 8.24.08.00.)

8.68.06.00 General Day Labor Expenditures

When work is to be performed by maintenance personnel in fulfillment of a right of way obligation subsequent to the completion of a construction project, payment shall be charged to the Right of Way Capital Program via Account 767, Interfunction Service Suspense. (See Chapter 15 of the Accounting Manual.)

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8.69.00.00 – RAILROADS

8.69.01.00 Railroad Function

The clearance of construction projects that involve railroads consists of two separate but closely connected functions:

- Acquisition of railroad property rights.
- Obtaining an agreement with the railroad for physical construction of the project.

This section covers both aspects of the Railroad involvement.

Railroad clearance is a joint effort between the District and HQ R/W Office of Project Delivery. A project can be advertised only when both a R/W Certification and a railroad clearance letter have been issued. A railroad clearance letter can be issued after completion of the Construction and Maintenance Agreement or Service Contract and all railroad required property rights are under the Department's control by Right of Entry, R/W Contract, etc.

The HQ R/W Office of Project Delivery obtains Legal approval for Construction and Maintenance Agreements, Service Contracts, and "Relations with Railroads" clauses. These subjects are covered in the Railroad Syllabus.

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

- Know the contents of this Chapter.
- Know the contents of the Railroad Syllabus.
- Fully inform their counterparts in the HQ R/W Office of Project Delivery of all correspondence and telephone contacts as problems arise.

8.69.02.00 Federal-Aid Requirements

Federal-aid requirements for railroad involvement are contained in 23 CFR 646.216. Full compliance is required to ensure federal participation where applicable. When questions arise, HQ R/W is to be consulted and prior FHWA concurrence obtained.

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8.69.03.00 District Responsibility

The DDC-R/W shall designate a R/W employee, who shall have a sufficient depth of acquisition experience and be at a minimum Associate level, with full responsibility for railroad activities leading to clearance of projects for advertising. The designee, referred to as the District Railroad Agent, shall be responsible for performance of the duties as described below.

8.69.03.01 Determination of Railroad Involvement

The Railroad Agent shall make a positive determination on whether or not there is railroad involvement on a project as early as possible, but no later than the Project Report stage.

Projects planning cost estimates are categorized as: (1) Project Feasibility; (2) PSR; (3) Draft PR; and (4) PR. At the feasibility stage, the Right of Way Branch will normally complete the first sheet of the Right of Way Data Sheet.

The Railroad Agent shall provide the information requested on the R/W 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 determination if there may be a more cost-effective solution to the project than constructing a facility to preserve the rail service.

Items to be considered and documented on the R/W Data Sheet include:

- 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 R/W 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.

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- Estimate need for, and cost of, Railroad Flagging for design and environmental studies.
- Estimated construction costs of work to be performed by the railroad. The Railroad Agent derives preliminary cost estimates from historical cost data. Final Estimates will be provided by the railroad after final plan review.

8.69.03.02 Acquisition and Document Preparation

The District Railroad Agent shall also:

- Acquire railroad parcels.
- Prepare R/W Contracts.
- Prepare Construction and Maintenance Agreements, Service Contracts, "Relations with Railroad," and other related documents.
- Initiate condemnation procedures (see Section 9.02.04.00).
- Prepare MOS (Form RW 8-30).
- Clear all interests affecting railroad parcels as required.
- Request and process Rights of Entry. Briefly inform railroad of the need and use of property.
- Prepare rebuttals in response to FHWA citations on railroad parcels.
- Coordinate with Project Development to prepare Exhibits A, B, and C for the PUC application for grade crossings and separations.
- Maintain status records for all railroad projects.
- Act as coordinator of the Railroad Advisory Team (see Section 8.69.11.00).
- Certify that required railroad property has been acquired, covered by Right of Entry or Order of Possession.
- Provide railroad clearance letter for projects delegated by HQ R/W Office of Project Delivery.

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8.69.03.03 Document Review

The District Railroad Agent shall also:

- Provide for HQ R/W Office of Project Delivery review and approval of Construction and Maintenance Agreements and Service Contracts, and ensure:
  - Conformity with what the district and railroad have agreed upon.
  - Payment or credit is not duplicated in a R/W Contract, Service Contract, or Construction and Maintenance Agreement.
- Review and recommend for HQ R/W Office of Project Delivery approval Nonstandard Railroad Indentures, Deeds, and Rights of Entry.
- Review and recommend for HQ R/W Office of Project Delivery approval of settlements that exceed the Department's approved appraisal.
- Review and obtain district and railroad approval, if necessary, of "Relations with Railroad" clauses and advise HQ R/W Office of Project Delivery of district approval.
- Provide the HQ R/W Office of Project Delivery with written confirmation of compliance with these document review requirements.

8.69.03.04 Coordination Activities

On state projects, the District Railroad Agent shall be the sole coordinator and shall handle all district contacts with railroad companies.

- Furnish the railroad with maps and plans during project development phase and request an estimate of cost of the work to be performed by railroad.
- Furnish the railroad with maps and legal descriptions of proposed right of way acquisitions affecting railroad property during R/W phase for their use in preparing concurrent appraisals.
- Send copies of the Contract Special Provisions to the involved railroad as soon as such copies are available in final form.
- Maintain file of all project-related correspondence and route copies to interested parties, including railroad, as necessary.
- Arrange and attend office and field reviews between district and railroad personnel.
- Provide services, information, and aid to all district branches, HQ R/W Office of Project Delivery, and Office of Project Development.

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- Act as liaison agent for district with PUC, railroads, Office of Project Development, and HQ R/W Office of Project Delivery.
- Advise supervisor of project status and any potential delays.
- Advise district Office of Project Development and HQ R/W Office of Project Delivery of potential railroad problems.
- Inspect or arrange for inspection of grade crossings upon completion of construction and determine date crossing was completed and opened to the public. Transmit this information in a final report to the HQ R/W Office of Project Delivery together with photographs of the crossing.
- Furnish information to HQ Division of Rail about projects for the recommended grade crossing list.
- Obtain PUC maps required for grade separation structures.
- Obtain exhibits for Legal's PUC application.
- Regions/Districts have the authority to make application for a new or renewal of a railroad franchise or for rearrangement or construction of rail facilities where an existing or contemplated state highway or freeway is affected, or likely to be affected, by the continued maintenance, rearrangement, or construction of the rail facility. Regions/Districts will handle the matter on the local level with the appropriate local authority.

The District Railroad Agent's involvement in local assistance projects will be in accordance with district procedure.

8.69.04.00 Responsibility of HQ R/W Office of Project Delivery

The role of the HQ R/W Office of Project Delivery is to assist the districts and various Headquarters offices in railroad matters, and clear all projects with railroad structures involvement for advertising. Certain levels of project clearance may be delegated to the Region or District (see R/W Delegation Matrix).

Duties involve some or all of the following activities:

- Provide liaison between the various railroad companies and state and federal agencies regarding engineering matters and specific issues affecting the railroads.
- Provide liaison between district and Headquarters units.

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- Serve as a member of the Railroad Advisory Team on projects with complex railroad involvement.
- Obtain Legal review of Construction and Maintenance Agreements, Service Contracts, R/W Agreements, and other related documents.
- Develop standard procedures for property acquisitions from the various railroad companies.
- Standardize "Relations with Railroad" clauses for Statewide use.
- Maintain standard indentures from railroad companies.
- Negotiate directly with railroad companies on specific issues of statewide significance.
- Assist the districts in preparing complex R/W Contracts and Agreements when requested.
- Review (for conformity with established procedures and delegated authority) and approve all nonstandard railroad property acquisition transactions.
- Process railroad invoices for Service Contracts and supplements thereto for construction work performed by railroad.
- Determine apportionment of costs.
- Determine state's liability for extraordinary maintenance.
- Review documents and agreements for conformance with FHWA rules and regulations and obtain FHWA approvals as required.
- Appear at PUC hearings as adviser or expert witness in cooperation with Legal.
- Request Extensions to expiration dates as authorized by PUC decisions as necessary.
- Post-audit district approved standard railroad property acquisition.
- Provide post audit review to ensure conformity of Construction and Maintenance Agreements and supplements with R/W Appraisal and Contract obligations.
- Prepare and update the Railroad Syllabus covering matters required for railroad negotiations and project clearance.

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8.69.05.00 Role of the Public Utilities Commission (PUC)

Railroads are common carriers that fall under the jurisdiction of the PUC. The powers and jurisdiction of the PUC are contained in the Public Utilities Code, which was adopted in 1951 (STATS 1951, Chapter 764 as amended) pursuant to the Constitutional authority found in Sections 22 and 23, Article 12 of the California Constitution. Section 23 provides in part:

> ***"The Railroad (now Public Utilities) Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California... as shall be conferred upon it by the Legislature, and the right of the Legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution."***

8.69.06.00 Powers of the PUC

Public Utilities Code Sections 1201 through 1220 are the laws that generally have the greatest effect upon the Department's program. Section 1201 provides:

> ***"No public road, highway or street shall be constructed across the tracks of any railroad corporation at grade...without having first secured the permission of the Commission."***

Section 1202 provides that the PUC has the exclusive right:

> ***"...to determine and prescribe, including the particular point of crossing, and the terms of installation, operation, maintenance, use and protection of each crossing...of a publicly used road or highway by a railroad or vice versa."***
>
> ***"...alter, relocate or abolish by physical closing any such crossing heretofore or hereafter established."***
>
> ***"...require...a separation of grades at any such crossing...and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the construction, alteration, relocation or abolition of such crossings or the separation of such grades shall be divided between the railroad...and the State...."***

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8.69.07.00 Role of the Surface Transportation Board (STB)

The Surface Transportation Board (Board) was established on January 1, 1996 as a decisionally independent, bipartisan, adjudicatory body organizationally housed within the U.S. Department of Transportation (DOT), with jurisdiction over certain surface transportation economic regulatory matters. It was created by a December 29, 1995 Act of Congress (49 USC 10101 et seq.) known as the ICC Termination Act of 1995 (ICCTA). The ICCTA terminated the Interstate Commerce Commission (ICC) effective December 31, 1995; eliminated various functions previously performed by the ICC; transferred licensing and certain nonlicensing motor carrier functions to the Federal Highway Administration within DOT; and transferred remaining rail and nonrail functions to the Board.

8.69.08.00 Powers of the STB

49 USC 10903 et seq., governs abandonment of rail lines and discontinuance of rail service by common carriers. Section 10903(d) provides that no line of railroad may be abandoned and no rail service discontinued unless the Board finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance.

Part 1152 contains regulations governing abandonment of, and discontinuance of service over, rail lines. This part also sets forth procedures for providing financial assistance to assure continued rail freight service under 49 USC 10904, for acquiring rail lines for alternate public use under 49 USC 10905, and for acquiring or using a rail right-of-way for interim trail use and rail banking.

8.69.09.00 Route Location and Design

The Railroad Agent shall advise their supervisor of potential railroad problems in the route location and planning phases. The Agent may arrange for joint studies in the project development stage to obtain a route location and design that is economical and compatible with the railroad's operational needs and requirements.

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8.69.10.00 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 R/W, and the district, and can be convened upon the district's request.

8.69.11.00 Project Certification – Railroads

Project construction advertising requires two separate railroad clearances—the R/W Certification and the Railroad Clearance Letter.

The Railroad Agent is responsible for the railroad clearance statement for R/W certification for a project. The Railroad Agent certifies to the District Certification Section that all railroad property required for the project has been acquired by the state, or is covered by a Right of Entry or a Resolution of Necessity, and that a railroad clearance memorandum has or has not been received from HQ R/W Office of Project Delivery.

Clearance of matters concerning railroad operations also rests with the Railroad Agent. Railroad Agents are responsible for preparing "Relations with Railroads" clauses for inclusion in the Contract Special Provisions, arranging for the state to execute the Construction and Maintenance Agreement or Service Contract, and coordinates obtaining PUC order or any other agreement required to clear the project.

When the above matters are cleared, HQ R/W Office of Project Delivery issues a railroad clearance memorandum to the Office of Office Engineer with a copy to the Railroad Agent. Some types of project clearance letters may be delegated to the Region or District Railroad Agent.

The Railroad Agent shall immediately notify District Project Control so the Status of Projects can be updated.

It is mandatory that the clearance information be entered in IRWS on the Railroad Project screen (I-2) and in PMCS on both the EVNT screen and the AGRE screen.

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8.69.12.00 Liaison Procedures with Railroad Companies

The Railroad Agent shall establish and maintain channels of communication with railroad companies in the district. The Railroad Agent will arrange for the exchange of project study information so that future highway construction can be achieved in the most economical manner and with the least amount of disruption to the railroad. The required procedure is shown below.

LIAISON PROCEDURES

Public Hearings

- All railroads that are affected, or may be affected, shall be notified in writing of the time and place of public hearings to be held in connection with highway locations.

Route Maps

- When a route is adopted by the CTC, a copy of the adopted route map shall be mailed to each affected railroad. Similarly, the railroad should be notified of any route that has been deleted from the highway system whenever it affects their railroad or railroad property.

Preliminary Design Plans

- When preliminary plans are sufficiently advanced to determine what railroad facilities may be involved, the Railroad Agent shall forward them to the affected railroad with a request that the railroad comment or prepare preliminary relocation plans, if required. Copies of the correspondence shall be sent to the HQ R/W Office of Project Delivery. Additional information, including any design revisions, and appraisal maps should be sent to the railroad as it becomes available.

Coordination/Railroad Advisory Team

- A project that requires a major rearrangement or relocation of railroad facilities should be discussed early in the planning stages by coordinating a Railroad Advisory Team meeting. Representatives of the affected railroad, Design, HQ Structures, Legal, and HQ R/W Office of Project Delivery should be present to ensure the most practical and economical alternatives can be determined, consistent with sound highway and railroad design standards and practices.

Approved Plans

- The Railroad Agent shall obtain railroad's approval of bridge plans.

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Construction Date

- The Railroad Agent shall notify each affected railroad in writing of the bid opening date for a specific highway project.

8.69.13.00 Steps in a Railroad Involvement

- Prior to route adoption, analyze route with respect to railroad involvement.
- Prepare notification of public hearings. Furnish adopted route maps to railroad.
- Send preliminary design plan to railroad.
- 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.
- R/W appraisal prepared.
- Railroad approves legal descriptions for right of way requirements.
- Preparation of agreements, special provisions, and PUC Exhibits.
- Legal Division files PUC Exhibit.
- Right of Entry obtained, if necessary.
- Execution of agreement, deeds, and R/W Contract.
- HQ R/W Office of Project Delivery clears project for advertising, unless delegated.

8.69.14.00 Property Classifications

8.69.14.01 Operating Property – Definition

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

In general, the term "operating property" is used to describe those railroad facilities and property that are essential to conduct the railroad transportation

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business and without which railroad service could not be provided to users. An example is the roadbed. Under some circumstances, however, certain railroad facilities such as warehouses, depots, and freight forwarding facilities may be classified as operating property.

8.69.14.02 Nonoperating Property – Definition

"Nonoperating property" is property that is not essential to railroad operating requirements or property that is vested in a railroad land company.

8.69.14.03 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.

8.69.14.04 Nonoperating Property – Degree of Title

The same degree of title should be obtained as is acquired for the balance of the project. In most cases, acquisition of fee title is advisable.

8.69.15.00 Acquisition Procedures

8.69.15.01 R/W Maps and Legal Descriptions

To expedite acquisition of both operating and nonoperating railroad properties, R/W has agreed to furnish appraisal maps to the railroad as soon as possible after environmental clearance. To implement this, R/W Engineering shall furnish the necessary number of appraisal maps (and legal descriptions if available) to the Railroad Agent at the same time it sends the appraisal maps to the Appraisal Branch. On maps furnished to the Railroad Agent, only the railroad parcel(s) should be colored.

The Railroad Agent 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 Railroad Agent's letter of transmittal to the railroad should provide an estimated completion date for the staff appraisal.

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8.69.15.02 Contract and Offer

A R/W offer must be sent to the affected railroad immediately after the appraisal is approved. The transmittal shall contain the deed or indenture, R/W Contract if applicable, and the appraisal summary statement (Exhibit 8-EX-15A) with specific comparables that were used, if any. A right of way contract will be used for Fee acquisitions. Railroads typically will not use right of way contracts for Easements. Ideally, the property transaction should be agreed to between the parties before the Construction and Maintenance Agreement or Service Contract is fully executed by the railroad. Some railroads may also require the Draft PUC Application be sent for their review prior to executing the Construction and Maintenance Agreement.

8.69.15.03 Mile Post

Highway projects should be identified with the railroad line designation and mile post, if available, or railroad station when corresponding with the railroad on new projects. After the railroad establishes a file number, that number shall be used on all future correspondence. If the proposed work is at an existing grade crossing, the PUC grade crossing number shall be used on the correspondence.

8.69.15.04 Railroad Contacts

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

8.69.15.05 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 railroad shall be furnished to the railroad if it is available.

8.69.16.00 Railroad Payments

8.69.16.01 Minimum Payment of $1,000

In transactions with railroads where the state is to receive a Grant or 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

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payment is applicable only when the appraised value of the property to be acquired is Nominal.

8.69.16.02 Right of Entry – Interest Payment

Although no interest may be paid on a Right of Entry obtained for temporary easement, payment of interest is permissible where the state ultimately is to obtain a permanent right from the railroad (see Section 8.69.24.01 for distinction). In this case, interest is paid from the date of execution by the state until 90 days after submission of a mutually satisfactory R/W agreement to the railroad.

8.69.16.03 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.

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.

8.69.16.04 Purchase of Track

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

8.69.16.05 Transverse Crossings

Payment of consideration will not be made for transverse crossing easements on railroad operating property, except as provided in Appraisal Section 7.13.60.01-A.1.d. A reasonable processing fee may be paid in addition to any Nominal compensation.

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8.69.17.00 R/W Agreements and Contract Clauses with Railroads

The clauses in the table entitled "R/W Railroad Agreements and Contract Clauses" are used in transactions with the railroad companies. The Department has carefully considered the phraseology of the clauses and they shall not be altered. If, in the district's opinion, situations arise that require modification of these clauses or use of special clauses, the district must submit the contract to HQ R/W for prior approval.

R/W RAILROAD AGREEMENTS AND CONTRACT CLAUSES

Mortgage Release-Reconveyance

- When acquiring fee title, the railroad shall furnish a reconveyance or release of mortgage prior to close of escrow.
- Clause:
  Railroad, at no expense to the State, expressly covenants to cause any or all mortgages or Deeds of Trust, including modifications, amendments and supplements thereto, which affect the property to be conveyed in this transaction to be released or reconveyed and recorded within 90 days from the date of delivery to the State of the Grant Deed or Quitclaim Deed.

Subordination

- If easement rights only are being acquired and if consideration paid for the easement is $2,500 or more, the R/W Agreement should contain the following clause obligating the railroad to furnish a subordination thereof to the State.
- Clause:
  In consideration of the State's waiving a Release of Mortgage, the undersigned Grantor covenants and agrees to have any Mortgage, Indenture, or Deeds of Trust subordinated to the rights being acquired in this transaction and provide evidence of said subordination within one year from the date of close of escrow.

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R/W RAILROAD AGREEMENTS AND CONTRACT CLAUSES (Continued)

Indemnification Clause

- The following clause is used in easement acquisitions where the amount of settlement is less than $2,500. This clause is not used when a transverse crossing easement is being acquired without monetary consideration. For consideration over $2,500, see previous "Subordination" clause.
- Clause:
  In consideration of the State waiving a release of mortgage, the undersigned grantor covenants and agrees to indemnify and hold the State of California harmless from any and all claims that other parties may make or assert on the title to the premises. The grantor's obligation herein to indemnify the State shall not exceed the amount paid to the grantor under this Agreement.

Modification of Clause 1, R/W Contract Form RW 8-3

- In all transactions, it is permissible to delete the following portion of Clause 1 of the standard R/W Contract.
- Clause:
  "...or on account of the location, grade, or construction of the proposed public improvement."

Real Property Tax Clause

- The following clause is used in all transactions.
- Clause:
  The _____ Railway Company agrees that it has paid or will pay all current taxes and it will make its own arrangements as it sees fit regarding adjustment or cancellation of taxes on property which is the subject of conveyance to the State of California in this transaction.

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8.69.18.00 Deed Clauses with Railroads

The deed clauses listed in the table entitled "Railroad Deed Clauses" have been standardized for use with the railroads. Prior HQ R/W approval is required if it is necessary to revise any of these standard deed clauses. The reason for the revision should be set forth in the MOS with a copy of the deed attached.

RAILROAD DEED CLAUSES

Grade Separation Access Rights Clause (See Section 6.06.05.00-.01)

- Use the following Deed clause in acquiring railroad property rights for grade separation projects.
- Clause:
  This conveyance is made for the purpose of a highway grade separation and the Railroad hereby releases and relinquishes to the State any and all abutters' rights of access in and to the traveled way within the limits of the property herein above described.

DM-4 Modification

- Use the following clause where the State accepts a Grant Deed or Quitclaim Deed and the mineral or oil rights are excepted by the owner or some other party having an interest in these rights.
- Clause:
  Excepting and reserving, however, unto the Grantor, its successors and assigns, forever, the title and exclusive right to all of the minerals and mineral ores of every kind and character now known to exist or hereafter discovered upon, within or underlying said land or that may be produced therefrom, including, without limiting the generality of the foregoing, all petroleum, oil, natural gas, and other hydrocarbon substances and products derived therefrom, together with the exclusive and perpetual right of ingress and egress beneath the surface of said land to explore for, extract, mine and remove the same, and to make such use of the said land beneath the surface as is necessary or useful in connection therewith, which use may include lateral or slant drilling, boring, digging or sinking of wells, shafts, or tunnels; provided, however, that Grantor, its successors, or assigns, shall not drill, dig, or mine through the surface of said land in the exercise of said rights, and shall not disturb the surface of said land or otherwise develop the same in such manner as to endanger the safety of any highway that may be constructed on said land; provided, also, that no lapse of time in the exercise of such reserved rights shall be deemed to be an abandonment thereof nor a vestiture of any adverse right in the Grantee or its assigns.

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RAILROAD DEED CLAUSES (Continued)

DM-1 Modification

- Delete the following portion of the DM-1 Clause from Form RW 6-1(C), Grant Deed (Corporation with DM-1 Clause).
- In lieu of deleting the aforementioned portion of the DM-1 Clause, the district may use Form RW 6-1(D), Grant Deed (Corporation without DM-1 Clause).
- Clause:
  "...and the Grantor for itself, its successor and assigns hereby waives any claims for any and all damages to Grantor's remaining property contiguous to the property hereby conveyed by reason of the location, construction, landscaping or maintenance of said highway."

Modified DM-4 Clause

- Include the following clause where the State accepts a Grant Deed or Quitclaim Deed and the railroad reserves the oil, gas, and mineral rights.
- Clause:
  Railroad expressly reserves and excepts all minerals contained in the above-described land, including without limiting the generality thereof, oil, gas, and other hydrocarbon substances, as well as metallic or other solid minerals, provided that Railroad shall not have the right to go upon or use the surface of said land or the upper 100 feet of the subsurface, or any part thereof, for the purpose of drilling for, mining, or otherwise removing, any of said minerals. Railroad may, however, and hereby reserves the right to remove any of said minerals from said land by means of wells, shafts, tunnels, or other means of access to said minerals which may be constructed, drilled, or dug from other land, provided that the exercise of such rights by Railroad shall in no way interfere with or impair the use of the surface of the land hereby conveyed or of any improvements thereon.

Easement Reversion and Structure Removal Provisions for Separated Grade Crossings

- Provision for removal of improvements constructed by the State in the event highway use ceases.
- Clause:
  If the land described in Exhibit "A" or any portion thereof, shall cease to be for highway purposes, then and in that event, the right hereby given shall as to such portion or portions, as the case may be, thereupon cease and terminate and GRANTOR, its successors and assigns, shall resume possession thereof the same as though this instrument had not been

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executed and any structure placed on the land described in Exhibit "A" by the GRANTEE will be removed by and at the expense of the GRANTEE, subject to appropriation of funds by the California Transportation Commission.

8.69.19.00 Railroad Indentures (Easement)

8.69.19.01 Standards of Acceptability

When acquiring easements, the district should examine the deeds or documents 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 that requires the railroad to obtain an encroachment permit for record purposes only when it plans to work within the area described in the easement.

HQ R/W should be contacted concerning any particular problem that may arise. When an easement requires review by the Department, the district will transmit the easement to HQ R/W 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.

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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 indentures.
- There should be no obligation for the payment of funds for railroad work in the easement indenture. The indenture may make reference 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 state's title based on non-use of the highway or highway facilities. The railroads will sometimes insert a clause that provides that 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 non-use.
- 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.

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8.69.19.02 Easements for Highway Widening

When an existing highway right of way was acquired through prescription, easements for the widening of the highway right of way (grade crossing) should not describe the existing right of way. If the state accepts an easement that describes the existing prescriptive right of way plus the widened portion, this might be interpreted as an abandonment of the original highway. In that case, the conditions and covenants contained in the document would apply to both the existing highway and the widened portion. Since the state's title by prescription may be less restrictive than the new rights obtained, this might mean the state may be divesting itself of rights previously acquired by prescription.

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 vitiate the state's original rights since these rights are of record and may be disposed of only through the CTC's action.

8.69.19.03 Drainage Easements

Where the state is obligated to relocate an existing drainage facility under the railroad tracks, the railroad is responsible for owning and maintaining the facility if the construction is nothing more than a substitute facility and there is no additional water being introduced or no appreciable change in water velocity. No easement is required in this case, and the proposed construction may be covered by a Right of Entry or in the Construction and Maintenance Agreement or Service Contract.

In certain cases, the railroad may be obligated to replace the existing drainage facility at its own expense. To avoid delays, the district should contact HQ R/W as soon as the right of way requirements are determined so a legal determination can be obtained.

8.69.19.04 Easements in Limited Vertical Dimension (Aerial Easements)

See Section 8.01.30.00 for restrictive conditions that must be included in Aerial Easements. HQ R/W must be consulted about any deviations in wording to be used, and FHWA concurrence is required.

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8.69.19.05 Standard Indentures

Standard indentures can be generated over time for individual railroads; however, all railroads typically use their own specific clauses and are subject to frequent changes. Therefore, Indentures must be submitted to HQ R/W to obtain Legal review and approval for use.

HQ R/W may be contacted to obtain information on current indentures approved for use.

8.69.19.06 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. If in doubt, check with HQ R/W.

8.69.20.00 Drilling Permits

Unless directed otherwise by the Railroad representative, the district prepares a letter of request for a Drilling License or Right of Entry (Permit) whenever the state proposes to do exploratory drilling with state forces on operating right of way. When work is contracted out, a No Fee Right of Entry must also be obtained by the Contractor per Railroad instruction.

The request will state the following:

- Approximate number and size of holes to be drilled.
- Anticipated length of time the property will be occupied.
- Grading requirements, if any.
- Any other significant factors relevant to state's proposed work.

The district submits the request with a print showing the location of the site tied into railroad stationing and indicating a minimum clearance of 15 feet (4.572m) measured at right angles to the centerline of the nearest track. The area of land to be used should be shaded and not outlined or colored.

Upon receipt, the district will accept the executed counterparts of the Permit on the state's behalf and return the duplicate counterpart to the railroad with any fee required. The district shall retain the original drilling permit and send a

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copy to the HQ R/W Office of Project Delivery for filing and a copy to the requesting branch.

After the drilling is completed, the district shall notify the railroad of the completion date and request termination of the license.

When the test findings are available, a copy of the findings shall be forwarded to the railroad for their information. All conditions of the license must be strictly adhered to during the performance of any work on railroad's property by state forces.

8.69.21.00 Acquisition of Railroad Access Rights

Procedures are outlined below.

ACQUISITION OF ACCESS RIGHTS EXAMPLES

Case #1:

- Factual Condition – 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.

- Explanation – The railroad has no legal right of access to the new facility and access rights need not be acquired from the railroad.

Case #2:

- Factual Condition - Same factual condition as in Case #1, except that railroad property is to be acquired.

- Explanation – Access rights shall be acquired from the railroad using the applicable access clause in the conveyance documents. No payment should be made for the access rights.

Case #3:

- Factual Condition – 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.

- Explanation – Access rights need not be acquired.

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ACQUISITION OF ACCESS RIGHTS EXAMPLES (Continued)

Case #4:

- Factual Condition – Same factual condition, but with a prior document or agreement.

- Explanation – If a prior document or agreement does exist between the State and railroad that establishes the railroad's rights of ingress and egress to the existing public roadway, the district should request a legal opinion through HQ R/W to determine if loss of this right is compensable. The request should include the following:
    - R/W map.
    - Plan showing proposed construction.
    - Copy of prior document or agreement.
    - Evidence of railroad's use of public roadway for ingress and egress.
    - Any additional pertinent information.

Case #5:

- Factual Condition – 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.

- Explanation – 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.

Case #6:

- Factual Condition – Same factual conditions as in Case #3, except that a portion of railroad operating property is to be acquired.

- Explanation – Access rights should be acquired utilizing the applicable access clause in the conveyance documents. No consideration for access rights should be made.

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. (See Section 8.69.18.00 et seq., for grade separation access rights.) The district should refer all railroad access control acquisitions to HQ R/W before completing the appraisal process and during negotiations should disagreements with the railroad occur.

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8.69.22.00 Replacement of Railroad Buildings

8.69.22.01 Determination of Use – Replacement

In all acquisitions of improved railroad property covered by R/W Contract, the district must determine whether the affected building is operating or nonoperating. 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 and in service until a new facility is constructed. Only then can the old building be removed to accommodate highway construction.

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 R/W Office of Project Delivery. The report is sent to FHWA for approval to ensure that 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. Nonoperating property shall be acquired at fair market value.

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

8.69.22.02 Buildings – Betterment and Credits

When an existing railroad building is to be replaced, the replacement facility must be constructed to meet building code requirements. In constructing a replacement facility, only items that exceed the code requirements are considered betterments. The plans for the structure must be approved by the railroad and, as a general rule, only those items specifically requested by the railroad in excess of the 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 depreciated book value of the existing facility. See 23 CFR 646, as amended, for detailed instructions.

On federally participating projects, HQ R/W's procedure is that FHWA concur that the improvement to be replaced is an operating railroad facility. On all

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projects eligible for federal funds, the contract plans for the improvement, including credits, shall have prior FHWA approval.

8.69.23.00 Railroad Rights of Entry

8.69.23.01 Types

Railroads grant the following three types of Rights of Entry:

- **Rights of Entry Covering Permanent Right of Way Requirements** – These rights shall be covered by a formal document as soon as practicable. Since issuing a Right of Entry involves considerable time and expense to the railroad, a Right of Entry covering permanent right of way requirements should be requested only when it becomes necessary to meet advertising schedules, if it is apparent that waiting for an agreement or deed will delay the State's project. Every effort should be made to complete an acquisition before requesting a Right of Entry.

- **Rights of Entry Obtained for Temporary Easement** – The railroad will not grant a recordable document for a temporary right of way requirement, such as a temporary slope easement or temporary drainage easement. The district's request to the Railroad shall clearly set forth the reason for and use of the temporary easement.

- **Rights of Entry for Hazardous Waste Testing** – This basically is the same as the request for a temporary easement with specific detail on the reason for testing and any special conditions and circumstances.

Whether the document covers a temporary or a permanent right, the railroad refers to each type as a Right of Entry.

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8.69.23.02 Standards of Acceptability

Rights of Entry from the railroad are prepared by the railroad. The request to the railroad should specify that the signature page is to provide for acceptance by the DDC-R/W (see Exhibit 8-EX-24). Since they deviate from our standard form of Right of Entry, they must be submitted to HQ R/W for review and approval. 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 by the use of 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 Construction and Maintenance Agreement or a Service Contract. If a dollar amount is included in the Right of Entry, the maximum should not exceed $500.

8.69.23.03 Processing

After review and recommendation for acceptance, the district shall execute the Right of Entry. If a dollar amount is included for possible work by railroad, it shall be encumbered prior to submittal. The Railroad Agent should notify Project Development to add this amount to State's estimate under "State Furnished Materials."

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8.69.24.00 Summary of Railroad Transactions

A MOS must be prepared for all railroad property transactions that are completed by deed, indenture, or Right of Entry for temporary right of way requirements when no other right of way document will be obtained from the railroad.

When a Right of Entry has been obtained for permanent rights that will be covered later by a deed or indenture, the MOS shall not be prepared until the permanent document has been obtained.

The MOS shall include conformed copies of all conveyances covered by the transaction. When permanent rights have been acquired, a conformed copy of the conveyance document(s) shall be sent to the HQ R/W Office of Project Delivery for filing. The district shall retain the originals.

The two types of MOS and their uses are described below.

8.69.24.01 Standard Memorandum of Settlement

All railroad property transactions where payment is made for acquired right of way, whether permanent or temporary, must be prepared with the standard MOS conforming to the requirements of Section 8.50.00.00.

8.69.24.02 Short Form Railroad Memorandum of Settlement

The short form Railroad MOS (Form RW 8-30) is used only when the appraised value of the transaction is zero and the right of way acquisition has been completed at no cost to the state, notwithstanding processing fees.

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8.69.25.00 Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Railroad Coordination 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**
23 CFR §646	8.69.03.04	Application for New or Renewal of a Railroad Franchise, or Rearrangement or Construction Impacting State Highway or Freeway (HQ Review and Comment Required)	District	Senior RW Agent
23 CFR §646	8.69.23 (all)	Execution of Railroad Right of Entry Form (Prior HQ Review and Approval Required)	District	RW Manager
23 CFR §646	8.69.05.00 8.69.18.00 8.69.19 (all)	Railroad Acquisitions – Nonstandard Clauses in RW Contracts, Deeds, Indentures, and Easements	HQ	Supervising RW Agent
23 CFR §646	8.69.16.04	Purchase of Railroad Track	HQ	Supervising RW Agent
23 CFR §646	Update Pending	Execution of Railroad Agreements on Behalf of the State (Department)	HQ	Supervising RW Agent

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8.70.00.00 – DELEGATIONS

8.70.01.00 Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Acquisitions 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**
23 CFR §710.201	8.01.07.01	Waiver of RAP Benefits	HQ	Supervising RW Agent
23 CFR §710.201	8.01.13.00	Negotiations with Unapproved Appraisal Report or Conditionally Approved Appraisal Report	District	Supervising RW Agent
23 CFR §710.201	8.01.16.00	Exchanges of Noncontiguous, or Yet-to-Be-Acquired Land	District	Supervising RW Agent
23 CFR §710.201	8.01.20.00	Substantial Payment for Out-of-Pocket Expenses	District	Supervising RW Agent
23 CFR §710.201	8.01.26.00	Payment for Parcels Appraised as Nominal	District	Senior RW Agent

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Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	**RW Manual Section**	**Responsibility**	**Delegation**	**Lowest Level of Sub-Delegation**
23 CFR §710.201	8.01.28.00	Non-Substantial Administrative Authorization Approval - Where Approved Staff Appraisal or Authorized Independent Appraisal is $100K or Less and Administrative Authorization is Up to $50K	District	<u>Valuation $10K or Less:</u> Senior RW Agent up to $10K *D9 Senior RW Agent up to $25K* <u>Appraisal "Nominal" to $100K:</u> • Supervising RW Agent up to $25K • RW Manager up to $50K
23 CFR §710.201	8.01.28.00	Non-Substantial Administrative Authorization Approval - Where Approved Staff Appraisal or Authorized Independent Appraisal is Over $100K and Administrative Authorization is up to a Max of $500K	District	<u>Appraisal Over $100K:</u> • Supervising RW Agent up to $250K • RW Manager up to $500K

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Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	**RW Manual Section**	**Responsibility**	**Delegation**	**Lowest Level of Sub-Delegation**
23 CFR §710.201	8.01.29.00 8.01.29.01	Non-Substantial Administrative and Legal Settlements - Where Approved Staff Appraisal or Authorized Independent Appraisal is $100K or Less and Proposed Settlement is Up to $50K	District	<u>Valuation $10K or Less:</u> Senior RW Agent up to $10K *D9 Senior RW Agent up to $25K* <u>Appraisal "Nominal" to $100K:</u> • Supervising RW Agent up to $25K • RW Manager up to $50K
23 CFR §710.201	8.01.29.00 8.01.29.01	Non-Substantial Administrative and Legal Settlements - Where Approved Staff Appraisal or Authorized Independent Appraisal is Over $100K and Proposed Settlement is up to a Max of $500K	District	<u>Appraisal Over $100K:</u> • Supervising RW Agent up to $250K • RW Manager up to $500K

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Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	**RW Manual Section**	**Responsibility**	**Delegation**	**Lowest Level of Sub-Delegation**
	8.01.29.00 8.01.29.01	Substantial Administrative and Legal Settlements – Proposed Settlement Exceeds Limits Above	HQ	Up to $1.5M: Supervising RW Agent Over $1.5M up to $3M: Division Chief Over $3M: Chief Engineer
	8.15.00 (all)	Loss of Business Goodwill Administrative and Legal Authorizations (Both Non-Substantial and Substantial) – Staff Appraisal or Independent "Zero Loss" Appraisal Completed	District	Senior RW Agent
	8.15.00 (all)	Loss of Business Goodwill Administrative and Legal Authorizations (Both Non-Substantial and Substantial) – No Staff Appraisal Completed	HQ	Up to $1.5M: Supervising RW Agent Over $1.5M up to $3M: Division Chief Over $3M: Chief Engineer

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Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	**RW Manual Section**	**Responsibility**	**Delegation**	**Lowest Level of Sub-Delegation**
23 CFR §710.201	8.01.28.00 8.01.29.00	Operating Railroad Property Only: Any Amount in Excess of Approved Appraisal with Exception of Parcels Defined Under 8.01.26.00 Substantial Administrative Authorizations, and Substantial Administrative and Legal Settlements (Where Difference Between Approved Appraisals, Independent Appraisals and Proposed Settlement is $500K or More)	HQ	Up to $1.5M: Supervising RW Agent Over $1.5M up to $3M: Division Chief Over $3M: Chief Engineer
23 CFR §710.201	8.01.30.00	Limiting Conditions of Easements in Limited Vertical Dimension (e.g. Aerial Easements)	District	Supervising RW Agent
23 CFR §710.201	8.01.31.00	State Rental of Residential or Commercial Units Prior to Acquisition	District	Project Decision: RW Manager Parcel Decision: Senior RW Agent

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Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	**RW Manual Section**	**Responsibility**	**Delegation**	**Lowest Level of Sub-Delegation**
23 CFR §710.201	8.03.02.00	Contractual Contingency Occurring More Than 3 Years Following Acceptance of R/W Contract	District	Supervising RW Agent
23 CFR §710.201	8.03.07.00	Contracts Acquiring Private Property for Private Use	HQ	Supervising RW Agent
23 CFR §710.201	8.03.08.00	R/W Contract Approval	District	Up to $25K: Senior RW Agent Over $25K: Supervising RW Agent
23 CFR §710.201	8.06.22.00	Partial Acquisition – Owner Requests Total Acquisition	District	Supervising RW Agent
23 CFR §710.201	8.09.09.00	Right of Entry Prior to Appraisal Process Involving Exceptional Circumstances or of an Emergency Nature	District	RW Manager
23 CFR §710.201	8.16.01.04	Contaminated Properties – Use of Nonstandard Clauses	District	Supervising RW Agent
23 CFR §710.201	8.21.04.02	Approval of Memorandum for Condemnation of State Park Areas	HQ	Supervising RW Agent
23 CFR §710.201	8.21.05.01	Execution of Agreement for Transfer of Jurisdiction	HQ	Senior RW Agent

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Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	**RW Manual Section**	**Responsibility**	**Delegation**	**Lowest Level of Sub-Delegation**
23 CFR §710.201	8.25.05.00	Appraisal Approval of Standard Form of Agreement, "Material Agreement"/"Disposal Agreement"	District	RW Manager
23 CFR §710.201	8.26.03.00	Determine if Water Stock is Appurtenant to Land	District	Supervising RW Agent
23 CFR §710.201	8.61.07.00	Authority to Change Escrow Instructions After Scheduling	District	Senior RW Agent
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23 CFR §710.201	8.64.02.00	Execution of Certificate of Acceptance (Requires Power of Attorney)	District	Senior RW Agent
23 CFR §710.201	8.64.03.00	Deeds Containing Nonstandard Recitals	District	Supervising RW Agent
23 CFR §710.201	8.65.02.00	Not Obtaining a Title Report for Land Valued Less Than $25K	District	Senior RW Agent
23 CFR §710.201	8.01.25.00	Donations of Unimproved Land Valued Up to $25K	District	Supervising RW Agent
23 CFR §710.201	8.65.04.00	Title Company Contract Rates	District	Senior RW Agent
23 CFR §710.201	8.01.32.00	Reinstatement of Offer on Parcels Not on the Current STIP	HQ	Supervising RW Agent

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Exhibits are located online:

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