RIGHT OF WAY MANUAL

JANUARY 2020

CALIFORNIA DEPARTMENT OF TRANSPORTATION

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STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY MANUAL

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(1/2020)

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CODE OF ETHICS for EMPLOYEES
in
RIGHT OF WAY AND LAND SURVEYS
DEPARTMENT OF TRANSPORTATION
STATE OF CALIFORNIA

Recognizing our responsibility to our Department and to the people of the State of California and feeling that we should encourage and foster high ethical standards in our organization, we do hereby subscribe to the following Code of Ethics for our constant guidance and inspiration, predicated upon the basic principles of trust, justice, and fair play.

- *To show faith in the worthiness of our profession by industry, honesty, and courtesy in order to merit a reputation for high quality of service and fair dealing.*

- *To add to the knowledge of our profession by constant study and to share the lessons of our experience with our fellow employees.*

- *To build an ever-increasing confidence and goodwill with the public and our employees by poise, self-restraint, and constructive cooperation.*

- *To ascertain and weigh all the facts relative to real properties in making an appraisal thereof using the best and most approved methods of determining just compensation.*

- *To conduct ourselves in the most ethical and competent manner in our negotiations with affected property owners, thus meriting confidence in our knowledge and integrity.*

- *To accept our full share of responsibility in constructive public service to the community, state, and nation.*

- *To strive to attain and to express a sincerity of character that shall enrich our human contacts ever aiming toward that ideal -- the practice of the "golden rule."*

(REV 5/2009)

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CHAPTER 1

INTRODUCTION
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1.00.00.00 - INTRODUCTION

1.01.00.00 - RIGHT OF WAY MANUAL OVERVIEW

1.01.01.00 Purpose

The Right of Way Manual is prepared by the Division of Right of Way and Land Surveys (R/W&LS) to provide uniform procedures and guidance for Right of Way (R/W) functions of the California Department of Transportation (Department). This manual is neither intended as, nor does it establish, a legal standard for these functions. Policies and practices established herein are for the information and guidance of the officers and employees of the Department and those under its oversight. It implements 23 Code of Federal Regulations (CFR) 710.201(c) which in part mandates each state department "***which receives funding from the highway trust fund shall maintain a manual describing its right-of-way organization, policies, and procedures.***" The CFR further obligates other public land acquisition organizations or private consultants under the Department's oversight on Federal-aid projects to comply with State and Federal laws, regulations, and the Department's policies and practices. While this manual outlines some aspect of Land Surveys' role in project delivery, more detailed guidance for the Land Surveys function is found in the Land Surveys Manual.

1.01.02.00 Authorities

- Code of Federal Regulations (CFRs):
  - Title 23 – Highways
  - Title 36 – Parks, Forests, and Public Property
  - Title 43 – Public Lands: Interior
  - Title 49 – Transportation
  - Title 50 – Wildlife and Fisheries

- California Codes:
  - Business and Professions Code (BPC)
  - Civil Code (CIV)
  - Code of Civil Procedure (CCP)
  - Education Code (EDC)
  - Evidence Code (EVID)
  - Financial Code (FIN)

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- Fish and Game Code (FGG)
- Government Code (GOV)
- Health and Safety Code (HSC)
- Insurance Code (INS)
- Labor Code (LAB)
- Probate Code (PROB)
- Public Contract Code (PCC)
- Public Resources Code (PRC)
- Public Utilities Code (PUC)
- Revenue and Taxation Code (RTC)
- Streets and Highways Code (SHC)
- Vehicle Code (VEH)
- Water Code (WAT)
- Welfare and Institutions Code (WIC)

- Stewardship and Oversight Agreement (Federal Highway Administration/Caltrans)

1.01.03.00 Scope

The manual includes R/W policies, instructions, and standard practices, as well as forms and exhibits intended to aid field and office operations. This manual is not a textbook or a substitute for law, statute, regulation, knowledge, experience, or judgment.

Administrative regulations, statutory references, and citations from U.S. Code (U.S.C.) and the CFR are referenced but not quoted in their entirety, except where noted. Citations are contained in the exhibits or in other books and pamphlets that are available to the region/district. Flowcharts have been developed for those chapters where applicable and helpful to the reader.

1.01.04.00 Manual Organization

Chapters, sections and subsections are identified by a decimal numbering system to facilitate referencing chapter and section headings in bold print. Quoted text of any referenced law, statute, or regulation is shown in bold italicized print. Abbreviations and acronyms are used wherever possible. A list of all current forms and exhibits immediately follow the chapter sections to which they relate.

This manual is organized along R/W's normal project delivery workflow as much as possible. The first chapters deal with planning, financing, and

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federalization of R/W activities. The manual then proceeds through the project development process, from initial estimates to final project closeout. Some activities are accomplished after construction of a project, for example, Airspace leasing and disposal of Excess Land. R/W activities not directly related to the Department's project delivery are covered in the last chapters.

1.01.05.00 Forms and Exhibits

Use of a given form or exhibit is mandatory for its stated purpose (unless stated as optional).

- Forms are available online:
  - External Forms site
  - Internal Forms site (Caltrans staff only)

- Exhibits are available online:
  - External Exhibits site
  - Internal Exhibits site (Caltrans staff only)

As Forms and Exhibits are not located within the R/W Manual, please visit the websites above to ensure you are using the most current version of a Form/Exhibit.

1.01.06.00 Revisions

Revision suggestions can be made via the R/W Manual Revision Request form.

The R/W Manual is typically updated on an annual cycle and is published each January. In early 2020, we anticipate a number of revisions due to new legislation (effective January 1st) and our manual Exhibits/Forms structure (many Exhibits will be converted to Forms). As a result, there will be two manuals published in 2020: one in January 2020 and another in July 2020.

In order to accommodate statewide review and allow for comment incorporation and publishing time, deadlines for new content in the next publication of the R/W Manual are on the following schedule:

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Publication Deadlines for Next R/W Manual (July 2020)

- 3/20/2020 – last date to submit R/W Manual Revision Requests for July 2020 Manual
- 4/17/2020 – last date Authors can submit approved drafts to Publications Manager for statewide review
- 5/1/2020-6/1/2020 – last available statewide review period
- 6/2/2020 – 6/5/2020 – all review comments compiled and submitted to Author
- 6/8/2020-6/30/2020 – Author's incorporation of review comments, final edit/review period
- 6/30/2020 – final approved edits due to Publications Manager
- 7/1/2020-7/17/2020 – incorporation of all final edits for publication
- 7/20/2020 – publication date

When immediate revisions are required, Right of Way Manual Directives (RWMDs) are published. These interim policy memos are posted online at the RW Manual Revisions page. RWMDs will serve as the official policy for that revised item until incorporation into the next manual publication.

1.01.07.00 Accessing the Manual

The R/W Manual is available online at the RW Manual page.

Subscribe to the Right of Way Manual Updates email list to receive direct email alerts for all revision information, including interim policy updates, updated forms and exhibits, etc. The email subscription sign-up is located at the RW Manual page.

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CHAPTER 2

ORGANIZATION AND POLICY
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(REV 8/2018)

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2.00.00.00 - ORGANIZATION AND POLICY

2.01.00.00 - ORGANIZATION'S PURPOSE AND OVERVIEW

2.01.01.00 Right of Way's Purpose

Right of Way (R/W) serves the statewide real estate needs of Caltrans by providing property rights and real property management services for the planning, development, and construction of transportation projects on time, within budget, and in support of Caltrans' purpose, mission, vision, and goals. Caltrans' current mission, vision, goals, and values may be referenced at the "About Caltrans" page.

2.01.02.00 Right of Way and Land Surveys Organization

Right of Way and Land Surveys (R/W & LS) maintains its headquarters (HQ) in Sacramento and a Division in each of the Department's twelve district offices. R/W regionalized six of the district offices for the purpose of workload leveling and the facilitation of project delivery. Districts 1, 2, and 3 comprise the Northern Region, while Districts 5, 6, and 10 comprise the Central Region. A District Director controls operations within each of the twelve district offices. However, the Chief, Division of Right of Way and Land Surveys (Division Chief) in HQ administers the statewide R/W & LS program and directs statewide R/W policies and administration through Region/District Right of Way Managers and HQ's R/W & LS Office Chiefs.

The organizational structure for the Land Surveys function within R/W & LS can be found in Chapter 1 of the Surveys Manual and Chapter 6 of this Manual (R/W Engineering).

R/W & LS consists of a highly skilled professional staff of R/W Agents, Land Surveyors, administrators, and others who play a vital role in contributing to the Caltrans mission by delivering right of way products for transportation projects and managing other real estate assets related to those projects. R/W Agents and Land Surveyors are the public face of Caltrans, since they are among the first Caltrans representatives to meet members of the public

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affected by transportation projects. As a result, R/W & LS staff and must abide by a stringent Code of Ethics (found at the beginning of this Manual).

2.01.03.00 Functions

R/W administers the statewide program with primary responsibilities within office functions to:

- Appraise and purchase property rights required for transportation purposes; effect the orderly relocation of displaced people, personalty, businesses, and utility facilities; and clear properties prior to construction as part of project delivery.

- Comprehensively manage the Department's real property and dispose of property no longer needed for transportation operational purposes.

- Monitor R/W activities on federally assisted local facilities.

- Maintain a stewardship role in the expenditure of federal funds.

- Ensure local agency compliance with state and federal requirements when local funds are used for projects on the State Highway System.

More information on major R/W functions is provided in the following pages.

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MAJOR R/W FUNCTIONAL AREAS

Function	Synopsis
Planning and Management	Develop, manage, and report on R/W's state, federal, and local capital resources for projects on the State Highway System.
Project Coordination	Oversee R/W data systems, coordinate and monitor project schedules, provide workplan support and delivery, along with related administrative activities.
Estimating	Prepare, update, and review R/W estimates to forecast and facilitate programming of funds for capital outlay and support.
R/W Engineering	Prepare all maps, documents, and legal descriptions needed to acquire right of way and dispose of excess land. Prepare and update record maps of Caltrans-owned property.
Appraisals	Prepare documentation required to establish the basis for just compensation to acquire right of way, lease airspace rights, and dispose of excess land.
Acquisitions	Conduct all activities necessary to acquire property rights to construct and maintain the transportation system. Initiate and follow the condemnation process if and when negotiations have reached an impasse.
Certification	Coordinate Right of Way Certification prior to construction.
Relocation Assistance	Provide full implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act in the relocation, advisory assistance, and reimbursement of displaced persons and businesses.

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MAJOR R/W FUNCTIONAL AREAS (Continued)

Function	Synopsis
Property Management	Manage all Caltrans-owned properties held for future transportation projects, employee housing, and excess land sales. Responsible for demolition and clearance of right of way for construction, and locating and leasing space for construction Resident Engineer offices, as needed. Responsible for Storm Water program.
Utility Relocations	Conduct all activities necessary to oversee regulatory compliance, early identification, avoidance, accommodation, or relocation of utility facilities that would be in conflict with planned construction or subsequent operation of the transportation facility.
Airspace	Lease and manage various types of Caltrans-owned and operated right of way and/or facilities that are used to support the transportation system, but that safely accommodate a secondary use.
Excess Land	Dispose of all properties declared as excess to Caltrans' transportation projects or operational needs. This can include fee owned land, easements, materials sources, disposal sites, maintenance station properties, or any other property owned by Caltrans. Oversee and support the Real Property Retention Review process.
Asset Management	Oversee project development of operational facility projects. Promote and pursue opportunities to optimize use of Caltrans' real property assets. Administer Caltrans' Lands and Buildings database, the Asset Management Inventory (AMI).

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MAJOR R/W FUNCTIONAL AREAS (Continued)

Function	Synopsis
Local Programs	Provide oversight and guidance for all R/W activities, including utility relocation, to local public agency partners for local agency projects of all funding types on the State Highway System, as well as for State and/or Federal funded local agency projects off the State Highway System.
Strategic Innovation	Develop and deliver training, work to enhance professional development, update and create all R/W publications, manage and develop information systems, coordinate examination planning and recruitment efforts, oversee Title VI activities.
Railroad Coordination	Perform early coordination and all railroad activities necessary leading to clearance of railroad involvements for transportation project delivery.

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2.02.00.00 - PROJECT DEVELOPMENT

2.02.01.00 Transportation Project Development Process

R/W participates throughout the transportation project development process as a member of the project development team. The transportation project development process starts with initiation of feasibility studies in accordance with the Project Development Procedures Manual (PDPM). The process covers project report studies, community interaction, environmental studies, clearance documents, alternatives, and public hearings–all leading to completion of the plans, specifications, and estimates (PS&E phase of a project). Current Department policy requires that project reports be prepared on all transportation development and improvement projects.

As early as the feasibility study Project Initiation Document (PID) stage, and as changes occur during the project development process, R/W produces a R/W Conceptual Cost Estimate or Data Sheet that contain R/W's estimated capital outlay, support workplan, and schedule requirements for the project. Upon obtaining the Project Approval and Environmental Document (PA&ED), R/W performs regular R/W activities to acquire and clear right of way required for the project. R/W's major deliverable is the R/W Certification, a statement of the level of readiness for construction required as part of the PS&E package. Upon completion of the PS&E, the project is Ready to List (RTL) the contract for project construction for advertisement, award, and completion of construction. The process ends with Construction Contract Acceptance (CCA) and project closeout of contractual and financial obligations.

2.02.02.00 Caltrans Project Management

The Division of Project Management oversees Caltrans project delivery activities. Project Management emphasizes planning, monitoring, and managing project delivery activities and resources through task management to deliver the right project, at the right time, within budget, and with the quality promised. Project Management emphasizes communication in a team-based environment. The project manager, functional managers, project management support personnel, and region/district managers work together with any local partners to deliver the project. As part of this effort, Caltrans has developed a Project Management Manual (internal Caltrans link) that sets forth the policies, goals, organizational structure, and roles and responsibilities of the project management organization. R/W participates as

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an active member of the project development team, generally as a functional team member and now in the evolving task manager role.

To support the Department's Project Management program, Region/District Divisions of R/W have created R/W Project Coordinator positions. R/W Project Coordinators act as points of contact to coordinate the exchange of information, respond to customer needs and enhance communication among divisions and offices in the Department, thereby aiding in project delivery on time and within the estimated cost.

2.02.03.00 Hazardous Materials

Caltrans' policy in the development of transportation projects is to fully consider all aspects of potential hazardous materials sites. Contaminated property is acquired only after adequate prior investigation and proper contractual and valuation safeguards are incorporated into the property acquisition process. The property owner shall complete remediation of contamination, if possible, prior to the Department's acquisition of the property. Where cleanup by the owner prior to acquisition is not possible, Project Delivery Directive PD-02 "Contaminated Property Acquisition" outlines exception procedures.

See Manual Section 7.04.12 for R/W's role in this phase of project development and valuation considerations relating to contaminated properties. In addition, procedures specific to each R/W functional unit are found in the hazardous materials sections in most chapters of the R/W Manual.

2.02.04.00 Risk Taking

R/W is constantly challenged with new laws, regulations, policies, and the application of policies and procedures to real-life situations. R/W sometimes faces unique situations that require judgment decisions when specific guidance for forming the decision is not available from law, regulations, or policies and procedures. R/W occasionally must take intelligent risks to deliver its product. The following statement provides some guidance for making decisions involving risk taking:

A RISK may be defined as a legal and planned deviation in business practices or policy application consistent with delegated authority and a fiduciary position that can result in time or dollar economies for Caltrans.

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Prior to making a decision regarding a risk situation, the following factors should be considered:

- Is the risk decision legal?
- Is this informed decision consistent with Caltrans' policy and practice of being good stewards of our assets?
- Is the decision consistent with delegated authority?
- Does the decision consider the rights of those involved?
- Does the decision fall in line with Caltrans' Mission, Vision and Goals?

For more information, please see the Project Risk Management Handbook (internal Caltrans link).

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2.03.00.00 - TRAINING AND DEVELOPMENT

2.03.01.00 Philosophy

R/W & LS is committed to developing and maintaining a highly qualified and motivated workforce that is representative of California's diverse population. Inherent in this commitment is the belief that a well-trained and motivated workforce will improve efficiency, reduce costs, and offer an increased level of service to our customers.

2.03.02.00 General

Employees in R/W possess distinct and specialized skills. Additionally, all employees are expected to have basic computer literacy, good communication and interpersonal skills, as well as familiarity with the range of functions within R/W.

Both formal and informal training is required for all employees. Formal training is offered in accordance with Caltrans' policies and falls into the following categories: mandated, job-required, job-related, personal development, upward mobility, and career-related. The formal training outlined in this section does not include mandated State and Caltrans training courses required of all employees. Informal training refers to on-the-job training and is an essential element in our philosophy of developing well-trained employees.

2.03.03.00 Responsibility

All R/W employees share responsibility for developing and maintaining a well-trained workforce. (See below.)

- **HQ Project Delivery Professional Development Managers** - are responsible for coordinating, scheduling, funding, and monitoring statewide training courses, as well as developing new courses and training instructors.

- **HQ Managers** - are responsible for planning training needs for HQ employees, identifying and prioritizing functional training needs statewide, identifying and providing personnel to be trained and used as instructors, and serving as subject matter experts to develop new courses.

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- **Region/District Managers** - are responsible for planning the training needs of region/district employees; maintaining training records; tracking, requesting and optimizing local funding for training; and identifying and providing personnel to be trained and used as instructors.

- **First-Line Supervisors** - are the primary managers and providers of training in their role as mentors. They also are responsible for annual staff evaluations, reviewing and updating the employee's training history, assessing the employee's training needs, and completing probationary reports for new and promoted employees.

- **Employees** - are ultimately responsible for their own personal and professional development. This includes assuming personal and fiscal responsibilities for developing skills and abilities. They are responsible for identifying training needs to be included in their IDPs; for fully participating in assigned training; for seeking training opportunities to improve job performance and self-development (including performing on task forces, seeking developmental assignments outside of the Division, serving on exam panels, serving as instructors, taking short-term assignments in other regions/districts); for developing mentor and lead person skills to assist in training others; and for maintaining a current, personal training history.

Attainment of professional designations from associations such as the International Right of Way Association (IRWA), Appraisal Institute (AI), or any internally sponsored professional certification can be beneficial to all R/W staff. The Division also has a Right of Way Certificate program (internal Caltrans link) which is available to all R/W Agents. While it is the employee's prerogative to attain such designations, R/W will support this endeavor to the degree that it benefits Caltrans.

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2.03.04.00 Training Standards

Training standards are structured to give all employees basic knowledge of R/W operations and to provide the skills necessary for optimum job performance. Each region/district must ultimately assess its own needs, its available resources, and the personnel involved when determining employees' training.

A general orientation process is an important step in training employees new to R/W. "The Supervisor's New Employee Orientation Checklist" (PM-0943) and the "Orientation to Right of Way & Land Surveys Checklist" (2-EX-1) are guides for the first-line supervisor to follow to ensure that all employees become familiar with Caltrans in general and R/W in particular. New employees should also review the Right of Way Agent Field Safety Guide at the RW Publications page (internal Caltrans link).

2.03.05.00 Employee Retention

R/W & LS is committed to strategic planning for effective recruitment to fill vacancies as well as long-term retention of experienced employees. Staff turnover adversely impacts production while a position is vacant and also during the natural transition from a new, untrained employee to being experienced with the necessary knowledge and skills for optimal productivity.

In an effort to determine causes of turnover and develop strategies to improve employee recruitment and retention in R/W, supervisors are responsible for providing the employees with the "Confidential RW Exit Interview Questionnaire" (RW 02-03) for completion, along with an envelope addressed to HQ R/W when given notice of an employee's intention to leave R/W. The employee also may provide a copy of the completed form to their supervisor or other local R/W management for information.

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2.04.00.00 - RIGHT OF WAY ADMINISTRATION

2.04.01.00 Title VI of the Civil Rights Act of 1964 and Related Statutes

Caltrans Director's Policy 28-R1 "Title VI of the Civil Rights Act of 1964 and Related Statutes" states that Caltrans shall provide equal opportunity and full access to its programs, services, and information to all persons without regard to race, color, national origin, sex, disability, age, or income status. R/W & LS assures that all services and benefits to be derived from any right of way activity will be administered in accordance with this policy, and as required in Title VI and related statutes, including but not limited to the following:

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000, provides in Section 601 that:

> ***"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."*** (PROHIBITS DISCRIMINATION IN IMPACTS, SERVICES, AND BENEFITS OF, ACCESS TO, PARTICIPATION IN, AND TREATMENT UNDER A FEDERAL-AID RECIPIENT'S PROGRAMS OR ACTIVITIES.)

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, provides:

> "For the fair and equitable treatment of persons displaced as direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance." (PROVIDES FOR FAIR TREATMENT OF PERSONS DISPLACED BY FEDERAL AND FEDERAL-AID PROGRAMS AND PROJECTS.)

The Uniform Relocation Act Amendments of 1987, P.L. 101-246, provides:

> "For fair, uniform, and equitable treatment of all affected persons; …(and) minimizing the adverse impact of displacement…(to maintain)…the economic and social well-being of communities; and…to establish a lead agency and allow for State certification and implementation." (UPDATED THE 1970 ACT AND CLARIFIED THE INTENT OF CONGRESS IN PROGRAMS AND PROJECTS WHICH CAUSE DISPLACEMENT.)

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Title VIII of the 1968 Civil Rights Act, 42 U.S.C. 3601, provides that:

> "(I) It shall be unlawful…to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion or national origin." (PROHIBITS DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING – U.S. Department of Housing and Urban Development (HUD) is the primary interest agency, but FHWA and States under Title VI are responsible for preventing discrimination in the function of Right-of-Way.)

Presidential Executive Order 12898 addresses Environmental Justice regarding minority and low-income populations.

Presidential Executive Order 13166 improves access to services for persons with limited English proficiency (LEP).

For more information on Title VI of the Civil Rights Act of 1964 and related statutes, refer to RW 2-EX-3 or the Caltrans Title VI Program.

2.04.01.01 HQ Responsibilities

The Division will designate a Title VI Program Area Advisor (PAA) whose primary responsibilities are to:

- Refer all Title VI discrimination complaints to Caltrans Office of Business and Economic Opportunity (OBEO) Compliance/Title VI Program Branch. The Division will follow the OBEO Compliance/Caltrans Title VI Program.

- Ensure Title VI requirements are included in policy directives, contracts, and program manuals, and that the procedures used have built-in safeguards to prevent discrimination.

- Advise Caltrans' Title VI Coordinator in HQ OBEO.

- Serve as liaison between the R/W Title VI Liaisons in the Regions/Districts and the Caltrans Title VI Coordinator in HQ OBEO.

- Ensure the collection and analysis of the "Right of Way Title VI Survey" (RW 02-01) is done by the Region/District R/W Title VI Liaisons.

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- Ensure evaluation of Region/District R/W performance for compliance with Title VI laws and regulations, delivery of the Title VI survey, and maintenance of Title VI records.

- Assist the Caltrans Title VI Coordinator in HQ OBEO in coordinating and conducting compliance reviews of HQ R/W & LS.

- Review and recommend needed changes in policy.

- Provide the Caltrans Title VI Coordinator in HQ OBEO with an annual report of the HQ R/W & LS' Title VI-related accomplishments and goals for inclusion in the Title VI Annual Report to FHWA.

- Provide information related to right of way activities in languages other than English.

2.04.01.02 Region/District Responsibilities

Each Region/District Chief for R/W shall appoint a Region/District R/W Title VI Liaison, who will collect and provide accurate information in a timely manner upon request.

During the first contact, each Region/District R/W Agent providing services to the public must deliver to property owners, tenants, and displacees the following Title VI information:

- Title VI brochure (internal Caltrans link) – available in eleven languages.

- "Title VI of the Civil Rights Act of 1964 and Related Statutes" (2-EX-3)

- The U.S. Department of Commerce of the Census, Language Identification Flashcard, Exhibit 2-EX-4, when the R/W Agent needs to identify a language while conducting right of way related activities.

- "Right of Way Title VI Survey" (RW 02-01)

- OBEO's "Title VI and Other Discrimination Complaint Form" (OBEO-0002).

Additionally, Agents shall document delivery of the Title VI information and the use of the Language Identification Flashcard with an appropriate diary entry.

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The Region/District R/W Title VI Liaison shall provide to the local District Title VI Liaison an annual report of the R/W Region's/District's-related accomplishments and goals upon request. The information will be compiled and conveyed by the District's Title VI Liaison to the Caltrans Title VI Coordinator in HQ OBEO for analysis and inclusion in the Title VI Annual Report to FHWA.

2.04.02.00 R/W & LS Roster

The R/W & LS Roster Coordinator initiates, assembles, and distributes the R/W & LS Roster, which serves as a resource for information on personnel in R/W classifications statewide. The R/W & LS Roster is typically published once a year in January.

The Roster is divided into the following three sections:

- Personnel (classifications, hires, retirements)
- Organization Charts
- Telephone Lists

Each Region/District Division Chief for R/W shall appoint a Region/District Roster Coordinator, who will provide accurate information in a timely manner upon request.

2.04.03.00 Statistical Reports

2.04.03.01 R/W & LS Division Annual Report

HQ R/W & LS prepares an Annual Report which compiles production statistics and provides an overview of R/W & LS activities during the preceding fiscal year. The report incorporates a Business Plan for coming years. The report is an internal document intended primarily for R/W & LS' use. HQ R/W & LS has overall responsibility for initiating, assembling, and finalizing the report. The various branches within HQ R/W & LS and Region/District R/W are required to supply certain data upon request. Information should be provided as quickly and accurately as possible following receipt of the request.

HQ R/W must maintain a well-documented file while the report is being prepared and ensure the information is available for current and future review.

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2.04.03.02 Uniform Act Annual Statistical Report

FHWA collects R/W acquisition and relocation assistance statistics from Caltrans to compile the Uniform Act Annual Statistical Report required by 49 CFR 24.9(c) and described in Appendix B to 49 CFR 24. The CFR requires the report be prepared on the basis of the Federal Fiscal Year, therefore, District/Region report data should be prepared on that basis and submitted to HQ Planning and Management (P & M) on or before November 1 each year.

The purpose of this report is to help FHWA gauge the effectiveness of the Uniform Act. Within Caltrans HQ and the Districts, P & M is the lead in compiling the report. For further guidance, refer to "Federal Statistical Report Form" (RW 02-04).

2.04.04.00 Forms, Records, and File Administration

HQ R/W & LS Office Chiefs and Region/District Division Chiefs for R/W are responsible for maintaining R/W & LS record systems and for assuring adherence to policies and procedures set forth in the Department's Records Management and Forms Management Programs for their respective offices in coordination with their assigned Records Officers and the Forms Officers for R/W & LS.

2.04.04.01 Records and File Administration

The Records Officers for HQ and Region/District offices manage the records program to include the following responsibilities:

- Control access to public records.
- Assure confidentiality of personal information.
- Assure application of appropriate technology to all records and file management-related activities.
- Approve requests for filing and storage equipment.
- Collect and prepare input for Annual Records Inventory, upon request.
- Consult with and advise managers in all matters pertaining to records and file management.

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HQ Records Officer's additional statewide responsibilities include:

- Maintain and revise the statewide R/W &LS Records Retention Schedule.
- Act as liaison between HQ and Region/District R/W for matters pertaining to R/W records.

2.04.04.02 Records Retention Schedule

Caltrans policy states that a Records Retention Schedule Approval Request, STD. 72, shall be established for all record series under each Program's functional control and shall include records held in HQ, Region/District offices, and storage. A complete revision is required every five years, but should be updated as retention requirements change. The Records Retention Schedule is available at the Records Retention Schedule webpage (internal Caltrans link).

The HQ Records Officer shall maintain and distribute the schedule to Region/District Records Officers as changes are made.

2.04.04.03 Forms Management

The Forms Officers for R/W & LS keep the Division in compliance with applicable laws and regulations of Caltrans' Forms Management Program to include the following responsibilities:

- Review forms for compliance with the Information Practices Act.
- Enforce provisions of the Information Practices Act to assure confidentiality of all personal information gathered.
- Prepare statewide input for the annual Information Practices Act report.
- Approve all requests to design and revise forms.
- Take advantage of opportunities for use of new technologies.

Region/District Forms Officers shall submit any issues on functionality or use of individual forms to the HQ Office Chief responsible for the related function.

The Forms Officer for HQ R/W & LS shall act as liaison between HQ R/W & LS Office Chiefs and HQ Forms Management on issues pertaining to forms management.

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2.05.00.00 - DELEGATION MATRICES

2.05.01.00 Delegations

Pursuant to Director's Policy #16 dated December 1, 1994, the HQ R/W & LS Division Chief issues, updates, and disseminates delegations directly to the Regions/Districts. Delegations transfer to Region/District Directors, and by separate sub-delegation order from Region/District Directors to Region/District Division Chiefs (or R/W Manager), and thereafter to the designated position.

Delegations responsibly transfer decision-making authority from Caltrans HQ Division of R/W & LS to individual Districts. These delegations are in place to ensure consistency and are based on good decisions; substantiated in quality documents and risk assessments; and developed, reviewed, and approved by appropriate technical and management authorities with appropriate justification and defendable rationale for District accountability.

These delegations provide the Regions/Districts a broad level of authority and can potentially impact both internal and external stakeholders. Delegations are provided in support of the Regions/Districts in an effort to be more efficient, transparent, and empowered at the Region/District level. At the lowest internal level, R/W staff have an expectation of good guidance and direction from management. At the higher level, Region/District Directors must have confidence that the delegated authority is wisely implemented and applied with appropriate documentation.

Delegation matrices for each function are at the end of the corresponding manual chapter. While many items are delegated at the Region/District level, several complex delegations are retained at HQ to provide statewide consistency. The delegation matrices identify specific delegations to Regions/Districts, and identify the Region/District sub-delegation level of approval required for actions within each R/W function. Each Region/District Division Chief will determine whether to delegate down to the lowest level. The Region/District R/W Division Chief must report any amendment to the level of approval authority to the appropriate HQ Office Chief.

Both the Regions/Districts and HQ will monitor quality and process requirements and ensure that the delegation responsibilities are consistently and uniformly implemented to all applicable parcels and projects. As part of the delegation transfer, HQ shall conduct periodic reviews to measure compliance with existing delegations. Action plans and objectives for measuring and monitoring the outcomes and results of the delegation process and authorities will be included in functional Quality Enhancement

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Joint Reviews (QEJRs), Functional Councils and R/W Management Board (RWMB) meetings. At a minimum, performance measure results will be reported periodically via functional QEJRs and RWMB meetings.

Delegations are subject to changes in experience, staffing, etc. Both the Regions/Districts and HQ will have the opportunity to periodically review and propose amendments to the various levels of delegated authority as needed. The allowance for additional/increased approval authorities to individual Regions/Districts when warranted and mutually agreed upon can be specific to an individual parcel or an entire project.

It is the joint responsibility of the Regions/Districts and HQ to determine any necessary further definition of delegated authorities not covered in the delegation matrices contained in this Manual.

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Exhibits are located online:

- External Exhibits site
- Internal Exhibits site (internal Caltrans link)

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Forms are located online:

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(REV 1/2020)

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3.00.00.00 - PROGRAMMING AND BUDGETING

3.01.00.00 - DEPARTMENTAL DATABASES AND DATA MANAGEMENT SYSTEMS

3.01.01.00 General

The Department uses numerous databases and data management systems, and those used most frequently by R/W Planning and Management (P&M) personnel are discussed in the tables below entitled "R/W Databases and Data Management Systems" and "Department Databases and Data Management Systems."

3.01.02.00 R/W Data Management Systems

The R/W Data Management Systems are comprised of the R/W Management Information System (ROWMIS), R/W Property Management System (RWPMS), R/W Excess Lands Management System (ELMS), and the R/W Utility Management System (RUMS). ROWMIS is an Oracle-based database, and the remaining systems are mainframe databases written in COBOL language.

R/W data is collected by the Division of Project Management for producing statewide project status reports required by Caltrans management and external agencies. Therefore, it is critical that R/W information is kept up to date.

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R/W DATABASES AND DATA MANAGEMENT SYSTEMS

- Right of Way Management Information System (ROWMIS)

  ROWMIS houses data for several functions in R/W, including R/W Engineering, Estimating, Appraisals, Acquisitions/Condemnation, RAP, and Demolition. ROWMIS contains data on both a project and parcel level.

- Right of Way Supplement System (ROWSUP)

  ROWSUP is a supplemental system that contains various reports related to project status, milestones, financial management, and other uses for R/W Planning and Management/Project Coordination activities.

- Right of Way Property Management System (RWPMS)

  RWPMS is one of the mainframe databases currently used to maintain Property Management information. It contains information of parcels acquired for project delivery, which can be rented until needed for the project or becomes excess land inventory to be sold.

- Right of Way Excess Lands Management System (ELMS)

  ELMS is also a mainframe database being used to track all excess parcels that are no longer needed for project delivery.

- Right of Way Utility Management System (RUMS)

  RUMS is also a mainframe database being used to track utility relocation activities for project delivery.

- SCOPE (SCOPE)

  SCOPE is the mainframe system that houses PMCS, ELMS, RUMS, and RWPMS data systems.

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ROWMIS is the primary data system used in Right of Way for project delivery tracking and contains data at both the project and parcel levels.

- Project level data:
  - Currently, ROWMIS imports project information and milestone dates from both AMS Advantage and Project Resource and Schedule Management (PRSM) systems. There is a lag between these systems that may cause a delay in setting up a project in ROWMIS; in addition, data imported from these other systems is displayed in brown text.
  - ROWMIS Project page provides essential information pertinent to R/W activities such as Federal participation, Cost Estimating (Datasheets), Project Agreement(s) (i.e. Coop Agreements), R/W Engineer products, and lists of parcels.
  - ROWMIS offers a *Comments* and *Project Docs* tab to add comments relevant to the project and saves project-related documents to the server.
  - There is a built-in R/W Parcel Tracking Report available in ROWMIS called the SOP (Status of Project) Report.

- Parcel level data:
  - The Parcel page provides information and the overall status of a specific parcel. Activities and deliverables can be tracked under each tab, including:
    - R/W Engineering
    - Appraisals
    - Acquisitions & Condemnation
    - RAP
    - Demolition & Clearance
  - Comments and related documents can be saved to the Parcel folder.
  - Limited parcel data is transferred to RWPMS and ELMS databases.

All R/W functions are responsible for maintaining their own sections of ROWMIS and/or other R/W systems and for providing P&M with data for input to other Department databases and systems. These systems depend on accurate and timely input by district R/W personnel.

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3.01.02.01 Department Data Management Systems

DEPARTMENT DATABASES DATA MANAGEMENT AND SYSTEMS

- Project Resource and Schedule Management (PRSM)

  PRSM is the Department's project management tool to assist in project resource and schedule development, project management, and tracking the status of projects.

- Project Management Control System (PMCS)

  PMCS is a mainframe computerized system for managing and controlling highway projects of all sizes from the earliest planning phase to contract completion, then back into the inventory phase. All project data can be viewed on-line. PMCS became fully operational on April 1, 1976; however, the project management component was replaced by PRSM in 2015, but R/W still maintains the R/W Cost Screens for its annual lump sum allocation development process. Refer to the PMCS User Manual issued by the State and Local Project Development Program for details on how to use the system and the purpose of the screens.

- AMS Advantage (AMS)

  AMS is the Department's accounting, procurement, and budget database, implemented in July 2010, which houses data for all financial transactions (accounts receivable and payable), support and capital expenditures, procurement transactions, and budgets. The Division of Accounting is responsible for maintenance and support of this statewide system. AMS is accessible to all staff for view only, or for data input by appropriate approved staff, through CT Pass.

- Enterprise Datalink (Datalink)

  Datalink contains information from AMS and was developed as a method to obtain data in a timely manner for inquiry and reporting purposes. Information is updated nightly and contains historical financial data from the former financial system called TRAMS. Datalink is accessible to all staff through CT Pass.

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- Federal Aid Data System (FADS)

  FADS was created to replace manual processing of Federal Aid Funding Requests, formerly known as FNM-76 or E-76 (Request for Approval to Proceed) with an electronic transfer data system. This system allows the Department to enter project information directly and to transmit the data electronically to FHWA's Fiscal Management Unit in Sacramento. FHWA is able to review and approve project data expeditiously and to process the data into FHWA's Federal Management Information System (FMIS) in Washington, D.C.

- California Transportation Improvement Program System (CTIPS)

  CTIPS is an Oracle database used internally and externally to manage the programming and allocation of funds for STIP/TCRP/BOND, SHOPP and local projects.

3.01.02.02 R/W Data System Users

To access R/W Data Systems, users must have appropriate user rights. An agent has full access to the specific database in the functional unit he/she is currently assigned and may have read-only access to other databases.

An agent can request access to ROWMIS and SCOPE accounts through his/her immediate supervisor as follows:

1. ROWMIS Account – Each district has a designated ROWMIS Administrator who can assign a user account, or a request can be sent to the ROWMIS Administrator (internal Caltrans link).

2. SCOPE Account – R/W Agents who work in Planning & Management, RW Property Management, RW Excess Lands, or RW Utilities functional units would require a SCOPE Account to access PMCS, RWPMS, ELMS, or RUMS. Each district has a designated RACF Coordinator listed on the Project Delivery intranet (internal Caltrans link) who can assign a SCOPE account. Additional software installation may be required.

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3.01.02.03 R/W Reporting Tools

In addition to R/W databases, there are reporting tools available. These tools provide access to datasets in R/W databases as well as other Department databases. Statewide R/W users have access to Discoverer and ROWSUP, and Quality Management Reporting System (QMRS) reporting tools. Districts may have other reporting tools, not mentioned here, serving their own needs.

1. Discoverer Account – This is an Oracle tool allowing an agent to download data from a variety of R/W databases for analysis and reporting purposes. Discoverer can be accessed by all staff from the Discoverer log-in page (internal Caltrans link). The Discoverer User Guide (internal Caltrans link) includes instructions for logging into the system and creating reports. A Discoverer account is required. User can request an account under the same process as requesting ROWMIS account.

2. ROWSUP Account – ROWSUP is a reporting tool created and maintained by North Region R/W. It provides many useful datasets and queries from both R/W and Department databases. User accounts may be requested by any staff via email request to the ROWSUP Administrator link shown on the ROWSUP page (internal Caltrans link).

3. QMRS – QMRS is a database reporting system for Project Delivery. It is used to aggregate and display data captured in the Project Delivery Workload Development Migration warehouse. Data is refreshed daily. QMRS reports can be accessed at the Project Delivery Reports page (internal Caltrans link). No user account is needed.

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3.02.00.00 - EXPENDITURE AUTHORIZATION (EA)/ PROJECT IDENTIFIER (PROJECT ID)

3.02.01.00 General

An EA is a six-digit numeric code assigned to a direct project, or a non-project activity, such as overhead. EAs were recorded and stored in the previous financial system, TRAMS. However, with the implementation of AMS Advantage (Advantage), EAs were replaced with a 10-digit code called a Project Identifier (Project ID) as the primary means of classifying expenditures for a related activity. It is used to track costs for proper management of project-related expenses and for budgeting of future resources based on historical data. The EA numbering system is still in use since some of the Department's legacy systems continue to use EAs. EAs are assigned in the districts by District Project Control, and when a Project ID is being created in Advantage, the EA number is also entered in the project setup. Once tabled in Advantage, the Project ID and EA numbers are populated into the Project ID Crosswalk.

3.02.02.00 Multiphase Project IDs

Multiphase EAs (0X01XX to 4X99X9) are for projects with more than one phase (category) of work that requires separate EA accounting for each phase. A multiphase EA is structured as follows:

XXXX	**X**	**X**
Four Characters Basic Serial Number (First character is in range 0-4)	Fifth Segment Code	Sixth Phase Code (Phases specific to R/W activities are 2 and 9)

The first four digits of the EA comprise the Basic Serial Number of a project. The district assigns this number before work is started on the Project Study Report, and the number is retained for the entire life of the project, including <u>all</u> phases of work.

The fifth digit of the multiphase EA identifies the project segment, if the project is segmented.

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The last or sixth digit represents the phase of the project. The functional phase codes are as follows:

Phase	Description
K	Project Study Report
0	Project Report/Project Approval & Environmental Document (PA&ED)
1	Plans, Specification, and Estimate/Design
2	R/W Operations (Support)
3	Construction Engineering (Support)
4	Construction (Major, Minor A, Maintenance Contracts)
9	R/W Capital

3.02.02.01 Phase 2 – Support

A multiphase project EA ending with 2 accounts for R/W support expenditures. The Phase 2 EA covers labor charges and all operating and equipment expenses chargeable to a project.

3.02.02.02 Phase 9 – Capital

A multiphase project EA ending with 9 accounts for R/W capital outlay expenditures. The Phase 9 EA usually covers costs of:

- R/W acquisition
- Excess land
- Inverse condemnation
- Gains and losses from sales of excess land
- Title and escrow fees
- Condemnation expert witnesses
- Condemnation legal expenses
- Condemnation deposits
- Project development permits
- RAP
- Demolition
- Clearance
- Utility relocation

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3.02.03.00 Single Phase EA

The types of Single Phase EAs (9XXXXX) are:

- **Overhead** - to record costs incurred by each function/organization in managing, supervising, and supporting the work and personnel of their areas of responsibility.

- **Owner-Operator** - to record costs considered necessary to ensure the integrity of the Highway System, but which do not directly relate to delivery of a project. (Effective July 1, 1999, it is no longer a valid EA category.)

- **Programmatic** - to record costs associated with achieving the goals of the Department's noncapital outlay programs (e.g., Airspace, Outdoor Advertising).

- **Single Task** - for projects with only one phase (function of work).

- **Service Center** - to record time spent by Caltrans employees for technical services for the department's functional units (e.g., Information Services, Equipment, and Legal).

- **Reimbursed Work for Others** - to record costs of performing work requested by and for the benefit of an entity external to Caltrans.

3.02.04.00 Establishing EA/Project ID

The District Project Control Officer assigns EA numbers sequentially, and establishes its Project ID in Advantage with the EA number referenced in the project setup. District P&M Project Control is responsible for creating R/W Phases for established Project IDs in Advantage. Normally, R/W Phases are created by a Cost Accounting Modification (CAM) document in Advantage. This enables the Department to maintain standard identification of projects for proper tracking and management of project costs.

District P&M must ensure that Project IDs for federal-aid projects are tabled in Advantage before commencing R/W work. Also, if Project IDs were previously established as State only funded, and federal participation is now secured on the project, then District P&M must adjust the Project ID funding source effective with the approval of the E-76.

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Accounting occasionally establishes non-project related EAs for special purposes; for example, EA 0R0005 for recording work activities related to excess lands inventory, or 0R006 for recording work activities related to property management of state-owned parcels.

Headquarters Project Control Branch provides "clearinghouse" controls on Project IDs input into the Advantage system for consistency with legal, financial, and administrative authorities or policies on work and maintains the integrity of the overall system and process.

R/W must conform to the standard identification system to avoid discrepancies between identification of the same project in Advantage (formerly TRAMS) and PMCS. (See Project Management Directive Number PMD 99-02 on Project Identification.)

The table below entitled "EA/Project ID Process" provides an overview of the process for establishing or supplementing R/W Project IDs.

3.02.05.00 Project ID Adjustments for Combined and Split Projects

Upon notification from Project Development to combine or split projects, R/W must adjust Project IDs according to instructions in Exhibit 3-EX-1.

The correct use of the EA under specific conditions is as follows:

- **Split Projects** - When a project is split into two or more smaller projects, each resulting project shall be treated as a segment of the original project. The reason for not keeping the original EA and Project ID is to separate costs incurred before and after the split.

- **Combined Projects** - When two or more projects are combined, the EA of the largest project shall have a "U" substituted for the fifth character as the new EA, which is used in both Advantage, PRSM and PMCS. Subsequent combinations should use V, W, X, and Y in the fifth character of the EA.

NOTE: Largest project means the project with the highest estimated cost. This means **Minor B** projects are combined into **Minor A** projects; **Minor A** projects are combined into **Major** projects and **NOT** the other way around.

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EA/PROJECT ID PROCESS

Step	Responsible Party	Action
1	District P&M	Accesses the Advantage System using the CAM document to create R/W Phase(s) for a Project ID.
2	District P&M	Approves authorized amounts for R/W Phase(s).
3	District P&M	Sends CAM to HQ Project Control via electronic processing and submission in Advantage.
4	HQ Capital Outlay Support Unit	Creates BGE94 in Advantage for only the R/W 2 Phase for STIP, SHOPP and Reimbursed funded projects.
5	HQ Project Control	Reviews CAM and supporting documentation for proper coding.
6	HQ Project Control	Approves CAM in Advantage to table the R/W Phase with the Project ID and sends confirmation to District R/W Project Control.

3.02.06.00 Suspending R/W Phase 2/9

The R/W Phases of an EA/Project ID are suspended when District R/W determines that all R/W work is complete and expenditures are fully recorded. District P&M initiates this action by deactivating the R/W Phases in Advantage via the CAM process.

Occasionally, Headquarters Federal Program Accounting requests a change in the activity status for R/W Phases (from inactive to active) related to a federal-aid project after the federal-aid project is in the final vouchering stage.

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3.03.00.00 - RESOURCE MANAGEMENT - SUPPORT

3.03.01.00 General

Capital Outlay funds construction contracts, right of way (R/W) capital and utility relocations for State Highway improvements. Capital Outlay Support is work required to produce Capital Outlay. R/W support personnel provide staff assistance for support matters concerning the Project Management Control System (PMCS), Project and Resource Management System (PRSM) and Capital Outlay Support budgets. This includes performance of studies and recommendations for improvement of right of way capital outlay support in PRSM, Work Estimating Norms and Work Breakdown Structure (WBS), as well as related workload statusing. Also included is identifying, monitoring, and evaluating workload for R/W minor program projects, projects under construction, Hardship and Protection projects, R/W clean-up projects (commonly referred to as 0R0 projects) and preparing budget calculations used to determine capital resource needs (Person Years or PYs) for current and future years.

3.03.01.01 Person Years (PYs) - Capital Outlay Support

At Caltrans, a PY is equal to 1758 hours of productive time and is the equivalent of one permanent fulltime position. To determine support hours and PYs needed to complete the R/W work on projects, functional managers analyze project details as they relate to the work efforts required of the function. Functional managers work with R/W Project Coordination staff to develop workplans based on work norms and the project details. They must identify the hours needed to complete the work efforts for each applicable Work Breakdown Structure (WBS) task, which is then calculated into PYs needed. Completed workplans, usually as an attachment to the R/W Data Sheet, are submitted to the Project Manager for concurrence and scheduling in PRSM.

3.03.01.02 PMCS & PRSM Workplan Calculations

Since 2016, support resource needs have been scheduled and tracked through PRSM. Open Workbench, which is part of the PRSM database, is used for the development of the project workplans. In PRSM, PYs for R/W activities are calculated based on direct R/W workload hours, converted to PYs; R/W capital dollars do not affect the PY calculations. The following project details

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should be considered as they can impact R/W workload:

- Number and type of parcels to be acquired
- Relocation Assistance Program involvement
- Number and type of improvement clearances
- Anticipated property management activities
- Number of anticipated condemnations
- Number and type of railroad and utility coordination
- Right of Way Engineering involvement
- Anticipated excess land sales

Right of Way is involved at various stages of the project delivery process, from the initial identification of a project need to closeout. (See Phase II Right of Way Involvement in Project Delivery, Exhibit 3-EX-3.)

3.03.01.03 Projects Involving Work by Others

Projects that involve work completed by local agencies are referred to as oversight projects. To receive PY resources to perform oversight, the district must properly flag these projects and work with the Division of Local Assistance to obtain sufficient resources. Project workplans must be input into PRSM by Project Management staff so the Department can accurately identify the resources needed.

3.03.01.04 PYs on Hardship and Protection Parcels

District P&M/Project Coordination should follow the procedures below to establish hardship and protection workload.

- Before Program Management's January 9th resource pull, identify projects where there is a high likelihood of encountering hardship and protection acquisitions. Estimate the number of parcels that may be involved on each project and the number of hours needed to complete the acquisitions.

- Submit to Project Management a project workplan for the hardship or protection work efforts only – separate from the regular right of way efforts. After the project workplan is agreed to by both R/W and Project Management, ensure the Project Manager enters the workplan in PRSM. Workplans must be input into PRSM so resource hours and PYs will be

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generated. In AMS Advantage, District R/W staff will create an earmarked 2 phase for the hardship and protection activities only.

- Project Management may determine a separate child EA/Project ID should be established for the hardship or protection acquisition, which will also require a project workplan. In this case, a Project Change Request must be processed to split the hardship and protection activities from the parent EA. Districts must ensure resources needs for the hardship and protection acquisition are not accounted for in both the parent and child project.

Districts must update data in these projects as information changes to ensure they are current.

3.03.01.05 Reimbursable Work

District R/W may perform work on projects funded by local fund sources and be reimbursed pursuant to a cooperative agreement. The district must carefully differentiate between projects where Caltrans resources will be used and projects where costs will be reimbursed for work done by Caltrans R/W Agents. Project workplans are required in PRSM so resources can be requested. Refer to Chapter 17 – Local Programs.

3.03.01.06 Duties of the R/W Project Coordinator

The R/W Project Coordinator is the liaison between Project Management and the functional units that perform R/W work on projects. He/she attends Project Development Team (PDT) meetings to discuss the various components of the project being developed and communicates project related information as it relates to R/W work efforts. The R/W Project Coordinator works with functional managers to develop and submit workplans for the 2 Phase support activities broken down by WBS, and coordinates concurrence of the workplans with the Project Manager. The workplans are loaded in PRSM by Project Management staff, and the R/W Project Coordinator verifies in PRSM that the workplans were loaded as requested. The R/W Project Coordinator also monitors support hours being expended throughout the project delivery process and works with functional managers to ensure sufficient resources are available or added as required.

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3.04.00.00 - RESOURCE MANAGEMENT – R/W CAPITAL OUTLAY

3.04.01.00 General

R/W capital estimates are managed through use of the Project Management Control System (PMCS) COST RW screens and commitments are officially accounted for through use of the AMS Advantage (Advantage) system.

PMCS is the former Caltrans Project Management Database that was replaced by the Project Resource and Schedule Management (PRSM) system in 2016. PMCS contains several individual screens; however, it is currently only used by R/W Planning and Management (P&M) to develop the R/W Capital Plan, and establish the R/W Capital Annual Allocation (formerly called the R/W Capital Lump Sum Allocation). Headquarters (HQ) Division of R/W is researching other departmental systems to replace PMCS. Manual updates will be completed after a new system is identified.

R/W P&M units are responsible for creating, maintaining, managing, and reporting on the R/W Capital Plan and R/W Capital Annual Allocation. The California Transportation Commission (CTC) is responsible for allocating legislatively approved capital outlay appropriations to projects that have been included in the Department's program documents (see table on the following page).

3.04.02.00 R/W Capital Plan

The R/W Capital Plan is a schedule of projected annual commitments for projects statewide. It is supported by a list of projects with the R/W capital estimate broken down over multiple fiscal years (FY). The Districts use a R/W Conceptual Cost Estimate or R/W Data Sheet to establish a spending plan for programmed R/W capital funds for each FY that costs are projected to be incurred. This spending plan is a living document. District P&M agents are responsible for ensuring the information entered in PMCS is current and accurate. Data must reflect the latest estimate. Projects with complex funding (i.e. multiple fund types) must have an individual spending plan to document the various fund types and how the funds will be spent.

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3.04.03.00 R/W Estimate

Chapter 4, Estimating, sets forth in detail the Department's policies regarding R/W project estimates. The estimate, usually documented on a R/W Conceptual Cost Estimate or R/W Data Sheet, is the first step in building a credible budget and programming R/W funds. The initial R/W estimate must be as accurate as possible so informed decisions can be made as the project progresses through the project development process.

The R/W Conceptual Cost Estimate or R/W Data Sheet is the base from which escalated R/W dollars are entered into PMCS COST screens and the PRSM R/W Capital Estimate screen. Only the most current estimate is entered into PMCS and PRSM. It should be based on the preferred alternative or on the alternative used for the construction cost estimate. If the alternative for the construction cost estimate has not been selected, the highest estimated alternative, shall be used.

R/W estimates are reviewed annually, or whenever project scope, schedule, or cost changes occur. The Deputy District Director-R/W (DDD-R/W) or District Division Chief-R/W (DDC-R/W) determines if the change is significant and warrants revising the R/W estimate. If the estimate requires a revision, a copy shall be forwarded to District P&M to update the PMCS COST screens and PRSM R/W Capital Estimate, and to the Project Manager. Programming changes may be required as a result of estimate increases or decreases in accordance with the Project Change Request (PCR) policy. (See Section 3.04.16.00.)

Changing the R/W estimate should not be confused with moving the estimated dollars between FYs. The District can and should move R/W dollars to reflect its most current R/W Capital Plan and should inform the HQ R/W Capital Funds Coordinator of changes as they occur.

3.04.04.00 Transportation Programming

The Government Code provides for establishing various project candidate lists that are used to plan and prioritize the State's Transportation Program. Projects are segregated into two separate program documents, the State Transportation Improvement Program (STIP) and the State Highway Operation Protection Program (SHOPP) as shown on the table on the following page.

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3.04.04.01 Project Programming

The adopted programming documents are statements of the CTC's intent to allocate funds during the span of years for each plan. To be considered for programming, a project must have an approved Project Initiation Document (PID). Projects requiring a PID must be identified in a Regional Transportation Planning Agency or Caltrans plan, such as a Regional Transportation Plan or 10-Year SHOPP Plan. Each PID will contain an escalated estimate for R/W capital.

The adopted programming documents assist in planning and implementing transportation improvements and ensure available resources are utilized in a cost-effective manner. The programming documents include:

- Project location and description
- Escalated capital outlay support costs
- Escalated construction capital outlay costs.
- Escalated R/W capital outlay costs.

The programmed dollars represent the total estimated cost, which should include actual commitments plus the amount needed to complete the component. The programming document should indicate if the programmed project is underfunded.

PROGRAM DOCUMENTS

- State Transportation Improvement Program (STIP)
  A five-year capital improvement program of transportation projects funded with revenues from the State Highway Account and other sources on and off the State Highway System.
  - Listed projects are found in the Regional Transportation Improvement Program (RTIP) and the Interregional Transportation Improvement Program (ITIP). The CTC adopts the STIP prior to the beginning of each even-numbered year.

- State Highway Operation and Protection Program (SHOPP)
  A list of projects programmed over a four-year period that are required for rehabilitation, traffic safety, seismic safety, and traffic operational improvements on the State Highway System.
  - The Department adopts the SHOPP every even-numbered year. SHOPP projects are developed jointly from candidate lists submitted by staff in HQ, Districts, and Regional Transportation Commissions.

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3.04.04.02 R/W Project Programming Coordination

Candidate Projects – Candidate projects are projects in the project initiation phase that have not secured programming yet. Department policy requires candidate projects have an approved PID to be considered for programming. District P&M must work closely with District Program/Project Management (PPM) to ensure all PIDs have a valid R/W estimate to effectively compete for funding. Each District should enter the R/W estimates for candidate projects into the PMCS COST screens and PRSM R/W Capital Estimate screen. R/W estimates for candidate projects are included in the R/W Capital Plan for future budget authority estimates purposes. Candidate projects should be coded as category G on the PMCS COST screens.

SHOPP Programming – The R/W capital component of SHOPP projects should be programmed in the year of delivery (construction allocation vote). R/W can request allocation in advance of the year of programming. Any SHOPP project with R/W capital programming outside of the current SHOPP cycle, referred to as long lead projects, can only commit R/W capital funds for CTC-approved pre-PA&ED expenses.

STIP Programming –STIP Guidelines require the R/W capital component of STIP projects to be programmed in the year of first acquisition or utility relocation expenditure. Allocation can be requested prior to the year of programming for CTC-approved pre-PA&ED expenses. If a STIP project is only programmed through the Environmental phase, any pre-PA&ED R/W capital commitments should be coded as an unprogrammed cost and tracked under category C on the PMCS COST screens.

3.04.05.00 PMCS COST Screens

The PMCS COST screens provide capital outlay data about the most current District approved* R/W estimate for specific projects. The COST screens document the R/W Capital Plan as defined in Section 3.04.02.00.

The COST screens provide information to support R/W's budget authority request as well as the R/W Capital Annual Allocation request. They also contain data regarding contributor dollars and local and federal participation.

The DDD-R/W/DDC-R/W is responsible for ensuring the screens are initiated and maintained whenever there is an anticipated need for R/W capital. In many Districts, this responsibility is delegated down to the District P&M unit. At a minimum, the COST screens should be updated when: a) a R/W

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Conceptual Cost Estimate, R/W Data Sheet or Final Cost Estimate is completed; b) sub-allocation is moved between FYs; and c) the close-out report is distributed at the end of the FY (referred to as "roll-up").

***NOTE:** "Approved" means the R/W estimate is the same as contained in the R/W Data Sheet or, if different, the Project Manager is aware of the change and will take appropriate action to amend the R/W programming through PCR procedures.

3.04.05.01 Keeping PMCS Current

R/W capital estimates in PMCS must be kept current since they are used by HQ P&M in reporting the R/W capital program to the CTC. District P&M is responsible for ensuring the COST screens are current. The decision to revise R/W project cost information on the COST screens is a District responsibility and should be done only after careful analysis.

Once developed and entered into the COST screens, the R/W project cost estimate should not be changed unless there is an annual R/W Data Sheet update or a substantial change in project scope, schedule, or cost. For purposes of this chapter, a substantial change is one brought about by a material change to the project (e.g., expressway to full freeway, additional lanes or interchanges with resultant R/W needs, substantially advanced schedule, significant change to land use at time of acquisition not foreseen in the estimate, or acquisition costs trending more than 20-30% above estimate).

At a minimum, the COST screens should be updated when:

- A R/W Conceptual Cost Estimate, R/W Data Sheet or Final Cost Estimate is completed.
- Sub-allocation is moved between FYs.
- The close-out (a.k.a. roll-up) report is reconciled at the end of the FY.

Periodic estimate revisions that reflect only changes to normal inflationary factors should be analyzed, noted, and reviewed with later project estimate revisions and at project milestone dates.

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3.04.06.00 Budget Development Process

The Department's proposed budget is submitted to the California State Transportation Agency and the Department of Finance in October. In support of developing the Department's proposed budget, HQ R/W provides a R/W capital budget authority estimate to HQ Budgets every September. This estimate provides a breakdown of the state and federal dollars.

At the same time, HQ R/W provides a R/W capital plan for reimbursed budget authority to HQ Budgets. Reimbursed budget authority covers dollars contributed by local agencies or others that are paid through the Department's accounting system, but are not included in the annual budget. Contributor dollars that are paid directly by the locals or others without passing through the Department's accounting system are not included in this process, nor are they included in the annual budget. The base used for requesting reimbursed budget authority is category R on the PMCS COST screens. Generally, contributor dollars are identified in a Cooperative Agreement or other form of agreement between the State and local agencies or others. The PMCS COST screen category code can be left blank for contributor dollars.

Ordinarily, the R/W amounts contained in the latest approved programming documents (STIP and/or SHOPP) are used as the basis for budgeting R/W capital dollars.

The R/W capital budget authority estimate for the current FY can be updated concurrent with submittal of the budget authority estimate for the next FY. Current FY budget authority is generally consistent with the R/W Capital Annual Allocation approved by the CTC the previous June plus any known significant changes. The current FY plan for reimbursed dollars is also updated and generally reflects the July 1 allocation plus any significant changes.

The Department of Finance forwards copies of the proposed Department budget to the Legislative Analyst's Office to aid in review of the Governor's Budget. On January 10 of each year, the Governor submits to the Legislature a budget containing itemized statements of recommended sources and use of resources for all departments and activities in the State. This is the printed budget and is referred to as the Governor's Budget.

The Governor signs the Budget Bill after it is passed by both Houses, which then becomes the Budget Act. The Budget Act is a one-year document beginning July 1 and ending the following June 30. This period is referred to as the State FY or Budget Fiscal Year (BFY).

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CTC and Department policy for R/W capital outlay is to allow one year to encumber and a total of five years to liquidate.

3.04.06.01 Fund Reservation

Through the STIP Fund Estimate process, HQ P&M establishes a Fund Reservation. The Fund Reservation covers costs that cannot be planned for or estimated in time to secure programming for the related project. Examples of such costs are:

- Post certification (a.k.a. unprogrammed) R/W costs, such as unidentified right of way, utility overruns, expert witnesses, excess condemnation awards, goodwill payments, interest costs, title company services, rights of entry, and RAP payments
- Pre-environmental clearance (pre-PA&ED) project development capital costs on projects with only the Environmental phase programmed
- Inverse condemnation
- Hardship and protection (H&P) acquisitions

HQ P&M develops the Fund Reservation based on anticipated costs derived from the COST screens. The Fund Reservation does not provide budget authority over and above the Annual Allocation. The budget authority is assigned to specific projects during the allocation request submitted to the CTC.

3.04.06.02 Distribution of Allocation and Sub-Allocation

Each July, HQ Budgets issues the R/W Capital Annual Allocation for state and federal dollars, as approved by the CTC. The Annual Allocation is available for expenditures and encumbering only after the Governor signs the budget. Once the budget is signed, District P&M can establish the R/W EAs/Project IDs in Advantage. EAs are initially established by District Project Control with the K, 0 or 1 phase, and the R/W phases (2 and/or 9) are established by District P&M. This process of establishing (opening) R/W phases allows R/W to start expending its allocation.

The Annual Allocation is sub-allocated to the Districts on a lump sum basis according to the District's R/W Capital Plan for major projects, programmed H&P acquisitions, inverse condemnation, and post certification R/W costs (Fund Reservation). R/W's Annual Allocation shall not be used to fund projects that do not meet the requirements of the R/W Capital Spending Guidelines.

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At mid-year and prior to FY end, HQ P&M conducts a statewide review of the R/W Capital needs by District. The total R/W Capital Annual Allocation must be managed within the R/W budget authority estimate previously submitted to the CTC. If, after all the District reviews are complete, the annual statewide allocation is deficient or has excess, HQ P&M submits a request to the CTC to right-size the R/W allocation dollars. This ensures there is sufficient allocation for R/W's annual expenditures or allows HQ Budgets to release funds to other programs.

3.04.06.03 Individually Allocated Projects

In June 2019, the CTC adopted CTC Resolution G-19-01. Until this Resolution, R/W capital spending on STIP and SHOPP projects were included as part of the Annual Allocation plan. Effective July 1, 2019, projects with R/W capital STIP and/or SHOPP programming of $10 million or more in FY19/20 or after must be allocated individually by the CTC.

Projects must achieve PA&ED before requesting an individual R/W capital allocation. CTC-approved pre-PA&ED expenses will continue to be paid from the R/W Capital Annual Allocation even if a project qualifies for individual allocation. After the project is allocated by the CTC, the project budget will be loaded into Advantage by HQ Budgets. Individually allocated projects use Task Code 1540, Sub Task 0000.

To request R/W capital allocation, the District Project Manager must complete a Funds Request Form (PRG-004 or PRG-005) and process it through the normal channels. District P&M staff shall coordinate with HQ P&M to prepare a Book Item for the next available CTC meeting. HQ P&M will present the Book Item to CTC staff for review. District staff should be prepared to answer detailed questions about the project.

3.04.06.04 Budgetary Controls

R/W capital allocation policies and guidelines are issued at the beginning of each FY, outlining allowances and restrictions related to R/W capital spending.

Even though the District sub-allocation is in a lump sum, the basis for the allocation is the project-level detail. The CTC reviews and approves the R/W Capital Annual Allocation. Since the CTC requires the Department to report quarterly on actual R/W total commitments compared to the approved R/W Capital Annual Allocation, each District must be prepared to provide a detailed explanation of significant differences.

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As a matter of policy, phase 9 should not be opened until programming for the R/W capital component is sufficient to cover the latest R/W capital estimate. If a programming change is needed, a PCR should be processed at the next available PCR Committee meeting. If an exception is needed, District P&M staff must ensure a corrective action plan is in place. The corrective action plan should be communicated with HQ P&M.

At this time, phase 9 project budgets are only required to be loaded in Advantage for Cooperative Agreement projects, projects with individual R/W capital allocation, and any other project where R/W capital funds are voted separately by the CTC.

3.04.06.05 Allocation Limitations

District R/W capital commitments shall not exceed the total District R/W sub-allocation, except with prior approval of the HQ P&M Capital Funds Coordinator. In addition, the following criteria must be met prior to committing R/W capital allocation on a project:

- Project must be programmed in a STIP or SHOPP document
- Allocation requested must not exceed the R/W capital programmed amount without following the policies set forth in the PCR Handbook
- All components of the project must be fully funded. Exceptions can be made for advance mitigation, long lead, and contingency projects.
- An E-76 has been approved if the project qualifies for Federal funds
- Freeway agreements have been executed, if applicable
- Project has been environmentally cleared, and an E-Resolution number has been obtained by the CTC, when necessary
- Project Report or equivalent has been approved
    - Pre-PA&ED commitments made in support of environmental clearance and/or project approval can be paid through the annual allocation; refer to the R/W Capital Spending Guidelines (internal Caltrans link) for further details.

3.04.06.06 Movement of Capital Outlay Dollars

Programmed dollars for projects may be adjusted in accordance with the internal PCR Handbook (internal Caltrans link) for STIP and SHOPP projects.

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3.04.06.07 Allocation Augmentation and Supplements

Each District has some discretion to move R/W capital outlay dollars subject to the guidelines set forth above. Movement of capital dollars between years or between projects does not change the District's total annual sub-allocation. If allocation is needed for a project not included in the initial Annual Allocation project list and redistributing the District's sub-allocation does not meet the District's needs, the District may request additional funds from HQ P&M.

HQ P&M will look for additional funds available from other Districts. If funds are not available, HQ P&M may ask the CTC to supplement the R/W allocation.

Any request for additional R/W capital funds shall:

- Explain the need for the funds and why that particular alternative is necessary
- Show the effect on project scheduling
- Demonstrate that redistribution of existing dollars cannot meet the need
- Demonstrate that at least 90% of the initial sub-allocation will be encumbered by the end of the FY

3.04.07.00 Hardship and Protection

Chapter 5, Corridor Preservation, Hardship and Protection, contains detailed information on review and approval of hardship and protection (H&P) acquisitions. This section provides guidance and sets limitations for funding of H&P acquisitions. Other limiting conditions may be set forth in the R/W Capital Spending Guidelines issued annually with the Annual Allocation.

There are two types of H&P:

- Those which occur in advance of the regular R/W acquisition process
- Those which occur when the requirements for commencement of the regular R/W acquisition process have been met, but funding and activity on the project have been deferred

Authority to approve both types has been delegated to the DDD-R/W or DDC-R/W.

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H&P acquisitions should be considered during the estimating process so funding can be included in the Annual Allocation to the Districts. After allocation, the District should consider priorities for spending its allocated dollars and, if necessary, seek additional funding from HQ P&M. Districts must notify HQ P&M of H&P acquisitions by March of the FY prior to the acquisition. If a H&P acquisition is needed in the current FY, notify your HQ P&M Liaison as soon as possible to determine if there is adequate budget authority for the acquisition. Identify H&P estimates and commitments in PMCS with Category Code F.

H&P acquisitions are charged as follows:

- **Acquisitions Resulting from Deferred Projects** - charged to the appropriate "9" phase EA and included in an approved E-76 if federally participating.
- **Acquisitions Prior to Environmental Clearance** - charged to the appropriate Earmark 2 and 9 Phase EA. Must have a Stage 1 authorization from FHWA if federally participating. Upon receipt of environmental clearance, the Stage 1 authorization must be converted to a regular federally funded project.
- **Protection Acquisitions** - charged to the appropriate Earmark 2 and 9 Phase EA. Must have an approved E-76 if federally participating.

For additional information, see Section 3.05.05.03, Stage 1 Authorization - Hardship and Protection.

3.04.08.00 Inverse Condemnations - Damages to Property

Inverse condemnation is the legal term used to describe a legal action brought against a government agency by a property owner, claiming private property has been taken or damaged, temporarily or permanently, without payment of just compensation. Per Deputy Directive 59, R/W capital can be used for claims related to the Capital Outlay Program. Maintenance funds should be used when a claim relates to the Maintenance program.

For claims relating to a reimbursed project with no STIP/SHOPP funds, Districts should work with Project Management to determine if the Cooperative Agreement has language permitting reimbursement of inverse condemnation costs. If R/W capital funds are used for a claim related to an active STIP/SHOPP project, the inverse costs should be charged to the project and its original program code. For active STIP projects, it is imperative that project

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stakeholders are informed of the inverse case and the potential liability prior to committing funds.

Inverse condemnation settlements and the associated costs (expert witness fees, legal services costs, court costs, attorney fees, etc.) are funded from the District R/W capital allocation. If R/W capital funds are used for a claim not tied to an active STIP/SHOPP project, Districts should set up an earmarked phase under their pseudo-EA 9RWIC, using PEC/PECT 20.20.800.420 and Task Code 1530. Districts must also maintain a PMCS cost screen for pseudo-EA 9RWIC. Identify inverse condemnation estimates and commitments in PMCS under Category Code I.

For more information, refer to the Inverse Condemnation Manual on the HQ R/W P&M Intranet Page.

3.04.09.00 Hazardous Waste/Materials Funding

The source of funds for identification of hazardous waste and hazardous materials and its subsequent abatement may vary each FY. District R/W should contact the District R/W Resource Manager for the current funding source and consult with HQ P&M to ensure consistent application of funding policies.

3.04.10.00 Title and Escrow Fees

Title and escrow fees are part of the R/W estimate. They are reported on the R/W Data Sheet and entered in the TITLE column on the PMCS COST screens.

Title and escrow services are contracted out to title companies through a competitive bid process by the Division of Procurement and Contracts (DPAC). 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. Since the Department's policy is to bring encumbrances in line with expenditures, the dollar amount of each contract must be split-funded in the accounting lines of the contract document (CT) in Advantage over the life of the contract.

Contracts for title and escrow services were previously considered ineligible for federal participation and reimbursement and were required to be funded by State or local funds; however, the internal Federal Aid Project Funding

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Guidelines (internal Caltrans link) implemented on January 28, 2019 were changed to allow federal participation for title and escrow costs that are paid after environmental clearance. To establish eligibility for these costs on projects, title and escrow estimates must be included in the federal funds authorization request (E-76) and approved by FHWA, provided the project meets the threshold requirements to seek federal authorization.

For additional information regarding federal eligibility, see Section 3.05.03.00 – Federal Participation in R/W Projects.

3.04.11.00 Federal Participation in Right of Way

District R/W should follow the policy and guidelines in internal Deputy Directive Number DD-11 (internal Caltrans link), Section 3.05.00.00 - Federal-Aid Project Funding, and the internal Federal Aid Project Funding Guidelines (internal Caltrans link), in determining federal participation for R/W components and deciding when to complete and submit an E-76 Request for Approval/To Proceed in the Federal Aid Data System (FADS).

Projects previously approved for federal-aid under former policies continue as federal projects, and supplemental E-76s should be submitted, if necessary.

3.04.12.00 Advance Mitigation Projects

Advance mitigation refers to performing compensatory mitigation in anticipation of and prior to incurring the environmental effects of an action. Specific to the Department, this means addressing potential environmental impacts before transportation projects are programmed for delivery.

Advance mitigation projects programmed prior to the passage of Senate Bill 1 (SB1) in FY17-18 are funded through the SHOPP 240 program. Adequate SHOPP programming is required and capital commitments are funded through R/W's Annual Allocation. These projects are set up like regular SHOPP projects in Advantage and can qualify for federal funds.

The Advance Mitigation Program established by SB1 provides a new funding source (Fund 2504). To use these funds, projects must be approved through the Division of Environmental Analysis' Advance Mitigation Office. Capital commitments will be coded with phase 9, but the funds do not flow through R/W's Annual Allocation.

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For more information on Advance Mitigation, visit the Division of Environmental Analysis' intranet page (internal Caltrans link) or contact the HQ R/W Advance Mitigation Liaison.

3.04.13.00 Accountability of Donated Lands

When land is donated to the Department for right of way purposes, the land's fair market value, based on an approved appraisal at the time of the donation (see Acquisition chapter), can be used in certain circumstances in lieu of state matching fund requirements.

- District R/W Acquisitions must identify donated parcels in ROWMIS as a "donation."
- If federal-aid is requested for the project's R/W phases, the appraised value of the donation parcel can be applied toward the State's matching funds and should be clearly identified in the federal funds request (E-76) in FADS.

HQ P&M provides a report to Accounting of donated right of way acquired each FY.

3.04.14.00 CTC Reporting Requirements

Prior to the beginning of each FY and after consulting with HQ Budgets, HQ P&M presents the proposed R/W Capital Annual Allocation Plan to the CTC for review and acceptance.

The R/W Capital Expenditure Allocation Plan presented to the CTC shall:

- Show proposed commitments by Program, District, and project
- Show each project's programmed amount
- For each project, show the total commitments to date for the life of the project

Each year during the months of March and April, HQ P&M pulls reports from the PMCS COST screens to develop the Annual Allocation. Districts may be requested to provide the following information:

- Amount of planned but unspent encumbrances to be carried-over from the current year to the next FY.
- Reason for requesting allocation on projects with PA&ED planned in or after the 2nd half of the next FY.

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- Corrective action plan for allocation requests in excess of the R/W capital programmed amount.
- Justification for requesting allocation on projects without construction funding in place.
- Supporting documentation for allocation requests in excess of District's spending trends.

The District should be prepared to provide an explanation for the items listed in the report.

3.04.14.01 Quarterly CTC Reporting Requirements

During the FY, HQ P&M prepares a quarterly report for the CTC. This report compares the original Annual Allocation project list against year-to-date commitments. The CTC is looking to ensure Caltrans' spending is in line with what was projected through the Fund Estimate and initial Annual Allocation. The Districts should be prepared to provide an explanation, when requested, for specific items listed in the report.

3.04.14.02 Year-End CTC Reporting Requirements

CTC Resolution G19-01 requires that after the end of the FY, the Department report the following based on the Department's official book closing statement:

- Actual R/W capital commitments (which includes expenditures and encumbrances) to projects listed in the R/W Capital Annual Allocation
- Any program level encumbrances against the R/W Capital Annual Allocation.

To meet this requirement, HQ P&M must provide a project-level detail report showing actual R/W expenditures and encumbrances from Advantage compared to the projects that were listed in the initial R/W Annual Allocation. Each District must be prepared to provide a detailed explanation for projects where the commitments substantially deviated from the allocation requested.

Program encumbrance balances at the end of the FY should be just enough to cover prior year invoices in transit. Each District must also prepare a detailed explanation for excessive program encumbrance balances.

Year-end detailed project reports are presented to the CTC at their October meeting.

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3.04.15.00 R/W Capital Reports

R/W P&M has various reports that are generated and distributed statewide to assist with the effective and efficient management of the R/W Capital Plan. It is imperative to have adequate reporting for accountability and transparency to ensure that R/W maintains its fiduciary responsibility to the highest standards.

The R/W Capital Monitoring Report, more commonly referred to as the Weekly Monitoring Report, provides data extracted from Advantage for R/W capital transactions that are processed against the R/W Capital Annual Allocation, from July 1st to the following June 30th.

The filtering criteria for the data extraction is as follows:

- Task Code and Sub-Task Code:
  - Pre-Cert- 1510/0000
  - Post-Cert- 1530/0000
- Budget Fiscal Year (BFY) + Appropriation + Fund + PEC + PECT:
  - Current 2-digit FY code (Example: BFY 2019-2020 = 20)
  - STIP (State) = *FY*301-0042/20.20.025/20.20.075
  - STIP (Federal) = *FY*301F-0890/20.20.025/20.20.075
  - SHOPP (State) = *FY*302-0042/20.20.201
  - SHOPP (Federal) = *FY*302F-0890/20.20.201
  - Reimbursement = *FY*302R-0042/20.20.400
  - Other State Funds = *FY*302-0042/20.20.800
- Fund Code:
  - R/W Capital Annual Allocation does not have Budget Authority for SB1 fund 3290.
- Object Code:
  - Must be one of the R/W Capital designated codes as shown in Exhibit 3-EX-8.
- District Code:
  - Must be 01 through 12 or 81 for Advantage expenditure/encumbrance adjustments.

The bi-weekly Combined Life of the Project Report provides data extracted from both Advantage and the previous financial reporting system FIDO, which pulls from the Department's former financial data management system TRAMS. This report includes all R/W capital transactions recorded throughout the life of the project, for all fund types.

The monthly Statewide R/W Capital Encumbrance Report provides data extracted from Advantage, showing projects that have funds encumbered

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against a specific project for various R/W transactions, such as Utility Agreements, demolition and clearance contracts, expert witness contracts, and other types of R/W capital transactions that allow for encumbrance of funds.

The monthly R/W Capital Program Encumbrance Report provides data extracted from Advantage, showing documents that have R/W capital funds encumbered at a *program* level, which reserves funds in the 20.20 program for future use on capital projects. Program encumbrances are typically for title and escrow contracts, non-project specific demolition and clearance contracts, legal services contracts specifically used for R/W projects, environmental services, and other types of R/W capital activities which are a part of project delivery.

When financial transactions are processed against an encumbering document, whether encumbered at the program or project level, the encumbrance is liquidated in the amount of the transaction, and then charged against a specific project(s). When liquidating prior year encumbrances, the BFY + Appropriation + Fund + PEC of the payment must match the BFY + Appropriation + Fund + PEC of the encumbrance. For example, if a Utility Agreement is funded with STIP/RIP State in BFY 19 (19301-0042-20.20.075), it must be liquidated the same way.

For additional information on encumbrances, refer to the internal Accounting Manual, Chapter 11 (internal Caltrans link).

3.04.16.00 Project Change Request Process

On September 1, 2016, the Division of Project Management issued internal Project Management Directive PMD 022R1 (internal Caltrans link) titled "Change Management." This directive identifies when corporate management must proceed with processing an amendment to make a programming change. All programmed projects (STIP, SHOPP, TCRP) and Special Program projects (Toll, Seismic, Retrofit Soundwall, etc.) are required to follow the process outlined in the Department's internal Project Changes Handbook (internal Caltrans link).

3.04.16.01 R/W Project Cost Changes

Scope and schedule changes may have dramatic effects on R/W costs, and District R/W must coordinate closely with District Project Management to determine those effects.

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For R/W capital on SHOPP projects, there are many scenarios that lead to cost changes; a PCR should be processed to un-program, delete, and increase or decrease project costs. Refer to guidance for cost changes in the internal Project Changes Handbook (internal Caltrans link).

For STIP projects, a PCR for R/W is required if the sum of the right of way support and capital costs varies from the programmed amount by twenty percent or more. All cost increases must include a plan outlining how required funds will be obtained. Trade-offs can only be used between projects listed in the same programming document, and in some cases the projects must be in the same county.

3.04.16.02 Reporting R/W Project Cost Changes

District P&M shall report cost increases to District Project Management as soon as possible after it determines a reportable cost change is required.

District Project Management submits a PCR to HQ Project Management for the next available PCR Committee meeting. If the District is not able to submit at PCR for the next meeting, District P&M must ensure a corrective action plan is in place and document the plan for HQ P&M.

3.04.16.03 R/W Capital Cost Control

The CTC has expressed continuing interest in R/W activities related to accomplishing the capital outlay program on time and within budget. As a result, the Department has increased its efforts to improve effectiveness in managing its R/W program. Proper management of R/W capital costs includes the ability to know at any given time the relationship between the R/W Capital Plan, programming, and total commitments to date against the allocation.

3.04.16.04 R/W Capital Cost Control Plan

Each District is responsible for developing and maintaining (staffing) a cost control methodology that allows the District to respond on short notice to requests for R/W cost information. The cost control system must be active and current and must contain information consistent with other statewide sources the Department uses. Data in the system is the basis for information used in the R/W COST screens and by Project Management.

At a minimum, the system must contain information that makes and displays a comparison of the status of R/W as estimated (remaining), programmed

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(remaining), allocated, expended, and approved (if different from programmed). The District must be able to explain any differences between the amounts and indicate when and to whom cost changes were reported. The plan shall also provide for R/W follow-up on reported cost increases.

Day-to-day management of capital outlay resources, including monitoring and reporting R/W cost changes, rests with each District. HQ P&M reviews each District's cost control methodology/plan for conformance with minimum requirements set forth above and for compliance with Department policies and procedures. Once project information is gathered, it must be constantly monitored. When the District reviews its projects and determines that estimated remaining R/W costs are significantly greater than programmed R/W costs, it must report the increase using PCR procedures.

R/W must take an active role in project cost management. It is not sufficient to merely report cost changes to Project Managers. R/W must follow up on what course of action the Project Manager takes and must record this information for future reference. If District R/W does not get a response from Project Management, it should advise HQ P&M of the cost change. The date the report was made to Program Management and the response should be recorded.

3.04.17.00 R/W Ledger

Years ago, R/W developed a system for tracking transaction codes and dollars to correct problems FHWA found in the Department's record keeping for R/W expenses. The R/W Ledger, which is essentially a R/W capital "checkbook", is part of that system.

The format of the R/W ledger should parallel the various monitoring reports, particularly the Weekly Monitoring Report and Encumbrance reports.
The ledger should list projects included on the original sub-allocation list and track any additions or deletions. All EAs/Project IDs with anticipated expenditures/encumbrances are listed in numeric order.

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For each transaction on an EA/Project ID, Districts should, at a minimum, record the following:

- Document number
- Date transaction documents forwarded to Accounting
- Amount of transaction
- State portion
- Federal portion*
- Local portion

*Federal participation percentages can be verified on the E-76 or the Internal Buyer Line in the Funding Profile setup.

RECONCILIATION PROCESS

R/W Accounting	Processes R/W capital transactions on a daily basis, including posting payments and making expenditure adjustments.
District P&M	Compares the R/W ledger or processed transaction documents against the Weekly Monitoring Report. It is recommended that the reconciliation process be conducted on a weekly basis to reduce the time necessary to complete the FY closeout. Errors in the weekly reports are reviewed and approved by the P&M Senior. The transactions requiring correction are forwarded to R/W Accounting for correction.
R/W Accounting	Determines type of errors and distributes them to appropriate Accounting Liaison for correction. Verifies that error adjustments do not affect other entries for the EA/parcel. Coordinates with District R/W for R/W adjustments.
District P&M	Verifies adjustments have been made in Advantage via the Weekly Monitoring Report.

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3.04.17.01 Reconciliation with Advantage

The CTC requires the Department to report on total commitments compared to the approved Annual Allocation. R/W must manage its Annual Allocation to ensure R/W does not exceed the allocated state, federal, or reimbursed budget authority amounts.

Districts are delegated responsibility to manage their sub-allocations. Managing the allocation includes ensuring expenditures are within the available balances of the state, federal, and reimbursed budget authority. In addition, R/W expenditures should be properly recorded in Advantage. If R/W ledger balances do not agree with Advantage balances, the discrepancy must be resolved. It is District R/W's responsibility to inform R/W Accounting of any discrepancy. R/W Accounting has primary responsibility to isolate the transaction(s) causing the discrepancy and adjust Advantage accordingly.

It is recommended that District P&M reconcile expenditure transactions on a weekly basis between the Weekly Monitoring Report and the R/W ledger to reduce the time necessary to conduct the reconciliation process at fiscal year-end. R/W ledger information and transaction documents should be compared against the Weekly Monitoring Report to ensure each transaction (EA/Project ID, Phase, Object Code, Reporting Code, and amount) are properly recorded.

Available balances are what remains from the District sub-allocation after recording expenditures and encumbrances.

3.04.18.00 Coding

The coding used to establish EAs/Project IDs and Phases in Advantage is determined by the type(s) of funds programmed on a project, as well as whether federal funds have been obligated under a federal project agreement (E-76). FHWA requests that all transaction documents contain a box in which the Federal Project Number can be clearly displayed. The number is used to confirm federal participation eligibility during examination or audit of parcel files and helps P&M and R/W Accounting determine if the proper coding has been entered on transaction documents and ultimately in Advantage.

Each transaction document should note the Funding Profile associated with the Project ID and FY in Advantage. The Funding Profile indicates what Fund

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was debited/credited. Fund Code 0890 confirms federal funds were used on the transaction.

Coding elements and abbreviations used most often by R/W are shown below.

R/W CODING ELEMENTS

Element	Explanation
District (Dist)	The Department is broken down by 12 Districts.
Unit	The functional unit within a District/Division.
Fiscal Year (FY)	Fiscal year in which a transaction is processed.
Budget Fiscal Year (BFY)	Fiscal year in which funds are appropriated by the Governor.
Appropriation (APPR)	Authorization from a specific fund to incur obligations for a specific purpose and period of time, most commonly done in the Budget Act, signed by the Governor each year.
Fund	Source or account covering the expense, for example: 0042 = State Highway Account 0890 = Federal Trust Fund 0042 with 'R' designation on the Appropriation = Reimbursement from Local Agencies, Toll Bridge funds or Subvention funds
Program Code (PEC/PECT)	Program, Element, Component, and Task of the fund source. For example: 20.20.400.100 indicates 20 = Program (Capital program), 20 = Element (Capital element), 400 = Component (State Highway projects funded from other sources), 100 = Task (Locally generated funds)

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R/W CODING ELEMENTS (Continued)

Element	Explanation
Expenditure Authorization (EA)	Former legacy system 5-digit project identification number assigned to a new project at time of project initiation.
Project Identifier or Project ID (Proj ID)	Advantage 10-digit project identification number which is cross-referenced with the EA.
Phase	The project development phase of a project.
Document Identification Number (Doc ID)	Number assigned to a transaction document, such as a contract number or utility agreement number.
Reporting Code (RPT)	A unique code established in Advantage to identify specific expenses, such as parcel numbers or environmental permit type.
Object Code (OBJ)	Designates the type of expense, such as acquisition or RAP. An Object Code followed by "N" is not federally eligible.

3.04.18.01 Coding Verification

Verification of coding occurs during examination and completion of R/W Accounting payment request forms, as follows:

- Fund Certification – District P&M verifies sufficient programming, allocation, and budget authority are available and codes various transaction documents for Fund Certification prior to processing payment.
- Reconciliation – District P&M and R/W Accounting verify coding elements and the EA/Project ID status (opened, closed, suspended) during this process.
- Monitoring Process – District P&M verifies coding for expenditures when reviewing the Weekly Monitoring Report. (See Section 3.06.09.00.)
- Audits – Coding is reviewed during project audits or Quality Enhancement/Joint Review (QEJR).

The Weekly Monitoring Report and Combined Life of the Project Report are the recommended resources for determining if proper coding has been entered into Advantage.

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3.05.00.00 - FEDERAL-AID PROJECT FUNDING

3.05.01.00 General

To obtain federal financing of projects, the Department must comply with laws, regulations, requirements, and procedures established by Congress and the Federal Highway Administration (FHWA). The decision to apply for federal participation on a project or phase of a project is made during the programming phase and is guided by the Department's federal-aid policy.

The following are laws and regulations that govern FHWA Program financing:

- Title 23 United States Code (USC)
- Title 23 Code of Federal Regulations (CFR)
- Fixing America's Surface Transportation Act (FAST Act)
- Clean Air Act
- National Environmental Protection Act (NEPA)
- Title 49 United States Code (USC)
- Uniform Relocation Act
- Annual Appropriation Act
- Special Congressional Action

The Department utilizes FHWA's publication entitled "A Guide to Federal-Aid Programs and Projects" in the administration of the Federal-aid highway program. The guide provides basic information about the Federal-aid programs, projects, and other program characteristics. The publication also includes information resulting from the latest multiyear Federal-aid authorizing legislative act, Fixing America's Surface Transportation Act (FAST Act, Public Law 114-94).

Federal-aid to California encompasses federal funding to Local Agencies, and STIP and SHOPP projects. Under SB 45, the STIP provides 75% of new STIP funds for the Regional Transportation Improvement Program (RIP) and 25% for the Interregional Transportation Improvement Program (IIP).

FHWA provides a portion of the total cost of each project in which it participates; the state or local agency must provide matching funds. The Federal Transportation Act sets the federal participating ratio (percentage) for each program.

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Title 23, Section 115, of the USC, as amended by the Federal Highway Act of 1987, allows states to finance projects with their own funds and later claim reimbursement when new federal funding or authorization becomes available.

Under the conditions in 23 CFR 1.36, FHWA may withhold payment where the state fails to comply with federal laws or regulations, or may withhold approval of further State projects, and take other actions deemed appropriate until compliance or remedial action has been accomplished by the State.

FHWA amended the right of way regulations for federally assisted transportation programs administered under Title 23, USC. The FHWA clarified and reduced federal regulatory requirements and placed primary responsibility for a number of approval actions at the state level.

Changes in 23 CFR, as a result of TEA-21, MAP-21, and FAST Act that affect Right of Way (R/W) activities are detailed in the functional sections of the R/W Manual. Significant changes to the federal regulations affecting right of way include, but are not limited to the following:

1. Expanding federal funds to participate in all costs required by state law.
2. Allowing states to receive credits or reimbursement for early acquisition when the acquired property is incorporated into a federally eligible transportation project, or use the normal federal-aid project agreement and reimbursement process to fund an early acquisition.
3. Allowing states to advance preliminary acquisition activities under preliminary engineering for requesting federal participation in funding and reimbursement of incidental or support costs.
4. Allowing states to retain the proceeds for the lease or sale of real estate purchased with federal funds, as long as the proceeds are used for Title 23 USC type projects.
5. Eliminating the federal right-of-way revolving fund for acquiring right-of-way in advance of available state funding.
6. Requiring states to submit an up-to-date R/W Manual (to document methods and practices to assure compliance with state and federal laws and regulations) to FHWA for approval no later than August 23, 2018.
7. Requiring State Transportation Departments to certify to FHWA every five years after August 23, 2018 that the current R/W operations manual conforms to existing practices and contains necessary procedures to

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ensure compliance with federal and state real estate law and regulation.

8. Requiring State Transportation Departments to periodically update its R/W Manual to reflect changes in operations and submit the updated materials for approval by FHWA.

3.05.02.00 Departmental Policies and Guidelines

The Department has established policies and guidelines for developing budget and programming documents (STIP and SHOPP) and for administering and programming federal-aid projects. The Department maximizes use of federal resources by capturing all federal aid available and applying it to construction, right of way acquisition, and preliminary engineering.

Current policy directs that all projects requesting federal aid must be listed in the current federally approved State Transportation Improvement Program (FSTIP). Departmental directive requires federal aid for both capital and support be requested for all eligible R/W projects. (See Section 3.04.04.05, Federal Participation in Right of Way.)

Refer to the internal Federal Aid Project Funding Guidelines (internal Caltrans link) for further directions.

It takes several years to expend funds for R/W project costs. To avoid obligating excess federal funds unnecessarily, the Department, therefore, typically does not request the total estimated at one time. The Headquarters Budgets Office of Federal Resources (OFR) will determine the amount of funds to obligate and the amount to authorize as Advance Construction (AC). AC authorizations allow the department to proceed with work efforts while reimbursement of expenses will not occur until AC funds are converted to obligated federal funds.

OFR is responsible for developing and submitting the Department's Federal Aid Programs to FHWA. In preparing the programs, it must consider the class of funds involved and the relationship of total funds to amounts expected to be available during the programming period.

District R/W submits requests for federal funding through a State/Federal Project Agreement, an electronic request in the Federal Aid Data System (FADS) commonly referred to as an E-76. Districts may submit multiple E-76 modifications to cover incremental portions of R/W work over the duration of the R/W phase of a project.

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3.05.02.01 Federal-Aid on State and Local R/W Projects

The Department secures federal funding on State and Local projects that qualify for federal-aid. To request federal-aid, a project must be listed in the FSTIP or FTIP and have an approved environmental document dated within 3 years of the submittal of the E-76.

With the enactment of SB 45, programmed projects on the State Highway System may have a mix of both state and local funds. State funds are STIP funds, which include the RIP and the IIP. Local Agency Funds include tax measure, property tax, developer fees, and Local Assistance federal subventions.

OFR and Office of Local Programs (OLP) are both responsible for programming federal funds on R/W projects. Headquarters OFR is responsible for State projects while Local Programs is responsible for Local Agency projects.

- State Projects are those projects on the State Highway System.
- Local Projects are those projects on Local Streets and Roads.

In administering state and locally funded R/W projects, there must be separate accountability of State and Local federal funds. The Department must establish separate Earmark Phases and Funding Profiles in AMS Advantage to account for separate funding and expenditures on each (State or Local) federal-aid project.

For locally funded (including subvention funds) projects, the Department must enter into a cooperative agreement or master agreement with a local agency or regional planning organization prior to performing any right of way activities.

3.05.02.02 Early Acquisition Under 23 CFR Section 710.501

Effective January 20, 2000, 23 CFR amended R/W regulations for federally assisted transportation programs to allow the state, under certain circumstances, to initiate early acquisition for corridor preservation, access management, or other purposes and use eligible acquisition costs toward the state's share of the project into which the right of way is incorporated. It specifically provides for early acquisition in advance of final environmental and project approval.

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In discussing "early acquisition" and acquisition costs as credit or soft match of federal funds, early acquisition refers to the acquisition of real property by state or local governments in advance of federal authorization or agreement. Early acquisition referenced in this section is not the same as advance acquisition under hardship or protection purchase criteria. See Chapter 5, Early Acquisition, Corridor Preservation, Hardship and Protection.

Amendments to 23 CFR allow flexibility in considering early acquisition under certain situations. However, state and local governments must conform to statutory requirements in early acquisition approaches and follow federal guidelines that include careful observance to the environmental process before obtaining credit. Before initiating early acquisition, proper legal authority must be obtained and careful consideration given to program and project needs.

On December 09, 2002, the HQ Chief Engineer issued a memorandum that revises and clarifies approval criteria for beginning R/W acquisition on STIP projects prior to approval of environmental clearance. The guidelines are a departmental process only and are not applicable to local agencies. See Exhibit 3-EX-6.

3.05.02.03 Credit (Soft Match) Toward State's Share of Project Cost

23 CFR 710.501 allows early acquisition project costs (capital costs only) incurred by a state agency to become eligible for use as a credit towards the state's share of a federal-aid project, provided the project receives surface transportation program funds and other conditions are met as indicated in 23 CFR 710.501 (c). Credits can be applied to projects where the initial project agreement with FHWA was executed after June 9, 1998.

Essentially, this provides that the value of property acquired by state or local governments and incorporated into the project could be credited to the **non-federal share** of the right of way costs of a federal project. However, it is only **land** and **building** costs (state only funded) that are deemed to be qualifying and are permitted as a contribution toward the nonfederal share. (All other costs, such as support, appraisal, related acquisition costs, damages, and RAP are not counted as soft match or credits.) **Credits are not available for lands acquired with any form of federal financial assistance, or already incorporated and used for transportation purposes.**

Prior to TEA-21, publicly-owned property could not be used as credit toward the non-federal share of the cost of a project. However, with the amended

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23 CFR regulations 710.507, state and local contributions of properties (incorporated within a federally funded project) can be used as a credit toward the matching share of the total project cost.

23 CFR Part 710, Subpart E, Section 710.501(c) Early Acquisition, provides conditions that must be met if eligible acquisition costs are used as credit (soft match) on a federal-aid project. Those conditions are, in part, as follows:

1. The property was lawfully obtained.
2. The property is not Park Land (23 U.S.C. 138).
3. The property was acquired in accordance with 49 CFR, Part 24.
4. The state complied with Title VI (42 U.S.C. 2000d - 2000-4).
5. The FHWA concurs that the action taken did not influence the environmental assessment, or
    i. The decision to construct the project;
    ii. iThe consideration of alternatives; and
    iii. The selection of the design or location; and
6. The property must be incorporated into a federal-aid project.
7. The original project agreement covering the project was executed on or after June 9, 1998.

Provisions of 23 CFR, Section 710.505–Real Property Donations and 710.507–State and Local Contributions, provide opportunities to the State Transportation Department to utilize the value of real properties as credit towards the state share of a project.

Under Section 710.505 (b), donations of real property from a non-governmental owner may be credited to the state's matching share of the project. The credit is to be based on fair market value established on either the date on which the donation becomes effective, or the date on which equitable title to the property vests in the State. The total credit cannot exceed the State's pro-rata share under the project agreement to which it is applied.

Under Section 710.507 (a), contributions of real property owned by State and local governments that is incorporated within a project receiving financial assistance from the Highway Trust Fund can be used as a credit toward the non-federal matching share of project costs provided documentation supporting all credits includes the following:

1. Certification that the acquisition satisfied the conditions in 23 CFR 710.501(c)(1) through (6); and

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2. Justification of the value of credit applied. Acquisitions costs incurred by the State to acquire title can be used as justification for the value of the real property.

Sufficient documentation of the financial data to support the soft match or credit must be included in the project file for the final voucher. Expenditure reports from AMS Advantage will suffice as financial support to document the State's matching share of the project.

OFR and the Division of Accounting should also be consulted for further guidance on the application of soft match or credit toward a federal-aid project.

3.05.03.00 Federal Participation in R/W Projects

OFR establishes guidelines, including thresholds based on federal funds management, for federal-aid funding for R/W projects. Although federally approved R/W projects are generally 100% participating, only those parcels within the R/W lines and eligible excess land are eligible for federal participation.

The current guidance for federal aid funding can be found on OFR's intranet page (internal Caltrans link).

The current established thresholds for requesting federal aid funding on R/W projects is as follows:

- State Highway Operation & Protection Program (SHOPP) projects that are identified for RMRA funding with programmed R/W capital of $10,000,000 or more are qualified for Federal-aid funding.
- SHOPP projects (including HSIP) that are NOT identified for RMRA funding with programmed R/W capital of $2,000,000 or more are qualified for Federal-aid funding.
- State Transportation Improvement Program (STIP) projects with programmed R/W capital of $10,000,000 or more are qualified for Federal-aid funding.
- Active Transportation Projects (ATP) projects awarded as part of the statewide competition with programmed R/W capital of $1,000,000 or more in ATP funding are qualified for Federal-aid funding.
- Some federal programs, including Demonstration project programs, are federalized regardless of the R/W capital estimate amount.

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Exceptions:

- All ER projects greater than $5,000 in total are to be qualified for Federal-aid ER funding and must be developed in accordance with federal requirements. This threshold applies to both construction capital and R/W capital. The final eligibility determination for Federal-aid ER funding is determined by the FHWA on a Damage Assessment Form (DAF).
- Capital Outlay projects programmed in the Railroad Grade Separation Program (20.30.010.400) and the Safety Railroad Grade Crossing Protection Program (20.30.010.500) with estimated construction capital of $100,000 or more are to be qualified for Federal-aid funding.
- Projects under Section 146.5 of the Streets and Highways Code, Parking Facilities, estimated to cost $30,000 or more in total are qualified for Federal-aid funding.
- Projects under Section 148 of the Streets and Highways Code, Transit Related Highway Facilities, estimated to cost $30,000 or more in total are qualified for Federal-aid funding.

Other Federal Program Projects

Projects funded from federal earmark programs such as High Priority Projects, Projects of National and Regional Significance, and National Corridor Infrastructure Improvement Program shall be qualified for Federal-aid funding regardless of the project's capital cost estimate.

All projects funded from Federal Discretionary Programs shall be qualified for Federal-aid funding. Federal Discretionary Programs include but are not limited to:

- Fostering Advancements in Shipping and Transportation for Long-term Achievement of National Efficiencies (FASTLANE) Grants
- Infrastructure for Rebuilding America (INFRA) Grants
- Transportation Investment Generating Economic Recovery (TIGER) program
- Coordinated Borders and Infrastructure program (CBI)
- Federal Lands Access Program
- Federal Lands Transportation Program
- Ferry Boat Program
- Intelligent Transportation System Program
- Surface Transportation System Funding Alternative Program
- Technology and Innovation Deployment Program

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There could be federal authorization and participation on a R/W project, but not on specific parcels because acquisitions may have occurred prior to initial federal authorization, or not approved through a subsequent authorization on the R/W project. (Those non-participating acquisition costs should be coded in AMS Advantage as ineligible.) Also, where the Department did not apply for and receive FHWA authorization and specific federal approval for utility relocations, the utility relocation costs may not be charged to the project with federal participation and must be state-only funded.

There may be federal aid for preliminary engineering and construction engineering on a highway project, but not for R/W. The nature and complexity of R/W projects compared to construction or preliminary engineering projects require that extreme care be exercised in identifying federal eligibility and participation. To accommodate the multifunctional R/W costs and credits, various federal participation forms are used to identify federal participating costs and to segregate eligible and ineligible R/W costs for federal reimbursement. Each R/W functional area has included special instructions for properly coding functional costs in its procedures. (See functional sections of the R/W Manual for detailed instructions.)

3.05.04.00 Federal Funding Overview

Whenever federal funds provide a portion of a project's funding, the Department must qualify the project for federal participation by meeting applicable requirements of federal laws, and implementing regulations and directives.

The following is a summary of activities necessary for obtaining federal authorization, funding and reimbursement for a federal-aid project:

- Verify project is included in programming documents (e.g., STIP, SHOPP, FTIP, FSTIP).
- Request work/project authorization and execution of project agreement by submitting an electronic E-76 in FADS to the Office of Federal Resources for processing to FHWA.
- Receive FHWA's approval through electronic signature document in FADS for the work/project, and begin R/W work.
- Bill FHWA for progress payments through AMS Advantage.
- Initiate and submit, when necessary, an electronic modification of project agreement in FADS to adjust federal funding and/or the Agreement End Date (AED) under agreement with FHWA.

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- Prepare a final voucher for the project after all work is completed and close out project with FHWA.

3.05.05.00 Federal Authorization/Approval

FHWA has delegated to the Department much of the authority for determining FHWA Involvement and Oversight on projects. OFR and OLP have overall responsibility for the management of federal funds on State and Local projects.

The Department obtains separate authorizations/agreements on capital outlay projects for preliminary engineering, R/W, and construction through the electronic combined authorization/agreement process. This process utilizes the Federal Aid Data System (FADS). The FHWA approval of plans, specifications and estimates, authorization to proceed with work, and obligation of federal-aid funds (for an exception, see Section 3.05.05.01 on advanced construction projects) all occur with the execution of the project agreement. FHWA's approval to proceed with work establishes the date after which expenditures are eligible for reimbursement.

Federal funds may not be used for costs incurred prior to the date of authorization to proceed. Since Advantage precludes costs prior to authorization from billing FHWA, special coding is not needed for segregating costs in the billing.

While many federally funded projects are exempt from FHWA approval and oversight, R/W projects are not exempt. R/W projects are sometimes authorized and funded for an amount less than the total estimated cost (usually the amount that can be expended on a timely basis, generally one year), or funds are obligated as advance construction (AC) (see Section 3.05.05.01). Since R/W project limits frequently differ from construction project limits, these projects are programmed separately with FHWA and are assigned different federal-aid project numbers.

OFR and OLP coordinate programming of all federal funds with FHWA and submit necessary back-up documentation for the projects.

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3.05.05.01 Federal Authorization for Advance Construction (AC) Projects

OFR will use its discretion in programming and processing federal-aid projects. When a R/W project is designated as an advance construction (AC) project, it is processed in the same manner as a regular federal-aid project and a project agreement is executed. The only exception is that the FHWA authorization does not constitute a commitment of federal funds on the AC project. OFR at some future date will convert the AC project and request federal funds be obligated through an electronic modification of the project agreement so that project expenditures can then be billed to FHWA for reimbursement.

3.05.05.02 Federal Participation in Preliminary Acquisition Activities

23 CFR 710.203 (a)(3) allows preliminary acquisition activities to be advanced under preliminary engineering prior to National Environment Policy Act (NEPA) clearance (42 USC 432 et seq.). Appraisal completion may also be authorized as preliminary right-of-way activity prior to completion of the environmental document. Thus, costs of preliminary R/W activities incurred in conformance with state and federal law requirements may qualify for federal participation.
Districts may prepare and submit an electronic E-76, Project Authorization/Agreement to seek Federal participation in preliminary R/W activities following:

1. June 9, 1994 guidelines that define preliminary right of way (see Exhibit 3-EX-5 and Section 3.08.01.00).
2. Departmental internal guidelines for federal aid project funding for Right of Way Projects (internal Caltrans link).

3.05.05.03 Stage 1 Authorization - Hardship and Protection (H&P) Acquisitions

Federal aid for H&P acquisition is requested only when total R/W capital costs, including H&P acquisition meet the thresholds referenced in Section 3.05.03.00. The Department's practice is to budget expenditures H&P acquisitions showing federal participation.

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The provisions of 23 CFR 710.503 (b)(c) allow authorizations for protective buying and hardship acquisitions. FHWA may authorize federal participation in acquisition of a particular parcel or a limited number of particular parcels within the limits of a proposed highway corridor prior to completion of the Environmental Impact Study and selection of the route. Known as Stage 1 Authorization, this is simply a federal authorization to proceed without the obligation of federal funds.

Stage 1 Authorization for H&P parcels requires submittal of a complete justification package, along with the preparation and submittal of an E-76 to FHWA. When submitting the E-76 for a Hardship or protection acquisition, the FADS COMMENT screen must clearly indicate that the request for a Stage 1 Authorization is pursuant to 23 CFR Section 710.503 – Protective buying and hardship acquisition, and authorization to proceed under 23 CFR 630.106 (c) (3).

Pursuant to 23 CFR Section 630.106(d), the following statement must be included in the E-76 request for Stage 1 Authorization in the FADS COMMENT screen:

> "Authorization to proceed is not a commitment or obligation to provide Federal funds for that portion of the undertaking not fully funded herein."

The Stage 1 Authorization allows eligible incurred costs to be reimbursed after the appropriate requirements are fulfilled, provided a revised E-76 (converting the authorization from Stage 1 to 2 – Regular Right of Way) is transmitted to and approved by FHWA.

Since all eligible Stage 1 costs, including appraisal, acquisition, and rental activities, potentially qualify for federal participation, they must be captured by a multiphase (project) EA and not by a single phase EA. See Section 3.04.04.01 for charging information on H&P acquisitions.

On Stage 1 Authorization, R/W Project Control sets up the project in Advantage with an Earmark 2 and 9 Phase with an ineligible, state-only funding profile. Upon conversion to a Stage 2 Authorization, a new funding profile is established for the Earmark phases for federal participation and must reflect federal-aid eligibility, and other appropriate federal-aid information.

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3.05.05.04 Stage 2 Authorization - Conversion to Regular Federal-Aid Project

When an H&P project progresses to the environmental clearance stage, the Stage 1 authorized project must be converted to a Stage 2 regularly funded federal-aid R/W project. As soon as project criteria are met, district P&M must submit a revised E-76 using FADS to receive federal funding obligations.

The following information must be included in the COMMENT Screen on the revised E-76 for a Stage 2 Authorization:

- Stage 2 Authorization (Conversion from Stage 1 Authorization)
- Environmental Clearance Document Date
- Route Adoption Date
- Public Hearing Date

Upon approval of the Stage 2 Authorization, R/W Project Control establishes a federally eligible 2 or 9 Phase in Advantage, to reflect federal-aid eligibility, and other appropriate federal-aid information.

Once a project has progressed to Stage 2, R/W support and capital outlay expenditures are charged to the federally eligible 2 and 9 Phase, and the Earmark Phases for the Hardship or protection acquisition charges become federally eligible.

3.05.05.05 10-Year and 20-Year Rule

As a part of federal funds management, it is important to monitor the progress of projects that are federally authorized. A project must continue to move forward within the following time limits, or risk losing or refunding federal funds:

10-YEAR RULE – Once the Preliminary Engineering (PE) phase is authorized, R/W or Construction must proceed within 10 years, or risk losing or refunding PE federal funds.

20-YEAR RULE – Once the R/W phase is authorized, Construction must proceed within 20 years, or risk losing or refunding R/W federal funds.

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3.05.06.00 Project Identification

The Federal-Aid Project Number (FPN) is the project identifier on a federal-aid project. For State purposes, the Advantage Project ID is the project identifier, and the EA is the Alternate State project identifier. (See Section 3.02.00.00 for additional information on EAs.) More than one project EA may be assigned to a federal project, and more than one federal project may be assigned to an EA.

Both FPN and EA are referenced on various documents including the E-76. FPNs and EAs are contained in ROWMIS, PMCS, PRSM, Advantage, RUMS, and ELMS.

The relationship between FPNs and Project IDs/EAs is important, especially with regard to federal authorization and reimbursement. Proper federal-aid information must be established in Advantage on the Funding Profile of the Project ID to link an FPN to one or more Project IDs/EAs, or vice versa, for the department to record project expenditures and to bill and collect federal reimbursement.

3.05.06.01 Federal-Aid Project Number

OFR assigns an FPN to identify a specific federally aided highway project or federally approved research study. The number is used to monitor project activities and funding and must be on the E-76, and any other support documents for the project.

An example of an FPN is:

- I-105-3 (311)
- P041 (041)

The FPN must be shown on R/W plans, contracts, deeds, appraisals, options, vouchers, utility agreements, correspondence, and other documents and papers.

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3.05.06.02 EA Adjustments for Combined and Split Projects

When combining or splitting project EAs, district R/W must exercise caution to maintain the federal-aid information related to authorized federal-aid R/W projects.

- **One Federal-Aid R/W Project Involved** - newly created EAs/Project IDs must reflect the original federal-aid project number if they are within the project termini authorized by the E-76.
- **Two Federal-Aid R/W Projects Involved** - newly created EAs must have separate Earmark Phases and funding profiles established to correspond respectively with each federal-aid project. (Post mile, or kilometer post, identification will be key to relating to appropriate federal aid R/W project.)

Consult with Headquarters P&M if the combined or split projects result in discrepancies with the federal project limits.

3.05.07.00 Request for Federal-Aid Funding Approval/To Proceed (E-76)

As a condition for receiving federal-aid, the Department must obtain FHWA authorization of work and execute a project agreement for contractual obligation of the federal share of a project.

The Department and FHWA use the Federal Aid Data System (FADS) Electronic Signature System to electronically transmit information required to authorize the project, execute the project agreement, and obligate funds for the federal-aid project. (See the table entitled "Departmental Databases and Data Management Systems" in Section 3.01.02.01 for additional information on FADS.).

Prior to the passage of TEA-21, there was a two-step process for committing federal funds and entering into a formal agreement with FHWA. Previous FHWA regulations [23 CFR 630.303(c)] combined these steps into a single action and the Department and FHWA Division office, in accordance with 23 CFR 630.106(2), now handle all project authorizations/agreements as a single action through execution of the project agreement in the FADS System. After reviewing E-76 data, FHWA Division transmits the FADS data to the Fiscal Management Information System (FMIS) in Washington, D.C. for electronic signature to finalize the agreement. The process on the E-76

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authorization/agreement is complete when the data is transmitted back to FADS from FMIS with signature names and dates for each project. The electronic processing of the Authorization to Proceed (E-76), Project Agreement, and Modifications of Project Agreements replaces the hard copies of these referenced documents.

Since costs are not eligible for federal participation if incurred prior to the authorization to proceed date, timeliness of E-76 submittal and authorization is critical. The district must submit an E-76 to OFR as soon as possible after environmental approval. Authorization to proceed with preliminary engineering and acquisition of rights of way on H&P projects is obtained in the same manner as regularly financed federal-aid projects.

The E-76 must be prepared for each highway project eligible for federal-aid funding. The purpose of the E-76 is to:

- Cover the various types of projects and kinds of work to be undertaken.
- Indicate the effective date governing FHWA authorization for federal share of eligible costs.
- Show the total amount of project cost requested and federal funds obligated.
- Set forth any special provisions or limits relating to the project.

The E-76 must be submitted at the following milestones for R/W projects:

- Prior to Project Approval & Environmental Document (PA & ED): Preliminary work - before beginning any effort, such as appraisal maps. This work effort can be included on the Preliminary Engineering (PE) authorization if preliminary R/W work needs to be started prior to PA & ED being achieved. R/W hardship or protection authorizations are executed prior to PA & ED as a Stage 1 authorization, and then upon achieving PA & ED, are converted to a Stage 2-Regular R/W authorization.
- At or soon after PA & ED: Appraisal, acquisition, relocation assistance (RAP), demolition/clearance, and utility relocation - before beginning effort.

Capital outlay costs are eligible for participation upon E-76 approval prior to commencement of the activity proposed for participation. For example, acquisition activities commence with the "First Written Offer." Submittal of the "First Written Offer" before the E-76 is approved makes all acquisition costs non-participative. The same restrictions apply to other capital outlay activities, e.g., utility relocation and RAP.

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Federal aid must also be requested for R/W support when federal aid is requested for capital outlay costs. Initially an E-76 may be submitted to cover preliminary R/W work and capital outlay costs, such as R/W engineering activities and title reports, with subsequent E-76s being submitted for the remainder of capital outlay and support costs., or a full request for all regular R/W support and capital may be requested upon achieving PA & ED.

The E-76 contains basic data about the project and the phase for which participation is being requested. The district drafts the request and OFR finalizes it. The E-76 should include:

- Total estimated support costs and functions involved in the support costs (e.g., acquisition, utilities, and RAP).
- Total estimated capital outlay broken down by costs of acquisition (right of way, excess land, and demolition and clearance), RAP, Last Resort Housing, and utilities.
- Total number of acquisition parcels.
- Total number of RAP families and business relocations.
- Total number of Last Resort Housing units or Hardship parcels.

Supporting documentation must be submitted to OFR with the E-76 request as follows:

- Current R/W Data Sheet (estimate) of all R/W capital costs.
- Utility relocation list that shows the utility owner name, type of utility conflict, and
  relocation cost estimate.
- CTIPS printout showing the support estimate or California Transportation Commission (CTC) vote.

3.05.08.00 R/W Project Estimate

The Department must provide total R/W costs for an entire project when submitting an E-76 for FHWA's approval to proceed. The total R/W costs must include separate estimates for:

- Acquisition (R/W, excess, and demolition/clearance).
- RAP Families and Businesses.
- Last Resort Housing/Hardship Acquisition.
- Utilities.
- Support.

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The total R/W costs displayed on the E-76 must reflect R/W (capital outlay) cost estimates that are on the R/W Data Sheet and PRSM Right of Way Capital Estimate screen, as well as support cost. The major capital items on the R/W Data Sheet should each have their own Funding Line on the Fund Detail tab of the E-76. For R/W capital costs, Utilities uses Improvement Type Code 43, while all remaining capital costs use Improvement Type 16.
The R/W support cost estimate must also be itemized separately on its own Funding Line on the E-76, and uses Improvement Type 16 as well; therefore, it is imperative that each type of R/W be listed on individual lines. Since support estimates currently are calculated manually and no standard procedures are applied, many projects are under-obligated and underfunded in federal funds. Support costs must be current and realistic, and based on anticipated workload. If workload changes, support costs must be revised.

The R/W cost estimate provided on the E-76 should be kept current and updated whenever it is determined the estimate is no longer valid. See Chapter 4, Estimating.

3.05.09.00 Amendment/Modification of Federal-Aid Project Agreement

When it is necessary to adjust federal funding on a project, Districts will prepare and transmit an electronic Amendment/Modification to OFR, who will review and submit to FHWA for review and approval. The modification of project agreements should continue to be processed in accordance with the requirements in 23 CFR 630.110.

The modifications to the project agreement are based on funding adjustments on an "as needed basis" to cover additional eligible project costs with increased programmed funding, and adjustments requested by R/W and/or Accounting.

Eligible project costs incurred beyond the funding limits of the federal project agreement become known as an accrual and cannot be billed to FHWA for reimbursement until additional funding is authorized for the project agreement. Therefore, it is advisable that the electronic Amendment/Modification be submitted to FHWA in a timely manner.

Federal project agreements that are in accrual status will require a modification to the federal project agreement, and the request for additional funding must be supported by an updated R/W capital cost estimate (R/W Data Sheet) and having sufficient budget capacity in the appropriate R/W Phase to accommodate the increase in funding. If enough funds are not

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programmed to cover the increased cost, a PCR is required to increase the project budget.

Supporting documentation must be submitted to OFR with the Amendment/Modification E-76 request as follows:

- An up-to-date R/W Data Sheet which reflects capital costs already expended plus estimated remaining costs, and a utility relocation list that shows the utility owner names and type of utility conflicts
- Parcel estimate list – this is **only required if** the modification request is to add additional parcels, or update parcel estimates as part of the modification request if the total acquisition estimate has increased.
- Approved G-12, CTC supplemental vote, or Documentation PCR for support cost estimate

3.05.10.00 Multiple Federal Funding

R/W projects may have multiple federal funding, that is, more than one funding source of federal funds. Two examples of dual or multiple funding are:

- A project with Interstate Completion (I) and Interstate Rehabilitation (IR) funds.
- A project with Surface Transportation Program (STP) and Minimum Allocation (MA) funds.

OFR can obligate different classes of federal funds for a specific project depending on the need and availability of funds. It is not unusual for a R/W project that spans a number of years to be financed with different types of federal funds.

A R/W project that is multi-funded (dual, triple, or quadruple funded) must have correct federal-aid information on the project setup in Advantage for each federal fund source related to the project. Specifically, the project must reflect the correct participating ratio for each federal-aid fund type. This is to ensure that project expenditures will be accurately charged to the appropriate FPN and federal program fund. Each FPN carries a separate class of program fund reflecting its reimbursement rate.

District R/W sets up the initial federal-aid information on the Funding Profile of a 2/9 Phase R/W Project ID using information from the approved E-76 — essentially the initial federal funding program code and the federal project number(s) (e.g., P052(061)). HQ Budgets Capital Outlay Support Unit (COSU) will establish and modify the 2 Phase project budget in Advantage for federal

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project authorizations approved by FHWA, and District R/W Project Control establishes and modifies the 2 and 9 Phase Funding Profiles in Advantage. Infrequently, a R/W project has dual funding that requires separate accountability of federal funds. For example:

- A project involves **two** different routes - one is an Interstate route, the other is a State route (e.g., I-880 and SR 237).
- A R/W project is approved with both Interstate Construction (I) and Interstate Maintenance (IM) or Interstate Rehabilitation (IR) funds.
- A project has state-administered federal funds, such as Traffic Congestion Relief Program (TCRP) and local federal subvention funds, such as Regional Surface Transportation Program (RSTP).

P&M must receive sufficient project information related to conditional funding requirements and limitations when a project is approved by FHWA and R/W work is identified for federal funding. This is to ensure that R/W Project ID Funding Profiles are correctly established in Advantage to maintain separate accountability for costs to be charged to each federal fund type. District R/W must be aware of the funding restrictions inherent in the different federal fund types to prevent mischarging project costs to FHWA. In addition to the above, under SB 45 programmed projects may also have multiple federal funding sources that require separate accountability. Therefore, it is important to exercise care to segregate the different federal fund types and properly account to each fund type and individual federal-aid project.

R/W should consult with OFR when clarification is needed on separate accountability of federal funds and other federal-aid funding issues.

3.05.11.00 Federal Emergency Relief (ER) Funded Projects

In situations where there are declared disasters (storms, earthquakes, fires, etc.) eligible for Federal Emergency Relief (ER) funds, the Department must follow Federal Emergency Relief Recovery Procedures to assure maximum federal reimbursement. Where the damage is significant, Caltrans will prepare a Letter of Intent to the Federal Highway Administration (FHWA) to apply for ER funds. FHWA approves and allocates ER funds either administratively or when a Presidential Declaration of Disaster is declared.

Under the Emergency Relief Program, Emergency Opening (EO) and Permanent Restoration (PR) work are eligible for ER funds. Consult the HA-23 Statewide Program Advisor or Federal Resources Area Engineer for the difference between Emergency Opening and Permanent Restoration.

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All ER projects greater than $5,000 in total are to be qualified for Federal-aid ER funding and must be developed in accordance with federal requirements. This threshold applies to both construction capital and R/W capital. The final eligibility determination for Federal-aid ER funding is determined by the FHWA on a Damage Assessment Form (DAF).

FHWA will reimburse the Department with ER funds at a rate of 100 percent for eligible emergency opening expenditures incurred during the first 180 days of a federally declared disaster. According to the Federal Register, the 180-day period starts on the initial day of the disaster. Emergency opening work continuing beyond the 180-day period will be reimbursed using the normal qualifying rates for the project.

Permanent repairs or restoration must have prior FHWA program approval and authorization through an E-76, unless done as part of the emergency repairs completed during the first 180 days of the federally declared disaster. Projects for restoration work will follow the normal federal-aid process. Restoration work is reimbursed by FHWA at the normal system rate, currently 91.57 percent on Interstate routes and 88.53 percent on all other Federal Aid Highways.

While OFR and Headquarters Maintenance are responsible for processing the ER projects for approval and funding with FHWA, it is still the District's responsibility to initiate the authorization request (E-76) and assure all requirements are met before beginning work. If work is begun prior to approval of the E-76, Federal ER funds will be lost. (Consult with OFR for guidelines and procedures for handling ER funded projects.)

For ER funded projects, only Emergency Opening work such as temporary operations, emergency repairs, and preliminary engineering may proceed without prior Federal authorization. <u>All other work including right of way appraisals and permanent restoration must have a FMIS approved E-76 prior to proceeding.</u>

EO projects must have photographs and other documentation of the initial damaged site to substantiate emergency opening costs. Also, a Damage Assessment Form (DAF) must be prepared for each site located on Federal-aid highways. The DAFs for State highway projects must include cost estimates for all phases of work, including R/W.

When major damage and disasters occur, Right of Way must actively participate in the Emergency Relief process to ensure that R/W work is considered and included in the DAF. The following are necessary:

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Emergency Opening (EO) Projects

- Participating as part of the disaster team to perform field reviews of damage sites
- Providing R/W cost estimates to the District Major Damage Coordinator in the District Maintenance Office for the Damage Assessment Form (DAF)
- Providing R/W cost estimates to the District Major Damage Coordinator for the E-76 (**HQ Office of Federal Resources is responsible for preparing the E-76 for EO projects, including the R/W estimates.**)
- Ensuring R/W staff charges to the proper EA/Project ID established for the EO projects
- Delivering R/W work in a timely manner for Emergency Opening Phase
- Upon receipt of Final Voucher Request form, confirming completion of R/W work on ER projects through a completed and approved R/W Final Voucher Questionnaire being returned to the Project Manager/ER Program Manager, who will then submit a complete Final Voucher package to Final Voucher Accounting for final vouchering of ER projects

Permanent Restoration (PR) Projects

- Coordinating with Project Development on the PR projects
- Developing R/W estimates as in regular typical projects
- Requesting federal participation by submitting an E-76 in a timely manner (**R/W prepares and submits E-76 for all PR projects.**)

NOTE: Permanent restoration projects are not required to be listed in a Federally approved Transportation Improvement Plan unless they involve substantial functional, locational or capacity changes [CFR 450.326(e)(5)].

All R/W work for permanent restoration projects must have an electronically signed E-76 prior to proceeding.

- Ensuring R/W staff charge to the proper EAs established for the PR projects
- Delivering R/W work in a timely manner for Permanent Restoration Phase
- Monitoring PR projects funded by ER funds and confirming completion of R/W work on PR projects through a completed and approved R/W Final Voucher Questionnaire being returned to the Project Manager/ER Program Manager, who will then submit a complete Final Voucher package to Final Voucher Accounting for final vouchering of PR projects

General questions regarding the ER Program, the HA-23 program, Deputy Directive DD-26, the Major Damage Restoration Handbook, and the Director's

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Order and Resolution G-11 Processes should be directed to the Headquarters Maintenance HA-23 Statewide Program Advisor.

3.05.12.00 Federal Reimbursement

The Federal-Aid Highway Program is a reimbursable program. The Department provides the initial cash to get a project underway, then receives federal funds for the federal share of the project cost incurred and work completed. This means Caltrans must first obtain obligational authority, execute a project agreement, incur costs, and bill FHWA for payment. Then it can receive payment. FHWA will pay only those expenses eligible for reimbursement, limited to the amounts shown on the executed Project Agreement, or latest modification of the Project Agreement.

Once the project is authorized and the Federal-Aid Agreement is executed, expenditures are accumulated in Advantage and reimbursement procedures are initiated. Project expenditures are matched with the appropriate federal funds reimbursement criteria, and FHWA pays the State a pro rata share of eligible participating costs. See Section 3.05.12.07 for information about the Department's system for billing FHWA.

3.05.12.01 Importance of Federal Reimbursements

Over 50 percent of the Department's annual resources come from federal reimbursements. Although the amount apportioned to California from the current Federal Highway Act is part of the annual Caltrans budget for a given fiscal year, the actual amount reimbursed depends on the amount claimed in compliance with established approval and reimbursement procedures.

3.05.12.02 Maximizing Federal Reimbursement

Timeliness of accounting entries and proper coding of transactions are essential for maximizing federal reimbursement. Each employee who codes a time sheet, car tag, or any other accounting document is performing an accounting function and has a responsibility for coding those costs properly.

A key element is correct project setup in Advantage, as well as correct use of object codes. See Section 3.05.12.05 for detailed information.

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3.05.12.03 Federal Project Setup in Advantage

There are two types of projects in Caltrans' financial system (Advantage) involved in the federal reimbursement process.

1. Advantage federal project identification (ID)
2. Physical project ID

When a federally participating project is authorized via E-76, the approved project's information is interfaced from FMIS to Advantage. This process creates an Advantage federal project ID which is a 10-character code with a prefix "FF". The authorized amount (obligation) and other information are passed into Advantage to complete the federal project ID record. The federal project ID sets the parameters for billing FHWA.

The physical project ID is a 10-character code used to program, budget and record expenditures for a Caltrans capital project. It identifies the funding source, i.e. fund, appropriation, and program code, of labor and/or operating costs charged to a project. Physical project IDs are created in various areas within Caltrans. For example, District Project Control creates the physical project ID for most multiphase projects and HQ Office of Engineer creates the state administered Phase 4 construction projects. If a project's funding profile includes federal funds, the relevant Advantage federal project ID is connected to the physical project ID's federal funding line. Once connected, the Advantage federal project ID will be listed on the internal buyer line section of the funding profile.

The physical project ID cannot be setup with a federal funding line without a valid federal project. Therefore, the federal project needs to be established first in Advantage (interface from FMIS) before it can be associated with the physical project. This prevents expenditures from posting to a federal funding line prior to the federal project authorization date.

3.05.12.04 Reimbursable R/W Costs

FHWA approves and limits the project expenditures it reimburses to those costs the Department has actually incurred (i.e., cash disbursed, not dollars encumbered).

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Federal funds may participate in R/W costs recorded in Advantage in two categories:

- **Capital Outlay** - costs necessary to acquire and clear rights of way for project construction. All capital outlay costs must be charged to a specific project. To meet FHWA requirements, capital costs must be recorded in sufficient detail to determine eligibility. To achieve this, the department uses Object Codes and Reporting codes to identify the specific financial transaction and federal-aid eligibility. This includes transactions for land, improvements, damages, utility relocation, demolition, clearance, relocation assistance, condemnation deposits, and income relating to sale of improvements and excess lands.

- **Incidental (Support)** – personnel and operating expenses supporting R/W functions that produce the capital outlay payments. FHWA uses the term "incidental cost;" the Department uses "support cost."

3.05.12.05 Definitions

Direct eligible costs are those expenditures incurred after federal authorization on a project is obtained. Generally, eligible acquisition and related costs are based on a parcel-by-parcel authorization by FHWA. Federal participation in real property costs is limited to the costs of property incorporated into the final project and the associated direct costs of acquisition, unless provided otherwise.

23 CFR 710.203(4)(b)(1) expands federal reimbursement for right-of-way acquisition costs beyond the current limits of "generally compensable" costs. Federal aid eligibility now extends to items usually covered by state law and items formerly determined not to be compensable under earlier CFR guidelines. See above-referenced section of 23 CFR for details on federal participation in direct costs.

District R/W is responsible for determining federal eligibility of R/W costs.

Ineligible costs are those expenditures that are not eligible for reimbursement (e.g., costs that would normally be eligible, but are incurred prior to FHWA's approval of the E-76). FHWA does not participate in any costs (except early acquisition soft match) that are incurred prior to the authorization of a project.

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As a result of TEA-21 and the newly adopted Federal regulations, FHWA no longer limits federal reimbursements on formerly excluded costs, such as goodwill and defendant's costs in connection with condemnation action.

The Department may also decide not to obtain federal reimbursements on certain eligible project costs. For example, since 1991 R/W had provided state funds to cover the costs of title reports and escrow fees and had charged these as ineligible project costs. However, in January 2019, the Federal Aid Funding Guidelines were revised and now allow federal participation for title report and escrow fee costs. Additionally, in 2000, Caltrans made a policy decision not to seek federal reimbursement for property management costs (see Section 11.01.09.00).

See Section 8.50.04.00, Segregation of Acquisition Costs for Federal Reimbursement, and Section 8.50.04.01, Federal Reimbursement Provisions.

Participation Ratio (Percentage) refers to that portion of the project costs authorized for federal reimbursement compared to the total cost of the entire project. Projects can include work outside the limits of the Federal Aid Highway System (not participated in by FHWA) or elements of a project's costs that are non-participating, thereby creating a non-participating portion. Furthermore, if a project or phase of work qualifies for federal funding but is not included in the federal project agreement, the costs will not be participating or reimbursable.

Reimbursement Percentage is the portion of the participating eligible costs that will be reimbursed. Each federal program has a reimbursement percentage that is established by federal regulations. The reimbursement percentage designates what the state's matching share will be for project costs.

In summary, eligible costs multiplied by the participating ratio of the specific project and multiplied by the reimbursement percentage for the federal program pertaining to the project equals the amount of expenditures that will be federally reimbursed. Note the reimbursement rate percentage on a physical project's regular federal funding line in Advantage is actually the funding split percentage assigned to the federal funding source based on the funding plan of a specific project. It does not always represent the percentage of the federal share authorized by FHWA. The approved reimbursement percentage is recorded on the sub account field in the Advantage federal project ID, for informational purposes only.

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The following is an example of Advantage calculations of federal reimbursement:

Eligible Cost		Participation Ratio		Reimbursed Rate		Reimbursed Federal Funds
$150	x	100%	x	91.57	=	$137.36
Matching State Funds						$12.64
Total Eligible						$150.00

3.05.12.06 Federal-Aid Eligibility Coding

The coding of expenditures on accounting system entry documents indicates whether or not costs are treated as eligible expenditures. The Project/Phase setup in Advantage requires a Funding Profile that establishes federal-aid eligibility, and charges will post against the appropriate Funding Profile, depending on eligibility of the expense. The Coding Manual, Section 5, Object Codes, and Section 6, Activity Codes, lists the allowable codes for labor and other expenditures.

Generally, the eligibility of R/W costs for federal participation relates directly to whether or not specific parcels have FHWA approval on the federal project agreement. Utility relocation costs, however, are only eligible for federal participation if FHWA approves and if federal rules and regulations that dictate federal-aid eligibility on R/W project costs are met.

District P&M should be consulted when it is necessary to determine whether or not certain R/W costs are approved for federal participation.

See Exhibit 3-EX-8 for object codes commonly used by R/W.

3.05.12.07 Supporting Claims for Reimbursement

Any claims made with FHWA for reimbursement shall be supported by various types of documentation on file, including a R/W map or plan showing the rights of way authorized and being acquired, including parcel identification numbers, area to acquire, property lines of acquired area, and any other pertinent data affecting the cost of right of way (e.g., structures, improvements, and fences). Right of Way Contracts for acquired property rights shall support acquisition costs claimed for reimbursement, and include parcel number, cost of parcel, and cost of excess land, if any, acquired from

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the same ownership. For Utility relocations, utility agreements must be on file. Incidental, (or support) costs and all other R/W costs, including credits and cost of construction performed to mitigate damages on a parcel basis (if claimed as a R/W item) shall be supported by project expenditure reports that are coded to reflect federal eligibility.

3.05.12.08 Current Bill

As a project incurs costs, federally eligible expenditures post to the physical project ID's federal funding line. During the Advantage reimbursement billing cycle, federal project expenditures are identified and "internally bill" the Advantage federal project ID associated with the federal funding line. If the federal project has sufficient obligation balance, the expenditures are considered billable. Otherwise, if the expenditures exceed the federal project's obligation balance, the expenditures are considered unbillable and will remain as such until the condition is resolved (e.g.: additional obligation authority is approved for the project). Billable expenditures are summarized, and a federal bill is generated.

The final step in the Advantage reimbursement processes generates a billing file transmitted electronically to FHWA's FMIS. Same day payment for an approved bill is usually made to the State. For same day payment to occur, Accounting's Federal Reimbursement Section (FRS) reviews and approves the bill in FMIS by 8:00 am. An email is sent to FHWA that a bill file is awaiting their review and approval. FHWA needs to approve the bill file by 8:30 am to receive same day pay. If FHWA approval is not completed by 8:30 am, the payment will be sent the following day (excluding holidays and weekends). Also, when the bill file is created, the Receivable and Cash Receipt documents are generated in Advantage. Office of Financial Accounting and Analysis utilize these documents to clear FHWA's electronic fund transfer to the State Treasury and to process a plan of financial adjustment with the State Controller's Office (SCO).

3.05.12.09 Accruals - Unbilled Federal Share

Federal-aid accruals are the reimbursable expenditures incurred by the Department that FHWA has not reimbursed. These unbilled federal expenditures are for advance construction projects, in excess of project agreement amounts, and for ER projects that do not have DAFs or federal projects identified. The Federal Accruals Report is produced and provided monthly to OFR and Division of Local Assistance.

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FRS provides OFR and R/W with monthly reports on all federal-aid projects with accruals. Accounting, Budgets, and R/W use the reports to monitor unbilled federal funds and to clear accruals to the extent of available appropriated federal funds.

As part of the process to clear accruals, OFR requests R/W to provide justifications and project cost information necessary for preparing and submitting a E-76 Modification to FHWA for additional federal funds. HQ R/W assists in resolving accrual issues and is the liaison with OFR and District R/W.

3.05.12.10 Excess of Agreement – Cost Overruns

After all AC funds have been converted to obligated Federal funds and R/W project costs exceed the federal funds in the Federal Project agreement, those costs go into Unbillable status and additional federal funds must be requested in order to bill FHWA for those costs. If there is enough budget capacity (programming) remaining in the project to cover the cost overruns, an E-76 modification must be submitted to increase the federal funds. If there is insufficient budget capacity remaining, an approved Documentation PCR will be required as supporting documentation in the E-76 modification request. An updated R/W Data Sheet, Parcel by Parcel Estimate and Utility Estimate will also be required as supporting documentation in the request.

3.05.12.11 Inactive Projects

A federal project that has not had any expenditures charged against federal funds in 12 or more months is considered "Inactive" and requires action. Possible actions to take are:

- Process an expenditure to support or capital to generate a billing to FHWA
- Decrease obligation if no further expenditures are pending
- Provide justification to OFR when inactivity is beyond Caltrans' control, such as:
  - Litigation delays
  - Unforeseen Utility relocations
  - Catastrophic events that delay project
  - Unforeseen Environmental concerns
  - Delays by other external agencies (utility companies)

FHWA has the authority to unilaterally de-obligate remaining federal funds for inactive projects.

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3.05.13.00 FHWA Citations - Federal Ineligibility Notice

3.05.13.01 General

Authorized by 23 and 31 CFR, FHWA has implemented the Financial Management Program for effective management of federal-aid funds and control of ineligible costs for federal participation.

23 CFR contains criteria relating to the eligibility of costs for reimbursement of Federal-Aid Highway funds. Pursuant to it, FHWA reviews and audits costs charged to federally reimbursable projects for eligibility. When certain costs are determined to be ineligible for reimbursement, FHWA issues a citation to the Department in the form of a Federal Ineligibility Notice (FIN) that identifies those costs.

3.05.13.02 Purpose of FIN

FIN Form PR-1367 is used to cite final or progress voucher claims for federal reimbursement or to require additional supporting information for such claims. FHWA prepares and submits a PR-1367 to the Department when deficiencies are disclosed that require a deduction from federal-aid participating costs or place such costs in an unbillable status.

3.05.13.03 FHWA Issuance of FIN

FHWA may issue FINs during three major activities:

- **Operational Audit** - FHWA may discover improper charges on the sample projects under audit.
- **FHWA Functional or Technical Review** - the reviewer may find items that have been improperly billed.
- **Voucher Fiscal Analysis** - FHWA may question certain cost items. The issues raised must be resolved before a revised final voucher can be processed and the project closed.

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3.05.13.04 Required Adjustments to Current Bill

When a FIN is issued, FHWA requires the Department to make an adjustment in the next billing cycle to move the questioned cost from "Eligible" to "Citation Suspense" category. This is done in accordance with FHWA Order H 2500.1A that all costs documented on a FIN shall be credited at the EA level from the next state current billing, but no later than 30 days from date of the FIN.

FRS does all initial crediting for federal reimbursement when the FIN is received. Credit must be given whether or not Caltrans concurs with the citation. Any differences of opinion on a citation may be negotiated, but should be resolved within nine months.

3.05.13.05 Process for Resolving FIN

The overall process for resolving FINs is shown on the following page.

3.05.13.06 Final Adjustments to Projects

FRS makes the final federal fund adjustments to projects once the FIN is resolved. R/W Accounting coordinates this effort with R/W to ensure the correction is timely and the appropriate amounts are adjusted.

3.05.14.00 Federal Funds Management

3.05.14.01 General

Federal funds management involves managing federal-aid projects from authorization to reimbursement and is the key to achieving better control over the use of federal funds. Project funds management assures the reprogramming of federal funds through the timely release of excess unexpended funds.

The Department has implemented continuous project funds management in response to audit findings by FHWA and the Office of Inspector General. The Department must manage its federal-aid funds with emphasis on the following:

- Continuously monitoring project expenditures against obligational authority.
- Applying accelerated procedures for closing completed projects.

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- Promptly withdrawing federal-aid projects that will not be completed.
- Releasing funds that exceed project needs in a timely manner.

PROCESS FOR RESOLVING FIN

Step	Responsible Party	Action
1	Federal Reimbursement Section	Receives all FINs issued.
2	Federal Reimbursement Section	Distributes copy of FIN to HQ R/W Federal Aid Liaison for the R/W federal-aid project at issue.
3	HQ R/W Federal Aid Liaison	Forwards FIN to the appropriate District P&M Chief for review and action.
4	District R/W P&M Chief	Investigates the allegation, prepares a draft response to FHWA, and recommends final resolution of FIN; forwards draft response and recommendations to HQ R/W Federal Aid Liaison.
5	HQ R/W Federal Aid Liaison	Prepares final response to FHWA and submits to Federal Reimbursement Section and R/W Accounting to ensure that the FIN is resolved and cleared from FHWA's and Accounting's tracking systems.

District R/W, HQ R/W, OFR, OLP, Federal Reimbursements Accounting, R/W Accounting, and Local Program Accounting all share in managing federal funds for federal-aid R/W projects.

HQ R/W has oversight responsibilities for project funds management and is the liaison with District R/W, OFR, and R/W Accounting.

District R/W administers federal-aid projects and manages federal funds. This primarily involves, but is not limited to:

- Obtaining FHWA authorization promptly.
- Monitoring project expenditures against federal obligations.

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- Taking timely actions to release unexpended funds or cancel federal obligations.

3.05.14.02 Monitoring Federal Aid Project Expenditures

At a minimum the district takes the following actions to monitor all activities and project costs:

- Compares approved amounts with actual expenditures incurred.
- Monitors cost overruns to request increased funds.
- Monitors underruns to release or deobligate excess unexpended funds.
- Makes revised project cost estimates as required.

For additional information on project cost overruns, see Sections 3.05.12.09 and 3.05.12.10.

For additional information on excess federal funds, see Sections 3.05.14.07 and 3.05.14.08.

3.05.14.03 Project Expenditure Report, Federal Aid Report

In managing federal-aid projects, the Department must properly track project costs by EAs. The Datalink Federal Aid Report is a standardized accounting report that provides the most current information available in Advantage related to federal projects. It is important to note that the Datalink Federal Aid report only records transactions posted since the implementation of Advantage in July 2010; for expenditures prior to Advantage, use the Datalink Major Project Summary Report, which includes converted expenditures that had been posted in the prior financial system, TRAMS.

The report can be obtained by accessing **CT Pass**, clicking on **Enterprise Datalink**, then click the drop-down menu for **Projects**, then select **Major Project Summary**. The report has different views that can be selected by clicking the drop-down menu for View; the default view is PEC Class/PEC/Project Summary. The "To" field indicates the point up to which you want to extract data for the project; Datalink automatically defaults to the most current fiscal period at time of extraction or gives you the option to go back as far as July 1, 1998.

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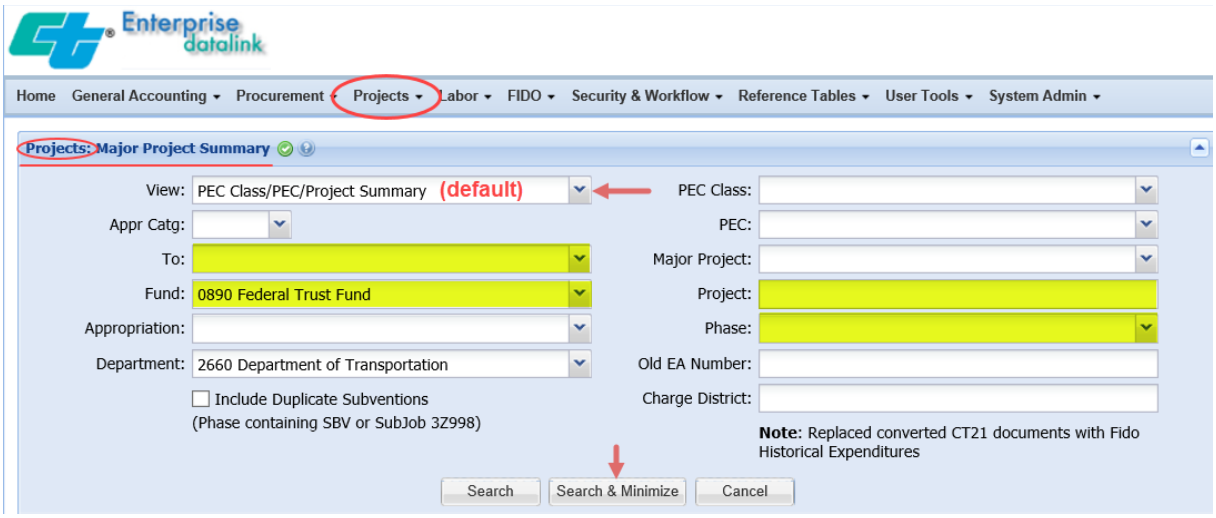

3.05.14.04 Estimating Remaining Project Costs

Prior to completion of a project, the district may need to provide OFR with a reasonable estimate of remaining costs. This may occur when project expenditures exceed the current agreement amount, when the Project End Date (PED) is nearing, or when there are anticipated excess unexpended funds to deobligate.

In developing remaining cost estimates, the district needs to:

- Review outstanding encumbrances for all R/W EAs related to the federal project. (refer to the monthly Statewide R/W Capital Encumbrance Report from HQ R/W)
- Estimate project support costs for R/W activities left to be performed (e.g., acquisition, RAP, utilities, R/W Engineering).
- Estimate outstanding capital outlay costs for each type of expenditure (e.g., title and escrow, acquisition, utility relocation, demolition and clearance, and RAP).

3.05.14.05 Accelerated Closing Procedures

R/W monitors federal-aid projects for timely progression through the final voucher stage to prevent unnecessary delays in closing out projects. To advance projects for final vouchering, district R/W should periodically review R/W projects for completion of the related construction projects. Using PMCS to identify projects where construction is completed, district R/W confirms completion of R/W work and verifies that all R/W costs have been paid and no R/W transactions remain outstanding. If a project is completed, R/W notifies the project manager and requests a Final Voucher Request form be

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submitted to R/W; R/W will then complete the R/W Final Voucher Questionnaire form and return it to the project manager, who will then submit the Final Voucher request package to the Final Voucher section in Accounting to begin the final voucher process with FHWA.

See Form FA-2658 for the Final Voucher Request Form and Exhibit 3-EX-9 for the R/W Final Voucher Questionnaire.

3.05.14.06 Cancellation of Obligational Authority

When a project has been deleted through the appropriate Departmental process, district R/W prepares a modification to the E-76 federal project agreement requesting cancellation of federal obligations and deobligation of federal funds, if funds are under agreement. OFR reviews and approves the request and forwards to FHWA.

3.05.14.07 Release (De-obligation) of Excess Funds

Unused federal funds must be released (deobligated) promptly and made available for reprogramming on other highway projects or for other FHWA programs.

The FRS periodically provides district R/W with a Project Status Report of inactive projects with significant fund balances to reassess funding needs. District R/W reviews projects to determine whether they will become active or need to be canceled and the funds deobligated. The district advises HQ R/W on project status. If appropriate, the district prepares and submits an E-76 modification to OFR to request the release of excess unexpended funds. OFR reviews and approves the request and forwards to FHWA to reduce federal funding on a project.

District R/W should take the initiative at any time prior to completion of a project to release unexpended obligations and identify excess federal funds. (It is not necessary to wait to review the Project Status Report before taking actions to release federal funds.)

3.05.15.00 Suspend/Close R/W EAs

As soon as P&M determines that all R/W costs on a project are recorded in Advantage, it must suspend all R/W phase EAs for the project. This prevents inappropriate charges from being recorded against the project and allows Accounting's Final Voucher section to begin final vouchering activities.

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See Section 3.02.06.00, Suspending R/W Phase 2/9.

3.05.16.00 Final Vouchering – Project Close Out

The last phase of a federal-aid project is final vouchering and closing of the project.

District P&M should periodically review PMCS to identify potentially completed R/W federal-aid projects (based on milestone M600-Construction Contract Acceptance) and verify with all functional units that all R/W work is complete and all costs are recorded in Advantage. Upon verification of completion of all support activities and capital costs, District P&M completes a final reconciliation of the federal project (State projects only, not Local) and submits a final E-76 modification to modify the federal project agreement to reconcile with the final project costs. District P&M then notifies the project manager that the R/W project is ready for final voucher. The project manager should then submit a Final Voucher Request form to District P&M or to the designated District R/W Project Closeout Coordinator. The R/W Final Voucher Questionnaire form is then completed and returned to the Project Manager, who will then forward the Final Voucher Request package to the Final Voucher section in Accounting with a copy to HQ R/W.

The Final Voucher section audits project charges to ensure FHWA is billed for all eligible expenses. They then prepare a final voucher representing the final claim for a single, completed, and FHWA-accepted project and submit it to FHWA.

The final claim for the federal share of project costs is made on form FHWA-1447. The final voucher is a segregated summary of the project's total costs and a determination of the final federal share. Accounting uses expenditures in Advantage as the basis for the final voucher. (A summary of project costs, classified by work type and other supporting documents, shall accompany the final voucher as a means of verifying costs.)

3.05.16.01 Final R/W Maps and Parcel List

Prior to 1994, R/W Engineering prepared a final R/W map that delineated the "as-built lines" and a Parcel List, FA 1567, to support the final vouchering of a completed federal-aid project. Under streamlined procedures approved by FHWA, R/W no longer prepares and forwards the final R/W maps to FHWA. All information required for completed federal-aid projects is recorded on R/W record maps and other maps. R/W Engineering must maintain these maps and make them available for FHWA's review upon request.

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3.06.00.00 - MONITORING PROCESS

3.06.01.00 General

R/W Planning & Management (P&M) is responsible for monitoring R/W's capital budget and ensuring approved capital plans are correctly implemented. It is especially important to verify that transactions on projects with multiple funding sources, such as federal, state and/or local funds, are accurately recorded. Prior to 1997, the Department used the "Closing the Loop" process to check payment coding and funding splits. In 1997, Accounting began providing weekly and monthly expenditure reports to R/W P&M staff to ensure all R/W transactions were accurately recorded.

With the implementation of AMS Advantage in 2010, R/W Accounting discontinued providing monitoring reports as report data is now available to all Department staff through InfoAdvantage and Datalink, the Department's reporting systems for all financial transactions in Advantage. As a result, HQ P&M established a revised monitoring process and created the Weekly Monitoring Report. This report identifies all financial transactions for R/W capital processed during the fiscal year, which includes cost breakdowns by fund type.

3.06.02.00 Objective

The Monitoring Process was implemented to streamline the "Closing the Loop" process while continuing to assure that R/W transaction coding and funding splits on federal projects are recorded accurately and accounted timely. This allows the Department to receive federal reimbursements based on current bills generated by Advantage.

The Monitoring Process facilitates identification of federal participation at the project and the parcel levels; assists in segregating R/W costs in eligible and ineligible categories; and identifies the type of costs involved. The process uses standard procedures that establish control for appropriate and proper accounting of revenues and expenditures on federally aided projects. It requires that adequate documentation be available for review by federal and state auditors.

3.06.03.00 Roles and Responsibilities

A successful monitoring process requires a close working relationship among the various R/W functional units, P&M and R/W Accounting. R/W has primary responsibility, authority, and accountability for parcel level detail, by establishing

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individual Reporting codes in Advantage that relate to each individual parcel on a capital project. P&M is responsible for ensuring that R/W capital transactions clearly identify the parcel in the financial coding on the payment or encumbrance transaction document. R/W Accounting has primary responsibility for ensuring that R/W follows statues and policies related to payments, and that R/W's parcel detail coding and funding splits are entered accurately in Advantage.

MONITORING PROCESS RESPONSIBILITIES

District R/W Agent	The R/W Agent must initiate transactions accurately and timely. The Agent obtains the proper financial coding and fund certification from P&M to record the expenditures accurately on the appropriate Accounting documents.
P&M	P&M has primary responsibility for reviewing all Phase 9 transactions and Weekly Monitoring Reports. Additionally, P&M has responsibility for ensuring the documents are coded properly with correct funding splits.
R/W Accounting	R/W Accounting performs all accounting activities (including providing independent analysis of financial transactions) in accordance with prescribed accounting and fiscal procedures. R/W Accounting also provides accounting and coding instructions and procedures to assist P&M in monitoring transactions; ensures appropriate internal checks and balances are applied to fiscal data; and maintains the integrity of the accounting system.

3.06.04.00 Scope

The Department is accountable for all expenditure billings and credits applied to projects. This encompasses capital outlay and support expenditures; incomes from rental properties and sales of excess lands, improvements, and equipment; and adjustments resulting from FHWA citations.

3.06.05.00 Federal Eligibility

R/W is responsible for determining federal eligibility of transactions and relaying this information to R/W Accounting on the appropriate accounting documents.

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For additional information, refer to:

- Section 3.05.12.04, Definitions.
- Section 3.05.12.05, Federal-Aid Eligibility Code.

3.06.06.00 Procedures

The procedures on the following pages establish a formalized tracking process to assure timely and uniform follow-up of R/W expenditure transactions and compliance with federal requirements.

MONITORING PROCEDURES

R/W Agent	The R/W Agent initiates functional transactions in a timely manner and identifies federal participation at the project and parcel levels with P&M's assistance. The Agent must segregate R/W costs into eligible and ineligible categories and classify expenditures to code them properly for Advantage. The Agent must accurately prepare and sign the Federal Participation Memorandum or a similar form to reflect the appropriate R/W transactions.
Functional Supervisor	The functional supervisor reviews the payment document and all necessary support documentation to verify appropriateness and accuracy of the Agent's work. The supervisor approves and signs the RW Accounting forms and returns the transaction package to the Agent (or forwards to P&M, varies by District).
R/W Agent	The R/W Agent or his/her functional supervisor forwards the transaction package (including support data) to P&M for encumbrances or payments.

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MONITORING PROCEDURES (Continued)

P&M	The P&M reviewer should request the complete file with all supporting material required to verify the functional transactions R/W Accounting will process. The reviewer provides all financial coding to the project and parcel level, and federal-aid related data, including the proposed segregation of charges, to ensure an appropriate distribution between eligible and ineligible categories. The P&M reviewer completes the Fund Certification and signs the R/W Accounting form(s), places a copy of the transaction request form in the pending file, and forwards the transactions package to R/W Accounting.
R/W Accounting	R/W Accounting reviews and verifies coding accuracy on all documents and ensures that each transaction package is complete. Accounting then enters the data into Advantage.
HQ P&M	HQ P&M forwards the Weekly Monitoring Report to Districts each Tuesday for district staff to monitor R/W capital financial transactions
P&M	Upon receipt of the Weekly Monitoring Report from HQ P&M, the P&M reviewer confirms coding and funding splits on all capital outlay payment/encumbrance transactions. If there are no variances, P&M notates the Claim Schedule number on the pending payment document (i.e. Federal Participation Memo), files a copy in the P&M project file and forwards a copy to the appropriate function, which reviews coding and funding splits one last time (safety net) and files it in the parcel folder. If there is a variance, P&M advises R/W Accounting either by phone or email and submits an Expenditure Adjustment Request (EAR) form to R/W Accounting to clear the variance.

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R/W Accounting	R/W Accounting makes adjustments in Advantage within 10 working days. The adjustments are reflected on the Weekly Monitoring Report.
P&M	P&M reviews the Weekly Monitoring Report for the next period to confirm that adjustments were made.

3.06.07.00 Document Log

The Monitoring Process requires a document log to monitor documents as they progress between R/W and R/W Accounting. This log may be in the form of a spreadsheet, R/W Ledger or database that tracks all financial activity on projects. Since the majority of documents flow from the R/W function through P&M, P&M should maintain the document log. Other functions, such as Excess Land, may also maintain its own document tracking log for their function's documents. The document log includes the following information:

- Parcel Number
- Expenditure Authorization/Project ID
- Reporting code
- Date document received from functional unit (if appropriate)
- Date document forwarded to R/W Accounting
- Date document returned from R/W Accounting
- Date document returned to functional unit (if appropriate)

It is recommended that the document log be set up by type of R/W transaction, such as:

- Acquisition
- Condemnation Deposit
- RAP
- Utility Relocation
- Demolition and Clearance
- Property Management
- Sales of Improvement/Equipment
- Excess Land Acquisition
- Sales of Excess Land

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3.06.07.01 Expenditure Document Retention File

All capital outlay transactions for Phase 9 EAs are processed through P&M. P&M maintains a copy of the transaction document in a pending file. When HQ P&M electronically transmits the Weekly Monitoring Report, District P&M compares the two documents for accuracy and completeness.

- **No Variances** – note the Claim Schedule number on the payment document and R/W Ledger, and file in the P&M project file.
- **Variances** - follow procedures in Section 3.06.09.00.

3.06.07.02 R/W Forms

Before R/W Accounting can process functional transaction requests, R/W must submit appropriate functional documents. A complete listing of the required documents for each functional transaction can be obtained from the internal District Guidelines for Complete Payment Packages (internal Caltrans link).

3.06.08.00 Weekly Monitoring Report

The Weekly Monitoring Report is electronically forwarded to each District P&M Office every Tuesday.
If the report contains a variance, it is reported to the district RW Accounting liaison. An adjustment is made within 10 working days. The adjustment appears on the reports issued during the next two weekly cycles. The first line entry records the reversal of the variance and should be shown as a credit. The second line entry is the adjustment.

The Claim Schedule number is noted on the pending file document and is placed in the parcel file.

FHWA has approved replacing the Closing the Loop and prior weekly transaction report with the current electronically transmitted Weekly Monitoring Report.

3.06.08.01 Variance Resolution

The need to resolve variances arises in both R/W Accounting and R/W.

When R/W Accounting reviews R/W transaction documents, questions may ensue about federal participation and eligibility or proper coding. R/W Accounting shall contact the appropriate R/W function to clarify and resolve

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any item in question. Accepted policy is that R/W Accounting will not make any coding changes to R/W transactions without R/W's approval.

If R/W Accounting is not certain about whom to call, their contact is P&M. P&M will direct them to the correct unit/person and will follow up to ensure the issue is resolved.

If District P&M discovers a variance upon review of the Weekly Monitoring Report issued by HQ P&M, P&M investigates to determine if an accounting adjustment is needed, and then contacts the appropriate RW Accounting liaison regarding the variance to be adjusted.

Variances on the Weekly Monitoring Reports are to be reported immediately to the District's R/W Accounting liaison by phone, email, or by overnight mail/shipping service, with the Expenditure Adjustment Request form to indicate the incorrect coding posted and the correct coding to make the accounting adjustment. Notes verifying the phone call and anticipated corrective action should be written on the Weekly Monitoring Report page and in the document log or Ledger.
If adjustments are not made in a reasonable time or the R/W Accounting liaison is not responsive, R/W should contact the R/W Accounting office chief.

3.06.09.00 Follow-Up Action

Inherent in maintenance of document logs and ledger files is the requirement to follow up with Accounting.

Accounting has committed to the following:

R/W Accounting: Processes all types of payments and Expenditure Adjustment Requests (EAR) for Phase 9.

Most payments are paid through the direct payment process in accordance with the Prompt Payment Act. However, RAP, Permit Fee, and Special Requests (e.g. condemnation judgment and/or other urgent time-sensitive payments) are paid through an expedite process as follows:

- RAP payments are processed within three working days through the State Controller's Office (SCO) using an Expedite "Next Day Release" ($50 fee). Expedite fees are charged against Accounting's overhead account.
- Permit Fee payments are processed within three working days through the SCO using an Expedite "Second Day Release" ($25 fee). Expedite fees are charged against Accounting's overhead account.

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- Special Request payments are prioritized as deemed appropriate by R/W Accounting and processed through the SCO using an Expedite Format per the instructions on the condemnation/acquisition invoice. Expedite fees are charged against the District's overhead account.

Expenditure Adjustment Requests are processed within 10 working days when the project and phase are set-up properly.

Cashiering Unit: Processes the R/W condemnation deposits.

Cashiering prepares a cover memo (FA 1621) and forwards, along with the RW 9-19 request, to the SCO. The SCO then prepares the Notice of Transfer of Funds (CA13), certifying that the transfer has been made as requested, and forwards it to the State Treasurer. This process takes several working days and cannot be expedited. The State Treasurer's Office (STO) forwards the documentation to Caltrans Cashiering for the department's records.

If the time frames listed above are exceeded without explanation, district P&M initiates follow-up action to request payments be made, or transactions be posted or adjusted.

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3.07.00.00 - COOPERATIVE AGREEMENTS WITH R/W INVOLVEMENT

In delivering projects on the State Highway System, the Department may be requested to perform R/W work financed with Local Agency Funds (e.g., Tax Measure, Property Tax, Developer Fees, Local Assistance federal subvention). To the extent that Departmental policy and budget authority allows, the State and Local Agencies may enter into cooperative agreements (co-op) for the R/W to be performed by State personnel.

The following procedures should be followed to ensure that cooperative agreements for reimbursed R/W work are properly developed and managed. Depending upon R/W's organizational structure in the region or district, these steps may be performed by various R/W functions including Planning & Management (P&M), Local Programs, the R/W Project Coordinator, or a combination of the three.

- Upon conception of a cooperative agreement, the R/W Project Coordinator works with the Project Manager to identify the type of R/W work to be covered by the agreement. The Project Manager should ensure that reimbursable work to be done is consistent with departmental policy.
- At the earliest stage of the project, the R/W Project Coordinator verifies with P&M that the District has sufficient reimbursement budget authority for the proposed reimbursed R/W work.
- Before negotiating an agreement with the other party or parties, the Project Manager and R/W Project Coordinator must verify that conceptual approval exists for doing the work cooperatively and that adequate funding is available.
- R/W develops resource information (R/W capital and support estimates) needed for the agreement. Also, R/W ensures adequate budget estimates are computed for R/W Support Costs that include both **direct** (the loaded rate for labor costs) and **indirect** costs.

NOTE: The indirect is also known as **Indirect Cost Rate Proposal (ICRP)** rate for reimbursed work. It is a combined rate consisting of Functional and Administrative rates for each of the various programs in the Department. (The ICRP for Right of Way historically has been quite significant, that is, as high as 87 percent.)

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The ICRP rate in effect at the time the expense was incurred is applied to the direct costs and is billed out to the Local Agency for the reimbursed work. The Accounting Division calculates and revises the ICRP rate for departmental programs annually.

- The R/W Project Coordinator forwards sufficient R/W information to the Project Manager for the writing of the project cooperative agreement.
- The R/W Project Coordinator and other appropriate functions review the draft cooperative agreement for all aspects of the R/W involvement and recommend approval to the R/W Manager or designee.
- The R/W Project Coordinator ensures that R/W activities do not begin prior to having a formal executed agreement.
- Upon execution of the cooperative agreement, R/W P&M establishes the R/W Phase(s) in Advantage, establishing the funding structure and budget for the reimbursed Project ID with all pertinent data (e.g., contributor number, dollar estimates for funding fiscal year), for recording and controlling reimbursed expenditures.
- R/W P&M provides charging instructions to staff for reimbursed work to be performed under the agreement.
- R/W P&M tracks and monitors expenditures by fund source. Also, R/W P&M and/or Accounting provide information to the R/W Project Coordinator on reimbursed expenditures.
- The R/W Project Coordinator monitors and manages the co-op to ensure that work is performed and reimbursed costs are within the limits of the agreement.
- The R/W Project Coordinator makes request to the Project Manager for an amendment to the cooperative agreement prior to exceeding funding limits.

See Caltrans Cooperative Agreement Manual for detailed information on cooperative projects and reimbursed work. Please also refer to Chapter 17, Local Programs, of the Right of Way Manual.

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3.08.00.00 – PREREQUISITES FOR RIGHT OF WAY ACTIVITIES

3.08.01.00 Preliminary Right of Way (R/W) Activities – Defined

Preliminary R/W Activities are defined as those R/W activities that occur after the project is programmed, and are typically charged as R/W support to the project's Phase 2 Project ID. These activities include:

1. Ordering Title Reports.
2. Preparing Base Maps.
3. Preparing Appraisal Maps.
4. Conducting project-wide comparable sales searches once a preferred alternative is internally selected.
5. Assigning appraisers to specific parcels, contacting the property owners to commence appraisal activity, and completing the appraisal.

Unless the prerequisites outlined below are met, these activities shall be avoided in all cases unless prior Headquarters R/W approval has been secured in writing in accordance with the instructions found below.

3.08.02.00 Prerequisites for Commencement of Preliminary Right of Way Activities

The prerequisites for initiating preliminary R/W activities are outlined as follows:

(These requirements do not apply to hardship and protection parcels or parcels subject to Acquisition Reference File 99-1 Regular R/W Activities prior to Environmental Clearance (non-STIP), or Acquisition Reference File 02-1 R/W Acquisition Prior to Environmental (STIP).

1. The project development component (Environmental and Permits) must be programmed, the amount requested must be managed within the lump sum allocation (if required), and a Phase 9 Project ID must be approved.
2. If Federal funds are to participate in preliminary R/W costs, environmental clearance (PA&ED milestone) must be achieved, and R/W activities must have been authorized by FHWA through the E-76 process; however, if project schedules require that these activities be

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started prior to achieving PA&ED, the department may request authorization for preliminary R/W activities in the Preliminary Engineering (PE) federal authorization request (E-76) so that these costs may be federally reimbursed.

3. When preliminary R/W activities for a STIP/SHOPP project must be completed prior to environmental clearance, or a STIP/SHOPP project is 100% federally funded, a non-STIP/non-SHOPP fund (PECT 20.20.800.200, Fund 0042) must be used to record costs related to such preliminary R/W activities.

Other entities (city, county, etc.) may, by agreement, be committed to funding all or some R/W support and/or capital costs. It is the responsibility of the District to see that such funds are secured in accordance with the terms of the Agreement prior to initiating the applicable activities.

3.08.03.00 Regular Right of Way Activities – Defined

The following is a nonexclusive list of activities, which shall not commence prior to satisfying the above prerequisites.

1. Acquiring right of way parcels
2. Relocating Displaced Persons or Businesses
3. Performing Utility Relocation activities from the request for Relocation Plans forward

Unless the prerequisites are met, these activities shall be avoided in all cases unless prior Headquarters R/W approval has been secured in writing in accordance with the instructions found in Section 3.08.04.00 or as defined in Acquisition Reference File 00-1 R/W Acquisition Prior to Environmental Approval.

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3.08.04.00 Prerequisites for Commencement of Regular Right of Way Activities

The prerequisites for initiating regular R/W activities are outlined as follows:

(These requirements do not apply to hardship and protection parcels or parcels subject to Acquisition Reference File 99-1 Regular R/W Activities prior to Environmental Clearance (non-STIP), or Acquisition Reference File 02-1 R/W Acquisition Prior to Environmental (STIP).

1. The project report must have been approved.
2. The project must have current final environmental clearance.

NOTE: As an alternative to having final environmental clearance, this requirement may be satisfied if the following three events have occurred:

a) The draft environmental document has been circulated.
b) The public hearing process is complete.
and
c) A preferred alternative has been approved.

3. Freeway agreement(s), including required amendments, must have been executed if required for the project.

NOTE: By statute (Streets and Highways Code Section 100.21), "(a) Whenever a street or highway closing agreement is required by Section 100.2, the department shall not acquire, except by gift, and except in hardship or protective cases as determined by the department or the commission, any real property for a freeway through a city until an agreement is first executed with the city council, or for a freeway through unincorporated territory in a county until an agreement is first executed with the board of supervisors. The department shall give notice to the city council or the board of supervisors, as the case may be, of any acquisition of real property prior to the execution of an agreement.

(b) Notwithstanding subdivision (a), a city council, or a county board of supervisors may, by resolution, authorize the purchase of rights-of-way prior to approval of an agreement if the purchase is limited to the mainline corridor of the proposed freeway and the alignment of the freeway is not at issue." (Direct quote from the Statute)

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Current final environmental clearance means:

a. An approved determination that the project is categorically exempt under CEQA, and if there is Federal participation in any part of the project, FHWA concurrence in a determination that the project is a categorical exclusion under NEPA.

   or

b. Final environmental documents (Environmental Impact Report [EIR], Environmental Impact Statement [EIS], Negative Declaration [ND], Environmental Assessment [EA]) have been prepared and approved, and, under NEPA, a Finding of No Significant Impact (FONS1) or a Record of Decision (ROD) has been completed and signed, and, under CEQA, a Notice of Determination (NOD) has been filed with the Office of Planning and Research.

   and

c. When required pursuant to the Environmental Handbook, an Environmental Reevaluation has been prepared and approved.

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3.09.00.00 – DELEGATIONS

3.09.01.00 Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Planning and Management 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**
	3.02.04.00	Establishing Right of Way EA	District	Associated Governmental Program Analyst (AGPA)
DD-11	3.04.04.05	Request Federal Participation on Right of Way	District	AGPA
SAM 8340, Executive Order 90-17	Update Pending	Certification of Right of Way Capital Funds Availability	District	AGPA
CTC G01-09	3.04.05.00	Authority to Sub-Allocate Funds for Right of Way Annual Capital Allocation	HQ	Senior RW Agent
CTC G01-09	3.04.06.01	Authority to Increase Right of Way Annual Capital Sub-Allocation	HQ	Senior RW Agent
PMD 022R1	3.04.04.07	Inform Project Manager of Need for Change Management Document	District	AGPA
	3.04.14.04	Authorize Amounts in PMCS	District	AGPA

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CHAPTER 3

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3-EX-4	*Held for Future Use*
3-EX-5	Right of Way Activities Prior to Environmental Clearance
3-EX-6	Right of Way Acquisition Prior to Environmental Approval on STIP Projects
3-EX-7	*Held for Future Use*
3-EX-8	Right of Way Object Codes
3-EX-9	Right of Way Final Voucher

Exhibits are located online:

- External Exhibits site
- Internal Exhibits site (internal Caltrans link)

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RW 3-3	Expert Witness Contract Request

Forms are located online:

- External Forms site
- Internal Forms site (internal Caltrans link)

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4.00.00.00 - ESTIMATING

4.01.00.00 – GENERAL

4.01.01.00 Introduction

The R/W estimate is the first step in building a credible budget. Estimates are prepared for all transportation projects regardless of whether capital expenditures for right of way on the transportation project exist. The elements of an estimate allow R/W Planning and Management to forecast capital outlay support personnel requirements, capital outlay expenditures, and future programming needs. Estimate data is entered into PMCS on the EVNT RW and COST RW1-6 Screens, in addition to the Estimating section of ROWMIS.

Since various levels of Caltrans' management, the CTC, the Legislature, and local agencies use R/W estimates, it is extremely important that R/W estimates be realistic and reliable. Overestimating may result in a project being deferred or eliminated. Underestimating understates the Department's financial obligations and may adversely affect supplemental funding or staffing needs.

4.01.02.00 Project Development, Programming, and Budgeting

Direct communication between R/W and Project Development staff is essential during all phases of the project development process. This process starts with the Project Initiation phase (PID) and carries through to completion of Plans, Specifications, and Estimates (PS&E). When it is determined that an estimate is needed, the program manager or project engineer submits a request to R/W. This is the beginning of a series of requests and estimates corresponding to changes that occur as the project develops.

As part of the estimating process, R/W will review right of way requirements submitted in the estimate request. R/W must notify the requesting unit (program manager or project engineer) if its review identifies design deficiencies. Deficiencies may include lack of replacement access, insufficient right of way width, any damage to a remainder parcel that has not been addressed, or any other unresolved issues. R/W will identify those proposed design features that could have a dramatic effect on value.

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4.01.03.00 Contingency Costs

Contingency costs are applied to acquisition and utility relocation costs for all estimates. Contingencies for relocation assistance, clearance/demolition, and title and escrow costs may be applied when considered appropriate. Contingency costs provide for possibilities such as administrative settlements, condemnation awards, utility overruns, interest payments, and unanticipated goodwill payments.

When preparing an estimate for a Project Study Report (PSR) or equivalent, R/W should apply a contingency rate of at least 25% unless district experience dictates otherwise. When preparing an estimate for a Project Report (PR), R/W should always base contingency costs on district experiences.

4.01.04.00 R/W Data Sheet Approval

The Senior Agent responsible for Estimating shall review and recommend approval of all R/W Data Sheets prepared by staff. The Region/District R/W Manager or designee shall approve all R/W Data Sheets. The following statement will be included directly above the approver's signature block in all R/W Data Sheets:

> *I have personally reviewed this Right of Way Data Sheet and all supporting information. I certify that the probable highest and best use, estimated values, escalation rates, and assumptions are reasonable and proper, subject to the assumptions and limiting conditions set forth; and I find this Data Sheet complete and current.*

4.01.05.00 Log of Estimates

A log of all requests for original and revised estimates shall be maintained by the Region/District Estimating unit.

4.01.06.00 Estimate File

The Senior Agent responsible for Estimating must ensure that a file is maintained for each project for which a R/W estimate is prepared. The file will remain active until the right of way portion of the project is completed, at which time it will become part of the project file.

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4.01.06.01 Filing System

For efficient retrieval of previous estimates or other information, the following procedure shall be implemented:

- Establish a file when the initial request for an estimate is received.
- Identify the file by county-route-post mile, expenditure authorization/project ID number, project limits, and requesting unit.
- Maintain the file in chronological sequence.

4.01.06.02 File Contents

The individual estimate file shall contain:

- The map(s) used in preparing the estimate, with date of original map(s) and dates of subsequent revisions. If, due to size or number, the maps cannot be maintained in the file, a reference should be placed in the file indicating where the maps are filed. Regardless of whether the maps are maintained in the file or in another location, they are part of the file and are to be retained in accordance with file retention requirements.

- Copies of all memoranda of requests and responses.

- Copies of all R/W Data Sheets (including attachments), Preliminary Estimates, Conceptual Cost Estimates, and Estimate Worksheets prepared for the project, along with accompanying R/W Data Sheet Transmittal Memoranda.

- Comparable sales and all other data used to prepare the estimate.

- A diary annotating by date and person making the entry each action taken regarding estimates on the project. The diary shall contain all actions the estimator takes throughout the life of the project.

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4.01.07.00 Preliminary Estimates

R/W is often asked to provide a rough estimate without sufficient lead time or adequate mapping. These estimates are prepared using, at a minimum, the first page of the Data Sheet and the Transmittal Memorandum. The face of the R/W Data Sheet for this type of estimate is marked in bold caps:

"NOT VALID FOR BUDGETING OR PROGRAMMING PURPOSES"

The reasons for this notation are indicated in the Transmittal Memorandum.

4.01.07.01 Conceptual Cost Estimates

A Conceptual Cost Estimate (CCE) is a specific type of preliminary estimate that may be requested from R/W during PID phase. The current Conceptual Cost Estimate was developed in response to the *Memorandum: Interim SHOPP Project Initiation Report Project Initiation Document* outlining the multi-divisional development of the revised interim SHOPP PIR guidance and template, led by the Division of Transportation Planning (DOTP). Additional information can be found at the Project Initiation Documents page. This Interim SHOPP PIR guidance identifies minimum PID requirements to be captured in estimates. The CCE should include:

- An estimate of "accurate and reliable" support costs for PA&ED
- An estimate of a reliable range for support & capital for future phases
- A reliable estimated schedule for completion of right of way

The purpose of this estimate is to provide the necessary project information to complete a work plan estimate for R/W support resources needed for the 0 Phase (PA&ED) component of a project, as well as to provide a rough order of magnitude estimate.

The CCE Request will contain the basic project information, the proposed right of way requirements, and estimate mapping. The request will also note if a field review is requested or is not required at this time. See 4-EX-7 K Phase Conceptual Cost Estimate Request – Right of Way.

The CCE Estimate Form will be completed only if the CCE Request is submitted to R/W. See. 4-EX-8 K Phase Conceptual Cost Estimate Form – Right of Way.

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4.01.08.00 Project Estimate Mapping

R/W Engineering is ultimately responsible for project estimate mapping. Guidelines for cost estimate map preparation are found in the R/W Manual, Chapter 6, Right of Way Engineering, Section 6.04.00.00, and the Plans Preparation Manual (PPM), Section 4-2. Some districts have made arrangements for R/W to receive mapping suitable for estimating purposes from other functional units; these arrangements are acceptable as long as the estimate mapping is in compliance with the outlined requirements.

4.01.09.00 Training

Each agent assigned estimating responsibilities should receive a thorough orientation on why estimates are prepared and how they are used. Ideally, an estimator should have practical experience as an appraiser and have taken the basic appraisal courses, at the very least. Additional courses in building cost estimating and a working familiarity with various cost estimating resources are recommended.

4.01.10.00 Hazardous Waste Site Identification

In the early stages of the project development process, Region/District Project Development and Environmental units will identify sites or facilities that have the potential for being contaminated with hazardous waste or materials. The presence of hazardous waste or materials in future right of way can cause costly project delays if discovered late in the project development process. It is imperative, therefore, that every effort be made to ensure early detection of hazardous waste sites.

As part of the estimating process, estimators must field review subject parcels. If an estimator suspects a hazardous waste site or hazardous materials are present in the proposed right of way and have not been previously identified, the estimator must immediately send written notification to the Region/District Project Development and Environmental units and both Region/District and R/W Hazardous Waste Coordinators. A copy of the memorandum is to be attached to the R/W Data Sheet.

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When field reviewing subject properties, estimators should pay special attention to improvements where structural components could contain large amounts of hazardous materials, such as asbestos. In addition, present and prior land uses may indicate the potential for contamination on the site, as well as the possible presence of underground storage tanks that may be in use or have been used for the storage of hazardous materials.

Examples of existing or former uses where hazardous wastes or material may exist include:

- Commercial and industrial sites, such as: service stations; muffler shops; bulk plants; paint manufacturing companies; machine shops; plating works; dry cleaning plants; chemical and fertilizer companies that may use or have used solvents, cleaning compounds, catalysts, cutting oils, plating solutions, dyes, paints, or other chemicals.

- Junkyards, auto wrecking yards, dumps, or landfills.

- Underground or aboveground tank storage facilities for liquid hydrocarbons, pesticides, or other toxic materials.

- Asbestos siding, roofing, flooring, or insulation on or in existing buildings.

- Disposal dumps or pits that may contain agricultural chemicals or industrial wastes.

- Utility substations or storage/maintenance facilities.

- Sites where contamination may have resulted from an adjacent property owner's operation, or where regulatory action involves implementation of hazardous waste regulations.

- Military bases and reservations.

- Atomic energy sites.

- Railroad sites.

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4.01.11.00 Use of Incentive Payment Program

If use of an incentive payment program is proposed or requested, these additional costs should be reflected in the R/W estimate as best as possible. If used, incentive payments must be applied to all parcels on a project regardless of type, size, appraisal amount, or ownership (including public agencies). Incentive payments are based on a lump sum payment of 10% of the appraised value of all parcels under the same ownership with a minimum payment of $1,000 and a maximum payment of $100,000. Use of incentive payments should be discussed with, at minimum, the Estimating Senior prior to use in an estimate.

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4.02.00.00 - PREPARING THE ESTIMATE

4.02.01.00 Estimating Theory

Estimates are forecasts of anticipated costs for properties that will be acquired at a future date. An estimating procedure has been developed to assist in identifying these costs. All districts must use this procedure in developing estimates unless an alternate method receives R/W Headquarters' prior approval.

The estimating procedure asks the estimator to look into the future to try to determine, to the highest degree possible, the value of subject properties at the time they are to be acquired (assumed to be the year of R/W Certification). This is accomplished in the following manner:

1. Determine the subject's most probable highest and best use including stage of development and probable improvements at the time of acquisition.

2. Determine the current value for the subject based on the rationale described in 1 above.

3. Determine value at time of acquisition by applying an escalation rate to the current value.

For Example: 20 acres of agricultural land today may have an estimated value of $1,000 per acre. It is anticipated that at the time of acquisition this property will have been developed into a commercial-industrial park site. Commercial-industrial property has a current land value of $10,000 per acre. The estimator determines the subject's current value based on future use. Therefore, the subject's estimated current value based on the future use is $10,000 per acre for a total of $200,000. If the escalation factor has been established at 10%, for example, the subject's escalated value would be $11,000 per acre for a total of $220,000.

4.02.02.00 Property Values

Although estimates are opinions, they are expected to be as solidly based as possible using appraisal principles. The estimator is not expected, however, to be put in the time and effort that goes into an appraisal.

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The estimator is allowed to use indicators of value that may not typically be acceptable in appraising. If District Appraisal staff has previously verified comparable sales and listings data, the estimator shall obtain this information. To prepare an estimate, the estimator will use this information as well as less direct indicators of market value such as:

- Staff appraisals of comparable properties.
- Assessor's information.
- Multiple listing service sales data.
- Observed listings.
- Information from brokers.

Factors to consider when preparing an estimate include increases in real estate values due to changes in land use resulting from anticipation of the proposed project, probable increases in values due to real estate improvements under construction at the time of the estimate, and any extraordinary costs that can be anticipated.

District experience and the experiences of other districts with payments for loss of goodwill should also be considered and factored into the estimate.

4.02.03.00 Curative Damages/Construction Contract Work

For estimating purposes, activities commonly referred to as Construction Contract Work (CCW) will be considered as Curative Damages when it is anticipated they will be satisfied with a cash payment to be included in the amount payable under clause 2(A) of the R/W Contract. (See R/W Manual Section 8.05.12.00, "Cost to Cure Damages.") If it is known at the estimating stage that the roadway contractor will satisfy Curative Damage type obligations during construction, the obligations will still be referred to as Construction Contract Work.

Project Development usually estimates the costs of Curative Damages and/or Construction Contract Work. Estimates for Curative Damages are to be included in Section 1.A. (Acquisition) on the R/W Data Sheet. This will ensure that Curative Damages are included as acquisition costs in the COST RW1-5 Screens and when the project is programmed. Estimates for Construction Contract Work will be included in the R/W Data Sheet in Section 1.G. (Construction Contract Work). Costs on this line are not entered in the COST RW Screens.

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Construction Contract Work is a Right of Way obligation regardless of how it is accomplished. It is Right of Way's responsibility to take a proactive role in ensuring that CCW costs in Section 1.G. of the R/W Data Sheet are provided to Project Development for inclusion in the PS&E.

4.02.04.00 Properties With Hazardous Waste or Materials

When estimating properties where hazardous waste or materials are known to exist, the estimator will observe the valuation guidelines found in Appraisal Chapter 7, Section 7.04.12.06.

4.02.05.00 Limiting Conditions

Limiting conditions are constraints that can reduce an estimate's reliability. They may include inadequate mapping or design information or short lead time. They are always stated in the appropriate section of the R/W Data Sheet; e.g., limiting conditions relating to acquisition are documented in section 6, while limiting conditions relating to utilities are documented in section 7 (see Exhibit 4-EX-1).

4.02.06.00 Assumptions

Assumptions are made both because of limiting conditions and the need to predict future costs far in advance of actual expenditures. They can be made on a parcel-by-parcel basis or may apply to the whole project. Estimators are expected to make reasonable assumptions. When more than one reasonable assumption can be made, the estimator is expected to select the assumption that yields the highest supported anticipated cost. All assumptions are to be documented in the appropriate section of the R/W Data Sheet; e.g., those relating to acquisition are documented in section 6, while those relating to utilities are documented in paragraph 7 (see Exhibit 4-EX-1).

Following are specific applications of the above general policy;

- Estimates will always represent the *most reasonable* and justifiable project delivery schedules.

- Estimates should always be based on the most probable "worst case" and "highest cost" assumptions.

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- When estimates are made for a project where several alternatives are under consideration, the estimate used for initial programming purposes should be the same alternative that is used for the construction cost estimate. If the alternative for the construction cost estimate has not been selected, the estimate for the most probable highest cost alternate of those considered by district management as most likely to be adopted shall be used. Estimates should not be artificially inflated by using the cost of an alternative included for study that does not have a realistic chance of being adopted.

- When in doubt because of inadequate right of way or construction details or other factors, a full acquisition should be assumed.

- For businesses, district experience and the experiences of other districts with payments for loss of goodwill in similar circumstances should be considered. Projected payments should be included in the estimate.

4.02.07.00 Documenting Limiting Conditions and Assumptions

It is very important to document limitations within which the estimate was prepared and assumptions made in developing the estimate. Without a clear understanding of this information, Project Development staff using the estimate will not know whether they have a very rough approximation or a complete estimate that is consistent with the current state of development of the project. In addition, statements of limiting conditions and assumptions may alert design staff to certain design conditions that if modified could reduce or increase project cost. Statements documenting the following limiting conditions and assumptions are to be included in the appropriate section of the R/W Data Sheet; e.g., those relating to acquisition are documented in paragraph 6, while those relating to utilities are documented in paragraph 7 (see Exhibit 4-EX-1):

- The specific parcels that may be partial acquisitions but are assumed to be full acquisitions due to incomplete mapping and/or design.

- The specific number of parcels with businesses where it is expected a payment for the loss of goodwill will be required.

- Any known or anticipated extraordinary cost for difficult or controversial acquisition cases based on the district's experience with the subject or similar type of property owner.

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- The anticipated additional costs for projects with aggressive schedules that will require rights of entry and/or condemnation proceedings.

- Any other unusual documented higher costs that are anticipated, such as revisions to the general plan, a city incorporation that may affect value, and other governmental actions or projects.

- Long lead time utility relocations.

4.02.08.00 Estimate Content

4.02.08.01 R/W Data Sheet

The completed R/W Data Sheet (Exhibit 4-EX-1) is the formal R/W estimate. The Data Sheet, with attachments, contains all relevant information and estimate conclusions.

Workload data from the R/W Data Sheet is entered in the EVNT RW screen. Cost data from the R/W Data Sheet is entered into the COST RW1-5 screens.

A Data Sheet is required for all viable alternates on all proposed projects. If an item on the Data Sheet is not applicable, it should be so indicated. A copy of the COST RW1 Screen reflecting the estimate is to be attached to the Data Sheet for the Preferred Alternate. (COST RW1 Screens are to contain escalated cost.) A Utility Information Sheet (Exhibit 4-EX-5) and a Railroad Information Sheet (Exhibit 4-EX-6) should be used whenever involvements dictate. The Data Sheet, including all attachments, becomes a part of the planning document for which it was prepared (PSR, PSSR, IPR, PR, PID, etc.). Copies of all Data Sheets and attachments and all supporting information, including comparable sales (specify which comparable sales or other data were used to estimate the value of each parcel), are to be placed in the estimate file. The first page of the Data Sheet contains data necessary for PMCS and should be used as the PMCS input document. Refer to Exhibit 4-EX-1, pages 5-6 for instructions on completing the Data Sheet.

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4.02.08.02 R/W Estimate Worksheet

The estimator will use the R/W Estimate Worksheet to arrive at individual parcel costs for each project alternate. Because of the varied forms used by the districts and types of projects estimated, statewide standardization of this form will not be mandated. Exhibit 4-EX-2 is a suggested format for the R/W Estimate Worksheet. To ensure that correct data is entered into PMCS, each district must use a worksheet form which contains the following 17 items for each parcel in the estimate.

1. Parcel type (see Exhibit 4-EX-3 for definition)
2. Parcel number
3. Postmile designation/kilometer post
4. Estimated cost
5. RAP cost
6. Clearance/demolition cost
7. Number of RAP displacements
8. Number of clearance/demolition units
9. Number of construction permits
10. Construction contract work cost
11. Title and escrow fees
12. Area in right of way
13. Area in excess
14. Permitter
15. Estimated cost of permit
16. Type of permit
17. Fiscal year when expenditure will occur

To standardize information entered into PMCS, any customized district forms used should be designed to maintain sequential order of the first six items shown above. Data for items 1 through 5 are required for each parcel in the estimate. Data for items 6 through 17 will be provided as appropriate. Information contained in the R/W Estimate Worksheet is summarized in the R/W Data Sheet. Copies of all worksheets are placed in the estimate file.

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4.02.08.03 Project Permit Fees

Project permit fees are those costs attributed to permits that must be acquired by the Department and *are required to construct the project*. The most common of these permits are Fish and Game 1601 permits, Water Resource Control Board National Pollutant Discharge Elimination System Permits (NPDES), and Regional Water Quality Control Board 401 Water Quality Certifications. Typically these and other permits are acquired during the project's Project Development stage. The fees for these permits are usually one-time expenses, although payment for time extensions on specific permits may occur. Although R/W does not participate in acquiring these permits, they will be treated as R/W capital expenses, and R/W must budget for them.

At the R/W Estimating stage, the R/W estimator will contact the Project Manager to obtain a list of required permits. This list shall include, at a minimum, the name of the permitter, type of permit, total anticipated cost, and the fiscal year when the fees are anticipated to be expended. This information shall be entered into Sections 14-17 of the Estimate Worksheet (Exhibit 4-EX-2). These costs will ultimately be reflected in the R/W Data Sheet (Exhibit 4-EX-1) under Section 1, Right of Way Cost Estimate, Subsection A., Project Permit Fees.

4.02.08.04 R/W Data Sheet Transmittal Memorandum

The R/W Data Sheet Transmittal Memorandum (Exhibit 4-EX-4) is used to transmit R/W Data Sheets to the unit requesting the estimate. The memorandum should contain a recapitulation of the limiting conditions and assumptions stated in the Data Sheet, along with a discussion of right of way lead time requirements.

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4.03.00.00 - ESCALATION RATES

4.03.01.00 General

Escalation can be defined as an increase in cost due to upward changes in market conditions. Because costs typically do increase over time, escalation rates must be developed for estimating purposes. The rates are in the form of percentages and may be districtwide or countywide, although individual project rates should be developed and used wherever possible for the greatest accuracy.

The estimator prepares escalation rates for right of way costs; the utility estimator prepares escalation rates for utility relocation costs. (See also Chapter 13, Utility Relocation, for information on escalation rates for utility relocation costs.) The appropriate functional area should review supporting data, including the analysis used to substantiate rates, before the data is used. Escalation rate documentation is to be maintained in the estimate files.

4.03.02.00 Factors Affecting Escalation Rates

Escalation rates are influenced by many factors, such as increases in development and building costs, legislation, inflation, and general economic conditions. The effect of these factors can be estimated but cannot be precisely determined.

4.03.03.00 Methods of Determining Escalation Rates

Data used in establishing escalation rates may be found in assessed value trends from repeating sales, the direction and trends of future development of areas, private and governmental forecasts, and construction and building cost indices. Past experience in estimating, appraising, and acquisition in the subject area should not be overlooked.

Judgment and experience aid the estimator in determining the proper rate. Improved methods of determining proper rates should be continuously sought.

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4.03.04.00 Individual Escalation Rates

Right of way and utility costs may escalate at different rates. To accommodate these differences, separate escalation rates for right of way (which includes land, improvements, damages, RAP, demolition, and goodwill) and utilities may be applied.

Separate utility escalation rates can be used to show more reliable costs in the Program Documents. This can be important when utility costs are changing more rapidly than other right of way costs. Costs should be escalated to the year of R/W Certification, except where unusual circumstances dictate otherwise. (*For example*: Knowledge that a contract for relocation of a utility may have to be let a year or more before highway construction begins.) Knowledge of the escalated utility costs as an item separated from right of way costs contributes to the effectiveness of the Program Documents.

4.03.05.00 Using Escalation Rates

Escalation rates are applied to estimated costs for acquisition, RAP, utility relocation, etc. Estimated costs are escalated to the year of R/W Certification and then spread over the anticipated years of acquisition (including after R/W Certification if applicable). These costs are entered into the COST RW1 Screen, a copy of which is to be attached to the R/W Data Sheet.

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4.04.00.00 - UPDATING THE ESTIMATE

4.04.01.00 General

Estimates are prepared during various stages of the project development process. Preliminary estimates prepared at the beginning of the planning process need not be updated unless other units specifically request an update.

Any written request for a revised data sheet may require a field review, a review of property ownerships, a new utility estimate, and a check with the environmental unit.

Estimates prepared for Project Initiation Documents (PID), such as PSRs, PSSRs, and PRs, must be updated whenever project scope, scheduling, or value changes sufficiently to warrant the update. Updating an estimate may involve little more than substituting an amended page to an otherwise current R/W Data Sheet or could involve preparing a new Data Sheet.

4.04.02.00 For Programming Purposes

Once projects are part of one of the Department's Program Documents (STIP, SHOPP, TSM, etc.), updating of estimates may occur whenever it is determined the estimate is no longer valid.

At a minimum, all projects in the Department's Program Documents will be reviewed and updated at the Project Report stage. When cost estimates are performed for programming purposes, estimates for active projects must be kept current and updated at least once a year, in accordance with the Project Development Procedures Manual (Chapter 20).

4.04.03.00 Final Cost Estimates At R/W Certification and Construction Contract Acceptance

Final cost estimates representing all capital and support costs (phase 2 and phase 9) are required for all programs, except Local Public Agency off-system projects. Typically performed by the R/W Project Coordinator and/or Planning and Management staff, the R/W Estimator may assist as needed to estimate remaining costs.

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At the Certification stage, final cost estimates are attached to R/W Certifications 1 or 2. For R/W Certifications other than a 1 or 2, the final cost estimate may be deferred until the R/W Certification is updated or upgraded (deferral not to exceed 12 months).

Final cost estimates are also required at the time of Construction Contract Acceptance (CCA).

See Programming and Budgeting policy for more information on final cost estimates.

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ESTIMATING
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4-EX-5	Utility Information Sheet
4-EX-6	Railroad Information Sheet
4-EX-7	K Phase Conceptual Cost Estimate Request – Right of Way
4-EX-8	K Phase Conceptual Cost Estimate Form – Right of Way

Exhibits are located online:

- External Exhibits site
- Internal Exhibits site (internal Caltrans link)

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

5.01.00.00 - EARLY ACQUISITION

5.01.01.00 General

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

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

a) Property is acquired in compliance with all applicable Department's policy/procedures, State and Federal law and regulations, including but not limited to the provisions of the Uniform Act and regulations in 49 Code of Federal Regulations (CFR) part 24 and the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4).

b) Property interests will be acquired through negotiation, without the threat of, or use of, condemnation; and is in compliance with the Uniform Act and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.).

c) Property is not protected under section 4(f), which includes, publicly owned parks, recreation lands, and wildlife, or waterfowl refuges and publicly or privately owned historic sites listed or eligible for listing on the National Register of Historic Places.

d) Will not cause any significant adverse environmental impacts as a result.

e) Will not limit the choice of reasonable alternatives for a proposed transportation project or otherwise influence the selection of the final alternative.

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f) Real property interests acquired under this section will remain as current uses, and there will be no demolition, site preparation, or construction taking place until after the completion of the environmental review process unless that is necessary to protect public health or safety.

g) Real property interest acquired under this section will be incorporated into the project.

h) Department determines and FHWA concurs the early acquisition does not influence the environmental review process for the proposed transportation project, including:

- The decision on need to construct the proposed transportation project;
- The consideration of any alternatives for the proposed transportation project required by applicable law; and
- The selection of the design or location for the proposed transportation project.

5.01.02.00 Definitions

a) Property interests: interest in land, option to purchase agreement, or similar action to acquire and/or preserve the right of way.

b) Early Acquisition Project: acquisition of real property interests by an acquiring agency prior to completion of the environmental review process for a proposed transportation project, as provided under 23 CFR 710.501 and 23 U.S.C. 108.

c) Displaced person: Owner and/or existing tenant who must be relocated as the result of the acquisition.

d) Core property interest: a common property interest identified in all alternatives.

5.01.03.00 Request to Proceed with Early Acquisition

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

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

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

5.01.03.01 Commencing the Acquisition

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

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

5.01.03.02 Relocation Assistance Program (RAP) Eligibility

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

5.01.04.00 Early Acquisition Funding Options

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

This section of the manual is under further review.

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

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5.01.05.00 Federal Authorizations

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

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

5.01.06.00 Local Public Agency (LPA) Funded Advance Acquisition

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

5.01.07.00 Acquisition by Donation

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

5.01.08.00 Acquisition by Dedication

See Section 8.29.00.00.

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5.02.00.00 - CORRIDOR PRESERVATION

5.02.01.00 General

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

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

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

5.02.02.00 Acquiring for Corridor Preservation-AB 3719 (Eaves)

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

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

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5.03.00.00 - HARDSHIP

5.03.01.00 General

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

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

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

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

5.03.02.00 RAP Eligibility

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

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5.03.03.00 Cessation of Hardship

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

5.03.04.00 Guidelines for Processing Requests

5.03.04.01 Hardship Criteria

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

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

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

5.03.04.02 Need to Dispose of Property

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

REASONS REQUIRING IMMEDIATE SALE

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

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REASONS REQUIRING IMMEDIATE SALE (Continued)

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

- Change of Work Location
  - Creates need to move

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

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

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5.03.04.03 Hardship Application Submittal

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

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

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

SUBMITTAL ITEMS - HARDSHIP APPLICATION

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

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

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

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

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SUBMITTAL ITEMS - HARDSHIP APPLICATION (Continued)

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

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

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

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

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

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

- District Approval Letter

- Categorical Exemption/Exclusion Determination
  - And required statement.

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

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

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5.03.04.04 Documentation of Files

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

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

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

5.03.04.05 Notification of Approval or Denial

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

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

5.03.04.06 Negotiation Alternatives

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

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

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

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

5.03.04.07 Vacation of Property

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

5.03.05.00 Disposition of Financial Information

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

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

5.03.06.00 Hardship Appeals

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

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5.03.06.01 Appeals Board

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

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

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

5.03.06.02 Eligibility

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

5.03.06.03 Appeals Board Action

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

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

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5.04.00.00 - PROTECTION

5.04.01.00 General

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

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

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

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

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

5.04.02.00 Protection Criteria

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

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

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- Substantial savings will accrue considering return on investment.

5.04.03.00 Request for Authority to Acquire

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

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

SUBMITTAL ITEMS – PROTECTION APPLICATION

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

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SUBMITTAL ITEMS – PROTECTION APPLICATION (Continued)

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

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

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

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

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

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5.05.00.00 – DELEGATIONS

5.05.01.00 Delegations of Authority

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

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

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Exhibits are located online:

- External Exhibits site
- Internal Exhibits site (internal Caltrans link)

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CHAPTER 6

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6.00.00.00 - RIGHT OF WAY ENGINEERING

6.01.00.00 - GENERAL

6.01.01.00 Function and Responsibility

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

For more information on the Surveys functions, see Chapter 1 of the Caltrans Surveys Manual.

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

6.01.02.00 Organization

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

HQ R/W Engineering is responsible for coordination of statewide R/W Engineering efforts, including updates and revisions for this chapter, Chapter 4 of the Plans Preparation Manual (PPM), and support of the Surveys Manual. To foster consistent and standardized interpretations of this manual

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and the R/W Engineering function, all questions or conflicts should be directed to the Chief, HQ R/W Engineering.

6.01.02.01 District Procedures

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

6.01.03.00 Knowledge, Skills and Abilities

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

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

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

6.01.03.01 Transportation Surveyor Series

Minimal requirements for entrance into the R/W Engineering function through the Transportation Surveyor series include graduation from a four-year curriculum in surveying, surveying engineering or related field, or possession of

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a valid certificate as a Land Surveyor in Training (LSIT) issued or accepted by the California Board for Professional Engineers, Land Surveyors, and Geologists or an equivalent certificate.

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

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

For more information on the Transportation Surveyor Series, contact the California Department of Human Resources.

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

6.01.03.02 Training

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

6.01.04.00 Project Process

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

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6.01.04.01 Work Breakdown Structure

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

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

6.01.05.00 R/W Engineering Mapping

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

	Reference to PPM
General Mapping Standards	Section 4-1
Cost Estimate Mapping	Section 4-2
Right of Way Hardship Map	Section 4-3
Right of Way Protection Map	Section 4-4
Right of Way Appraisal Map	Section 4-5
Federal Lands Application Maps	Section 4-6
Map Application for State Sovereign Lands	Section 4-7
Resolution of Necessity Map	Section 4-8
Court Exhibit Map	Section 4-9
Director's Deed Maps	Section 4-10
Transfer of Jurisdiction Map	Section 4-11
Right of Way Record Map	Section 4-12
Relinquishment Maps	Section 4-13
Vacation Map	Section 4-14
Freeway Lease Area Map (FLA)	Section 4-15
Right of Way Map Files	Section 4-16

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

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

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6.01.05.01 Visualization in Mapping

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

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

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

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

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

6.01.05.02 Subdivision Map Act

The acquisition and disposal of lands for the purpose of State transportation projects can result in a physical subdivision of the parcel in question. Section 66410, et seq., of the Government Code, known as the Subdivision Map Act (SMA), governs the subdivision of land for the purpose of sale, leasing or financing.

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

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

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6.01.06.00 R/W Engineering Documents

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

6.01.06.01 Document Types

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

- Acquisition - Used when rights and title pass to the State (grant deed, easement deed, quitclaim deed, indenture deed). For additional information on Acquisition Documents, see Section 6.09.00.00 of this manual.

- Supporting - Used to clear liens, leases, deeds of trusts, etc. These documents are used to extinguish or subordinate a prior right. R/W Engineering may be asked to provide a written legal description describing the real property to be attached to the supporting document. For additional information on Supporting Documents, see Section 6.09.00.00 of this manual.

- Condemnation - The State exercises the power of eminent domain to acquire property for public use. For more information on Condemnation Documents, see Section 6.11.00.00 of this manual.

- Director's Deeds - The State conveys property or property rights to others. For more information on Director's Deeds, see Section 6.15.00.00 of this manual.

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

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

6.01.07.00 Title Reports

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

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

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

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

6.01.08.00 Expert Witness

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

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

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6.02.00.00 - OWNERSHIPS, PARCELS, SUBPARCELS

6.02.01.00 General

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

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

6.02.02.00 Definitions

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

6.02.02.01 Ownership

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

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

Specific exceptions to definitions of ownership are:

- *Government Agencies* - Properties under jurisdiction of separate agencies of the same governmental body will be considered separate ownerships.
- *Long-Term Leases* - Where property is historically or customarily developed on the basis of long-term leases, i.e., subdivisions in the Irvine Ranch, where the leaseholds will be considered as separate ownerships. The term is generally considered to be over ten years.

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- *Permits for Homesites on Federal Land* - Rights of occupancy in National Forests or National Park Lands, as covered in Section 104.4 of the Streets and Highways Code, will be considered as separate ownerships.
- *Undeveloped Subdivisions* - If a vesting is in a subdivision or tract in which the roads have not been improved or in which lots have not been sold individually, the streets and alleys within the subdivision will not be considered as dividing ownership.

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

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

6.02.02.02 Parcel

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

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

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

6.02.02.03 Subparcel

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

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A. The following are examples of subparcels:

1. Non-contiguous areas of fee, within the same ownership, required by the State.

2. Permanent or temporary easements for highway purposes such as slope, drainage, scenic, retaining wall, detour, or construction easements.

3. Fee, permanent easements, and temporary easements, to be appraised or acquired in the name of the State or in the name of a third party for exchange purposes or under cooperative agreement. This includes acquisitions for sewer, storm drain, gas, water, electricity, pipeline, or ingress and egress.

4. Access rights when described separately from other right of way requirements. This primarily applies when acquiring access rights only or when a "together with access rights" clause will not obtain sufficient rights.

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

1. Excess land.

2. Remainders.

3. A separate use or zoning.

4. Interests in property that consist of encumbrances that must be cleared, such as overlying easements of an adjoining property owner, a lease, a utility easement, a mining claim, a mortgage, or a deed of trust.

5. Oil and mineral rights.

6. Permits to enter and construct (rights that would not be condemned).

7. Appurtenant easements.

8. Underlying fee in a public road. (It may be described as a separate subparcel in Resolutions of Necessity.)

9. An option of all or a portion of a parcel.

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

6.02.03.00 Numbering

Examples of parcel, subparcel, excess lands, and encumbrance numbering can be found in Exhibit 6-EX-1 of this manual.

6.02.03.01 Ownership

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

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

6.02.03.02 Parcel

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

6.02.03.03 Subparcel

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

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6.02.03.04 Non-Right of Way Parcels

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

6.02.03.05 Cancellations

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

6.02.03.06 Additional Requirements

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

6.02.03.07 Ownership Splits

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

6.02.03.08 Ownership Mergers

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

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6.02.03.09 Combining Parcels for Appraisals and Acquisition

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

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

6.02.04.00 Excess Land Numbering

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

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

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6.02.04.01 Parcel Numbers

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

Excess land parcel numbers consist of three parts:

1. Parent Parcel Number (Ownership Number): The parent parcel number is the ownership number as defined in Section 6.02.03.01 of this manual.

2. Unit Number: The unit number is always a two-digit number (01-99) and designates individual fee excess land parcels acquired from the same ownership. The first, or a single excess land unit, is number 01, additional units being 02, 03, etc. An alpha unit number now in the Excess Land Inventory need not be changed to numbers, but new unit numbers must be numeric.

3. Item Number: The item number is the numeric (01-99) designation of each conveyance out of an excess land unit.

See Exhibit 6-EX-1 of this manual for examples demonstrating various parcel numbering situations. This parcel numbering shall appear on appraisal maps, record maps, and all excess land mapping. "*REMAINDER*" is shown on some of the examples to indicate remainders. This does not need to be shown on the actual mapping.

6.02.04.02 Non-Inventory Parcels

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

A. Excess lands which the Department intends to convey to a specific entity, including those:
    1. under the terms of a written agreement with that entity.
    2. identified as excess when acquired.
    3. identified after acquisition.

B. All decertified access rights, provided no other property rights are involved.

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Examples of non-inventory parcels of excess lands include:

A. Parcels acquired exclusively for exchange pursuant to an executed written agreement.

B. Parcels acquired exclusively for replacement or replenishment housing facilities.

C. Property rights to be conveyed pursuant to an executed utility agreement for facility relocations.

D. Property rights, including underlying fee in local streets, which are to be conveyed to a local agency under terms of a freeway and/or cooperative agreement.

E. All decertified access rights where no other property rights are involved.

F. Property specifically acquired for another agency under terms of a written agreement.

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

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

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NOTES:

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

6.02.04.03 Cross-Reference Parcel Number

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

6.02.04.04 Director's Deed Numbering

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

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6.03.00.00 - BOUNDARY DETERMINATION AND RIGHT OF WAY REQUIREMENTS

6.03.01.00 General

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

6.03.01.01 Datums

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

For more information on Survey Datums, see Chapter 4 of the Caltrans Surveys Manual.

For more information on the California Coordinate System, see Section 8801 of the Public Resources Code.

6.03.02.00 Boundary Determination

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

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

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

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

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

6.03.02.01 Total Acquisition

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

6.03.03.00 New Right of Way Requirements

New right of way requirements are defined as:

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

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

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

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

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

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

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

6.03.04.00 Minor Design Changes

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

6.03.05.00 Property Ties

It is the responsibility of R/W Engineering to:

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

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

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

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

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

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

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

For more information on the Surveys function, see the Surveys Manual.

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6.04.00.00 - COST ESTIMATE MAPS

6.04.01.00 General

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

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

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

6.04.02.00 Process

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

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

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

Requirements for Cost Estimate Mapping are described in Section 4-2 of the Plans Preparation Manual.

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

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6.05.00.00 - HARDSHIP MAPS

6.05.01.00 General

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

Hardship maps are used for:

A. Appraisal of the property.

B. Negotiations with the property owner.

C. As a base for a Resolution of Necessity Map, if necessary.

D. An interim R/W Record Map.

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

Requirements for Hardship Maps are described in Section 4-3 of the Plans Preparation Manual.

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6.06.00.00 - PROTECTION MAPS

6.06.01.00 General

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

Requirements for Protection Maps are described in Section 4-4 of the Plans Preparation Manual.

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

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

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6.07.00.00 - APPRAISAL MAPS

6.07.01.00 General

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

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

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

Requirements for Appraisal Maps are described in Section 4-5 of the Plans Preparation Manual.

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

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

6.07.02.00 Ownership Extension

A total holding in one vesting often extends beyond the limits of a single ownership from which right of way is required. Occasionally, the Appraisal function may determine that it is necessary to consider such extension of

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ownership in appraisal calculations. Upon request, R/W Engineering will calculate additional areas and delineate the additional areas on the Appraisal Maps. Such delineation of total vesting will not require any change in the original ownership number.

6.07.03.00 Railroads

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

For additional information on the acquisition of railroads, see Section 8.69.00.00 of this manual.

6.07.04.00 Certificate of Sufficiency

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

The Certificate of Sufficiency document and its process are outlined in Exhibit 6-EX-6 of this manual.

For additional information on the acquisition of hazardous waste, see Sections 7.04.12.00 and 8.16.00.00 of this manual and PDPM Chapter 18.

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6.08.00.00 – LEGAL DESCRIPTIONS

6.08.01.00 General

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

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

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

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

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

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6.08.01.01 References

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

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

6.08.02.00 Elements

Legal descriptions are generally comprised of the following elements:

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

6.08.02.01 Preamble/Caption

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

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

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

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

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

> *"For highway purposes, that portion of …"*

See Section 6.11.00.00 for more information on Resolutions of Necessity.

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

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

For subsurface only pipes, remove the word "over."

6.08.02.02 Body

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

6.08.02.03 Qualifying Clauses

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

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

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6.08.02.04 Reservation

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

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

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

6.08.02.05 Exception

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

6.08.02.06 Conditions

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

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

6.08.02.07 Supplemental Statements

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

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

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

For more information on Survey Datums, see Chapter 4 of the Surveys Manual.

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

> *"The above described parcel contains 17.25 acres, more or less."*

> *"Containing 12.56 acres, more or less."*

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

6.08.03.00 Curves

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

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

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

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

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

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

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

6.08.04.00 Acquiring Fee Interest in Public Ways

Caltrans acquires sufficient title to existing public roads under Sections 83 and 233 of the Streets and Highways Code by including such areas within the boundaries of the State highway. It is not necessary for construction, operation or maintenance of State highways for Caltrans to acquire the underlying fee in existing public ways. Acquisition of local street and road rights of way in accordance with these Sections does not require an acquisition document.

When Caltrans acquires title in accordance with these Sections, it does not leave a clear chain of title in the official records. To avoid leaving isolated parcels of fee ownership underlying the highway right of way, it is Caltrans' policy to acquire underlying fee interests along with parcels which abut public ways within the proposed right of way. The underlying fee will generally pass with an abutting ownership unless the method of description precludes its conveyance. It is desirable to include in descriptions appropriate wording to assure the acquisition of grantors' fee interest, if any, in and to the area of adjacent public ways that fall within the necessary right of way.

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

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

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

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

6.08.05.00 Licensing Requirements

A licensed land surveyor or civil engineer registered prior to January 1, 1982 is authorized to practice land surveying as defined in BCP Section 8726. It is a requirement that the person in responsible charge provides their signature, seal or stamp of their license, and the date of the signing or stamping on each legal description where a new property line is created. This is not needed for a total acquisition where the original description has not been modified.

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

The following examples show the approved format for Caltrans:

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

Signature _____
Professional Land Surveyor

Date _____

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

Signature _____
Registered Professional Engineer

Date _____

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6.09.00.00 - ACQUISITION DOCUMENTS

6.09.01.00 General

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

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

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

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

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

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

6.09.01.01 Resources

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

- Legal Descriptions – Section 6.08.00.00
- Title Reports – Section 8.65.00.00
- Example Legal Documents – Exhibit 6-EX-2
- Vesting Information and Signature Blocks – Exhibit 6-EX-8
- Standard Clauses for Freeway Deeds – Section 6.10.00.00
- Standard Clauses for Condemnation – Section 6.12.00.00
- Standard Clauses for Director's Deeds – Section 6.15.00.00

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6.09.02.00 Deed Documents

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

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

6.09.02.01 Grant Deed

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

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

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

For an example of a standard Grant Deed, see Exhibit 6-EX-2 in this manual.

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6.09.02.02 Easement Deed

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

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

For an example of a standard Easement Deed, see Exhibit 6-EX-2 in this manual.

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

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

For an example, see *Easement Deed - Highway* in Exhibit 6-EX-2 in this manual.

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

Aerial Easement Deed
An Aerial Easement Deed is used to obtain aerial rights for highway purposes (e.g., bridges). This easement can be specified as either exclusive or non-exclusive and includes clauses specific to access for maintenance and construction, height restrictions, hazardous waste, and more. This document includes a portion of the "DM-2 General Waiver for Easement Deeds" Clause, as described in Section 6.10.10.02 of this manual, and the "DM-4 Reservation of Oil, Gas, Mineral or Water Rights, Etc." Clause, as described in Section 6.10.10.04 of this manual.

For an example, see *Easement Deed - Aerial* in Exhibit 6-EX-2 in this manual.

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

This document includes a portion of the "DM-2 General Waiver for Easement Deeds" Clause, as described in Section 6.10.10.02 of this manual, along with language used for the protection of the railroad property. It is common for additions and modifications to be made to this document through negotiations with a railroad for any specific project.

For an example, see *Easement Deed - Railroad* in Exhibit 6-EX-2 in this manual.

Additional standard clauses for railroads are described in Section 8.69.18.00 in this manual.

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

For more information on Railroads, see Section 8.69.00.00 in this manual.

6.09.02.03 Quitclaim Deed

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

For an example of a standard Quitclaim Deed, see Exhibit 6-EX-2 in this manual.

6.09.02.04 Miscellaneous Deeds

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

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

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

Examples of available standard documents that may be used for clearing title include: Partial Reconveyance Under Trust Deed and Request for Partial Reconveyance. These examples can be found in Exhibit 6-EX-2 in this manual.

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

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

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

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

For an example of a standard Correction Deed, see Exhibit 6-EX-2 in this manual.

6.09.03.00 Document Structure

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

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6.09.03.01 Header

The Header of a legal document typically includes:

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

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

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

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

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

Space above this line for Recorder's Use

GRANT DEED

District	County	Route	Postmile	Number
99	Bliss	476	87.26	07984-1

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6.09.03.02 Body

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

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

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

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

For more information on vesting information or title reports, see Sections 8.13.00.00 and 8.65.00.00 and Exhibit 6-EX-8 of this manual.

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

Grant - "…*hereby grants to*…"
Easement - "…*an easement for [enter type of easement], upon, over and across that real property*…"
Quitclaim - "… *hereby release and quitclaim to*…"

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

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

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

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

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

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

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

GRANT DEED

District	County	Route	Postmile	Number
99	Bliss	476	87.26	07984

Aliquom Eu, LLC,
a limited liability corporation organized and existing under and by virtue of the laws of the State of Delaware,

hereinafter called GRANTOR, hereby grant(s) to the State of California, Department of Transportation, hereinafter called STATE, all that real property in the City of Total, County of Bliss, State of California, described as follows:

See Exhibit "A", attached.

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

6.09.03.03 Signature Page(s)

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

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

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

For more information on vesting information and signatures, see Exhibit 6-EX-8 of this manual.

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

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

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

Dated: December 31, 2012

Aliquom Eu, LLC

By U. Iris Terrum
Member

By BEN E. TERRUM
Member

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

Dated: January 3, 2013

Malcolm Dougherty
Director of Transportation

By T. B. Barrister
Attorney in Fact

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

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

6.09.04.00 Document Numbering

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

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

6.09.04.01 Primary Documents

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

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

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

6.09.04.02 Supporting Documents

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

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

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

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

6.09.05.00 Certificates and Statements

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

6.09.05.01 Acknowledgment

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

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

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

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6.09.05.02 Certificate of Acceptance

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

The following statement should be used:

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

6.09.05.03 Recordation

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

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

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6.09.06.00 Execution of Documents

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

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

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6.10.00.00 - STANDARD CLAUSES FOR FREEWAY DEEDS

6.10.01.00 General

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

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

6.10.02.00 Classification of Clauses

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

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

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

6.10.03.00 "DF" Series--Access Only

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

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6.10.03.01 DF-1 Fee or Easement Deed

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

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

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

A. *" . . . over and across the westerly 510 feet of the southerly line of the parcel of land described above"*

B. *" . . . over and across courses '(2)' and '(4)' and the easterly 10 feet of course '(3)' described above"*

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

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

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

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

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

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

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

6.10.03.02 DF-2 Fee or Easement Quitclaim Deed

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

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

6.10.03.03 DF-3 Partial Reconveyance Under Trust Deed

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

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

6.10.03.04 DF-4 Partial Release of Trust

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

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

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

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

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

(Description)

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

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

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

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

(Description of grantor's property)

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

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

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

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

_____Signed_____
_____Signed_____

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

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

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

Dated this _____ day of _____, 20___.

_____
Beneficiary
By: _____
Trustee"

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

"For value received _____, Mortgagee under that certain Mortgage recorded _____ in Book _____, Page _____, of Official Records of _____ County, hereby agrees that a relinquishment of

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access rights as set forth in that certain instrument described as Relinquishment of Access Rights executed by _____, dated the _____ day of _____, 20___, and to be recorded concurrently herewith, shall be and remain paramount, prior and superior to and forever bind the interests of the undersigned under the mortgage for all purposes as fully as though the Relinquishment of Access Rights had been executed and delivered prior to the creation of the Mortgage and the latter made and accepted specifically subject and subordinate thereto.

Dated this _____ day of _____, 20___. _____
Mortgagee"

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

The "DFA" clauses acquire any and all appurtenant rights, such as view, light, and air, together with abutter's access rights. However, these clauses are for general usage and must be checked for conformance with each particular situation. Where necessary, it is permissible to modify them to conform to special situations as may be necessary.

For example situations of Freeway, Waiver, and Miscellaneous Clauses, see Exhibit 6-EX-3 in this manual.

6.10.04.01 DFA-1 Fee or Easement Deed

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

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

(Description)"

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

The above clause lends itself readily to describing the permitted openings into the expressway as exceptions. However, for deed writing purposes, in those cases where it is more convenient or desirable to affirmatively describe the

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line over which access rights are to be relinquished, in addition to the relinquishment of the other appurtenant rights such as light, air, and view, the following alternate clause may be used:

DFA-1 Alternate Fee or Easement Deed

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

6.10.04.02 DFA-2 Fee or Easement Quitclaim Deed

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

6.10.04.03 DFA-3 Partial Reconveyance of Trust Deed

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

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

6.10.04.04 DFA-4 Partial Release of Trust

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

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6.10.05.00 "DFO" Series--Freeway and Frontage Road

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

6.10.05.01 DFO-1 Fee or Easement Deed

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

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

> "as hereinafter provided"

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

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

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

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6.10.05.02 DFO-2 Fee or Easement Quitclaim Deed

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

6.10.05.03 DFO-3 Partial Reconveyance of Trust Deed

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

6.10.05.04 DFO-4 Partial Release of Trust

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

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6.10.06.00 Access Clause for Deeds from Railroads Applicable to Freeways and Expressways

6.10.06.01 For Union Pacific Railroad Grade Separation Projects

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

6.10.06.02 For Railroads Other Than Union Pacific Railroad Company

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

6.10.07.00 Temporary Access and Deferment Clauses for Deeds

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

6.10.07.01 Vehicular Separation Construction Deferment Clause

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

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6.10.07.02 Temporary Railroad Detour

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

6.10.08.00 Reservation for Overhead and Underground Facilities

When the District finds that:

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

OR

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

the District must use the following reservation clause in deeds:

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

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

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B. *GRANTOR shall have no right of entry on the surface of the lands and shall exercise its rights over or under the lands in a manner consistent with public safety and the continued unobstructed use of the land for highway purposes.*

C. *Before installing or performing any work on its facilities as herein provided, GRANTOR agrees to obtain STATE's approval of the location of such facilities which approval shall not be unreasonably withheld."*

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

6.10.09.00 Oil, Gas and Mineral Reservations

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

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

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

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6.10.10.00 "DM" Series--Miscellaneous

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

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

6.10.10.01 DM-1 General Waiver for Deeds

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

NOTE: Deeds with this clause are to be used in all fee acquisitions except in the following cases:

A. When the acquisition involves entire fee taking of grantor's property.

B. When appurtenant rights are being taken under the "DFA" and "DFO" series of clauses.

6.10.10.02 DM-2 General Waiver for Easement Deeds

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

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

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

6.10.10.03 DM-3 Temporary Construction Easement (TCE) Termination

"Rights to the above described temporary easement shall cease and terminate on (date).
The rights may also be terminated prior to the above date by STATE upon notice to GRANTOR."

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

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

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

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

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

The clause is as follows:

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

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

NOTE:

1. When EXCESS LAND is being acquired, the use of the above clause, especially as to water rights, shall be thoroughly investigated to avoid jeopardizing the State's salable title for later return to private ownership.

2. It is essential that any effect on the MARKET VALUE be investigated prior to incorporating the above reservations in a deed to the State.

3. Modification of DM-4 will be made when used with railroad companies. Contact District Railroad Coordinator for current language.

6.10.10.05 DM-5 Restricting Public Access to Private Property

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

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

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6.10.10.06 DM-6 Landlocked Remainders

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

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

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

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

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

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

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

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NOTE:

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

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

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

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

NOTE:

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

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

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6.10.11.00 Actual Possession

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

> *"The date of possession by STATE of the herein described property was _____."*

6.10.12.00 Slopes and Drainage Clauses

6.10.12.01 For Extension of Slopes and Drainage Structures Beyond Land Granted

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

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

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

6.10.12.02 For Right to Remove Slopes

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

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

(Legal description of slope easement)

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

NOTE: When the slope easement is no longer necessary, the State may clear the easement from the public record by a Director's Deed quitclaiming the easement to the fee holder of the property. The property owner is entitled to the Director's Deed without payment or consideration.

6.10.13.00 Grade Change Waiver

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

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

6.10.14.00 Deed Reservations for Irrigation Facilities

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

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

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

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

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

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

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

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

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

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6.11.00.00 - CONDEMNATION

6.11.01.00 General

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

The requirements for a Resolution of Necessity can be found in CCP Section 1245.230.

For more information on the RON Process, see Chapter 28 of the Project Development Procedures Manual.

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

6.11.02.00 Preparation

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

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

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

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For an example of a standard Resolution of Necessity Transmittal, see Exhibit 6-EX-2 in this manual.

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

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

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

6.11.02.01 Legal Descriptions

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

- When describing the vesting interest, "OWNER" should be used in place of "GRANTOR" and "STATE" should be used in place of "GRANTEE."

- Where underlying fee is to be separated into individual subparcels (see Section 6.11.02.03 of this manual).

- In condemnation descriptions involving excess, the excess must be described and mapped separately from the portion lying inside the right of way, and must be treated as a separate interest.

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

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

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

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

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

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

6.11.02.02 Type of Title or Interest

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

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

> *For State highway purposes, that portion of _____, described as follows:*
>
> *(Description of Parcel)*
>
> NOTE: The example above will be used even if the parcel is for a connecting road. No access rights are to be extinguished.

> *For freeway purposes, that portion of _____, described as follows:*
>
> *(Description of Parcel)*
>
> NOTE: The example above will be used even though the parcel is partly for freeway, partly for connecting road, and partly for frontage road purposes.

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

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

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

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

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

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

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

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The following examples require special resolutions:

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

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

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

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

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

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

6.11.02.03 Underlying Fee

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

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

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

6.11.02.04 Clauses for Condemnation

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

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

6.11.02.05 Mapping

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

The condemnation mapping shall consist of at least 2 maps:

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

Requirements for the Resolution of Necessity Maps are described in Section 4-8 of the Plans Preparation Manual.

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6.11.03.00 Final Package

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

- A file in Portable Data Format (.pdf) containing the Resolution of Necessity Transmittal Memorandum (signed and stamped), mapping and condemnation legal description(s). (See Section 6.11.02.00 of this manual.)

- The Condemnation legal description(s) in Word format (to be used by Legal in the preparation of court documents).
  NOTE: Legal has requested descriptions to be:
  - in Times New Roman 12 Point font.
  - *not* on pleadings format.

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

6.11.04.00 Posting

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

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6.12.00.00 - STANDARD CLAUSES FOR CONDEMNATION

6.12.01.00 General

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

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

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

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

6.12.01.01 Definitions

The following definitions will apply to this section:

Expressway: A highway having partial or complete access control regardless of whether it is divided or separated at grade. [Section 941.4(h) of Streets and Highways Code (SHC)]

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

Highway: A public roadway maintained by the State.

6.12.02.00 Classification of Clauses

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

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

Exhibit 6-EX-4 shows examples of Condemnation Parcels requiring Access Clauses. The letters in parenthesis ( ) following each clause relate to the situations shown on Exhibit 6-EX-4.

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

6.12.03.00 "CF" Series--Extinguish Access Rights

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

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

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

A. *"Parcel 12345-1: For freeway purposes, that portion of _____, described as follows:*

(Description of Parcel)

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

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

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

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

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

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

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

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

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

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

   (Description of Parcel)"

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

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

   (Description of Parcel)"

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

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

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

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

Examples of this are:

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

(Description of Parcel)"

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

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

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

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

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

C.

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

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

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

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

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

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

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

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

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

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

6.12.04.01 CFO-1 Condemnation for Freeway and Frontage Road

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

(Description of Parcel)"

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

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

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

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

B. *", as hereinafter provided,"*

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

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

or

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

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

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

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

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

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

(Description of Parcel)"

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

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6.12.04.03 CFO-3 Condemnation for Freeway; Remainder to Have Access Above or Beneath Freeway to Existing Adjoining Longitudinal Street or Road

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

(Description of Parcel)"

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

6.12.05.00 "CFNL" Series

The "CFNL" clauses extinguish all abutter's access rights without acquiring any land.

6.12.05.01 CFNL-1 Condemnation of Access Rights Only

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

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

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

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

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

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

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

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

6.12.06.01 Vehicular Separation Construction Deferment Clause

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

6.12.06.02 Temporary Railroad Detour Easement

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

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6.12.07.00 Access for Livestock

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

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

6.12.08.00 Condemnation Improvement Clauses

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

6.12.08.01 Condemnation Improvement Removal Clause

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

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

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

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

(Description)"

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

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

(Description)"

6.12.08.02 Condemnation Improvement Severance Clause

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

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

(Description)"

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

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

(Description)"

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6.12.09.00 Temporary Construction Easement (TCE) Termination

"Rights to the above described temporary easement shall cease and terminate on (date).
The rights may also be terminated prior to the above date by STATE upon notice to OWNER."

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

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

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

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6.13.00.00 - FEDERAL LANDS

6.13.01.00 General

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

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

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

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

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

6.13.02.00 Federal Land Agencies

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

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6.13.02.01 Forest Service

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

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

6.13.02.02 National Park Service

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

For additional information on the regulations of the National Park Service, see 36 CFR Chapter I.

6.13.02.03 Fish and Wildlife Service

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

For additional information on the regulations of the Fish and Wildlife Service, see 50 CFR Chapter I.

6.13.02.04 Bureau of Land Management

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

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

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6.13.02.05 Bureau of Indian Affairs

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

For additional information on the regulations of the Bureau of Indian Affairs, see 25 CFR Chapter 1.

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

6.13.02.06 Other Federal Agencies

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

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

6.13.02.07 Resources

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

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

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

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Federal Regulations:

- Bureau of Reclamation, see 43 CFR 429.
- Highways, see Title 23 of the CFR.
- Transportation, see Title 49 of the CFR.

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

6.13.03.00 Federal Land Transfers

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

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

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

The procedures to obtain a Federal Land Transfer are regulated by 23 CFR 710.601.

In an effort to streamline the process of Federal Land Transfers, a study was made to identify best practices and provide recommendations to simplify land transfers (*Synthesize Division Interagency Real Estate Agreements and Identify Practices for Improved Interagency Support*).

For more information on Federal Land Transfers for Federal Aid Projects, see the FHWA Manual.

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6.13.03.01 Department of Transportation Easement

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

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

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

For an example of the DOT Easement document, titled "Highway Easement Deed – Federal Lands," see Exhibit 6-EX-2 in this manual.

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

6.13.03.02 Perfection of Title

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

For an example of the Perfection of Title easement document, titled "Highway Easement Deed – Perfection of Title (USFS only)," see Exhibit 6-EX-2 in this manual.

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

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

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

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

6.13.04.00 Mapping for Federal Land Transfers

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

Requirements for the Federal Lands Application mapping are described in Section 4-6 of the Plans Preparation Manual.

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

6.13.05.00 Legal Descriptions for Federal Land Transfers

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

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6.13.05.01 Legal Description by Mapping Reference

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

Example:

> *"… lands described as:*
>
> *All those portions of land shown as Parcel 12345-1 and Parcel 12345-2 on the map filed in State Highway Map Book _____ at Page _____, _____ County Recorders Office."*

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

Example:

> *"… lands described as:*
>
> *All those portions of land described on "Exhibit A" and shown on "Exhibit B" as Parcel Number(s) [Parcel##, Parcel## …] on Sheets [##] through [##], attached."*

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6.13.05.02 Legal Description for Perfection of Title

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

1. If sufficient mapping exists, the map may be filed in the State Highway Map Book or if the mapping can be legibly reduced to a size suitable for recording, then it can be recorded with the deed as an exhibit.

2. A strip map with reference to State Highway Postmiles and right-of-way widths can also be recorded with the deed if it meets the requirements addressed in Section 6.13.05.00 in this manual.

   The following is an example:

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

3. Postmiles and widths of the existing highway right of way may be described similarly to a written legal description or in tabular format. This method will use the deed template titled, "Highway Easement Deed – Perfection of Title (USFS only) – Post Mile Reference," see Exhibit 6-EX-2 in this manual.

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

   "PARCEL 12345-1

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

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

   Contains 23.2 acres, more or less."

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The following is an example in a tabular format:

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

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

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

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

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

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6.13.06.00 Clauses Specific to Federal Land Transfers

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

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

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

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

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

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

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

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

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

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6.14.00.00 - STATE LANDS

6.14.01.00 General

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

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

6.14.02.00 State Lands Commission

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

For more information on the acquisition of State Lands, see Section 8.21.00.00, "Public Lands - State," in this manual.

For more information, see the State Lands Commission FAQ's webpage.

6.14.02.01 State Sovereign Lands

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

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

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

6.14.02.02 State School Lands

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

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

Map requirements for State School Lands are the same as those for State Sovereign Lands. See PPM Section 4-7.

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

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

6.14.03.00 Other State Agencies

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

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

6.14.04.00 Transfer of Land Between State Agencies

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

R/W Engineering is responsible for providing a legal description and map to Right of Way for processing of the transfer of land between State Agencies.

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The instrument to be used, Exhibit 8-EX-32, functions as both contract and deed. This instrument must contain all terms of the transaction together with a complete and accurate description of property being transferred.

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

6.14.04.01 Legal Descriptions and Maps

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

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

Requirements for Transfer of Jurisdiction maps are described in PPM Section 4-11.

6.14.04.02 Interoffice Transfers

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

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6.15.00.00 - DIRECTOR'S DEEDS

6.15.01.00 General

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

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

For information on numbering of Excess Land parcels and Non-Inventoried Excess Land parcels, see Section 6.02.04.00 and Exhibit 6-EX-1 of this manual.

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

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

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

6.15.02.00 Director's Deed (DD) Documents

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

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

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6.15.02.01 DD Grant

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

For an example of a standard Director's Deed Grant, see Exhibit 6-EX-2 in this manual.

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

6.15.02.02 DD Easement

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

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

> "*…hereinafter called GRANTEE, an easement for [enter type of easement], upon, over and across that real property…*"

For an example of a standard Director's Deed Easement, see Exhibit 6-EX-2 in this manual.

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

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6.15.02.03 DD Quitclaim

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

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

> "…*hereinafter called GRANTEE, all right, title and interest in and to all that real property in the*…"

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

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

For an example of a standard Director's Deed Quitclaim, see Exhibit 6-EX-2 in this manual.

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

6.15.02.04 DD Access Exchange

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

For an example of a Director's Deed Access Exchange, see Exhibit 6-EX-2 in this manual.

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

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6.15.02.05 DD Correction

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

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

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

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

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

For an example of a Correction Deed, see Exhibit 6-EX-2 in this manual.

6.15.02.06 Inadvertence or Mistakes

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

6.15.03.00 Deed Preparation

All Director's Deeds are forwarded to the District Excess Lands function at the time the request is made for execution of the deed.

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

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

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

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

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

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

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

6.15.04.00 Clauses

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

6.15.04.01 Exceptions and Reservations to State

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

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6.15.04.02 Access Clauses

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

DD-1
The following clause shall be used in all cases where property being conveyed abuts directly upon the access restriction line of the freeway. The clause shall also be used in all cases where property being conveyed abuts only upon a sidewalk, a bikeway, and/or any other type of nonmotorized public thoroughfare lying between the real property and the access restriction line of the freeway.

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

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

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

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

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

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

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DD-2
At interchanges where real property abuts upon the freeway and a city street or county road and the demarcation of freeway and local road is reasonably subject to misinterpretation, the following clause is used to designate the lines over which no access is allowed:

> *"There shall be no abutter's rights, including rights of access, over and across the courses described above with lengths of…"*

OR

> *"There shall be no abutter's rights, including rights of access, over and across course _____ through _____ described above." [Insert course limits such as 1 through 5]*

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

6.15.04.03 Landlocked Parcels

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

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

6.15.04.04 Power of Termination Clause for Conveyance for Public Purposes

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

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

> *"It is expressly made a condition herein that the conveyed property be used exclusively for public purposes for a period of fifteen (15) years from*

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

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

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

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

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

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

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6.15.04.05 Clause for Soil Instability Caused by State Highway Construction

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

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

6.15.04.06 Slope Clause - Right to Remove

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

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

When the slope easement is no longer necessary, the State may clear the easement from the Public Record by a Director's Deed, quitclaiming the easement to the fee holder of the property. The property owner is entitled to the Director's Deed without payment of consideration.

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6.15.05.00 Execution of Documents

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

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

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

6.15.05.01 Certificate of Execution

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

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

Dated _____ *STATE OF CALIFORNIA*
DEPARTMENT OF TRANSPORTATION

APPROVED AS TO FORM AND PROCEDURE

_____ *By*_____
ATTORNEY *Director of Transportation*

*By*_____
Attorney in Fact

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6.15.05.02 California Transportation Commission

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

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

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

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

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

Dated: _____

APPROVED AS TO FORM AND PROCEDURE

_____
ATTORNEY
DEPARTMENT OF TRANSPORTATION

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____
Director of Transportation

By _____
Attorney in Fact

This Space Reserved for
California Transportation Commission
Certification

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6.15.06.00 Maps

Director's Deed Maps or Excess Land Maps are used in appraisals, negotiations, and sales notices of real property or interest in real property being exchanged or sold by Caltrans. Director's Deed Maps are used by HQ in reviewing proposed transactions and may be referred to by members of the CTC. Director's Deed Maps will accompany all Director's Deeds and will consist of an Index and Plat Map.

There are four types of mapping requirements for Director's Deed Mapping. They include the following types of conveyances:

- Public Sale - Excess State land to be disposed of by public auction or public sealed bid.
- Findings A and B - Excess State land to be disposed of by direct sale to an adjoining owner.
- Exchange - Excess State land to be exchanged (typically with an adjacent property owner) for a right of way requirement.
- Contract Obligation - State land conveyed as in compliance with a contract obligation (utility agreement, cooperative agreement, clearance of cloud on title, etc.).

Requirements for Director's Deed Mapping can be found in Section 4-10 of the Plans Preparation Manual.

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6.16.00.00 - RECORD MAPS

6.16.01.00 General

A Right of Way (R/W) Record Map is used to present the *current status* of all real properties including interest in real properties under the jurisdiction and control of Caltrans. This includes operating right of way (fee, easements, etc.), excess lands, access rights, or other interests.

Data necessary to produce an intelligible, comprehensive right of way record should be shown on Record Maps. Construction details and data usually shown on plan layout sheets, not pertinent to the right of way, should be omitted.

Record Maps shall show all of the pertinent R/W information by one of the following methods:

A. All pertinent information contained on previously prepared Record Maps shall be incorporated into the most recent Record Map, and previous Record Maps shall be labeled "superseded" or destroyed.

B. The current Record Map shall show all the latest R/W requirements including R/W lines, access control, easements, etc. Parcels previously acquired shall be included in the new Record Maps by cross-referencing between the new and old Record Maps.

Public road connections approved by the California Transportation Commission are not required to be shown on the Record Map.

Requirements for R/W Record Maps are described in Section 4-12 of the Plans Preparation Manual.

6.16.02.00 Review of Record Maps

R/W Engineering shall verify with the Offices of Construction and Design as necessary, and make field reviews to ensure the following:

- R/W lines and legal access control are correctly represented.

- Easements outside the R/W lines, Joint Use Agreements (JUA) and Consent to Common Use Agreements (CCUA) within the R/W are correctly represented.

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- Excess land is correctly represented.
- Areas to be relinquished and vacated have been entered on the relinquishment and vacation status and are correctly represented.
- All necessary cross-references to previous record mapping are complete.

6.16.03.00 Excess Land

Excess land is real property vested in the State of California, Department of Transportation, and is determined and certified to not be required for rights of way or other operational purposes of Caltrans.

For more information on Excess Lands, see Section 16.00.00.00 of this manual.

It may be necessary for R/W Engineering to advise Excess Lands by memorandum of all excess parcels created, eliminated, increased or decreased in size as a result of design changes subsequent to acquisition.

6.16.03.01 Porter Bill

A Director's lease of excess land, according to Section 104.15 of the Streets and Highways Code (SHC) (Porter Bill), shall be posted on the Record Map by showing graphically the boundary of the lease area and adding the Director's lease number on or adjacent to the lease area.

6.16.04.00 Procedure for Making Public Records Available

For the purpose of complying with the California Public Records Act (CPRA), (Sections 6250-6270 of the Government Code), SHC Section 128 , and for the purpose of making required information available to the public in an orderly, uniform and economical manner, the following procedure is to be used:

A. A counter, desk or other suitable reception area will be maintained by R/W Engineering at a location where R/W Record Maps are readily available.

B. Specific R/W Engineering personnel will be assigned to receive parties making inquiries and aid them in finding parcels in the Record Maps.

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C. When an inquiry is made on State-acquired parcels, the District will provide copies of the Record Map. Payments of fees are determined based on actual cost of copying the document(s).

D. All inquiries relating to any legal actions must be referred to the District Claims Officer for processing.

For more information on the CPRA, see Deputy Directive DD-79-R1 (internal Caltrans link) and its accompanying CPRA Guidelines (internal Caltrans link), set by Caltrans.

If certified copies are requested, the documents should be forwarded to the Division of Right of Way and Land Surveys for certification by the Director of Transportation. An additional charge per document will be made for certification. If requests are made for a Final Order of Condemnation or a Deed, the suit number or recording data will be furnished and the inquiring party should be referred to the County Clerk or County Recorder's office.

The above-mentioned procedures in no way affect the State's practices under the California Civil Discovery Act (Section 2016.010, et seq., of the Code of Civil Procedure) pertaining to information that can be obtained by means of various discovery devices in a condemnation action.

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6.17.00.00 - RELINQUISHMENTS

6.17.00.01 General

A relinquishment is a conveyance of all rights, title and interest to a State highway, or portion thereof, to a county or city (Section 73 of the Streets and Highways Code [SHC]), and specific to park and ride lots, to a county transportation commission, a joint powers authority (JPA) formed for purposes of providing transportation services, a transit district, or a regional transportation planning agency (RTPA) (SHC Section 73.01). It must be approved through a resolution by the California Transportation Commission (CTC).

For additional information on the Relinquishment process, see Chapter 25 of the Project Development Procedures Manual (PDPM).

6.17.00.02 Definitions

The following list includes definitions to common terms used throughout this section. Links and references to applicable laws, codes and references have been made to assist with further definition and context usage.

Collateral Facilities: a commonly used term for streets or roads and appurtenances constructed in connection with a State highway project that are not needed for continuity or the proper functioning of the State Highway System. Examples of these facilities include frontage roads, road connections, relocated or reconstructed roads, service roads, cul-de-sacs, and areas used by pedestrians, bicyclists, and equestrians. Facilities that are appurtenant may include landscaping, slope, and drainage or basin areas.

Freeway: highway in respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands or in respect to which such owners have only limited or restricted right or easement of access. (SHC Section 23.5)

Highway: includes bridges, culverts, curbs, drains, and all works incidental to highway construction, improvement, and maintenance. (SHC Section 23 and Section 8308)

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Legislative Deletion: using legislative action to delete a portion of a state highway from the State Highway System that no longer serves interregional or statewide transportation needs.

Nonmotorized Transportation Facility: pedestrian ways, bikeways, and equestrian ways. (SHC Section 887)

Park and Ride Lot: the term used to describe a parking facility located along or near the State Highway System that provides a location for individuals to park their vehicles to join carpools and to access bus and/or rail services.

State of good repair: term used to mean a safe, drivable, well-maintained road, as used in SHC Section 73. It does not include betterment or capacity increasing improvements.

Superseded Alignment: a state highway that has been built (relocated) or realigned from the existing alignment.

6.17.01.00 Policy

It is the policy of the California Department of Transportation (Caltrans) to relinquish all interests in State highways deleted by legislative enactment, State highways superseded by relocation, and adjacent public ways (collateral facilities) which have been constructed as part of a highway project but are not essential to the proper functioning of the State highway facility (SHC Sections 73 and 73.01).

Relinquishments are unnecessary for adjacent public ways improved as part of a State highway project if there was no additional acquisition of title. These adjacent public ways lie outside of Caltrans' normal operating right of way.

Relinquishment policy for projects financed solely from State funds is similar to Federal Aid projects (see Code of Federal Regulations, Title 23: Highways, Part 620, Subpart B-Relinquishment of Highway Facilities). Federal and State authorities have agreed to acceptable relinquishment procedures and federal conditions on all Federal Aid projects as follows:

A. Sections of the *State highway superseded by construction on a new location* are usually relinquished to local authority for control, maintenance and operation. According to SHC Section 73, the commission shall not relinquish to any county or city any portion of any state highway that has been superseded by relocation until the

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department has placed the highway, as defined in SHC Section 23, in a state of good repair.

Under these circumstances, a section of highway superseded by construction of a new project, approved by the Federal Highway Administration (FHWA) as the new location of the particular Federal Aid route, is not a part of the Federal Aid highway system and the superseded section may be disposed of without referral to the FHWA. Federal Aid funds may not participate in rehabilitation work performed for the purpose of placing the road to be relinquished in a condition acceptable to the local authority.

B. In connection with freeway projects, *reconstructed local facilities*, that are located outside access control lines, such as turnarounds of severed local roads or roads adjacent to the freeway right of way, and local roads and streets crossing over or under the project that have been adjusted in grade and/or alignment, including any new right of way required for adjustments, are relinquished to local authorities for control, maintenance and operation. Structures over or under the freeway within the State highway right of way lines are retained under State jurisdiction.

   Under these circumstances, the State obtains custody of the local facilities. Any new right of way required for adjustments, and only for the time necessary for performing the construction involved in the adjustments, never become a part of the State highway system or Federal Aid highway system. These local facilities may be allowed to revert to local custody without referral to the FHWA. Eligibility of such adjustments for Federal Aid participation is as determined at time of Plans, Specifications & Estimates (PS&E) approval under policies of the FHWA.

C. Frontage roads, or portions of frontage roads not necessary as extensions of freeway ramps to connect the freeway with the nearest crossroads or streets, are constructed generally parallel to and outside of the access control lines of the freeway. This permits access to private properties, and thus reduces or eliminates claims for severance damages by those whose access rights are affected by freeway construction. This also restores local travel circulation that has been disrupted by the severing or adjustment of local streets and roads. Such frontage roads, or portions thereof, are relinquished to the local authority for control, maintenance and operation.

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Frontage roads constructed under these conditions are not a necessary part of the State highway system or the Federal Aid system and may be relinquished to local public authority without referral to the FHWA. Eligibility of such frontage roads for Federal Aid participation will be as determined at the time of PS&E approval under policies of the FHWA.

D. Frontage roads, or portions of frontage roads outside access control lines of the freeway, are constructed to serve (in lieu of or in addition to the purposes outlined under C. above) as connections between ramps to or from the freeway and existing public roads or streets. In effect, these become part of the ramps, and are retained in the custody of the State for control, maintenance and operation. A frontage road, or portion of a frontage road, which serves as an extension of a ramp from a freeway to a local public road or street, is necessary to the intended functioning of the Federal Aid freeway and may not be released from State jurisdiction without approval of the FHWA.

E. Ramps are constructed to serve as connections for interchange of traffic between the freeway and local roads or streets. Ramps are generally within project access control lines for the full length except at the point of connection with the local road or street. Ramps are retained in the custody of the State for control, maintenance and operation.

   All ramps constructed to serve for interchange of traffic between the freeway and local roads or streets are necessary for the intended functioning of the Federal Aid freeway and may not be released from State jurisdiction without approval of the FHWA.

The State may relinquish to local government jurisdictions, without referral to the FHWA, on a project-by-project basis items A., B., and C. above, subject to the following conditions and understandings:

- Immediately following action by the CTC in approving relinquishment to local governmental jurisdiction of facilities in which there has been participation of Federal Aid funds, Caltrans will furnish the FHWA Division Engineer, for record purposes, a copy of a suitable map, or maps, identified by the Federal Aid project number and the date of the CTC action, clearly delineating the facilities to be relinquished.

- If at any time after relinquishment the relinquished facility is required for proper operation of the Federal Aid freeway, Caltrans will take immediate action to restore such facility to State jurisdiction.

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- If at any time a relinquished frontage road, or portion thereof, or any part of the right of way therefore, has been vacated by local governmental authority and a showing cannot be made that the vacated facility is no longer required as a public road, the FHWA may withhold Federal Aid highway funds due the State an amount equal to the Federal Aid participation in the vacated facility.

- In no case shall any relinquishment include any portion of the right of way within the access control lines as shown on the plans for a Federal Aid project approved by the FHWA without prior approval from the FHWA.

- There cannot be additional Federal Aid participation in future construction or reconstruction on any relinquished "off the Federal Aid system" facility unless the underlying reason for such future work is caused by future improvement of the associated Federal Aid highway.

6.17.02.00 Numbering

A number is given to each continuous segment of legislative deletion, superseded State highway, or collateral facility proposed to be relinquished to a single local agency. A continuous segment includes all contiguous rights of way, including slope and drainage easements, and is given a single number. Legislative deletions, superseded highway, and collateral facilities are identified by separate numbers (e.g., Segment 1, Segment 2, etc.).

Park and ride lots proposed to be relinquished to a county transportation commission or RTPA are given a separate segment number for each distinct park and ride lot.

A collateral facility that is one continuous segment on the freeway agreement map will generally carry one segment number on the relinquishment map.

Exceptions may be made in the above-numbering procedure when necessary to expedite the relinquishment process or to clarify unusual situations. Exceptions should be explained in the Relinquishment Request submitted to the Office of Land Surveys at Headquarters (HQ).

6.17.03.00 Status of Relinquishments

The District shall prepare and maintain an up-to-date listing of relinquishments that need to be completed. The list should include current status and reasons

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for any delay in completing the relinquishment process on schedule. The status shall contain sufficient information to describe without undue investigation the latest completed step in the relinquishment process. The listing will be submitted to HQ on a quarterly basis for inclusion in the Division report on Deferred Relinquishments, as required by Deputy Directive DD-52 (internal Caltrans link).

Relinquishments shall be entered on the status not later than 30 days after award of a construction contract for a project that contains highway right of way requiring relinquishment.

Relinquishments that are a result of policy change but that are not connected with new construction projects shall be entered on the relinquishment status within 90 days of issuance of the policy change.

Relinquishments that are a result of right of way requirement changes not connected with new construction projects shall be entered on the relinquishment status at the time right of way changes are completed on Right of Way Record Maps.

6.17.04.00 FHWA Approval

FHWA approval of a proposed relinquishment is required when any portion of the proposed relinquished right of way lies within access control lines as shown on the plans for a Federal Aid project previously approved by the FHWA.

Design determines when access rights are no longer needed. They obtain necessary approvals for disposal from the FHWA. Access rights proposed to be relinquished should be brought to the attention of Design by Right of Way Engineering at the earliest practicable time. This will give Design adequate time to obtain FHWA approval and prevent delay in relinquishment processing. Right of Way Engineering relinquishment files should document the coordinating effort with Design.

Relinquishment requests submitted to HQ involving access rights no longer needed for freeway purposes will contain either a copy of the FHWA approval letter or a statement that Design has obtained FHWA approval.

FHWA approval must be obtained for relinquishment of any Park and Ride facility in which federal funds were used for right of way acquisition or construction.

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6.17.05.00 Local Agency Consent

SHC Section 73 authorizes relinquishment only in four situations:

A. Where a State highway has been deleted from the State highway system by legislative enactment.

B. When a State highway or portion thereof has been superseded by relocation.

C. Where frontage or service roads, or outer highways, having a right-of-way of at least 40 feet in width, have been constructed as part of a State highway project but do not constitute a part of the main traveled roadway.

D. Any nonmotorized transportation facility, as defined in SHC Section 887, that has been constructed as part of a State highway project and does not lie within the main traveled way.

In the first two situations, the relinquishment may be made without the consent of the local agency. In the third and fourth situations, the local agency's consent is required. Normally, this consent is given in an agreement or by resolution adopted by the local agency, in a clause which provides for the local agency to accept control and maintenance over each of the ***"…relocated or reconstructed city streets (or county roads), frontage roads and other State-constructed local roads…"*** and ***"… will also accept title to the portions of such roads lying outside the State highway limits upon relinquishment by the State."***

If a local agency protests a relinquishment proposal, the District will follow procedures set forth in PDPM Chapter 25.

A county transportation commission, JPA, transit district, or RTPA may request the relinquishment of a park and ride lot (SHC Section 73.01). An agreement is required between Caltrans and these local entities providing for the relinquishment.

For additional information on Cooperative Agreements, see the Cooperative Agreement Handbook (internal Caltrans link) and PDPM Chapter 16.

For additional information on Freeway Agreements, see PDPM Chapter 24.

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For additional information on nonmotorized transportation facilities, see PDPM Chapter 31.

6.17.05.01 Changes Subsequent to Agreement

When changes occur in the project after an agreement has been executed, an amendment to the original agreement is recommended. In the absence of an amended agreement, or in situations which are appropriate for relinquishment and are not covered by an agreement, a Resolution of Acceptance or Letter of Consent from the legislative body of the county (Board of Supervisors) or city (City Council) shall be forwarded to HQ with the letter of transmittal requesting the relinquishment resolution. It may save time to have included in the resolution or letter a waiver of the *90-Day Notice of Intention to Relinquish*, as required by SHC Section 73.

6.17.06.00 Ramp Junction Limits

It is the policy of Caltrans to acquire access rights and to protect such rights with appropriate fencing along interchange ramps to their junctions with the local road system. Details regarding this policy are stated in the Highway Design Manual.

It is the policy of Caltrans that roads that have been constructed as parts of State highway projects, but which will become part of the local road system upon relinquishment, to establish cutoff lines between ramps and roads to be relinquished along normal right of way lines of the local road system of which the roads will become a part. In most cases, cutoff lines will be between the ends of access control fences constructed to protect ramp access rights. Sound engineering judgment must be used in the application of this policy. In no case may facilities, which are essential to proper flow of traffic on freeways, be relinquished. In cases of doubt, Design must be consulted.

6.17.07.00 Park and Ride Facilities

Caltrans constructs, maintains, and operates parking facilities located along the state highway system. Such facilities are considered a part of the state highway (SHC Sections 146.5 and 148). If it is considered in the best interests of the state and there is an agreement with a local agency, these facilities can be relinquished to a city or county (SHC Section 73).

In January 2013, SHC Section 73.01 became law, which allows the CTC to relinquish to county transportation commissions or RTPAs, park and ride lots that are within their respective jurisdictions. Effective January 1, 2015,

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Section 73.01 was amended to include JPAs and transit districts. An agreement is required between Caltrans and the county transportation commission, JPA, transit district, or RTPA. As a part of the agreement, the commission, district, or agency must maintain, at a minimum, the same number of parking spaces as were maintained by Caltrans at the time of the relinquishment.

For additional information on relinquishments of Park and Ride Lots, see "Relinquishment of Park-and-Ride Lots to County Transportation Commissions and Regional Transportation Planning Agencies" in PDPM Chapter 25, Article 4.

For additional information on Park and Ride Lots, see the Park and Ride Program Resource Guide, provided by the Division of Traffic Operations.

6.17.08.00 Legal Description

Legal descriptions of State highway right of way, deleted by legislative enactment or superseded by relocation, may be described in general terms sufficient to identify the area to be relinquished, provided definite terminal limits are described. Where the superseded highway is adjacent to the new State highway, the common boundary between right of way to be relinquished and right of way to be retained must be described or defined by some recorded reference or by an actual description of said line.

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

Caltrans may file relinquishment maps in State Highway Map Books (SHC Sections 128 and 129) or record a Record of Survey map which depicts the proposed segments to be relinquished. The relinquishment is referenced to the filed/recorded maps. The maps must contain the same basic information required when a relinquishment is entirely by legal description.

Care should be taken when using a Record of Survey to show the relinquishment segments. It is Caltrans policy to relinquish as soon as possible after completion of the related construction project. A relinquishment should not be delayed because of a lengthy amount of time required to gain County Surveyor approvals and to record a Record of Survey.

Requirements for Relinquishment Maps are described in Chapter 4-13 of the Plans Preparation Manual.

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Requirements for Record of Survey Maps are described in Section 8762, et seq., of the Business and Professions Code (BPC) and must be made under the direction of a licensed Land Surveyor or pre-1982 registered Civil Engineer, as required by State law. An additional guide is available from the County Engineers Association of California, titled Guide to the Preparation of Records of Survey and Corner Records.

6.17.08.01 Frontage Roads or Relocated Public Roads

Frontage roads or relocated public roads that will constitute new public roads (as distinguished from a superseded existing road) must have their boundary fully described. This requirement may be fulfilled by giving either the correct centerline description with right of way widths stated, a metes and bounds description, or a description referring to maps filed in the State Highway Map Books. The reason for the distinction between frontage roads or relocated public roads, and superseded public roads, is that the width and location of the superseded road can be determined by record. The construction of a frontage road or relocation of a public road to accommodate the new State highway creates a new road or roads that did not exist prior to construction.

6.17.08.02 Relinquishment over Federal Lands

Care should be exercised when contemplating a relinquishment of State highway over Federal lands. If Caltrans acquired a highway easement from a Federal agency, it is possible that the easement is not transferable and must be vacated, with a new easement conveyed from the Federal agency to the local agency in a separate arrangement.

If that is the case, it is advisable for Caltrans, the local agency, and the Federal agency to agree beforehand as to what procedures will be acceptable to all parties.

6.17.08.03 Excess Land

It is the policy of Caltrans to dispose of excess land by Director's Deed. The relinquishment statutes apply only to the conveyance of highway right of way. Therefore, care should be taken that relinquishment descriptions do not include any land outside the highway right of way lines. Only small portions of land that are unsalable or of nominal value that have been included within the right of way lines may be relinquished as part of the highway right of way.

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If there is excess land along the route of a proposed relinquishment, the relinquishment maps and legal descriptions must clearly show by exception or exclusion the excess land that is not a part of the relinquishment.

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

For additional information of Director's Deeds, see Section 6.13.00.00 of this chapter.

6.17.08.04 Access Restrictions

Access will not be reserved to the State on lines between private property and the road to be relinquished. Any deviation from this policy shall require a memorandum from the Project Engineer detailing the operational necessity of such action. The memorandum should be kept in District files and a copy included within the relinquishment submittal package.

If access is to be restricted between the relinquished road and an adjacent State freeway, the following clause will be added at the end of the legal description:

> *EXCEPTING AND RESERVING to the State of California any and all rights of ingress to and egress from the highway hereby relinquished in and to the adjacent and adjoining freeway, except at such points as now are or may be established by resolution of this Commission.*

6.17.09.00 Scheduling Relinquishment Resolutions

The District Director shall appoint staff with the duty of preparing requests for all relinquishment resolutions. Each request shall be assigned a request number. This number shall be the basic reference when communicating with HQ regarding a specific resolution.

Prior to submittal of relinquishment proposals to HQ, they should be circulated through the various internal District functions for their review and comment. Commonly contacted functional areas are Design, Construction, Maintenance, Traffic Operations, Excess Lands, Environmental Planning, Right of Way Utilities, and others.

In order to prevent premature CTC action on relinquishments, HQ will obtain written clearance from the District, prior to scheduling specific requests on the CTC's agenda. District clearance may be in the form of a letter or e-mail,

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which clearly states the relinquishment is clear to proceed to the CTC for action.

Relinquishment requests are to be forwarded to HQ at least four months prior to completion of construction. This allows time for the 90-day notification period to the local agency to elapse and permit presentation of the resolution to the CTC immediately after the project is completed.

Where counties and cities object to receiving the 90-day notice prior to completion of construction, the District should notify HQ to delay issuance of the Notice of Intention to Relinquish.

Submittals of relinquishment requests to HQ for freeway collateral facilities are not to be delayed in the District pending proposed freeway planting contracts. Where planting contracts will affect relinquishment, the District shall enter into a cooperative agreement at an early enough date so the agreement will be executed prior to completion of the construction contract. Any difficulty in securing a cooperative agreement that will delay relinquishment of the collateral facilities is to be referred to HQ with full details.

6.17.10.00 Preparation of Requests

The request for relinquishment resolution by the CTC shall be prepared and submitted to the Chief, Office of Land Surveys, Division of Right of Way and Land Surveys, Attention: Relinquishment & Vacation Coordinator, with the personal recommendation of the District Director. The request shall be in the form of a District Relinquishment Request Memorandum.

The memo may be submitted electronically and shall contain the following information:

1. District, County, Route, Postmile Range.
   - Include number of segments.
   - Include name of the local agency where the relinquishment is located.
   - Include Contract Number and Project Limits.
   - Include date of acceptance or anticipated date of construction completion.

2. Describe location of proposed relinquishment by descriptive limits. An example would be to reference the beginning and end points to the nearest existing definable point on the ground, such as a road, street,

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river or county line. A specific tie to a city limit should never be used because city limits are subject to frequent change.

3. Type of relinquishment:
   - Deleted by legislative enactment. Provide Senate/Assembly Bill No. and date.
   - Superseded State highway.
   - Frontage road, Service Road, Outer Highway.
   - Nonmotorized Transportation Facilities, i.e., pedestrian, bicycle, or equestrian ways.
   - Park and Ride Lot (county transportation commission, joint powers authority (JPA), transit districts, or regional transportation planning agency (RTPA)).

4. Federal Aid number, if applicable (see Section 6.17.04.00), and a statement that the relinquishment complies with the Code of Federal Regulations 23 CFR 620.203(i), as follows:
   1) The lands to be relinquished will not be needed for Federal Aid highway purposes in the foreseeable future;
   2) The right of way being retained is adequate under present day standards for the facility involved;
   3) The relinquishment will not adversely affect the Federal Aid highway facility or the traffic thereon;
   4) The lands to be relinquished are not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway consonant.

5. State that all right of way has been acquired and that fee and/or easement title vests in the State.

6. State whether or not access rights are to be reserved and give details.

7. State whether the proposed relinquishment conforms to the approved plans and if discrepancies exist. Include reasons for the discrepancies.

8. State if frontage roads, service roads and outer highways are under the minimum width of 40 feet and are shown in the freeway agreement. Attach a copy of the Resolution of Acceptance or Letter of Consent by the local authority if the facility does not meet the minimum width.

9. State whether highway facilities are in good repair in accordance with SHC Section 73, whether State funding is involved, and if so, state date when funding request will be before the CTC.

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10. State whether the proposed relinquishment has been reviewed with the local agency within the past year. If a protest is probable, this should be stated in the request reporting the kind of protest and action to be taken. Consult the PDPM Chapter 25, Article 5, if a local agency protests a relinquishment proposal.

11. Describe any special conditions that may exist:
    a. Is the proposed relinquishment within U.S. Forest Service land?
    b. Does the proposed relinquishment involve a railroad grade crossing? Include the Public Utility Commission decision number by which consent was given.
    c. Can the proposed road be used for stock trail purposes? Give District recommendation. (SHC Section 105)
    d. Does the relinquishment involve Tribal Lands? Give District recommendation.
    e. Include any additional comments.

12. State whether there are any pending minor contracts and explain.

13. State whether any highway planting is covered by a cooperative agreement.

14. Include Segment details in a tabular form:

Segment	Begin PM	End PM	Type**	Typical Hwy Lanes (#)	C/L Miles	Lane Miles*

* Lane Miles = (Typical Hwy Lanes) x (C/L Miles)

** Type of Relinquishment:

A. Legislative Enactment –
   Senate / Assembly Bill No. _____, dated _____
B. Superseded State Highway
C. Frontage Road, Service Road, Outer Highway
D. Nonmotorized Transportation Facility
E. Park and Ride Lot

Mileage will be noted for superseded highway, frontage roads, and connecting road type parcels. Mileage should not be shown in the legal description, on maps, or for parcels that contain only cul-de-sacs,

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alleys or reconstructed county roads. In cases where frontage roads and reconstructed local roads are combined as one parcel, show mileage for the frontage road portion only and note it as "mileage added."

In addition to the District Relinquishment Request Memorandum, the following items shall be included in the relinquishment request package. This package may be submitted in digital format and e-mailed as attachments, such as *pdf*, except for the legal description which must be on bond paper, signed and sealed by a licensed land surveyor, and mailed.

A. Two original copies of the legal description of the right of way to be relinquished. Relinquishment descriptions shall be submitted, double-spaced, on 8-1/2" x 11" good quality paper (bond) acceptable for recording, with 1-1/2" margin at the top and 1" margin at the bottom and sides, except the last page shall have a 3" minimum margin at the bottom. Legal descriptions should include an access clause, if applicable.

B. One set of unrecorded relinquishment maps. After HQ review and approval of the unrecorded maps, the District will be requested to record the maps and submit a copy of the recorded map for inclusion in the relinquishment package to be forwarded for review to Design and Legal at Headquarters. If a Record of Survey map is to be used instead of a relinquishment map, the Record of Survey must clearly show the area to be relinquished and must not unduly delay the relinquishment process.

   NOTE:

   a. When bearings and distances used on maps or in legal descriptions are based on the California Coordinate System, identify the datum (NAD 1927 or NAD 1983), datum tab (adjustment), epoch, and state the zone.

      For additional information on datums, see Chapter 4 of the Surveys Manual and Section 8801, et seq., of the California Public Resources Code.

   b. The final maps or legal descriptions shall include: the signature, seal, date of signing, and expiration date of the license on the title sheet of the relinquishment map or legal description by the person in responsible charge (BPC Section 8761).

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c. If relinquishment maps do not show construction features, they shall be accompanied by one additional set of maps, such as marked up layout sheets, which show the proposed relinquishment and also features of construction shown on the approved plans.

6.17.11.00 Processing

There is no legal requirement for the consent from the legislative body of the county (Board of Supervisors) or city (City Council) to relinquish superseded portions of State highways. However, in the interest of courtesy and cooperative effort, District Directors will contact local authorities and advise them of the impending action and their responsibility for future maintenance before recommending relinquishment to HQ.

As required by SHC Section 73, HQ will forward to the county or city a "*90-Day Notice of Intention to Relinquish*" letter on all superseded highways, frontage roads, service roads, outer highways or nonmotorized transportation facilities. (Note: the local agency may choose to waive this requirement by inclusion of wording in an agreement or resolution.) This letter will be sent by certified mail with a return receipt requested. The Notice of Intention to Relinquish will contain a copy of the proposed CTC resolution together with a set of relinquishment maps. Copies of the proposed CTC resolution will also be forwarded to the District. After the 90-day notice period, and clearance from the District, the proposed CTC resolution will be submitted to the CTC. If adopted, a certified copy of the approved CTC resolution will be recorded by the District. After CTC action, HQ will send a certified copy of the relinquishment to the county (Board of Supervisors) or city (City Council) and will advise them that the relinquishment will become effective upon recordation by District staff.

When processing has been completed, the District shall forward a copy of any relinquishment involving National Forest Lands to the local National Forest Representative.

6.17.12.00 Recordation of Relinquishments

The District, upon receipt of a certified copy of the CTC's resolution authorizing the relinquishment of highway right of way, shall record such certified copy in the Recorder's Office of the county in which the relinquished right of way is located. Immediately upon recordation, the District shall inform, by letter, the county (Board of Supervisors) or city (City Council), that the relinquishment has been recorded, giving full recordation data.

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The District shall submit to HQ for filing, a copy of the letter sent to the local agency and a copy of the recorded CTC relinquishment resolution. The District shall also update the Right of Way Record Maps to reflect changes made by the approved relinquishment and inform the District's Maintenance Office and other interested offices in the District of the approved relinquishment.

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6.18.00.00 - VACATIONS

6.18.01.00 General

A vacation is an action by the California Transportation Commission (CTC) by which the public right of use is removed from State highway right of way, which is held as an easement [Section 8309 of the Streets and Highways Code (SHC)]. The easement is removed from the title of the underlying fee owner by vacation procedures described in the following sub-Sections. If State right of way is held in fee, the land should be disposed of as described in Section 6.15.00.00 (Director's Deeds) of this manual.

In addition to a vacation, an alternative method of the disposal of easement areas would be by Director's Deed in accordance with SHC Section 118. Cost effectiveness is the basis for determining which method is used.

6.18.02.00 Local Agency Consent

SHC Section 8330.5 - requires that a superseded highway, or portion thereof, to be vacated, must first be offered for relinquishment to the local agency.

SHC Section 8313 - requires that a vacation should not conflict with the local master plan in effect for the area.

SHC Section 892 - requires that highway right of way shall not be vacated until the local agency has indicated it does not need the right of way for nonmotorized transportation, as defined in SHC Section 887.

All vacations shall be offered to local agencies using the sample letter shown in Exhibit 6-EX-7 of this manual, which explains provisions of each Section of the SHC in detail. If a Right of Way (R/W) contract predates former Section 2381 (now Section 892), which was the first of the above three sections to be added to the SHC (September 30, 1975), a statement may be added to the letter that refers to the R/W contract. A second letter should be sent to the local agency, certified mail return receipt requested, if no reply is received within 90 days of the first letter.

NOTE: If particular local agencies have a history of "non replies" in your District, use Certified Mail and request a "Return Receipt" for the first letter.

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It is the policy of the Office of Land Surveys at Headquarters (HQ) that a R/W contract signed prior to September 30, 1975 providing for vacation of superseded State highway to the grantor does not preclude compliance with the above noted sections of the SHC. Any local agency with plans to use the area proposed for vacation will be referred back to Caltrans Legal Division for final disposition. That portion of a R/W contract providing for vacation that is signed after this date is invalid unless consent of the local agency has already been obtained.

Local agency clearance is not required for vacation of highway right of way across Federal lands.

6.18.03.00 Status of Vacations

The District shall prepare and maintain an up-to-date listing of vacations that need to be completed. The list should include current status and reasons for any delay in completing the vacation process on schedule. The status shall contain sufficient information to describe without undue investigation the latest completed step in the vacation process. The listing will be submitted to HQ on a quarterly basis.

Vacations shall be entered on the status not later than 30 days after award of a construction contract for a project that contains highway right of way requiring vacation.

Vacations that are a result of policy change but are not connected with new construction projects shall be entered on the vacation status within 90 days of the issuance of the policy change.

Vacations that are a result of right of way requirement changes not connected with new construction projects shall be entered on the vacation status at the time right of way changes are completed on R/W Record Maps.

6.18.04.00 Legal Description

Legal descriptions of State highway right of way to be vacated may be described in general terms sufficient to identify the area to be vacated, provided definite terminal limits are described. Where the highway right of way to be vacated is adjacent to the new State highway, the common boundary between right of way to be vacated and right of way to be retained must be described or defined by some recorded reference or by an actual description of said line.

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Caltrans may file vacation maps in State Highway Map Books (SHC Sections 128 and 129) or record a Record of Survey Map which depicts the proposed segments to be vacated. The vacation is referenced to the filed/recorded maps. The maps must contain the same basic information required when a vacation is entirely by legal description.

Requirements for Vacation Maps are described in Section 4-14 of the Plans Preparation Manual.

Requirements for Record of Survey Maps are described in Section 8762, et seq., of the Business and Professions Code (BPC) and must be made under the direction of a licensed Land Surveyor or pre-1982 registered Civil Engineer, as required by State law. An additional guide is available from the County Engineers Association of California, titled Guide to the Preparation of Records of Survey and Corner Records.

6.18.04.01 Utility Reservations

No vacation recommendation should go to the CTC without first determining the presence of any utility encroachments. This will require close working relations between R/W Engineering and District Utilities, Permits and Maintenance functions.

Whenever facilities belonging to utility owners are within the area to be vacated, Districts will notify the owners of the proposed vacation. SHC Section 8340(c) requires a reservation for "in-place" and "in-use" utilities unless a determination is made that the public convenience and necessity otherwise require. Consequently, unless Caltrans can demonstrate that *the public convenience and necessity* do not require utility reservations as provided in SHC Sections 8340 and 8341, a clause will be included in the legal description used for vacation.

A separate reservation clause identifying each affected utility company will be included in the legal description as follows:

> *EXCEPTING AND RESERVING to the (name of owner, e.g., Pacific Telephone and Telegraph Co.) an easement and right at any time, or from time to time, to construct, maintain, operate, replace, remove, renew, and enlarge the existing public utility facilities, namely, (insert description of the facilities with as much specificity as possible, e.g., underground telephone lines) and facilities incidental thereto, including access to protect the*

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property from all hazards, in, upon, under and over the highway herewith vacated.

Care should be exercised in using this clause when the vacation is over Federal lands. If Caltrans acquired a highway easement from a Federal agency, it is possible that the vacation may terminate all prior rights upon cessation of highway use. In this case, the utility company should apply for rights from the Federal agency.

6.18.04.02 Access Restrictions

If access is to be restricted between the vacated road and an adjacent State freeway, the following clause is to be added at the end of the legal description:

EXCEPTING AND RESERVING to the State of California any and all rights of ingress to and egress from the highway hereby vacated in and to the adjacent and adjoining freeway, except at such points as now are or may be established by resolution of this Commission.

It should be noted that Section 30609.5 of the Public Resources Code (PRC) restricts the sale or transfer of State lands located between the first public road and the sea. Said restrictions preserve existing or potential access rights to and along a sea. If a proposed vacation has potential impact to such rights, District should consult with the California Coastal Commission.

6.18.05.00 Scheduling Vacation Resolutions

The District Director shall appoint staff with the duty of preparing requests for all vacation resolutions. Each request shall be assigned a request number. This number shall be the basic reference when communicating with HQ regarding a specific resolution.

Prior to submittal of vacation proposals to HQ, they should be circulated through the various internal District functions for their review and comment. Commonly contacted functional areas are Design, Construction, Maintenance, Traffic Operations, Excess Lands, Environmental Planning, Right of Way Utilities, and others.

In order to prevent premature CTC action on vacations, HQ will obtain written clearance from the District prior to scheduling specific requests on the CTC's

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agenda. District clearance may be in the form of a letter or e-mail which clearly states the vacation is clear to proceed to the CTC for action.

6.18.06.00 Preparation of Requests

The request for vacation resolution by the CTC shall be prepared and submitted to the Chief, Office of Land Surveys, Division of Right of Way and Land Surveys, Attention: Relinquishment and Vacation Coordinator, with the personal recommendation of the District Director. The request shall be in the form of a District Vacation Request Memorandum.

The memo may be submitted electronically and shall contain the following information:

1. District, County, Route, Postmile Range.
   - Include number of segments.
   - Include name of the local agency where the relinquishment is located.
   - Include Contract Number and Project Limits.
   - Include date of acceptance or anticipated date of construction completion.

2. Describe location of proposed vacation by descriptive limits. An example would be to reference the beginning and end points to the nearest existing definable point on the ground, such as a road, street, river or county line. A specific tie to a city limit should never be used because city limits are subject to frequent change.

3. State the manner in which the State acquired title to the segments to be vacated.

4. State whether the property owner will be cut off from access by reason of the vacation [SHC Section 8330.5(c)].

5. If this vacation is a R/W contractual obligation, attach a copy of the R/W contract.

6. If a utility reservation is necessary, include the reservation needed in the legal description and list the name of the utility owner.

7. State whether or not access rights are to be reserved and give details.

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8. Describe any special conditions that may exist:
   a. Is the proposed vacation within U.S. Forest Service land?
   b. Does the proposed vacation involve a railroad grade crossing? Include the Public Utility Commission decision number by which consent was given.
   c. Can the proposed road be used for stock trail purposes? Give District recommendation (SHC Section 105).
   d. Can the superseded road be used for maintenance stockpile areas?
   e. Does the vacation involve Tribal Lands? Give District recommendation.
   f. Include any additional comments.

9. State whether the vacation complies with SHC Sections 892, 8313, and 8330.5. This statement is used by HQ when preparing agenda letters recommending approval of vacation resolutions by the CTC.

10. State whether the vacation involves public access to the sea (PRC Section 30609.5).

NOTE: Mileage of highway proposed to be vacated does not need to be submitted.

In addition to the District Vacation Request Memorandum, the following items shall be included in the vacation request package. This package may be submitted in digital format and e-mailed as attachments, such as *pdf*, except for the legal description which must be on bond paper, signed and sealed by a licensed land surveyor, and mailed.

A. Two original copies of the legal description of the right of way to be vacated. Vacation descriptions shall be submitted, double-spaced, on 8-1/2" x 11" good quality paper (bond) acceptable for recording, with 1-1/2" margin at the top and 1" margin at the bottom and sides, except the last page shall have a 3" minimum margin at the bottom. Legal descriptions should include utility and/or access clauses, if applicable.

B. A copy of the letter from Caltrans to the local agency regarding SHC Sections 892, 8313, and 8330.5 and a copy of the letter from the local agency affected, stating it has no objection to the vacation. In the absence of a letter from the local agency, a copy of both sides of the certified mail and signed return receipt showing proof of a second attempt to notify the local agency is sufficient.

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C. One set of unrecorded vacation maps. After HQ review and approval of the unrecorded maps, the District will be requested to record the maps and submit a copy of the recorded map for inclusion in the vacation package to be forwarded for review to Design and Legal at Headquarters. If a Record of Survey map is to be used instead of a vacation map, the Record of Survey must clearly show the area to be vacated and must not unduly delay the vacation process.

NOTE:

a. When bearings and distances used on maps or in legal descriptions are based on the California Coordinate System, identify the datum (NAD 1927 or NAD 1983), datum tag (adjustment), epoch, and state the zone.

For additional information on datums, see Chapter 4 of the Surveys Manual and PRC Section 8801, et seq.

b. The final maps or legal descriptions shall include: the signature, seal, date of signing, and expiration date of the license on the title sheet of the relinquishment map or legal description by the person in responsible charge (BPC Section 8761).

6.18.07.00 Recordation of Vacations

The District, upon receipt of certified copies of the CTC's resolution authorizing the vacation of highway right of way, shall file a certified copy with the county (Board of Supervisors) and record a certified copy in the Recorder's Office of the county in which the vacated right of way is located. Upon such recordation, the vacation is complete.

The District shall submit to HQ for filing, a copy of the recorded CTC vacation resolution. The District shall also update the Right of Way Record Maps to reflect changes made by the approved vacation and inform the District's Maintenance Office and other interested offices in the District of the approved vacation.

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6.19.00.00 - FREEWAY LEASE AREA AIRSPACE MAPS

6.19.01.00 General

Freeway Lease Area (FLA) Airspace Maps are used to show State-owned property adjacent to or under freeways that is available for leasing. They are used for inventory purposes, for information to potential lessees, for circulation prior to leasing, and for estimating or appraising airspace lease areas. They consist of an Index Map and an FLA Parcel Map. FLA Parcel Maps consist of either an Inventory Map or an Appraisal Map.

All Freeway Lease Area maps shall be assigned FLA numbers as follows:

> Sites identified along a route would be assigned an FLA prefix followed by the highway route number and number of the particular site; i.e., sites along Route 5 will be designated FLA-5-1, FLA-5-2, etc. Sites along Route 101 will be designated FLA-101-1, FLA-101-2, etc.

Requirements for Freeway Lease Area maps are described in Section 4-15 of the Plans Preparation Manual.

For additional information on Airspace, see Chapter 15 of this manual.

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Exhibits are located online:

- External Exhibits site
- Internal Exhibits site (internal Caltrans link)

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7.00.00.00 - APPRAISALS

7.01.00.00 - APPRAISAL POLICIES AND GENERAL REQUIREMENTS

7.01.01.00 General Overview

Article I, Section 19 of California Constitution states ***"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."***

7.01.01.01 Definition of Market Value

The measure of "just compensation" is "market value." Section 1263.320 of the California Code of Civil Procedure defines market value as:

"(a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

"(b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable."

A just and equitable method of determining the value of nonprofit, special use property as defined, for which there is no relevant, comparable market is:

"The cost of purchasing land and the reasonable cost of making it suitable for the conduct of the same nonprofit, special use, together with the cost of constructing similar improvements."

This method of valuation pertains only to those properties where all of the following apply:

1. Operated for a special nonprofit use such as a school, church, cemetery, hospital or a similar property.
2. Tax-exempt.

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3. Not owned by a public entity.
4. There is no relevant, comparable market.

See Section 7.04.13.00 for further details.

7.01.01.02 Necessity for Appraisal

An appraisal is necessary to ensure compliance with the Constitution in arriving at a conclusion of just compensation. The basic document in all appraisals is the Appraisal Report. It contains the appraiser's estimate of fair market value and all data and narrative necessary to support the appraiser's conclusions.

An approved report is generally required for acquisition, property management, relocation assistance and record purposes. It is of critical importance to further Right of Way activity. It must be complete and reliable in all its contents.

The report will be a summary of basic information and conclusions together with pertinent support. It shall contain information about the properties and general aspects of the entire project. Additional backup information such as detailed improvement descriptions and plans, additional photographs, bids, detailed cost studies, interview records, additional comparable data, utility relocation studies, etc., should be maintained until acquisition is complete and the files are no longer necessary for record, testimony, or RAP purposes.

7.01.02.00 Appraisal Report Not Required

When the Region/District determines that the valuation problem is uncomplicated and the fair market value is estimated at $10,000 or less, based on a review of available data, an appraisal report is not necessary under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. The $10,000 amount includes severance damages but excludes any nonsubstantial construction contract work. Authority to waive the appraisal is provided for in Federal Regulation [49 CFR 24.102(c)(2)]. Authority to make this determination rests with the Region/District Right of Way Manager (Region/District R/W Mgr.), who may delegate it. The documentation required is the "Waiver Valuation." (See Section 7.02.13.00.) The Waiver Valuation **cannot** be used as a basis for deposit when obtaining an Order for Possession.

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7.01.03.00 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act)

The Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) contains basic requirements for the appraisal of real property for Federal and federally-assisted land acquisition programs. These basic requirements shall apply to all projects, regardless of Federal participation. Appraisals are to be prepared according to these requirements, which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP).

49 CFR 24.1, 24.101, 24.102, 24.103, and 24.104 set forth these basic requirements.

7.01.04.00 Standards

The appraiser will thoroughly investigate and consider every material fact regarding the market value of the appraised property. Every effort will be made to interview the property owners and to secure factual information on the subject property sales, costs, alterations, income and expense data, age, etc. The subject properties and comparable data shall be viewed in the field and all improvements to be appraised shall be carefully inspected. The appraiser should refrain from furnishing detailed information regarding valuation, time schedule or construction items. At the appraisal stage, such information is usually incomplete and subject to change.

7.01.04.01 Appraiser Qualifications

The Associate Right of Way Agent is considered the staff appraiser for routine to complex eminent domain real property appraisals not involving Federally insured financial lending institutions. Staff appraisers (Associate Right of Way Agent) are not additionally required to be licensed by any other State agency having real property appraisal oversight. Ranges A and B Right of Way Agents are considered the staff appraiser when the work product is directly supervised by and cosigned by an Associate Right of Way Agent.

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7.01.05.00 Separation of Appraisal and Acquisition Functions

The Department of Transportation (Department) maintains a separation of the appraisal and acquisition functions, except that the same person can appraise and negotiate a parcel if total valuation, excluding nonsubstantial construction contract work, is $10,000 or less. This dollar limit also applies to revisions where the appraiser was previously assigned to negotiate the parcel. The valuation document can be either an appraisal or Waiver Valuation as discussed in 7.01.02.00 above.

When the same person prepares the appraisal and performs the acquisition, the Certificate of Appraiser must be revised from the standard Certificate. It should contain a statement substantially as follows: *"That I understand that I may be assigned as the Acquisition Agent for one or more parcels contained in this report but this has not affected my professional judgment nor influenced my opinion of value."*

Members or candidates of professional appraisal organizations who are assigned to act in the dual capacity of appraiser and acquisition agent should check their organization's code of ethics for specific prohibitions and disclosure requirements.

7.01.06.00 Prerequisites for *"Preliminary Right of Way"*

Right of Way Planning and Management is the lead right of way function concerning prerequisites for commencement of all "preliminary engineering" activities, "preliminary right of way" activities, and "regular right of way" activities. See Chapter 3.

Preliminary Right of Way is defined as those Right of Way activities that occur after:

A. The project is programmed or lump sum funded. (Activities are typically charged as Right of Way support to the project's Phase 2 expenditure authorization.)

B. Budgeted spending has occurred.

   1. The project is in the current approved Right of Way Capital Plan or in the proposed Right of Way Capital Plan for the budget year.

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2. Other entity funding is secured. The source of funding is in accordance with the terms of a Cooperative Agreement with a Local Public Agency, if applicable.

The Preliminary Right of Way Activities are:

1. Ordering Title Reports.
2. Preparing Base Maps.
3. Preparing Appraisal Maps.
4. Conducting project-wide comparable sales searches once a preferred alternate is internally selected.

In addition, the preferred alternate must be made public in some manner, e.g., newspaper announcement, distribution of the final environmental document, or the like, before the following activities can take place.

5. Assigning appraisers to specific parcels.
6. Contacting the property owners to commence appraisal activity (i.e., sending the Notice of Decision to Appraise).
7. Completing the appraisal.

These prerequisites do not apply to hardship and protection appraisals.

Final environmental clearance is a prerequisite to commencing regular right of way acquisition. The exception to this rule is when "early acquisition" is approved. See the Early Acquisition Guidelines (Reference 3-EX-6). Appraisal support costs may or may not qualify for federal aid. PA&ED along with E-76 approval is the point at which parcel specific right of way support costs become eligible for federal aid on a federally eligible project.

7.01.07.00 Dual Report Requirements

The District may determine that dual reports are needed to ensure the owner receives a fair market value offer. Duals should be considered for unusually large or complicated parcels or parcels exceeding $500,000 in value. This amount includes improvements pertaining to realty, severance damages, and substantial construction contract work.

The following are items to consider in determining which parcels may require dual reports:

- There is a serious question as to highest and best use.

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- Market data is inconclusive because of its scarcity and/or absence of established patterns.

- There are substantial improvements not compatible with the highest and best use of the land.

- A significant portion of the appraised value is severance damages or there is a substantial question regarding damages or benefits.

- The value of the land is primarily on a development-analysis approach, or there is reliance on a specific plan of proposed development.

Dual reports shall be separate, and fully independent in calculations, analysis and conclusions. This will give a better basis for determining market value and help ensure a sound offer. The appraisers and their Region/District supervisors are responsible for maintaining the fact, spirit and appearance of this independence.

For dual report requirements pertaining to the direct sale of excess commercial property pursuant to S&H Code Section 118.1, refer to Excess Land Appraisals 7.14.02.02.

7.01.08.00 Donations

Anticipated donations must first be appraised unless the following apply:

A. The donation is initiated by the owner, and

B. The owner, after being informed of the right to receive just compensation, provides the Region/District with a signed statement or letter waiving said right to receive just compensation and releasing the State from its obligation to appraise the property.

If an owner provides a signed statement or letter waiving just compensation but requesting an appraisal, the Notice of Decision to Appraise is not required.

In the past, IRS has indicated that staff appraisers may not be used to appraise donations in excess of $5,000 which are to be claimed as charitable contributions for Federal tax purposes. The owner should be advised to check with a tax consultant, IRS and/or the Franchise Tax Board if this or other questions of tax implications arise.

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Donations may be used as matching fund credit to a Local Agency. This can apply on selected route segments where a local agency is required to match State right of way protection expenditures. The donation must be appraised to establish the contributory value to be credited to the local agency.

7.01.08.01 Credit Toward State's Matching Share

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, may be used as credit toward the State's matching share for a Federal-aid highway project. No credit can be allowed for any amount negotiated with the owner which exceeds the appraised fair market value. The credit applies only to bona fide donations. It does not apply to dedications. 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. Donations made by a Federal or State government agency are not eligible for project credit purposes. A contribution by a unit of local government of real property which is offered for credit, in connection with a project eligible for assistance under this title, shall be credited against the State share of the project at fair market value of the real property. Property may also be presented for project use with the understanding that no credit for its use is sought. Right of Way shall assure that the acquisition satisfied the conditions in 23 CFR 710.501(b) and the documentation justifies the amount of the credit.

All appraisals involving donations for credit to State matching funds must otherwise meet the same standards as normal acquisition appraisals. See Chapter 8 for further information related to Acquisition.

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7.01.09.00 Dedications

Legal considerations concerning the appraisal of property having future street requirements as of the date of value are summarized in this section. Legal considerations are not to be confused with factual determinations which are to be made in every instance by the appraiser. Appraising a property with future street requirements can prove problematic when the property is located in such manner that in order to comply with the master plan of streets or the master plan of zoning, additional street areas will be required to be dedicated and improved in the reasonable near future as of the date of valuation for the purposes of the appraisal. These properties generally fall into four categories:

A. Those already improved to their highest and best use.

   The property that is already enjoying the highest and best use and the street requirement, while considered, must be assumed to not affect valuation. It is unlikely that the local governing body could force a dedication if the property is already developed to its highest and best use. If the street were to be widened, the local governing body would be required to condemn the necessary area. Therefore, this property should be valued at full market value under the highest and best use.

B. Those already zoned to their highest and best use.

   Generally, a dedication requirement arises as a condition for a change of zone. If that is the only requirement of the local governing body, then the conclusions under Category A would be followed. However, a significant number of local governmental entities have adopted building permit requirements, as opposed to zone change requirements, which impose dedication requirements as a condition for obtaining a building permit. If the property is found in such a political entity, then the conclusion under Category C would be followed.

C. Those not zoned or improved to their highest and best use.

   Since the required street area would have to be dedicated before the property could achieve its zoning or building permit for highest and best use, the required area would likely have a nominal value. In this instance, the value of the area to be dedicated is reflected in the higher unit value of the remaining property which is generated by such dedication. It follows then that the average unit value theory could not apply and the nominal value theory would be used. In any event, if the

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appraiser finds that by reason of the local agency's governing provisions the land probably will never be used for street purposes, the appraiser should take that into consideration in forming an opinion of value.

D. Those properties which would fall within Category C, except there is an interim use of some significant time period before the ultimate highest and best use is developed.

   The area to be dedicated would have the same unit value as either the whole property or the remaining property by the interim use, assuming, that the time of the interim use and the value of the interim use were of such significance as to affect the appraiser's ultimate conclusions of value.

In all of these instances, the future requirement of street dedication with the ultimate improvement of the street for city or county standards must be considered by the appraiser.

7.01.10.00 Notice of Decision to Appraise

The appraiser must advise the property owner of the State's decision to appraise the property. The notice must be in writing and cover the following:

A. A specific area is being considered for a particular public use, i.e., the project;

B. The owner's property is located within the project area; and

C. All or a portion of the owner's property (which should be generally described) may be acquired for public use.

The letter will offer the owner (or the owner's representative) the opportunity to accompany the appraiser on an inspection of the property. It will give reasonable advance notice. There is no mandatory format for the notice; however, see Exhibit 7-EX-17 for a suggested format.

Enclosed with the letter to the owner will be the following:

A. Written explanation of the Department's land-acquisition procedures. The booklet "Your Property, Your Transportation Project" will satisfy this requirement; and

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B. A Title VI brochure and other required items listed in R/W Manual Chapter 2, Section 2.04.01.02.

The Notice and acquisition procedure explanations may be modified as necessary when doing contract appraisal work for other agencies, when the property owner is a governmental agency, etc. Governmental agencies are entitled to written notice, etc., just like a private property owner; however, judgment should be used as to the need to send complete notices and packages to the same agency time after time.

7.01.11.00 Parcel Diary

The appraiser will initiate the Parcel Diary Form RW 7-1 for each ownership. The appraiser shall include all required information covered in the instructions. The form should be initiated by an appropriate entry indicating the date the parcel is assigned for purposes of preparing an appraisal, together with entries documenting parcel data. The parcel diary is an internal document to be forwarded with the appraisal for review and kept in the parcel file for documentation.

7.01.12.00 Responsibility for Providing RAP Information

The Appraisal Branch is responsible for the following:

A. The Appraiser, when asked, shall give accurate, basic relocation information to all potential displaced persons encountered during the appraisal process.

B. Pursuant to Federal regulations, the RAP Branch is required to advise potential displacees of their possible RAP benefits as soon as the occupants are identified. The Code of Federal Regulations also requires each business to be interviewed by the RAP Agent prior to the initiation of negotiations. The appraiser is usually the first contact a potential displaced person has with the Department. When an appraisal (primary or alternate) indicates a displacement of people, businesses, and/or personal property, the appraiser is to complete the Parcel Occupancy Data Form RW 7-2 at the time of the first meeting or contact with the owner. This is true whether the displacement would result from the taking of right of way or from the effect of the taking on the remainder. Note that a displacement may occur even though there are no severance damages to the real property (a "consequential" displacement). This form may be modified to cover a

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residential or business only displacement. The RAP Agent may accompany the appraiser during the inspection of the subject.

The Parcel Occupancy Data Form is an internal document; as such, it does not go forward with the appraisal. The appraiser is to forward the Parcel Occupancy Data Form to the Region/District RAP Branch at the earliest possible date and note in the Parcel Diary the date it was forwarded. The RAP Branch will then provide general relocation assistance information to all potential displacees listed. The RAP Branch will send the Title VI (Civil Rights) Survey form and a Title VI brochure to all known tenants.

The appraiser must immediately notify the appropriate branch (RAP, Acquisition, etc.) of information which may affect the displaced person's eligibility for RAP benefits (i.e., the knowledge that an occupant intends to move prior to the date of the first written offer), along with a parcel diary entry.

C. Where the appraisal of commercial, industrial, or other properties includes machinery, equipment, fixtures, and/or improvements pertaining to the realty, the appraiser shall, as part of the appraisal report:

    1. Itemize for identification: machinery, equipment, and fixtures which are considered realty, as well as those items determined to be Improvements Pertaining to the Realty (see California Code of Civil Procedure Sec. 1263.205). RAP will not pay for the relocation of realty.

    2. To the extent possible, determine the ownership or claims to ownership of the listed items as between the fee owner and tenants or lessees.

D. If the primary or alternate appraisal indicates occupied improvements will be acquired or may be acquired as uneconomic remnants (in the market or to the owner), then the State is usually obligated to provide relocation assistance to the occupants (residential or business). In questionable situations, the appraiser shall discuss the situation with the Region/District's RAP Branch.

E. Actual and Economic Rental Rates (see Section 7.03.08.00, "Rental Rates") – Actual and economic rental rates for all properties will be shown in the fair market value appraisal.

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7.01.13.00 Legal Opinions

All appraisals shall consider potential legal items involved in the appraisal problem, and care must be exercised to see that they are clearly defined and resolved. The Region/District should consult with the Legal Division, normally through HQ R/W, when such problems are first encountered. The Region/District may request a legal opinion directly from a local office of the Legal Division generally where an interpretation of a condition or situation is involved.

Any legal opinions involved in the appraisal process shall be documented in the report. It may be desirable to secure legal opinions on such questions as benefits, compensable damages, extent of larger parcel, personalty versus realty, valuation of dedications, etc. Strictly adhering to this policy will result in minimum loss of time for Region/District personnel and the State's attorneys.

7.01.14.00 Responsibility for Preparation

Appraisals will only be made by qualified appraisers. Field work and composition will be accomplished by or under the direct supervision of a Right of Way Agent of at least Associate grade. The agent assisting in the preparation will, at the Region/Districts' option, sign the Title Page and/or a Certificate of Appraiser as discussed in Section 7.02.03.00. The appraiser shall personally conduct the inspection of the subject and comparable properties.

7.01.15.00 Appraisal Review

All appraisals are reviewed to:

1. Ensure that the appraiser's documentation, including valuation data and the analyses, demonstrates the soundness of the appraiser's opinion of value and that the appraisal report conforms to the requirements of this Chapter and established appraisal practices.

2. Ensure that the appraised amount is equitable and represents a proper amount for the offer of just compensation in accordance with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 and Government Code 7260 et seq.

Both the cumulative review and review appraiser process are recognized and acceptable methods for determining the adequacy and appropriateness of the appraisal report being reviewed to ensure that it is based on sound appraisal theory and contains appropriate documentation to support the

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appraisers' conclusions. Both methods will also accomplish the requirement that the approved appraisal represents the fair market value of the property and represents a proper amount for the offer of just compensation.

Definitions:

Administrative Review - A review performed to confirm the appraisal contains the proper forms, is in proper sequence, and the arithmetic is correct. The administrative review is usually less detailed than a technical review, and the administrative reviewer does not render an opinion as to adequacy of the opinion of value.

Technical Review - Review performed for the purpose of forming an opinion as to whether the analyses, opinions and conclusions in the appraisal report under review are appropriate and reasonable and that the appraisal complies with the Uniform Act, Government Code 7260 et seq., the requirements of this Chapter, and established appraisal practices.

The technical reviewer, as the review appraiser or the cumulative review appraiser, must have the necessary appraisal knowledge, experience, and formal education to satisfy the requirements of 49 CFR 24.103(d). The qualifications of the review appraiser and cumulative review appraiser must be consistent with the scope of work for the appraisal assignment. The qualifications must meet the appraisal related criteria of the Senior Right of Way Agent classification (as defined by the California State Personnel Board and internal district duty statements) and must be based on formal appraisal education such as the courses listed on the Division of Right of Way Recommended Course List.

7.01.15.01 Cumulative Review Concept

The cumulative review process used by the Department requires that the appraiser's supervising Senior will conduct a technical review and approve or recommend for approval the appraisal report. If the supervising Senior is not delegated to approve the appraisal report, it will be submitted for approval to the Supervising Right of Way Agent (Branch Chief), Region/District Right of Way Manager, or HQ R/W in accordance with the current delegations. A flow chart outlining the typical steps in the cumulative review process is shown as Table I in Section 7.01.21.00.

There are limited instances where the Review Appraiser concept and its implementation are available to the staff reviewing appraiser. See Section 7.01.15.02.

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7.01.15.02 Review Appraiser Concept

The review appraiser is a unique position whose responsibility includes ensuring that appraisals under review are based on sound appraisal theory and contain appropriate documentation to support the conclusion of fair market value consistent with requirements of 7.01.15.00. As part of this responsibility, the review appraiser can reject an appraisal that does not meet the test of an adequate appraisal product and if unable to resolve the differences with the appraiser, require a new appraisal be prepared.

The review appraiser will conduct a technical review and will have the authority to approve appraisals consistent with current delegations.

Since the review appraiser is the only individual reviewing and approving the appraisal report at the Region/District level, it is imperative that the review appraiser have a solid appraisal background. This will include education and experience in preparing a wide variety of appraisals including partial acquisition appraisals with severance damages and/or benefits analysis. At a minimum, the review appraiser should be a Senior Right of Way Agent and report directly to the Region/District Right of Way Manager. Review appraisers receive their approval authority/review appraiser delegation through Headquarters based on individual appraisal background and experience.

In limited instances, this concept and its implementation are available to the cumulative review appraiser.

This process may be used when a contracted/independent fee appraiser prepares an acquisition report or, in rare instances, on a staff appraisal. This situation may also be encountered when a local agency hires a fee appraiser, and the Department provides appraisal review and approval services.

When the review appraiser finds the report lacking in content, support, reasoning, or conclusion, the reviewer may elect to assume the capacity of review appraiser (when delegated) and supplement the areas considered lacking, including modifying the appraised value. This would be accomplished by written memorandum clearly delineating the areas in question and providing full support and documentation for the reviewer's conclusions. Approval requirements will be in accordance with existing delegations.

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7.01.16.00 Review Appraiser Process

A flow chart outlining the typical steps in the review appraisal process is shown as Table II in Section 7.01.21.00.

A. Roles and Responsibilities of Review Appraiser.

To better define the role and responsibilities of a review appraiser, a Review Appraiser Task/Duties is included as Table III in Section 7.01.21.00. While some of the tasks may be discretionary, the table provides the basis for the expectations of the duties to be performed by a review appraiser.

B. Approval Certificate

In conjunction with the approval of the appraisal, the review appraiser will sign the Review Appraiser Certificate, Exhibit 7-EX-24D, and Appraisal Title Page - Review Appraiser, Exhibit 7-EX-21B.

C. Dual Report Process

The current process for dual reports as stated in 7.01.07.00 remains the same. The review appraiser duties regarding dual reports are as follows:

- Review and concur with all requests for waiver of dual reports prior to submitting the request to the Region/District Right of Way Manager.

- When dual reports are prepared, the review appraiser will perform a technical review of both reports and recommend both reports to HQ R/W for approval.

  The review appraiser's recommendation of both reports is not necessarily a recommendation of two separate fair market values. Rather it is an indication that both reports are based on sound appraisal theory and contain appropriate documentation to support the appraisers' conclusions. See Section 7.02.09.02 for an additional discussion on resolving significant judgmental differences between the two reports.

  Only the approved appraisal will be provided to the Grantor. The second report will be stamped "Reviewed for Documentation" and kept in the office files.

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D. Role of Supervising Senior in the Review Appraiser Process

Although the supervising senior will not be approving and/or recommending for approval the appraisals produced by their unit, they need to have a good understanding of appraisal theory and practice. In this context, the supervising senior will:

- Make appraisal assignments.
- Track progress of appraisals.
- Provide staff the necessary guidance and training.
- Assure consistency in application of data and valuations, particularly between different appraisers who are preparing appraisals in the same area.
- Perform an administrative review of the appraisal for accuracy, adequacy of documentation, and consistency in the application of data and valuation prior to submitting the appraisal to the review appraiser for approval. This administrative review is not considered a review for purposes of approving the appraised value, nor is it a first step in the cumulative review process. Rather it is a review for form and content to ensure that the appraisal product is complete and contains appropriate documentation to support the appraiser's opinion. Upon completion of the administrative review, the supervising senior will complete the Appraisal Checklist, Exhibit 7-EX-22, and sign a certificate indicating an administrative review of the appraisal for form and content has been completed. Exhibit 7-EX-23 is a suggested format for the transmittal letter.
- Assist the appraisers in responding to the review appraiser's concerns.

7.01.16.01 Minor Deficiencies

Minor deficiencies are deficiencies that do not affect the value, but should be corrected prior to approval. They include:

1. Mathematical errors not affecting the value conclusion
2. Project identification data
3. Parcel numbers
4. Typographical errors which could lead the reader to an erroneous conclusion. Possible errors in location, zoning, or present use of either the subject property or of comparable sales, if not a major deficiency (i.e., one which affects value)
5. Other minor deficiencies not affecting value

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In the case of minor deficiencies in the appraisal report, the review appraiser can either request the appraiser correct the deficiencies or make the changes to the report as the review appraiser. Any changes made by the review appraiser should be initialed and dated and the appraiser notified of the changes.

7.01.16.02 Major Deficiencies

Major deficiencies are deficiencies that affect the value conclusion and, unless corrected, will result in a rejection of the appraisal report. They include:

1. Highest and best use analysis
2. Insufficient analysis, reasoning, and erroneous conclusions
3. Errors in valuation
4. Analysis that mislead the user of the report
5. Nonadherence to the requirements of this Chapter
6. Other deficiencies that will cause the report to be rejected

In the case of major deficiencies in the appraisal report, the review appraiser should immediately notify the appraiser and supervising senior, preferably in writing, stating the deficiencies and/or need for clarification. If the review appraiser is unable to resolve the deficiencies, the review appraiser will reject the appraisal and request a new appraisal or prepare a Reviewer's Appraisal Report.

A. Appraisal Rejection

When an appraisal is rejected, the review appraiser prepares a memorandum to the supervising senior (Appraisal Branch Chief) with a copy to the Region/District Right of Way Manager stating the reasons for the rejection, the major areas of disagreement, and efforts taken to obtain an acceptable report. The supervising senior will then make arrangements to have a new appraisal prepared.

B. Reviewer's Appraisal Report

If it is not practical to obtain a new appraisal, the review appraiser, after consulting with the supervising senior (Appraisal Branch Chief) and Region/District Right of Way Manager, may develop appraisal documentation to correct the rejected report for the parcel in question. In arriving at their own estimate of value, the review appraiser may use valid market data available, including data contained in any appraisals received for review. The review appraiser must personally verify any data

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obtained on their own initiative and provide written analyses of the data, plus reasoned justification or explanation supporting their conclusions consistent with the requirements of this chapter and established appraisal practices.

When the review appraiser makes changes to an existing appraisal report to cure a deficiency which results in the reviewer's own opinion of value, the entire appraisal report is considered to be that of the review appraiser and no longer that of the original appraiser.

7.01.17.00 Approval Authority

Regardless whether the Region/District utilizes the cumulative review or review appraisal process, approval of the appraisal products will be in accordance with the existing delegations as discussed in R/W Manual Chapter 2. Any approvals not specifically delegated are retained in HQ R/W.

7.01.18.00 Criteria for Use of Contracted or Independent Fee Appraisers

When the Department uses a Contracted or Independent Fee Appraiser to prepare a regular acquisition, condemnation, excess land or airspace appraisal, the Contracted/Independent must have a current California "Certified General" (AG) real estate appraiser license issued in accordance with Title XI of Reform, Recovery and Enforcement Act of 1989 and the California Code of Regulations Title 10, Chapter 6.5 (Real Estate Appraisers). This requirement also applies to all Federally-aided local streets and roads projects and all special funded projects.

7.01.19.00 Report Processing and Record Keeping

The original appraisal shall be held by the Region/District as their record of appraisals for the applicable retention period. A copy of the approved appraisal is not typically required to be sent to HQ R/W, unless otherwise specified by specific delegation or policy. This includes Local Assistance contract appraisals when acquisition is to be performed by the Region/District.

1. Appraisals may contain multiple parcels in a single ownership for both HQ R/W and Region/District approval. Waiver Valuations may also contain multiple parcels in a single supplement. In these cases,

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parcels will be arranged in the report in numerical order regardless of approval authority.

2. The Title Page will indicate whether HQ R/W approved or Region/District approved.

3. If used, a Parcel Summary Sheet may be kept in the parcel file for documentation.

4. Internal documents including the Certificate of Sufficiency (COS), the Hazardous Materials Disclosure Document (HMDD), the Parcel Diary, the Parcel Occupancy Data Sheet, the Parcel Summary Page, and the Excess Property Inventory Valuation (VTA) are not a part of the appraisal per se. As such, they must go forward with the appraisal for review and also with the copy that goes to Acquisition. The internal documents are then retained in the District's file. All internal documents shall be removed prior to providing a copy of the appraisal to the Grantor.

7.01.20.00 Memo of Transmittal

A memo of transmittal is not required for routine submission of Appraisal Reports. A memo is required on resubmission of unapproved reports or the submission of corrected or revised appraisal pages. In these cases, the memo will briefly summarize the reason for resubmission and corrections made.

7.01.21.00 Tables

Table I - Cumulative Review Process For $10,000 and Over

Table II - Review Appraiser Process $10,001 to $1,500,000

Table III - Review Appraiser Task/Duties

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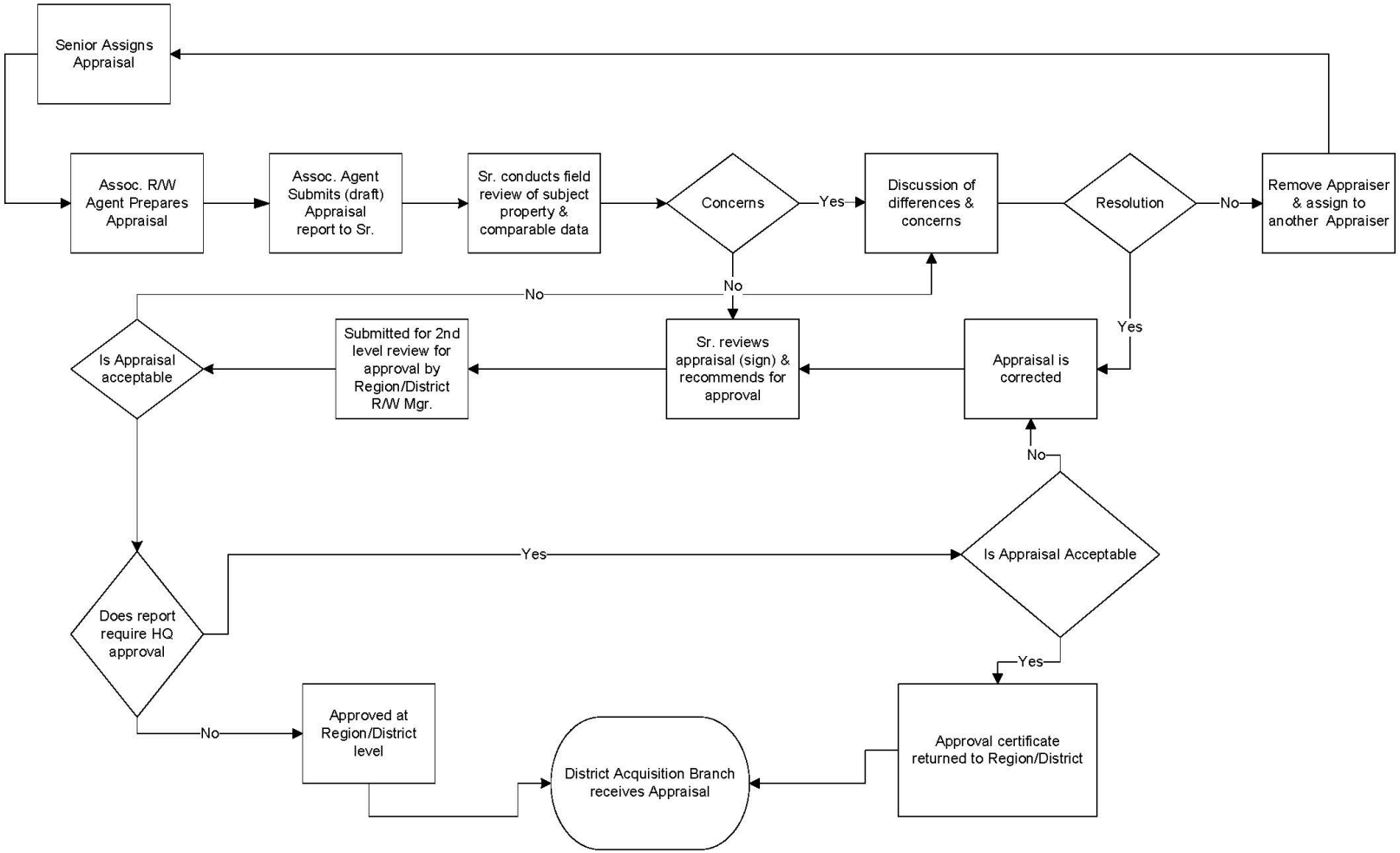
Table I
CUMULATIVE REVIEW PROCESS
FOR $10,000 AND OVER



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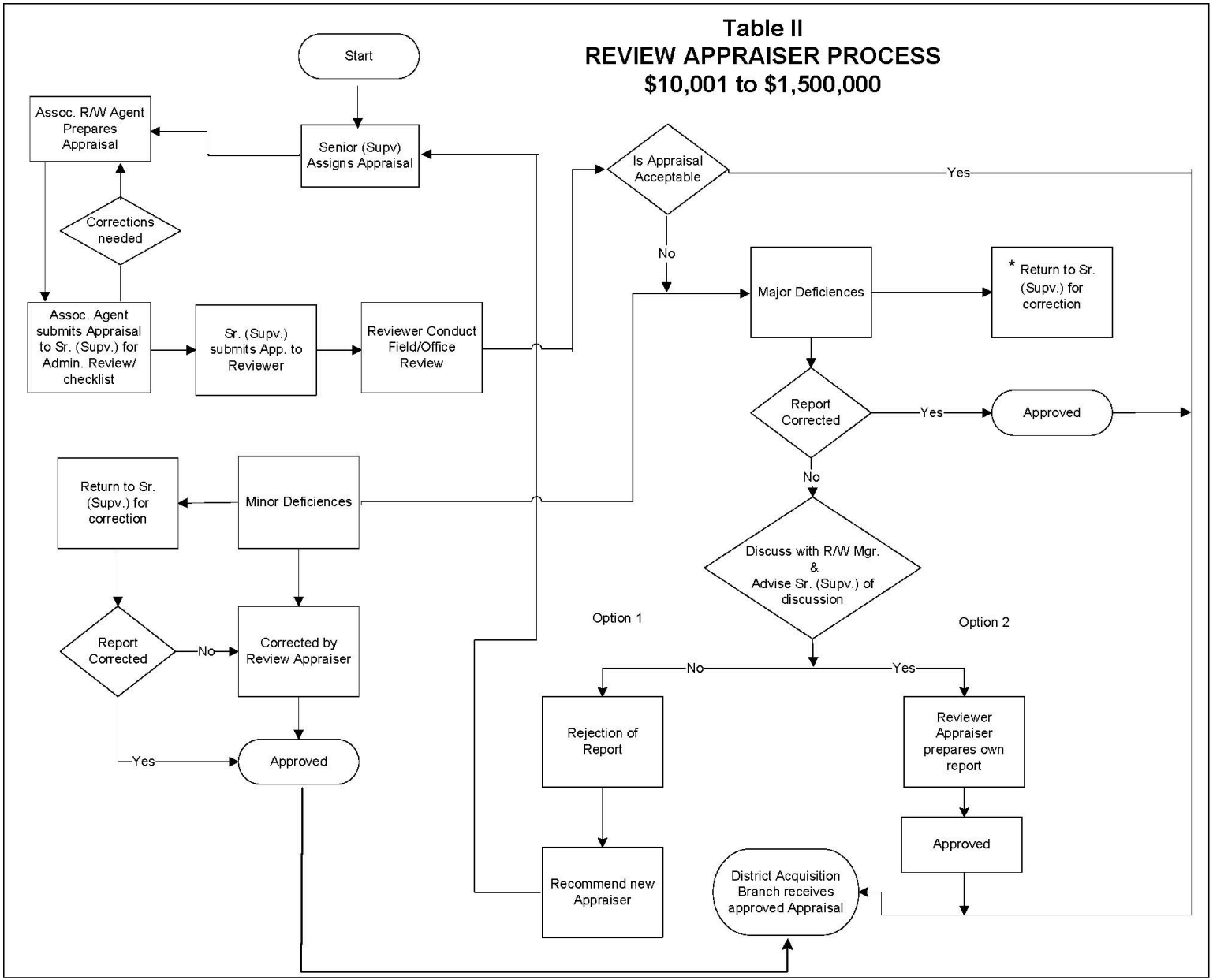

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Table III
Review Appraiser Task/Duties

1. To become familiar with all projects involving the acquisition and disposal of parcels including field reviews, if necessary.
2. Meets with supervising senior to review the maps of projects involving R/W acquisitions/disposals and to discuss potential appraisal problems.
3. In conjunction with supervising senior, determines which parcels require dual reports and when dual reports may be waived.
4. Although supervising senior will author all requests for waiver of dual reports, appraisal reviewer recommends approval of such waivers to the Region/District Right of Way Manager.
5. May attend STM meetings, Public Hearings, etc., for projects involving R/W acquisition.
6. Consults with the supervising senior to discuss appraisal issues that arise during the preparation of the appraisals.
7. Reads all single and dual reports and field reviews subjects and comparable sales in accordance with existing policy in the R/W Manual.
8. Assures that Appraisal Branch Senior has completed the standard "Appraisal Checklist," which verifies that appraisal meets requirements of R/W Manual.
9. When reviewing a report where the dual was "waived," has the right to request preparation of the dual should the single report display that the appraisal assignment did indeed not meet the criteria for waiver of a dual.
10. Consults with the supervising senior and the appraiser to discuss appropriate corrective action, if any, on concerns that arose during the appraisal review.
11. May make minor corrective changes to the report, which do not materially affect the value conclusion without assuming responsibility for the appraisal.
12. Approves all single project appraisals up to $1,500,000.
13. For dual reports, reviews both reports regardless of value. Recommends both and sends to HQ liaison for review/approval, one for acquisition, and the other for documentation.
14. Reviews and recommends to HQ for approval all other nondelegated project appraisals, e.g., goodwill, railroad, etc.
15. Prepares Review Appraiser Certificate for all parcels approved.
16. Prepares Review Appraiser Report when appraisal is modified in some manner by review appraiser.

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Table III
Review Appraiser Task/Duties (Continued)

17. In exceptional cases, can elect to revise appraisals under the review appraiser concept. When does so, must author revised pages, appraiser certificate, etc., as required and assumes role of the appraiser.
18. Is responsible for assuring consistency of appraised values on any given project. When inconsistencies are observed, meets with the supervising senior to discuss appropriate corrective action.
19. Is responsible for assuring that individual appraisal branches are being consistent in the application of Department's appraisal policies. Consults with supervising senior when discrepancies are observed to discuss appropriate corrective action.
20. In conjunction with supervising senior, provides appraisal training to appraisal staff.

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7.02.00.00 - APPRAISAL REPORTS

7.02.01.00 Federal Project Numbers

Federal project numbers are required for projects involving Federal participation in Right of Way costs. The Federal project number will appear on the following:

A. All appraisal correspondence (including a letter of transmittal, if used)

B. The Front Cover (7-EX-1)

C. Appraisal Title Page (7-EX-21)

D. Parcel Summary Page, if used (RW 7-4)

E. Appraisal Summary (RW 7-9)

F. Appraisal Maps

7.02.02.00 Report Identification Numbers

Appraisal Reports will use Phase 9 Expenditure Authorizations and be numbered in sequence. Each expenditure authorization will have its own series of report numbers. If an expenditure authorization is subdivided, each new expenditure authorization number will warrant a separate series of numbers. The Title Page will also show the Control Expenditure Authorization.

Project post mile and project limit descriptions of each report must coincide exactly with Phase 1 Expenditure Authorization limits. Right of Way Planning and Management can provide the most current description.

7.02.03.00 Organization, Content, and Sequence

The material in most reports shall be arranged in the following order as applicable. All pages in the report shall be numbered consecutively and completed as described.

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A. Front Cover

HQ R/W copy of the report will be bound and the information shown on Exhibit 7-EX-1 will be typed in the upper right-hand corner of the cover sheet.

For a revised parcel, place the word "Revised" and the old report number in parentheses following the parcel number. All parcels appraised together as a larger parcel will be listed in parentheses under the lowest parcel number of the group, regardless of number sequence.

B. Title Page

The Title Page will be organized substantially as shown on Exhibit 7-EX-21 if the cumulative review process is used or Exhibit 7-EX-21B if the review appraiser concept is used.

One signed original or a scanned copy of the Title Page will be submitted to HQ R/W so one hard copy with the Headquarters approval signature can be returned to the Region/District as a receipt. The hard copy of the approved Title Page will be bound into the report, inside the front cover. This procedure provides the Region/District with a positive verification of HQ R/W having received their copy of the appraisal and any revisions.

Each person signing this page certifies the appraisal has had appropriate review for accuracy and the report is approved or recommended for approval. Signatures shall be in accordance with current delegations.

The person verifying the calculations certifies that all mathematical calculations have been checked, verifies the accuracy of the maps in comparison with parcel appraisals, and certifies that no typographical errors or content inconsistencies exist in the report.

C. Parcel Summary Page (if used)

This will be prepared in accordance with RW 7-4.

D. Senior Field Review Certificate

This will be organized substantially as shown on 7-EX-24. The Senior Agent supervising preparation of the appraisal will sign the Certificate

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which summarizes the Senior's field review and certification statements regarding all parcels in the report. The 7-EX-24A will be used when the Senior has not performed a field review. The 7-EX-24D will be used by the Review Appraiser.

E. Certificate of Appraiser

This is executed by the Appraiser and by any other Agent who participated in preparing the appraisal. A new Certificate is required whenever a parcel appraisal is revised resulting in a change in value. See RW 7-6.

F. Excess Land Review Certificate

The Excess Land Review Certificate is an internal document. This will not be included in the appraisal report, but transmitted separately for review with reports proposing purchase of excess. A new Certificate will be submitted with any change in excess parcels. See RW 7-7.

The Certificate will be executed by the Region/District Excess Land Manager. The purpose of the excess land review is to minimize or eliminate fragmentary excess land parcels.

G. Introduction

The Introduction shall contain information of a general nature applying to the Appraisal Report as a whole. It may also contain parcel description or valuation information pertaining to several parcels, if more than one parcel is included in a supplement (e.g., more than one parcel in a single ownership or Waiver Valuation).

Data which apply only to individual parcels should be shown on the pages for those parcels and not in the Introduction.

H. Outdoor Advertising Structures

All outdoor advertising structures owned by entities other than grantor or occupants of the subject property will be listed on the Summary of Outdoor Advertising Structures prepared in accordance with the format and instructions shown on RW 7-8.

The cost of outdoor advertising structures appraised will be carried forward to the Parcel Summary Page (RW 7-4), if used, and to the Appraisal Summary (RW 7-9).

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I. List of Access Openings

A list will be included in each report noting parcels with proposed private access openings within the access - restriction line. The list will show the openings by parcel number, station location, width, and type (permanent, temporary, or locked gate). The list and pertinent maps will be reviewed and confirmed with Region/District Project Development immediately prior to submission of the report for approval.

J. Photographs

Each Parcel Appraisal and each Comparable shall include photographs. They are to show all major improvements. Approximate location and direction of the view and the right of way line should be indicated where possible. Each photograph will be clearly identified with the parcel number, date, and photographer's initials or other suitable identification.

K. Appraisal Summary

Separate Appraisal Summary pages will be included covering all parcels (and subparcels when necessary) included in the report. See RW 7-9. An Appraisal Summary may be used to recapitulate the values for all subparcels in the parcel appraisal and for all parcels appraised together as a larger parcel.

L. Parcel Remarks

The Parcel Remarks shall contain information of a specific nature, applying to the individual parcel only. Included in this narrative section are site descriptions, improvement descriptions, Highest and Best Use, valuation analysis, damages/benefits discussions, and reconciliation.

To aid the acquisition agent with the preparation of either the Appraisal Summary Statement (8-EX-15A or B) or the Valuation Summary Statement (8-EX-15C), in the Department's compliance with Section 7267.2 of the Government Code, the appraiser shall provide a paragraph entitled, "Summary of the Basis for Just Compensation." The paragraph shall be reproduced, verbatim, and inserted by the acquisition agent into either the Appraisal Summary Statement or the Valuation Summary Statement. This paragraph shall provide a concise summary of the reconciliation of value, (i.e., method most heavily relied upon, and reason); the reason for damages, or the lack thereof; the

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reason that damages can or cannot be cured; and a discussion of benefits, or a lack thereof. Numerical calculations should not be included in the narrative discussion.

M. Sales Data

The subject's sales history will be reported on the form and according to the instructions shown on RW 7-10. Each change of vesting of the subject during the last five years will be explained on a separate Sales Data form. Starting with the most recent sale that occurred during this period, all sales shall be verified by the appraiser with both the grantor and the grantee if at all possible. If not verified with both parties, efforts to do so must be described.

A complete verification shall be made, not only as to price paid and terms of the sale and what the sale included, but why the seller sold the property, why the buyer purchased the property, was the buyer aware of the State's proposed construction and acquisition, if the buyer had knowledge of the proposed construction and the effect it had on the purchase price, and how the purchase price was determined.

Any difference in appraised value and sales price must be explained.

This page is not required for sales of portions of the subject ownership outside the right of way.

N. Summary of Comparable Data

All comparable data used in a report should be separately summarized in tabular form similar to Exhibit 7-EX-2.

A specific comparable or group of comparables may be related to one or more specific subject properties.

O. Comparable Data

All comparable data will be carefully investigated with as many parties involved as warranted. All reasonable attempts should be made to confirm the transaction with both the seller and the buyer. In the rare instance when the sale cannot be confirmed with one or both of the principals to the transaction, the appraiser will provide the full explanation on the Comparable Data form. In these cases, confirmation with secondary sources such as brokers, closing agents, and lenders with direct knowledge of the transaction should be

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included. Information solely obtained from the Assessor, Recorder, or private data services such as Costar, FARES, and Multiple Listing Service is not adequate for verification and confirmation purposes. Comparable improvements should be inspected when possible and/or appropriate, including interiors, and square feet obtained. If not possible, the Comparable Data form will so state.

Recent listings of the subject parcel should be investigated, considered, and discussed in the appraisal. If the listing is considered to be a reliable indicator of value, it may be included in the comparable data. In this case, it will also be referenced as a subject parcel.

All comparable data will be described on Comparable Data forms in accordance with RW 7-11 or RW 7-11A.

Other State appraisals or settlements will not be used for comparable data purposes.

An appraiser using the data verified previously by another State appraiser must investigate and analyze the data as appropriate, to enable reliance on the information for valuation purposes. This does not require reverifying the data with the principals unless the circumstances warrant. It does require viewing the data in the field and reviewing all pertinent information necessary to become familiar with the data in all the aspects necessary for reliable comparison purposes. It is imperative that each appraiser analyze any zones of land value or contributory value of improvements indicated on the Comparable Data form. Independent judgment will be documented by appropriate comments on the sales sheet to the effect that the figures have been reviewed and found reasonable or changes made to reflect the second appraiser's judgment. Each appraiser is free to change items on sales sheets previously used if he or she disagrees with the judgment of the original appraiser.

The Comparable Data form will show the date and name of the agent who originally verified the data. If the comparable data is used by other appraisers in subsequent appraisals, the date and name of the using appraiser will be shown immediately below that of the verifying appraiser.

Not all comparable data discovered need be included in the report. Include only that data considered most reliable and indicative of market value and which has been referenced in support of the parcel

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appraisal. Additional data should be retained in the Region/District's files.

The Comparable Data form shall be numbered, indexed, and filed for easy and rapid retrieval.
The inclusion of an Assessor's Plat of the comparable is strongly encouraged for clarity and understanding.

See Section 7.05.02.00 for further information on comparable data.

P. Appraisal Maps

The report will contain all the maps necessary for proper analysis, identification, and documentation. Each report will contain an Index Map (if available from Right of Way Engineering), an Appraisal Map, and a Comparable Data Map.

The report will include any additional maps required for proper understanding and documentation of specific parcel valuations, such as contour maps, topographic maps, or design plans. Significant topography should be included for partial acquisitions. Where a total ownership is very large, it can be shown on a reduced sketch, plat, or map.

Exhibit maps showing pertinent design detail are required for parcels with damages, benefits, and/or construction contract work of other than routine curative nature, utility relocations, or road approaches. Such exhibit maps may be on a reduced scale and need show only the affected parcels. The maps should show the main lanes, frontage roads, and the nearest interchanges, drainage structures, construction contract work locations, and information regarding cuts and fills (if significant) for the affected parcels. At the Region/District's discretion, this information may be on separate maps, or plotted on the Appraisal Maps. If a large number of parcel appraisals are involved, the possibility of consolidating the Appraisal Map and the topographic design map should be investigated.

The Appraisal Branch is responsible for the completeness of the maps, and for requesting delineation of pertinent data and topography not previously included.

It is also the Appraisal Branch's responsibility to ensure that maps, including coloring, are correct. If corrections are required, the maps will be returned to R/W Engineering for correction.

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Q. Comparable Data Map

This map will be produced from information supplied by the appraiser. The map must show the proper locations of the comparable data, the subject properties, and other pertinent information necessary for the understanding of the comparable data.

The map will be prepared by the appraiser or Right of Way Engineering. It will be of sufficient size or scale to show the following:

1. Size, shape, and location of subject property(ies) and comparable data as related to each other.

2. Zone(s) of the various properties (when pertinent).

3. Comparable sales colored orange, comparable listings colored green, and subject property(ies) colored red.

4. Utility service mains (when pertinent).

Additional information may be included when necessary or when considered by the appraiser to contribute to the understanding of the comparable data. A North arrow will be included on all maps.

7.02.04.00 Parcel Numbering

The parcel numbering shown on the Appraisal Maps and certified for right of way acquisition will be utilized in the report. If parcels merge prior to final Appraisal Maps being received by the Appraisal Branch, the parcel numbering will be revised. If a merger occurs after final Appraisal Maps are received, at the Region/District's option, the assigned parcel numbering will continue and the merged parcels will be appraised together as a larger parcel. Merged parcels will be colored one color; both separate and combined areas will be shown, and the correct vesting will be shown on the maps. The lowest parcel number will be used for reference and the other number(s) will be shown in parentheses. If the Region/District prefers, it can revise the maps and numbering and combine the parcels into one.

Occasionally, an ownership lies outside the right of way but has appurtenant rights affected by the project requirements (access rights, easements, etc.). The effect of the project requirements may not become known until the appraisal stage. Such rights may be cleared by quitclaim deed in the encumbered parcel transaction. Frequently, however, the right of way

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acquisition of the appurtenant rights may materially affect the dominant remainder. If a separate appraisal of the affected ownership is required, the Appraisal Branch will request a parcel number be assigned and the ownership delineated. Separate appraisals may be required when (1) improvements are affected, (2) damages occur to the remainder, (3) construction contract work is required, or (4) a separate escrow is necessary.

Subparcel numbers will be used to designate separate requirements. Occasionally, subsidiary interests, such as mining claims or oil rights, will require separate appraisals. These will be separately identified by subparcel letters by the Appraisal Branch and need not be delineated on Appraisal Maps unless required for clarity.

Parcel numbering for right of way purposes may not necessarily coincide with condemnation parcels nor with title company parcels.

It is the Region/District Appraisal Branch's responsibility to ensure that vestings, parcel numbering, and appurtenant rights are correct.

7.02.05.00 Number of Parcels Per Report

Generally, only one parcel will be contained in each report as the report will be provided to the Grantor in compliance with Section 102 of Streets and Highways Code. However, multiple parcels within a single ownership may be contained in a report. Waiver Valuations may also contain more than one parcel in a supplement.

7.02.06.00 Parcels Straddling an Expenditure Authorization

If requirements from a single ownership straddle an expenditure authorization, it will be acceptable to charge the total property cost to a single project expenditure authorization. Minor overlaps warrant investigation of possible project limit adjustments.

7.02.07.00 Parcel Groups - Mutual Owners

A project may contain multiple parcels with the same ownership, but the parcels not comprising an integrated operation. In these cases, the remarks for each parcel should contain clear references to other parcels required

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from the same owner. All requirements from a single owner on a project should be included in the same report, if possible.

7.02.08.00 Parcel Groups - Integrated Operation

A. General

Parcels that compose an integrated operation will be included in one appraisal with sufficient discussion to illustrate the relationship of the parcels. If the inclusion of all of the parcels in one appraisal is impractical, the Region/District may approve the variance.

B. Procedure

When appraising parcels which are part of an integrated operation, the following instructions apply:

1. All parcels in the group will be included together in the report regardless of numbering sequence. If revision of an unclosed transaction is necessary, either revised appraisal pages may be used or the entire group included in a revised appraisal.

2. A recapitulation Appraisal Summary (RW 7-9) will summarize the values for the total group. The page will reference in the upper margin all parcels included in the group. It will use the lowest parcel number as file reference.

3. Following the recapitulation will be the pro rata segregations of value for each parcel and subparcel, including excess portions. Subparcels will follow each parcel. Below the words "Parcel No." on the Appraisal Summary, insert the words "See also Parcel _____" and the lowest parcel number in the group.

4. Following the Appraisal Summary will be the basic appraisal data for the group.

5. On the Appraisal Report front cover and Parcel Summary Page, list the parcels appraised together as a larger parcel in parentheses showing the lowest parcel number regardless of number sequence. On the Parcel Summary Page, the total value of each parcel in the group will be shown.

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6. On the Appraisal Maps, the group will be colored as a whole with the same color. A plot plan of the group will also be shown if the total group cannot be seen on one map.

7.02.09.00 Dual Report Process

When a Dual Report Process is utilized, the second report may be prepared by either a second staff appraiser or by a contract appraiser under the supervision of another Senior, or both reports may be done by contract appraisers. Contract appraisals shall comply with all pertinent appraisal instructions. This includes the front cover through the Appraisal Summary (RW 7-9) which will be prepared by the reviewing Senior from information in the report. The two reviewing Seniors shall act as a liaison between the appraisers to ascertain that both are following the same legal premises and have benefit of all the sales and other supporting data. (See 7.01.07.00 and 7.01.16.00, C.)

Senior Review Certificates will be prepared for each appraisal.

The excess property inventory valuation and replacement housing estimates will be prepared by Staff (following HQ R/W approval) and not by independent appraisers.

The report to be used for acquisition will be approved. The other report will be reviewed for documentation. The judicious use of joint factual data is encouraged; however, independent analyses, judgments, valuations, and conclusions are required. A joint factual data section may include any data of a factual nature mutually accepted as such by the appraisers, and other data such as acquisition authorization documents, list of access openings, photos, maps, and cost-new estimates.

7.02.09.01 Corrections and Revisions

Where two reports were prepared and revision or correction of the approved appraisal becomes necessary, the following guidelines are to be observed:

A. In general, only the approved appraisal need be revised; except,

B. In these situations where there is a major change which substantially affects the fair market value estimate, it is necessary to revise both reports.

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7.02.09.02 Review Process

Region/District cumulative reviewers above the Senior level are responsible for resolving significant differences between reports due to factual matters only. Determining the reasons for major divergences is important. It may be necessary to inquire into the support for significant judgmental differences. However, any attempt to simply narrow the spread of values resulting from differences is inappropriate and contrary to the purpose for securing dual reports. HQ R/W will consider these differences in its review process.

The Region/District Appraisal Supervisor's signature recommending approval of both reports is not considered a recommendation of two separate fair market values. It is just indicating that both reports are based on sound appraisal theory and contain appropriate documentation and analysis to support the appraisers' conclusions. HQ R/W is responsible for reviewing both reports and approving the report which best supports its conclusions.

7.02.10.00 Replacement Housing Valuation Reports

The Appraisal Branch may prepare these reports for use by the Relocation Assistance function. Instructions for preparing them are contained in Relocation Assistance, Chapter 10.

One individual cannot prepare both the Acquisition Appraisal and the Replacement Housing Valuation on the same dwelling unit. One Senior Right of Way Agent may review and recommend for approval both reports on the same dwelling unit as long as that Senior does not also have responsibility for the Region/District's Relocation function.

7.02.11.00 Calculations

All monetary appraisal calculations shall normally be carried accurately to the nearest cent without rounding of figures or adjustment of unit values to yield rounded figures. The total appraised value is to be rounded as follows:

A. From $500 to $2,500, to the nearest $50.

B. From $2,501 to $100,000, to the nearest $100.

C. Parcels exceeding $100,000, to the nearest $1,000.

When several approaches to value are used, the final value found after reconciliation will normally be a rounded figure. Minor rounding adjustments

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are permitted on condemnation appraisals for clarity of testimony presentation.

Generally, land areas should be shown to at least two decimal places where acres or front feet are used, and to the closest square foot where areas are so expressed.
Building areas should be calculated to the closest square foot.

All calculations shall be carefully checked prior to first level recommendation for approval.

7.02.12.00 Noncomplex Valuations of $25,000 or Less

Noncomplex parcel valuations of $25,000 or less may be appraised utilizing either the memorandum appraisal format (Exhibit 7-EX-25), or a very succinct narrative appraisal using RW 7-9. The $25,000 amount includes severance damages, but excludes minor construction contract work such as: replacement of existing facilities such as road approaches, fencing, irrigation pipelines, etc. A Noncomplex Valuation is still an appraisal and must meet all the requirements of 49 CFR 24.103(a) and applicable California State Statutes.

The determination as to which parcel valuations are noncomplex rests with the Region/District. Among the criteria to be considered in making the determination are:

A. There is no serious question as to highest and best use.

B. Adequate market data is available.

C. Substantial damages and benefits are not involved.

D. There is no substantial decrease in market value due to the presence of hazardous material/waste.

Exhibit 7-EX-25 shows the minimum content requirements for the narrative portion of the appraisal. The amount of analysis and degree of documentation should be in proportion to the appraisal problem and valuation involved. However, substance and brevity should be the norm. If RW 7-9 is used, then the narrative should be the same succinct format as the Memorandum Appraisal. A narrative paragraph, as described in Section 7.02.03.00, L., shall be included in the report.

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All appraisals must include at least the following:

- Certificate of Sufficiency and HMDD
- Senior Field Review Certificate
- Certificate of Appraiser
- Photograph(s) of subject
- Summary of the Basis for Just Compensation
- Index map
- Appraisal map
- Comparable Data forms with photographs
- Comparable Data Map

Where applicable, the appraisal must also include: Summary of Outdoor Advertising Structures, List of Access Openings, and Sales Data form.

7.02.13.00 Waiver Valuation In Lieu of an Appraisal

An appraisal is not required if the Region/District determines one is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at $10,000 or less based on a review of available data. As stated in 49 CFR 24.102(c)(2), an appraisal is not required for parcels estimated at $10,000 or less.

The $10,000 amount should include severance damages, if any, but exclude any insignificant construction contract work. Authority to make this determination rests with the Right of Way Manager, who may delegate it.

The "Waiver Valuation" does not qualify as an appraisal under 49 CFR 24.103(a) and is to be used merely for documentation for support of the amount of just compensation to be paid to the property owner. A Waiver Valuation cannot be used in eminent domain proceedings.

The determination as to which parcel is uncomplicated rests with the Region/District. Among the criteria to be considered in making the determination are:

A. There is no serious question as to highest and best use.

B. Adequate market data is available.

C. Substantial damages and benefits are not involved.

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D. There is no substantial decrease in market value due to the presence of hazardous material/waste.

The Waiver Valuation may be based on a review of available relevant data such as: comparable sales and listings already in the Region/District files, comparable sales and listings from multiple-listing services, and commercial databases, opinions of Assessor's Office appraisers or real estate brokers, and other data sources. Comparable Data forms and Comparable Data Maps are not necessary.

The documentation to support the Waiver Valuation is contained in Manual Sections 7.02.13.01 and 7.02.13.02. The required content will differ depending on whether the value is $2,500 or less, or $2,501 to $10,000.

Requirements regarding the Certificate of Sufficiency and HMDD for environmental clearance, project identification, certification date, confidentiality statement, and certification of need for the right of way and access control by Project Development still apply. A narrative paragraph, as described in Section 7.02.03.00, L., shall be included in the report.

Property owners of these parcels shall be sent the "Notice of Decision to Inspect" letter (7-EX-17A) with the appropriate Title VI information and booklet "Your Property, Your Transportation Project." Also, parcel diaries should be initiated and included in the estimate and the file.

A Waiver Valuation must be approved in accordance with present approval delegations. They may be prepared and recommended for approval by an Agent of less than Associate grade. It is strongly recommended that Agent preparing the Waiver Valuation have a good understanding of appraisal valuation concepts.

Members or candidates of professional appraisal organizations who are assigned to act in the dual capacity of Appraiser and Acquisition Agent should check their organization's Code of Ethics for specific prohibitions and disclosure requirements.

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7.02.13.01 Waiver Valuation ($2,500 or Less) - Contents and Requirements

In addition to the documentation mentioned in Section 7.02.13.00, a Waiver Valuation valued at $2,500 or less can be documented with a diary entry. The diary entry should state the basis of the value conclusion, i.e., land value, improvement value, and severance/cost to cure damages. In addition, a photograph(s) of the subject must be included.

7.02.13.02 Waiver Valuation ($2,501 to $10,000) - Contents and Requirements

In addition to the documentation mentioned in Section 7.02.13.00, a Waiver Valuation with a value estimate of $2,501 to $10,000 must include the following:

- Waiver Valuation Title Page, Exhibit 7-EX-21A
- Senior Review Certificate Form - Waiver Valuation, Exhibit 7-EX-24B
- Certificate of Waiver Valuation, RW 7-6A
- Waiver Valuation, RW 7-15
- Photograph(s) of subject
- Index map (if available)
- Appraisal map

The Certification of Waiver Valuation may have to be modified as to the statements concerning comparable sales. It should also contain a statement as follows:

> "That I understand I may be assigned as the Acquisition Agent for one or more parcels contained in this report, but this has not affected my professional judgment nor influenced my opinion of value."

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7.02.14.00 Nominal Values ($2,500 or Less)

Regardless of the type of valuation report prepared, i.e., narrative appraisal report, memorandum appraisal report, or Waiver Valuation, if the amount of all property rights or interests is $2,500 or less, the value of the required property is considered to be nominal. Calculations supporting this conclusion shall be shown in the valuation report to illustrate the basis for the $2,500 or less conclusion. For example, the report will show 0.025 acres at $5,000/ac = $125.

The word "Nominal," as discussed above, shall be shown in the $2,500 or less valuation report as the following:

A. If the value of the requirement is so minimal as to not be calculable or to not have an effect on the market value of the parcel, show "Nominal" in the amount column.

B. If the calculated amount is $500 or less, show "$500 (Nominal)" in the amount column.

C. If the calculated amount is between $501 and $2,500, show the actual amount rounded to the nearest $50 with "(Nominal)" in the amount column.

Under options A, B, or C, the word "Nominal" or the valuation amounts with Nominal in parenthesis shall be carried forward to the RW 7-9 value column, the Parcel Summary Page, if used, the Senior Field Review Certificate, and the Certificate of Appraiser.

The Senior Field Review Certificate and Appraisal Review Report shall be prepared substantially as shown on the 7-EX-24. Minor modifications may be made to suit the approval requirements.

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7.03.00.00 - APPRAISAL PREPARATION

7.03.01.00 The Appraisal Summary - Purpose

This page presents a summation of parcel data, value elements, and total appraised valuation.

7.03.02.00 Appraisal Summary Format

The Appraisal Summary (Form RW 7-9) will be completed in accordance with the directions following the form. Each of the described headings will be completed as appropriate.

Under the heading "Land," show the valuation of the land or other property rights to be acquired. Each class of land required will be shown by type, area, unit value, and total value. Mining claims or other land rights separately valued will be separately described. If access rights are the only rights required, the remark "Access Rights Only" and a nominal value will be shown. Loss in parcel value will be reflected under "Damages." If excess property is to be acquired, including parcels with excess proposed for exchange or as replacement sites, a segregation between Right of Way and Excess will be shown. If subparcels are included, clearly indicate the separate values, including those of excess.

All improvements proposed to be acquired, including those valued with land, will be listed under the "Improvement" heading. If improvements are on excess to be acquired, there will be a segregation of value between right of way and excess.

Improvements proposed for relocation in lieu of purchase and fixtures, machinery, equipment, and other "items pertaining to the realty" proposed for purchase will be shown under separate subheadings. Improvements may be listed either on the Appraisal Summary page, a Summary of Improvements page, or in the Cost Approach.

7.03.03.00 Alternate Appraisals

Alternate appraisals are secondary acquisition approaches and will be shown on supplemental Appraisal Summary pages. When alternate appraisals are included, the words "Primary" or "Alternate" will be shown in the headings of the Appraisal Summary pages. See the following sections on appraisals of Uneconomic Remnants and Excess Acquisitions regarding which approach

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should be the primary and which approach should be the alternate. The amount carried forward to the Parcel Summary Page, if used, will be the appraisal, either alternate or primary, that represents the higher cost to the State. Both the Primary and Alternate valuations will be provided to the Grantor in compliance with Section 102 of the Streets and Highways Code, as they are both part of the approved appraisal.

7.03.04.00 Appraisals of Excess Property for Acquisition

The appraisal of excess property will be done according to one of the following subsections:

7.03.04.01 Uneconomic in the Market

Staff appraisals will normally propose only acquisition of the right of way required plus net damages to the remaining property, if any. A small uneconomic remnant should be reviewed for possibility of including it in the right of way. However, with full substantiation, the appraisal may propose purchase of uneconomic remnants and/or improvements in the following instances:

A. When net severance damages, construction contract work, and utility relocations are substantial in relation to the value of the remainder in the before condition.

B. When the remainder is landlocked or so reduced in size or irregularly shaped as to be legally or economically incapable of independent development in the after condition.

Whenever the purchase of excess is proposed, purchase of the excess is required as the primary appraisal and will be approved for acquisition in accordance with current appraisal approval delegations. Justification for the acquisition of the excess from an economic standpoint in the market must be included in the report. The partial acquisition appraisal including estimated net severance damages must be included as the alternate appraisal. On Federally funded projects, the Department's policy is to seek Federal reimbursement for the value of the partial acquisition, plus the amount of net damages accruing to the remainder.

NOTE: Whenever feasible, a valuation of the minor remnant left in the after condition should be included in the acquisition appraisal if: (1) the uneconomic remnant "is landlocked or so reduced in size or irregularly shaped as to be legally or economically incapable of independent

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development;" and (2) the uneconomic remnant is likely to have a value of $5,000 or less as an independent parcel or as plottage to an adjoining property. The valuation should be prepared in the appropriate excess land appraisal format and processed as a nominal value parcel (see Section 7.14.00.00). The valuation amount is the VTA. See Section 7.03.07.00.

If an exchange appears likely, the acquisition may be accelerated by completing the excess land appraisal concurrently with the acquisition appraisal, regardless of dollar amount.

7.03.04.02 Uneconomic to the Owner, or for the Convenience of the Owner

FHWA (49 CFR 24.2) defines "uneconomic remnant" as follows: "a parcel of real property in which the owner is left with an interest after a partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner." NOTE: An uneconomic remnant may have substantial market value and still have little or no value or utility to the owner.

The Uniform Act [49 CFR 102(k)] states:

> "If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project."

Statutes on the subject of "uneconomic remnants" are as follows:

A. State Government Code Section 7267.7(a) states:

> "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, and may acquire, the entire property if the owner so desires."

B. Code of Civil Procedure Section 1240.150 states:

> "Whenever a part of a larger parcel of property is to be acquired by a public entity for public use and the remainder, or a portion of the remainder, will be left in such size, shape, or condition as to be of little value to its owner or to give rise to a claim for severance or other damages, the public entity may acquire the remainder, or

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portion of the remainder, by any means (including eminent domain) expressly consented to by the owner."

Law Revision Commission Comment: "Inasmuch as exercise of the authority conferred by this section depends upon the consent and concurrence of the property owner, the language of the section is broadly drawn to authorize acquisition whenever the remainder would have little value to its owner (rather than little market value or value to another owner)."

At the appraisal stage, it may be difficult to determine whether or not a remainder is an uneconomic remnant to the owner. The determination must be made on a case-by-case basis. The Region/District should consult with the Division Appraisal Branch when questions arise. Ultimately, the appraiser needs to explain in the appraisal that the proposed changes to the remainder will affect the utility of the parcel in such a way as to make the use no longer viable to the owner, and make a determination that the owner's request for acquisition is not merely for the owner's convenience. If the remainder is not identified initially by the appraiser as an "uneconomic remnant to the owner," the Acquisition Branch may later request an alternate appraisal that includes the uneconomic remnant and document such request by the owner in the Parcel Diary.

Identified uneconomic remnants to the owner will be included for acquisition as an excess parcel in an alternate appraisal. A partial acquisition appraisal is required as the primary appraisal, which will be reviewed and approved for acquisition. The alternate will be approved for valuation purposes only. The specific justification and authorization for the acquisition of the excess in the alternate will be the responsibility of the Region/District Right of Way Manager (Region/District R/W Mgr.).

The partial acquisition appraisal including damages sets the limit for Federal participation. The residual value of the excess after damages is not eligible for Federal participation.

The exception to the requirement of preparing both a primary and alternate appraisal, as described above, is in situations where the property owner, at the time of the appraisal, requests that the State acquire the remnant that has been identified by the appraiser to be an "uneconomic remnant to the owner." In these cases, the Region/District R/W Mgr., may authorize the Appraisal Branch, in writing, to prepare a single, full take appraisal that proposes acquisition of the remnant as an excess parcel. A copy of the memorandum authorizing the single appraisal will be included in the appraisal report. The appraiser must also document such requests in the

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Parcel Diary. This exception only applies if there is no Federal participation in funding the acquisition since the appraisal would not contain a before and after damage analysis.

Additionally, property owners may request the purchase of a remainder merely for their convenience under circumstances which do not fit within the reasons as described above. Again, the partial acquisition appraisal including damages sets the limit for Federal participation. An alternate appraisal proposing the purchase of excess will be prepared when authorized in writing by the Region/District R/W Mgr. A copy of this memorandum will be included in the report with appropriate reference.

When the property owner requests the purchase of a remainder for convenience, a partial acquisition appraisal is required as the primary appraisal, which will be reviewed and approved for acquisition. The alternate will be approved for valuation purposes only, in accordance with current delegations. The specific justification and authorization for the acquisition of the excess in the alternate will be the responsibility of the Region/District R/W Mgr., considering among other things, the availability of State funds. The alternate excess acquisition appraisal may be made at the time of the initial appraisal or subsequently at the request of the Acquisition Branch.

If primary and alternate appraisals are made pursuant to this Section, the appraisal report must include a statement to that effect.

7.03.04.03 To Avoid Large Windfall Relocation Payments to Single Family Owner-Occupants

In some situations involving improved single family residential sites, a partial acquisition may result in a large windfall purchase price differential payment to the owner-occupant. This may occur when the taking includes the residence, and the remaining site has substantial value. The Appraiser must discuss these cases with the Relocation and Acquisition Branches to determine if a windfall situation exists, and thus a need to offer to acquire the remainder as excess (a total take) to avoid the windfall. If yes, a total take appraisal (including excess) will be made as the primary approach and a part take appraisal will be made as the alternate approach. A statement must be included that both appraisals are being made to avoid creating a windfall situation.

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The total take must first be offered to the owner-occupant. If the owner elects to retain the remainder, the relocation payment can be calculated on the basis of a full take, thus avoiding the windfall payment.

In these situations, both the primary and alternate appraisals will be reviewed for approval in accordance with current appraisal approval delegations. While the purchase of the excess under this circumstance is not eligible for Federal participation, reimbursement can be sought for the value of the requirement plus the appraised amount of the damages (as set by the partial acquisition appraisal) on Federally funded projects.

7.03.05.00 Legal Larger Parcel and Subparcels

Generally, each parcel, together with all subparcels, will be included on one Appraisal Summary (RW 7-9). It may be necessary to have separate Appraisal Summary pages for subparcels. In these cases, the total value for the parcel will be compiled on one Appraisal Summary page.

There will be cases when more than one ownership will be included in a legal larger parcel. It may be necessary to appraise the separate ownerships as one legal larger parcel for proper damage and special benefit valuation. A separate Appraisal Summary page will be included to summarize the combined analysis of these separate ownerships.

7.03.06.00 Allocation Between Excess and Right of Way

Land value will be segregated by area, unit value, and total value of each class of land in the right of way and excess area. Additional requirements on excess land (drainage easements, etc.) are to be valued and attributed to the right of way. The excess is valued after encumbrances of any additional requirements.

Improvement values, including Relocations in Lieu of Purchase and Improvements Pertaining to the Realty, will be allocated between the required right of way acquisition area and the proposed excess area depending on their location and subject to the following instructions:

A. Building improvements straddling the right of way line will be charged to Right of Way. Building improvements, including garages and auxiliary buildings, located entirely on excess will be charged to Excess.

B. Landscaping, miscellaneous yard improvements, minor sheds, patios, fencing, and improvements pertaining to the realty located on excess

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are to be charged to Right of Way if the property's major improvements are charged to Right of Way.

C. Damages to remainders not acquired as excess will be charged to Right of Way.

Separate totals will be shown for right of way and excess areas.

7.03.07.00 Excess Parcel Inventory Value (VTA)

Every proposed excess parcel will be appraised at inventory value (Value at Time of Acquisition, or VTA) for accounting purposes.

A. Inventory Value is the value of the excess, as a partial acquisition under condemnation rules, immediately after acquisition and considered as a separate parcel. The inventory value may not exceed the pro rata cost of the parcel except when this cost is less than $1. The minimum inventory value is $1.

B. The inventory value of each proposed excess parcel will be shown on an Excess Property Inventory Valuation Page (Form RW 7-13) in each parcel appraisal.

C. Inventory Value may be based on the appraiser's judgment without detailed supporting documentation. Excess valued in a partial acquisition appraisal need only be summarized on Form RW 7-13.

D. It is anticipated that Form RW 7-13 will not contain sufficient data to document a partial acquisition. If grantor desires to retain the excess and the excess has not been appraised on a partial acquisition alternate, the Acquisition Branch will request a revised appraisal.

E. Inventory value will be changed only if the staff Appraisal is revised. Inventory values will not be revised to agree with administrative settlements, independent appraisals, stipulations, or condemnation judgments.

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7.03.08.00 Rental Rates

Rental rates for all improved properties where the improvements are affected by the taking and rented unimproved properties shall be shown on the Appraisal Summary (RW 7-9).

The actual existing rental rate and the estimated economic rental rate will be shown on tenant-occupied properties. An estimate of the economic rental rate will be shown for all improved owner-occupied properties. The basis for the appraiser's estimate of economic rent on dwelling units to be acquired shall be documented in the appraisal usually by specific reference to comparable rental data (see Exhibit 7-EX-3). State ownership will not be considered in estimating the rate. All actual and estimated economic rental rate data that include utilities should be specific as to type of utility(ies) involved.

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7.04.00.00 - VALUE CONCEPTS AND CONSIDERATIONS

7.04.01.00 Value Basis

Required property rights will be appraised at current fair market value. The property will be appraised as though free and clear of all liens, bond assessments, and indebtedness. The property will be appraised at its highest and best use, considering its legal and economic utility and desirability. Highest and best use is considered to be the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and results in the highest value.

Any decrease or increase in the fair market value prior to the date of valuation of real property caused by the public improvement for which such 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, will be disregarded in determining the compensation for the property.

7.04.02.00 Total Value

The market value of required property is the total appraised value of the property rights proposed for purchase including net damages, if any, to the remainder. This amount is carried forward to the Appraisal Summary (RW 7-9) and the Parcel Summary Page (RW 7-4), if used.

7.04.03.00 Encumbered Fee

The condition of title of each subject parcel will be examined. The effects of land restrictions and existing rights of way and easements, recorded and unrecorded, will be considered in the land valuation. The effect of routine tract restrictions, domestic utility easements, and easements of nominal effect may be reflected in the overall valuation of the land. Fee areas encumbered with extensive easements and rights of way which materially affect the use or desirability of the land are to be valued separately, reflecting the effect of the encumbrances. Great care must be exercised in evaluating the effect of private land restrictions or easements in which the subject parcel is a servient tenement. In these cases, a separate appraisal of the dominant tenement and the effect on the servient tenement may be required.

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7.04.04.00 Mineral, Water, Oil and Gas Rights

Mining claims, water rights, mineral reservation, and oil and gas rights will be valued as separate rights in land, if separately owned, or if comparable data supports other than nominal valuation. The appraisal will include the land value of the right, the improvements appurtenant to the right, and the damage payments and construction contract work necessitated by the proposed highway construction. The value of the fee ownership should reflect the loss of the surface area and other rights required to exploit the resource.

Frequently, these rights may be exploited in the after condition without interfering with the use of the surface for highway purposes. In these cases, the appraisal may show the right at a nominal land value and appropriate payments for improvements, damages, and construction contract work.

When necessary to make separate appraisals of these interests, the Appraisal Branch will identify the separate rights by subparcel letter designation. These rights need not be delineated on Appraisal Maps unless required for clarity.

7.04.05.00 Improvement Bonds and Assessments

Property will normally be appraised free and clear of improvement bonds and assessments. This assumes that the appraised value reflects these improvements over properties not so improved and therefore not subject to bonds and assessments. Comparable data are to be adjusted to reflect these differences where the comparables are not subject to the same bonded indebtedness.

Exception to this policy will be allowed only if both the following conditions are met:

A. The assessment Region/District is relatively new, and few, if any, sales have occurred which reflect the effect of the bonded improvements on property values.

B. The appraisal indicates that the bonded improvement will be adequate for the area and will add value to the properties, at least, commensurate with its cost.

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7.04.06.00 Leasehold Interests "Bonus Values"

The valuation of parcels will be made as if free and clear of leasehold interests. However, leasehold information is required. The appraisal will contain the name of the lessee, lease rate, and general summary of the lease terms. The contract, estimated economic rents and any circumstances which may indicate a "bonus value" situation, including the statement that one does or may exist, will be discussed.

"Bonus Value" is defined as the value of a tenant's leasehold interest in the real estate arising from contract rent that is less than the economic rent. The economic rent must be consistent with the highest and best use of the property. The amount of "bonus value" is a matter between lessor and lessee. Any "bonus value" shall be estimated only at the request of the Acquisition Branch for assistance in negotiations and not included in the Appraisal Report.

7.04.07.00 Access Rights

The value of restriction of abutter's rights, including access rights, is measured by the loss in value of the remaining property before and after the restriction. The requirements for abutter's rights and/or access rights will be marked on the Appraisal Summary (RW 7-9) of all partial acquisitions. If abutter's rights and/or access rights are the only property rights acquired, the remark "Abutter's Rights and/or Access Rights Only" and nominal value will follow the "Land" heading. Valuation of any loss will be shown under "Damages." (See Section 7.09.00.00.)

When the Department proposes to dispose of access rights, Project Development may request an appraisal of the market value of the property right being transferred. The measure of market value for access rights is the potential increase in value of the abutting property before and after the access is granted. See Project Development Manual, Chapters 26 and 27, as well as Chapter 16 of the Right of Way Manual for guidance.

7.04.08.00 Temporary Easements

A temporary easement is an encumbrance for a specific use over a specified duration of time. Temporary requirements are valued by the loss in utility and enjoyment of the encumbered area for the entire easement term/duration. The appraiser shall discuss the proposed use of the temporary easement area with Design in order to understand and estimate the impacts to the subject parcel.

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An appraiser is often unable to accurately calculate any varying levels of loss, as Caltrans may not control when "actual" physical work starts and ends on a parcel within the span of the temporary easement term. Although the actual/physical use of a property may be anticipated for a limited duration within a set time frame, a property is considered to be encumbered for the entire duration of the easement term. While the extent of an owner's loss of utility and enjoyment may be influenced by a potential constraint to the lease or general use of the encumbered area, the temporary easement valuation shall employ one consistent (flat) rate for the compensable period. This loss may be expressed as a discounted land rental rate.

The compensable period for a temporary easement shall commence on the "start date" and expire on the "end date." The start date shall be the project's Right of Way Certification date. The end date should be confirmed with Design, if possible. If the end date cannot be confirmed with Design, the end date shall be the project's Construction Contract Acceptance date.

If there are additional acquisitions and/or impacts to the subject property, timing of the temporary easement encumbrance shall be considered appropriately in order to avoid any potential double payment and/or minimize damages.

7.04.09.00 Permanent Easements

A permanent easement is a perpetual encumbrance for a specific use. Permanent requirements, such as drainage easements, etc., will be valued by the loss in utility and enjoyment before and after the imposition of the encumbrance. This loss may be expressed as a percentage of unencumbered fee value. The appraiser shall discuss the proposed use of the permanent easement area with Design in order to understand and estimate the impacts to the subject parcel. The requirement may also involve improvements and possible damages and benefits to the remaining property.

Care must be exercised that easements existing within the subject fee acquisition are properly valued and that double payment is not proposed for easement replacement requirements.

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7.04.10.00 Underlying Fee

Caltrans defines "underlying fee" as the portion of ownership encumbered by a public road easement. Per Streets and Highways Code Section 83, the underlying fee "*within the boundaries of a state highway . . . constitute a part of the right of way*" and shall be without compensation paid. As the public has full control over the surface use and the only right the underlying fee owner has is one of reversion, underlying fee is typically valued at $1.00. Also see Section 7.13.70.00 G (2).

7.04.11.00 Unit Values

Comparable data, land, and improvement values are normally expressed as unit values. The unit values are then adjusted and applied to land and/or improvements of the subject, as appropriate, after taking differences into account.

Occasionally, land may be valued by comparison on a site or lot basis. This method must be supported by the comparable data. In a partial acquisition, the land will be valued at the comparable unit value of the class of land of which it is a portion. Distribution of value between right of way requirements and excess will be shown at the component unit land values of the classes of land of which the portions are a part.

7.04.12.00 Hazardous Waste and Hazardous Material Definition

A material is hazardous if it poses a threat to human health or the environment. The term "*hazardous waste*" is applicable to the storage, deposit, contamination, etc., involving a hazardous material (HM) which has escaped or been discarded or abandoned and which may be defined in general terms as being any of the following:

- Flammable
- Reactive (subject to spontaneous explosion or flammability)
- Corrosive
- Toxic

"*Hazardous materials*" may be any of a large group of the above products. If their use is under control and in accordance with applicable statutes and regulations, there is generally no appraisal problem.

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7.04.12.01 Hazardous Waste General

Each Region/District has a designated Region/District Hazardous Waste/Materials Coordinator; this is the contact person for all HW information that may pertain to the development of a project. They will be responsible for ensuring implementation of and compliance with the Director's policy memorandum that outlines the Department's policy/procedure relative to HW. The major points affecting Right of Way are:

A. No real property acquisition or possession is to take place until HW investigation reports have been completed and the appraisal reflects those findings.

B. The parcel Certificate of Sufficiency (COS) from Project Development to Right of Way is to have attached a Hazardous Materials Disclosure Document (HMDD) that provides a narrative certification from the District Hazardous Waste Coordinator that the property can be:

    1. considered free of significant HW; or

    2. the COS and HMDD will include a completed and approved property investigation report stating the nature and extent of contamination and an appropriate remedial cost estimate; or

    3. if appropriate, the COS and HMDD will state the owner's approved cleanup plans, schedule and current status.

The COS and HMDD are internal documents. As such, they are to be transmitted with the appraisal for review and retained in the file.

7.04.12.02 Hazardous Waste Identification and Investigation

During the early stages of project development, the Region/District Environmental Engineering Branch, as part of the Project Development Team (PDT), will identify sites or facilities that may be contaminated with HW for further investigation. Note: R/W, as a PDT member, shall provide functional input on HW parcel issues early in the project development process.

Environmental Engineering thereafter administers HW investigations and should furnish resulting parcel reports and estimated costs to R/W by the time

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the parcel Certificate of Sufficiency with attached Hazardous Materials Disclosure Document is approved and forwarded to Right of Way.

The R/W Appraisal Branch must receive and consider in the appraisal the effect of the parcel HW investigation report, or receive a certification from Environmental that the parcel is considered "free" of HW, before a resulting parcel appraisal can be approved for acquisition purposes.

Right of Way, as part of the Project Development Team, will assist in the identification and investigation phases whenever possible and will provide the primary source of contact with property owners and operators. As such, Right of Way will:

A. Alert the PDT whenever a new potential HW site is discovered.

B. Obtain necessary Permits to Enter for HW investigation and cleanup from property owners and operators, including securing court orders through the Legal Division.

C. Provide normal right of way clearance activities to include cleanup of minor HW situations which can be handled as part of the clearance contracts.

Early identification of potential HW is essential. The Region/District Project Development Branch is responsible for developing and maintaining an HW tracking system database; however, Right of Way should assist in any possible way and ensure that the PDT is aware of any suspected HW sites.

Environmental Engineering must give a copy of any reports and cleanup costs to R/W by the time the Certificate of Sufficiency with attached Hazardous Materials Disclosure Document is approved and provided to R/W. This must then be considered in the appraisal of the parcel or the Certificate with attachment must state the parcel is "free" of HW before the appraisal can be approved for acquisition.

7.04.12.03 Hazardous Materials

Asbestos containing materials (ACMs) and other HMs must be fully considered to ensure property with such HM is not acquired without adequate prior investigation, valuation analysis and clearance abatement. HMs primarily include asbestos, but can include polychlorinated biphenyls (PCBs), lead based paints, etc.

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The identification, investigation and evaluation of parcels which may contain HMs must be made early to assure project delivery schedules are met. This early identification requires the appraiser to use common sense and knowledge to identify possible HM-containing property. Once identified, inspections will be performed by licensed, qualified persons, usually contractors hired by contracts awarded under the bidding process either by task order or separate contract.

The property owner must give prior written permission before an inspection can be made.

The inspection will include a determination of:

A. The type, extent, location, and quantity of ACM (and any other suspected significant HM), within the structure;

B. Condition of the ACM - friable, nonfriable, stable or deteriorating, etc.;

C. Identification of and cost of appropriate remedial action(s):

   1. Removal

   2. Other acceptable steps (encapsulation, etc.)

   3. Cost of restoration.

   Every improved property will be inspected except:

      A. Residential improvements of one to eight units when:

         1. The market approach is the only, or clearly the primary, basis for valuation;

         2. Comparable data shares the general characteristics of the subject; and

         3. The existing improvements represent the highest and best use of the property;

      B. Improvements constructed entirely after January 1, 1980.

      C. Those improvements constructed with materials which can be easily determined to not contain HMs (example: all-metal storage buildings).

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7.04.12.04 HW Site Identification

This, as well as information on testing and/or cleanup, including a cleanup cost estimate appropriate for fair market value appraisal analysis, should be furnished by Project Development for all parcel appraisals including replacement utility easements to be acquired by the Department. The appraiser may obtain information to assist Project Development in identifying possible HW sites that may have been missed. This includes observing potential problems during the inspection of the subject property. It also includes questioning the owner and lessee about current and past possible HM and possible contamination on the site including underground storage tanks. When previously undiscovered tanks do exist, the appraiser must obtain as much information as possible regarding tank size, age, construction, location, contents, etc.

The appraiser must document observations and discussions with the property owner, lessee or other occupants regarding possible waste problems in the Parcel Diary. This must be passed on to Project Development and the Hazardous Waste Coordinator. (See 7.04.12.05, "Notification.")

As a general guide for appraisers, some present and prior land uses where HW/HM problems may exist are set forth below.

A. Commercial and industrial sites such as service stations, muffler shops, bulk plants, paint manufacturing companies, machine shops, plating works, dry cleaning plants, chemical and fertilizer companies (which may use or have used solvents, cleaning compounds, catalysts, cutting oils, plating solutions, dyes, paints, or other chemicals);

B. Junk yards, auto wrecking yards, dumps, or landfills;

C. Underground or aboveground tanks for storage of liquid hydrocarbons, pesticides or other toxic materials;

D. Existing buildings with asbestos siding, roofing, ceiling material, floor tiles, fire-proof doors, or insulation on water pipes, heaters, heating ducts, steel framing, etc.

E. Disposal sumps or pits which may contain agricultural chemicals or industrial wastes;

F. Utility substations or storage/maintenance facilities, and;

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G. Sites where contamination may have resulted from an adjacent property owner's operation.

7.04.12.05 Notification

When a suspected HW site has not previously been identified, R/W is to immediately notify Project Development by memorandum with a copy to the Hazardous Waste Coordinator. This memorandum is to give full details as to the appraiser's observations and findings regarding the potential HW problem. The memorandum will request an investigation to determine future actions. If the investigation finds potential HW and testing is necessary, Project Development will hire a consultant to determine the nature and extent of the waste. If testing confirms contamination, Project Development is to furnish the Appraisal Branch with a cleanup cost estimate.

7.04.12.06 Valuation

Regardless whether the right of way requirement is fee or easement title, the real property will be appraised recognizing the effects of HW and HM on its market value.

A. HAZARDOUS WASTES -

The valuation of property that involves an identified HW site will include: 1) The market value of the property as if free and clear of the HW. 2) The market value of the property considering the effects of the HW.

The opinion of market value of a property in its contaminated condition must consider the following:

- Local regulatory agency cleanup requirements.
- Estimated cleanup cost furnished by Project Development.
- Market data involving sales, offers or listings of properties with comparable cleanup problems.
- Marketability of parcels with known HW cleanup problems considering opinions of developers, brokers, lenders, insurers, investors or other informed persons.
- Any other pertinent data, opinions, etc.

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- Comparable data verification will at a minimum include the following:

    1. Was site investigation or testing done as a condition of sale? What were the results?

    2. Did the transaction price or terms reflect the results and/or cost of correction?

    3. Was an indemnification agreement to protect the buyer from risks associated with HW/HM a part of the deal?

- If investigation indicates that the property being appraised either originated or caused contamination that has, or may have, also contaminated adjacent property, HQ R/W is to be contacted.

- Adequate comparable data may not be available to directly conclude a fair market opinion of a property in its contaminated condition. In such cases, the alternate appraisal may consider deducting the estimated cleanup cost from the value of the property as if free and clear of the HW. The estimated cleanup cost should reflect what a knowledgeable buyer would reasonably expect to pay in order to utilize the property at its highest and best use. This does not necessarily follow the remedial methods, costs or construction schedule associated with the Department's project. Also, the property's highest and best use could change depending on the nature and extent of contamination and alternate remediation options and costs.

- Analysis must consider the cleanup requirements, for highest and best use, of the local regulatory agency having jurisdiction. Full cleanup may not be required or can be delayed for a certain period of time. Thus, the cleanup estimate as furnished by Project Development may need to be adjusted or discounted to reflect the market value situation.

Appraisals that result in a negative value (cost of HW cleanup exceeds market value of cleared property) will be shown as "$0."

The existence or absence of possible hazardous waste will be noted on the Appraisal Summary (RW 7-9) in every appraisal by checking "Yes" or "No" after "Possible HW (including underground tanks)." Where possible or confirmed HW problems do exist, a full discussion will be included in the body of the appraisal. This discussion will describe the nature of the problem or suspected problem, regulatory agency cleanup requirements,

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status of testing or cleanup plans and any other pertinent information, including the impact on market value, if any.

B. HAZARDOUS MATERIALS -

The Appraisal Branch must obtain and fully evaluate the impact of ACM, or other HM, before an appraisal report can be approved for acquisition purposes. The Appraisal Branch retains the responsibility for requesting needed inspections on improved properties which were originally excluded from inspection. The appraisal report will document if an inspection was not required.

Appraisals of all improved properties to be acquired will reflect market adjustments for the presence of ACMs or other significant HMs.

Evaluation of improved comparable sales data will, at a minimum, include verification of the following:

1. Was an inspection of the buildings for HWs and/or HMs made as a condition of sale? If "Yes," what were the results of the inspection?

2. Did the transaction price or terms reflect the results and/or the cost of correction or other HW/HM considerations?

3. Was there an indemnification agreement provided by the seller that affected the property's sale price by protecting the buyer from liability, risk or exposure associated with a known or possible HW/HM condition?

Valuation will consider the impact of HM on the property. The market may react to the presence of HMs in an improvement on the subject by adjusting the price/terms of the purchase agreement. Dollar adjustments, if any, may be more, less, or equal to the cost of the remedial action to remove, restore, or otherwise mitigate the problem.

The effect of HM on value will vary depending on whether the existing improvements are the highest and best use of the land. Cost of remedial action may change the highest and best use. Further, any remodeling, renovation, repair or modernization which requires disturbance of otherwise dormant HMs in order to achieve or maintain highest and best use must be analyzed. Economic life of improvements may be shortened as a result.

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The fact that the Department will incur cleanup costs as part of the right of way clearance process does not necessarily indicate that the market value of the property is affected. In appraisals where the estimated demolition cost of an improvement is being deducted from the market value of a property as if vacant and ready for development, the estimated demolition cost should include the removal of any HMs.

Containerized HMs used in an operation that represents the highest and best use of a property will ordinarily not affect market value — i.e., paint stored in cans in an auto paint shop. On the other hand, containers of HMs that must be removed to utilize a property to its highest and best use may impact market value — i.e., abandoned drums of toxic chemicals on a vacant site.

Following investigation, the existence or absence of HMs will be noted in the appraisal. Where HMs occur, the appraisal discussion will include a description of the materials, their location and condition, any regulatory controls applicable, the effect on the property's current or future use, present and/or future remediation actions and costs, and the estimated impact on market value.

7.04.13.00 Market Value of Nonprofit, Special Use Properties

The statutory definition of market value for nonprofit, special use properties is defined by Evidence Code Section 824(a) as:

> *"The cost of purchasing land and the reasonable cost of making it suitable for the conduct of the same nonprofit, special use, together with the cost of constructing similar improvements."*

These provisions are applicable only if the property meets all four of the following criteria:

1. The subject property is operated for a special, nonprofit use.
2. The operator must have an exempt status with the State or Federal Income Tax offices.
3. The property is not owned by a public entity.
4. There is no relevant, comparable market data.

"*The cost of purchasing land*" is considered to be the estimated cost to acquire an area of sufficient size to conduct the special use. It is not necessary to identify any specific property. The cost should usually be estimated on the basis of typical unit or site prices for a land area with

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sufficient utility to conduct the use. The geographical area analyzed to arrive at the typical price should be suitable to the special nonprofit use. *"The reasonable cost of making it suitable for the conduct of the same nonprofit, special use"* should be based on the typical or appropriate factors in the geographical area suitable to the use. There is no requirement to base the cost on a specific site, and there is no requirement that the nonprofit entity relocate in order to be compensated under this method.

"The cost of constructing similar improvements" shall be based on the value of reproducing the improvements without taking into consideration any depreciation or obsolescence of the improvements per Evidence Code Section 824(b).

The total sum of these three costs is the market value under this method. It is important to note that Federal participation in acquisition costs is limited in these cases to fair market value as commonly measured on the basis of replacement cost new less depreciation. For accounting purposes, appraisal reports shall include the market value of the subject property using a conventional cost approach (considering any applicable depreciation).

The difference between the two valuations will be a nonparticipating, state-only payment.

Properties of this type may not be acquired often but have potential for significant effects on capital and scheduling, and should be discussed with the Headquarters Appraisal Branch before the owner is contacted and the appraisal begun. All nonprofit, special use property appraisal reports are to be approved consistent with current delegations.

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7.05.00.00 - METHODS OF VALUATION

7.05.01.00 Value Approaches

The appraisal of all properties will utilize the three approaches to value as appropriate. If an approach is not used, an explanation will be given for the nonapplicability of the particular approach. Even if not required, separate approaches may be used if helpful.

The final reconciliation of value will be made considering the relative validity and reliability of each approach and will be the best estimate of the value of the entire property. The basis of reconciliation and relative considerations will be explained as necessary. Averaging is not a satisfactory reconciliation procedure. Exhibit 7-EX-4 is a suggested format. The final Estimate of Value should be further segregated for total charges to lessee-owned improvements, partial acquisition, joint acquisitions, etc.

Separate approaches and reconciliations for before and after conditions may be required to measure severance damages.

7.05.02.00 Sales Comparison Approach

The Sales Comparison Approach is required in most appraisals. The only exception to this rule is in certain governmental, public utility, or special-purpose parcels under specified circumstances. Comparable data will be fully utilized for direct comparison of total values, land values, improvement values, for information for other approaches, and for damage and special benefit studies.

Gross Income Multipliers are a unit for comparison of income properties and are indicated when there are sufficient sales of similar properties. It is extremely important to use similar properties when employing this method.

7.05.02.01 Comparable Data

The most reliable comparable data are the sales and listings of properties similar to subject parcels. Comparable data are not to be limited to sales and listings or to use in the Sales Comparison Approach. Valuable information may be gained for all three approaches by studies of similar properties with regard to use and development, well-informed opinions, independent appraisals, depreciated values, after condition land use, remainder parcel and excess parcel sales, options, income-expense

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experience, etc. Each factor or value element in the appraisal which can be supported by comparable data attains greater reliability.

Significant comparable data of all types are expected to be included in the Appraisal Report in support of appraisal conclusions.

Sections 7.02.03.00 O and P contain additional requirements for comparable data collection, confirmation, and reporting.

7.05.02.02 Analysis of Comparable Data

Proper analysis of comparable data in relation to the subject is basic to the Sales Comparison Approach. The following procedures are intended to achieve the optimum quality in the discussion relating comparables to the subject parcel:

A. Comparable-data prices may be compared in terms of whole properties. However, to facilitate comparison, reduction of comparable prices to a common denominator or unit of comparison may be desirable. Examples are price per square foot and price per dwelling unit. Applicable adjustments may be made on either the whole property or unit of comparison basis.

B. The six basic elements of comparable adjustment are:

   1. Property rights conveyed (i.e., conveyance of leasehold interest, etc.)

   2. Financing terms

   3. Conditions of sale (i.e., motivations of the buyer or seller)

   4. Expenditures immediately after purchase (expenditures a buyer will have to make immediately upon purchase, i.e., demolition costs, hazardous waste cleanup)

   5. Market conditions (time)

   6. Physical characteristics (e.g., location, size, shape, topography, access, etc.)

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C. Adjustments to Comparable Data

Both California Department of Transportation (Department) and FHWA appraisal policy recognizes the need to have an appraisal that is well supported and demonstrates a thorough analysis of the elements of comparison necessary to arrive at a factual conclusion in the sales comparison approach. Each appraisal must contain a sufficient description of the comparable sales including the specific elements of comparison made thereto so that it is possible for the reader to understand the conclusions drawn by the appraiser from the comparable sales data. Department and FHWA policy mandates that quantified adjustments shall be the primary method of adjusting comparable data. The quantified adjustments can be expressed as a percentage or dollar amount and represent a market derived adjustment or, absent that, the appraiser's opinion of the comparative weight for the element of comparison to be made.

In very limited circumstances when the appraiser cannot find market derived adjustments and/or cannot form an opinion of the comparative weight for the element of comparison to be made, qualitative adjustments can be used. When the appraiser must resort to qualitative adjustments, they must recognize that this form of comparative analysis will require a more extensive discussion. Merely to state that the comparable is superior or inferior, either overall or for a particular element of comparison, is not suitable. Each element of comparison must be discussed in sufficient detail to allow the reader to clearly understand the appraiser's reasoning for the adjustment and the comparative weight that the appraiser is attributing to that element of comparison. To facilitate clarity and consistency, seven levels of comparison are to be used in qualitative adjustment: similar, slightly inferior, inferior, far inferior, slightly superior, superior, and far superior. The degree of difference may be expressed as one, two, or three pluses or minuses applied to each element in a grid. In addition, the appraiser must state whether the comparable sale is overall superior or inferior to the subject.

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Quantitative and qualitative adjustments are not mutually exclusive methodologies. Because one element of comparison cannot be quantified does not mean that all adjustments to a comparable sale must be qualitative. All factors that can be quantified should be adjusted accordingly. When quantitative and qualitative adjustments are both used in the adjustment process, all quantitative adjustments should be made first.

If no adjustment of any element is needed, a statement explaining the reason(s) shall be included in the appraisal.

In developing a final value estimate by the sales comparison approach, the appraiser shall explain the comparative weight given to each comparable sale, no matter whether quantitative or qualitative adjustments or a combination thereof are used. A comparative adjustment chart or grid is strongly recommended and may assist the appraiser in applying the adjustments consistently and help the reader follow the appraiser's reasoning and analysis.

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D. Sequence of Adjustments

The following sequence for making adjustments is required whenever percentage adjustments are used either solely or in combination with dollar adjustments. The first series of adjustments are sequentially applied with resulting subtotals for each adjustment. After applying the market condition adjustment, all other adjustments for items such as location, physical characteristics, etc., are combined and applied to the market conditions adjusted price to arrive at a final adjusted sales price.

This sequence is depicted in the following example:

Unadjusted sales price		$100,000
Adjustment for property rights conveyed	0%	$0
Adjusted price		$100,000
Financing terms	-$5,000	-$5,000
Adjusted price		$95,000
Conditions of Sale	+10%	+$9,500
Adjusted price		$104,500
Adjustment for expenditure immediately after purchase		+$5,000
Adjusted price		$109,500
Adjustment for market conditions	+10%	+$10,950
Adjusted price		$120,450
Location	+5%	
Size	-10%	
Shape	-5%	
Topography	-5%	
Access	+5%	
Net Adjustment	-10%	**-$12,045**
Final Adjusted Sales Price		**$108,405**

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7.05.03.00 Assessor's Office Data

Under Section 408 of the Revenue and Taxation Code (AB 82-Chapter 1641), County Assessors are required to provide information, abstracts, or access to records to Department staff appraisers "pursuant to their authorization to examine such records."

The code provides that Department will reimburse the Assessors for their actual costs incurred in furnishing data pursuant to the code. These costs and the resulting charges to Department can vary from county to county.

The obtaining of data and arrangements as to fees involved should be handled directly between the Region/District and the Assessor's Office involved.

7.05.04.00 Cost Approach

The Cost Approach is required in the valuation of improved properties where income and market data are nonexistent, limited, or inconclusive. In the valuation of improved properties where there is sufficient comparable data to estimate the value of the property by the market and income approaches, the Cost Approach is optional. However, the Cost Approach may still be appropriate and advisable in these cases for reconciliation with the Income and Sales Comparison Approaches. The Cost Approach is not required for the valuation of minor improvements and improvements that have only interim, salvage, or a negative value.

An analysis and support of depreciation must accompany the Cost Approach. The basis for the "cost new" estimates must be supported by acceptable cost sources. This applies to the valuation of buildings, structures, machinery and equipment and all other improvements pertaining to the realty defined in Code of Civil Procedure Section 1263.205.

Support of the cost new estimates with acceptable cost sources applies to all appraisals using the Cost Approach prepared by either staff or independent appraisers, including separate specialty-type appraisals (e.g., machinery and equipment). The same support for cost estimates also applies to cost-to-cure damages.

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The following are some of the cost-new sources which are acceptable:

- Recent actual construction costs of similar improvements.
- Cost data services (e.g., Marshall & Swift).
- Architects, engineers, contractors, builders and supplier estimates.
- Actual written bids from contractors, engineers, suppliers, etc.
- Manufacturers' catalogs.

When estimates from architects, engineers, contractors, etc., are used as cost sources and the estimated cost new of any improvement is substantial, a secondary cost source must be used as collateral support. If more than one cost source is used and the costs differ, the appraiser must furnish rationale for the final cost estimate.

When a cost-data service such as Marshall & Swift is used as a cost source, the appraiser must show the page, section, and date of each reference, together with support for any adjustments used in estimating the cost new. Cost references must be identified or referenced on an item-by-item basis in the Cost Approach. Exhibit 7-EX-5 is a suggested format for displaying the Cost Approach.

7.05.05.00 Income Approach

The Income Approach is appropriate and usually required for valuation of properties that are bought and sold in the market on the basis of income.

There may be instances where there is sufficient comparable data to very clearly support the value indicated by the Sales Comparison Approach without the need for analysis by other approaches. This would most often occur with smaller residential income properties. Use of the Income Approach in those cases is optional. However, its use may still be appropriate as a check against the other approaches. In most cases involving income property, inclusion of an Income Approach is expected.

The Income Approach is not required for minor partial acquisitions with no severance damages, which have little or no effect on the income stream and where there is no necessity for entire property valuation.

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When the Income Approach is used, documentation to support each element, including income, expenses, and rate(s) must be included in the Appraisal Report. If possible, the same comparable sales used in the Sales Comparison Approach should be analyzed in sufficient detail to reflect these elements. If these sales cannot be utilized, other comparable data must be gathered and analyzed to obtain the necessary information. These data or a detailed summary must be included in the Appraisal Report.

Where economic rent varies from existing or contract rent, the increase or decrease shall be explained and supported by market information.

7.05.05.01 Income Schedule

A schedule of actual and fair income will be included as a supplement. The schedule will show the rental basis including furniture or utilities supplied, and the reasons for adjustment to fair rents. It will also include significant leasehold terms and conditions and may include a Gross Income Multiplier valuation. An example for an income residential property is Exhibit 7-EX-7, which also provides basic relocation assistance information.

7.05.06.00 Review of Owner's Claimed Out-of-Pocket Expenses

The Acquisition Branch must verify any payment to reimburse owners for out-of-pocket expenses claimed to be incurred by the development of property when development is interrupted by State's Acquisition. (See Chapter 8.) This will include appropriate audits, and, if necessary, review by the Regional Legal Office. However, the Acquisition Branch should request the Appraisal Branch to assist in the review of the reasonableness of the expenses claimed by the owner. This review will be to determine whether or not any of these expenses claimed have already been considered and included in the appraisal. This review should eliminate any duplication of payments.

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7.06.00.00 - LAND

7.06.01.00 General

Final appraised land value will assume the land to be vacant and ready for development to its most probable highest and best use. Land value will be established in almost all cases by the Sales Comparison Approach.

It is proper to use zones of value due to differing amenities or utilities of portions of the parcel. Examples of zones of value would be illustrated in differences between level and hillside, commercial and residential, or irrigated and nonirrigated portions of an ownership. Differing land values by zone must be supported by comparable data. When using zones of value, it is important to consider the effect each zone has upon each other and the value of the whole. Without this, merely aggregating the different zones of value is not a complete analysis.

Valuation of timber land, agricultural land, government land, land which is encumbered by a conservation easement, and fee-owned public utility properties may be subject to special treatment as noted in this Section and in Section 7.13.50.00.

The effect of existing private expressway access openings on the development potential of the land should be investigated. The reasonable probability of developing such an opening as a future public street connection to and from the interior of the property is a valid valuation consideration.

Retaining walls and utility services necessary for proper use of the land should be included in land valuation.

Certain specific improvements such as agricultural wells, fencing, etc., may be included with land, as described in 7.07.05.00 and 7.07.06.00.

7.06.02.00 Timber Land

Valuation of commercial timber will be based on in-place value of the uncut timber estimated by timber cruise. The value of the timber and the value of cut-over land will be shown separately but totaled in the land valuation. Care must be exercised that proper market consideration is given to possible recreational or residential use of the timbered area.

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7.06.03.00 Agricultural Land

Adequately developed agricultural properties such as orchards and vineyards frequently sell on acreage values, considering the state of development and productive capacity of the land as improved. As such, the value of trees, vines, irrigation systems, agricultural wells, fencing, etc., may properly be included as part of the land value. The unit value should reflect adjustment to the comparable data for differences in age, condition, and productive capacity as compared to the subject. If valued by this method, agricultural improvements other than trees and vines will be briefly described under "Improvements" with zero value and the remark that their value is included in the "Land." The description of pumps and motors will include model and serial numbers.

Although Code of Civil Procedure Section 1263.250 requires the valuation of and payment for growing crops when possession is taken before harvesting, it is usually not necessary to make such a valuation in reports prepared for negotiations. The owner will generally be afforded the opportunity to harvest the existing crop.

7.06.04.00 Valuation of Williamson Act or Farmland Security Zone Lands and Timberland Production Zone Land

If the land proposed for acquisition, in whole or in part, is under contract with a local agency pursuant to the California Land Conservation Act of 1965, special notification and valuation procedures apply. This Act, which is also known as the Williamson Act, is found in Government Code (GOV) Sections 51200 – 51295 inclusive. Article 6, GOV Sections 51290 – 51295, governs eminent domain procedures for Williamson Act lands. Agricultural properties may also be held subject to Farmland Security Zone contracts, which are similar to but expand upon Williamson Act contracts (GOV Sections 51296 – 51297.4). Generally, the same eminent domain provisions applicable to Williamson Act lands will also apply to Farmland Security Zone properties (GOV Section 51297.1).

The Williamson Act and Farmland Security Zone provisions require special notification under GOV Section 51291(b) to the Director of the California Department of Conservation and the local governing body administering the preserve ***"…whenever it appears that land within an agricultural preserve may be required by a public agency or person for a public use..."*** Usually such notification would take place during the environmental phase of the project,

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with facts and findings in the approved environmental document. The appraiser should confirm with the Environmental Branch that this notification has been performed.

As to valuation for eminent domain acquisitions, the law requires that Williamson Act contracts shall be considered never to have existed for the purpose of valuation in the case of a total acquisition, and disregarded in the valuation of the land actually taken in a partial acquisition. If the remaining land subject to contract will be adversely affected by the acquisition, the value of the damage shall be computed without regard to the contract (GOV Section 51295). As noted above, the same procedures apply for properties under the Farmland Security Zone contracts.

Similar notification and valuation procedures apply for land zoned Timberland Production Zone (TPZ) (GOV Section 51155). Like lands subject to Williamson Act contracts, these specialized zones artificially affect highest and best use, and are to be disregarded in eminent domain appraisals as outlined above. However, the notification is to be sent to the Secretary of Resources and the local governing body [GOV Section 51151(b)]. Again, the appraiser should confirm with the Environmental Branch that this notification has been performed. Timberland Production Zones are governed by the "California Timberland Productivity Act of 1982" under GOV Sections 51100 – 51155 inclusive. Article 6, GOV Sections 51150 – 51155 governs eminent domain procedures for TPZs. In valuation, the TPZ shall be deemed never to have existed. Under GOV Section 51155, when any action in eminent domain is filed in court for a full acquisition, the parcel is immediately rezoned as to the land actually being condemned; for the purposes of establishing the value of the land, the TPZ must be treated as though it never existed. When an action to acquire less than all of a parcel of land subject to a TPZ is filed, the parcel is deemed immediately rezoned as to the land actually condemned or acquired and must be disregarded in the valuation process only as to the land actually being taken, unless the remaining land subject to the TPZ will be adversely affected by the condemnation, in which case the value of that damage shall be computed without regard to the TPZ. As a result, the appraiser should contact the County Planning Department to ascertain the zoning of the parcel upon the removal of the TPZ.

Each of these special zones will be disclosed by investigation at the local planning agency as part of the appraisal process.

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7.06.05.00 Valuation of Land Encumbered by Conservation Easement

If the land proposed for acquisition is encumbered by a conservation easement, special procedures apply. These properties are distinguished from Section 7.06.04.00 above in that the properties noted above are owned in fee and have restrictive zoning overlays, whereas the properties covered in this Section are encumbered by conditions in a recorded deed. The term "conservation easement" is defined in Civil Code (CIV) Sections 815-815.5 and refers to a restriction placed by (or on behalf of) the owner upon the use of land for the purpose of retaining land in its natural, scenic, historical, agricultural, forested, or open-space condition. Public entities, qualified tax-exempt, nonprofit organizations, and certain California Native American Tribes [see CIV Section 815.3(c) for specific information regarding qualifying tribal entities] can hold conservation easements, but all conservation easements must be recorded under CIV Section 815.5.

California law recognizes several special types of conservation easements that involve specific approaches to valuation and acquisition (Open-Space, Wildlife, and Agricultural Easements, discussed further in this Section). However, conservation easements are generally acquired and valued by the Department in the manner set forth in Code of Civil Procedure (CCP) Section 1240.055. Under the statute, the Department has authority to acquire conservation easements solely under either CCP Section 1240.510 (compatible public use) or CCP Section 1240.610 (more necessary public use). The following provisions apply:

NOTIFICATION:

When sending the *Notice of Decision to Appraise* to the fee land owner, the appraiser shall also send a letter to the easement holder notifying them of the State's proposed acquisition and including the project description and appraisal map. This notice is mandatory and provides for early communication with the parties involved with the conservation easement acquisition; CCP Section 1240.055(c) states ***"Not later than 105 days prior to the hearing held pursuant to Section 1245.235, or at the time of the offer made to the owner or owners of record pursuant to Section 7267.2 of the Government Code, whichever occurs earlier, the person seeking to acquire property subject to a conservation easement shall give notice to the holder of the conservation easement as provided in this subdivision."*** CCP Section 1240.055(c)(1)(D) requires the easement holder, under certain circumstances set forth in CCP Section 1240.055(c)(2)(B), to take several steps – one of which is to forward the State's notice within 15 days to any

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and all public agencies funding or having direct involvement in the approval or permitting of the original easement. An example of this notice is included in the Exhibits as 7-EX-17B *Notice of Decision to Appraise (Conservation Easement)*. The holder of the conservation easement or the public entity receiving notice, or both, may respond with written comments on the acquisition, including identifying any potential conflict between the public use proposed for the property and the purposes and terms of the conservation easement. Written comments on the acquisition may be submitted no later than 45 days from the date the notice was mailed to the easement holder. The statute requires the Department to respond to comments from the easement holder and the notified public entity within 30 days. Any comments received shall be referred to the project environmental coordinator for expert analysis and input. The result of that coordination shall be utilized in preparing responses to comments. It shall also be considered in the appraisal of the impacts of the proposed project on the conservation easement.

VALUATION:

- CCP Section 1240.055(g)(1)(A) provides general parameters for valuing conservation easements: "***The total compensation for the acquisition of all interests in property encumbered by a conservation easement shall not be less than, and shall not exceed, the fair market value of the fee simple interest of the property as if it were not encumbered by the conservation easement."***

- The statute further reads: "***If the acquisition does not damage the conservation easement, the total compensation shall be assessed by determining the value of all interests in the property as encumbered by the conservation easement."*** [CCP Section 1240.055(g)(1)(B), emphasis added]. A "before and after" analysis will be the primary means of valuing the rights acquired from the interest(s).

- The final valuation guidance in the statute [CCP Section 1240.055(g)(1)(C), emphasis added] reads that ***"If the acquisition damages the conservation easement in whole or in part, compensation shall be determined consistent with Section 1260.220 and the value of the fee simple interest of the property shall be assessed as if it were not encumbered by the conservation easement."*** That section (CCP Section 1260.220) provides that each property interest and the damage to the remainder of each interest shall be separately "assessed," but allows the condemning agency to present an undivided offer at its discretion.

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While the appraisal shall present separate valuations of just compensation due to the fee and easement holder, it is the Department's usual policy to follow CCP Section 1260.220(b) that allows an undivided offer.

The acquisition may damage the conservation easement by reducing the environmental and/or ecological goals and values for which the easement was acquired. The appraiser shall consider damages to the remainder of the conservation easement. Damages to the remainder of the conservation easement may occur due to reduction in the critical size of the protected area (i.e., size of the remainder limits ability to serve intent of easement), fragmentation thereof, or related issues. These are technical questions that require communication with our Division of Environmental Analysis and input from the affected stakeholders through the notification and communication process outlined above.

The following concepts are consistent with appraisals in general: there may be the "value of the part acquired" and/or "damages to the remainder" from the encumbered fee area, in addition to "the value of the part acquired" and/or "damages to the remainder" from the unencumbered fee area (that is, free of the conservation easement). The appraiser must be careful not to duplicate compensation to the fee and easement areas.

The general case is that most road or highway acquisitions involve fee or highway easements that may potentially impair the value of the conservation easement as public improvements typically physically impair the natural resource values for which the conservation easement was acquired in the first place. In such cases, the Department will typically invoke the authority of CCP Section 1240.610 to acquire the property. The measure of compensation is based on the rights that the express deed language grants to the Department, and upon the assumption that the Department's exercise of its granted rights are "more necessary" and will displace the conservation use(s) of the property. Anecdotal or unrecorded assurances of about lesser impacts, regardless of the source(s) of the assurances, should be disregarded.

However, instances may arise where the acquisition will not impair the conservation easement. This occurs where the Department's authority to acquire is based on CCP Section 1240.510, in that the use to be put to the land is "compatible" with the conservation easement purposes, and the easement deed language has been specifically modified to perpetuate and protect the environmental values for which the conservation easement was created. In such cases, the acquisition would result in no impairment to the conservation easement. As previously described, the property should then be valued as though encumbered by the conservation easement.

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In order for the appraiser to incorporate these compatibility findings into the appraisal, specific documentation must be provided from the certified project environmental document. In addition, communication with the project's Environmental Coordinator, the easement holder, and impacted public agencies should be undertaken to reach a mutual concurrence on the compatibility finding. Any modifications to the acquisition easement deed to ensure compatibility would necessarily be drafted and/or approved by the Legal Division in conjunction with the discussions with the stakeholders. The appraiser should fully discuss the findings in the appraisal and attach a copy of the easement deed with the modified language.

Regardless of possible damage(s) to the remainder of the easement, the valuation analysis of all reports should include the unencumbered fee value of the acquisition. The Appraisal Summary (RW 7-9) will show the just compensation to the fee interest and just compensation to the conservation easement interest.

If the recorded conservation easement, recorded deed, or other document encumbering the acquisition parcel includes a "condemnation clause" which specifies a different procedure from the statutes by which just compensation will be segregated between the underlying fee owner, the conservation easement holder, and/or funding entities, then the recorded easement language shall be cited and attached in the appraisal and acquisition. The appraiser still performs the analysis between the conservation easement and the fee interest as above.

The appraiser should find conservation easements of all types disclosed in the exceptions to the preliminary title report as they are required to be recorded by law. In addition, the appraiser should also consult the certified environmental document, the approved project report, and/or the project environmental coordinator for guidance and consistency regarding how the project Department plans to address any acquisitions of conservation easements.

Identification and evaluation of conservation easements frequently involve complex legal issues in the areas of real property and State and Federal environmental law. In the event that legal assistance is needed in assessing the Department's and grantors' rights and/or duties with respect to conservation easements, the Legal Division should be contacted.

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7.06.05.01 Open-Space Easements

Open-Space Easements (easements established to preserve the natural character of open-space land for the benefit of public use and enjoyment) should be treated in the appraisal as other conservation easements (in accordance with CCP Section 1240.055), with one exception. If the open-space easement was gifted or donated, the easement shall terminate at the time of condemnation complaint filing; the owner is compensated as if the easement did not exist (GOV Sections 51063 and 51095).

7.06.05.02 Wildlife Conservation Easements

Wildlife Conservation Easements (easements held by state agencies at least 10 years in duration primarily to benefit wildlife) will be acquired in accordance with Fish and Game Code (FGC) Section 1348.3. The eminent domain law regarding conservation easements (found in CCP Sections 1240.055(g)(1)(A)-(C) as referenced in the previous section) does not apply in its entirety to wildlife conservation easements acquired by a state agency, as stated in CCP Section 1240.055(h). The following principles are specified in FGC Section 1348.3, which is part of the "Wildlife Conservation Law of 1947" under FGC Sections 1300-1375.

Under FGC Section 1348.3(b), prior to the initiation of condemnation proceedings against a state agency-held wildlife conservation easement, the condemning entity shall give notice to the holder of the easement, provide an opportunity for the holder of the easement to consult with the condemning agency, provide the holder of the easement the opportunity to state its objections to the condemnation, and provide a response to the objections. CCP Section 1240.510 (authority to acquire for a compatible public use) and CCP Section 1240.610 (authority to acquire for a more necessary use) apply to wildlife conservation easement acquisitions. The condemning governmental entity is required to prove by clear and convincing evidence that its proposed use satisfies the requirements of those statutes. At the appraisal stage, the FGC Section 1348.3(b) notice of the proposed acquisition shall be given to the holder of the wildlife conservation easement. Exhibit 7-EX-17B may be used for this purpose. Upon receiving the response to the notification, the appraiser shall forward the response to the project environmental coordinator, the project manager, and the Acquisition Senior. The Department is required to provide a response to any objections to the acquisition.

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The statute does not explicitly identify a valuation methodology, nor does it preclude one; therefore, the following valuation approach is recommended, consistent with similar special conservation easement valuations. In valuing the acquisition, the owner of the land in fee shall be paid the full value that would have been payable to the owner but for the existence of the wildlife conservation easement less the fair market value of the easement, and the easement holder shall be paid the value of the wildlife conservation easement. The appraisal shall take into account any reasonable impacts disclosed by the comment process as outlined above.

7.06.05.03 Agricultural Conservation Easements

Agricultural Conservation Easements are interests in land, less than fee simple, which represent the right to prevent the development or improvement of the land, as specified in Civil Code Section 815.1, for any purpose other than agricultural production. Such easements are granted for the California Farmland Conservancy Program by the owner of a fee interest to a local government, nonprofit organization, resource conservation district, or to a regional park or open-space district/authority that has the conservation of farmland among its stated purposes as provided by statute, or as expressed in the entity's locally adopted policies. Agricultural conservation easements are granted in perpetuity as the equivalent of covenants running with the land (Public Resources Code Section 10211).

Agricultural conservation easements will be appraised in accordance with Public Resources Code (PRC) Section 10261. According to PRC Section 10261(a)(1), ***"The owner of the land in fee shall be paid the full value that would have been payable to the owner but for the existence of the easement less the fair market value of the easement, as determined by an independent appraisal, at the time of condemnation."*** Furthermore, PRC Section 10261(a)(2) states ***"The [California Farmland Conservancy] program, and any other contributing parties if so provided in the easement, shall be paid the value of the easement at the time of condemnation."*** In valuing the acquisition, the owner of the land in fee shall be paid the full value that would have been payable to the owner but for the existence of the agricultural conservation easement less the fair market value of the easement, and the easement holder shall be paid the value of the agricultural conservation easement.

However, CCP Section 1240.055 subdivisions (a) through (f), which govern scope, notification, resolutions of necessity and court proceedings, still apply. It is only the valuation subsection, CCP Sections 1240.055(g)(1)-(2), that does

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not apply to agricultural conservation easements acquired under PRC Section 10261.

7.06.05.04 Replacement Conservation Easements

In some cases where the Department is acquiring a property encumbered by a conservation easement, it may propose replacement of the conservation easement. This may occur by replacement with a substitute property or easement elsewhere, or by acquiring a replacement conservation easement area from the existing fee owner (this applies where there is a remainder that is not encumbered by an existing conservation easement). Usually, this type of an arrangement will be developed through the environmental phase of the project and documented in the approved environmental document, license, certification, or permit. In addition, there will be cases where the certified environmental document will require a replacement easement area that exceeds the existing easement area by a ratio that is higher than 1:1. The appraiser will appraise the project requirement and any replacement property as per normal procedures and cite the approved environmental document, license, certification, or permit's specific provisions for the treatment of conservation easement and the replacement conservation easement.

7.06.05.05 Comparison of Statutes Regarding Valuation of Conservation Easements

The following table shows the relationship between the statutes regarding the valuation of existing conservation easements.

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Comparison of Statutes Regarding Valuation of Conservation Easements

Easement Type	Scope of Law (Application)	Measure of Compensation
Conservation Easements	• Applies to recorded conservation easements (CIV Section 815.5), whether local, special district, state, federal, or tribal, [CCP Section 1240.055(a)] or held by a tax-exempt nonprofit entity whose primary purpose is conservation, etc. (CIV Section 815.3). • Does not apply to wildlife conservation easements if they were acquired by a State agency. [CCP Section 1240.055(h)]. • Per CCP Section 1240.055(g)(2), the valuation methodology [CCP Section 1240.055(g)(1)] does not apply to Agricultural Conservation Easements acquired under PRC Section 10261. **CIV Section 815, CCP Sections 1240.55 and 1260.220**	• Allocation between encumbered fee and easement areas as provided in CCP Section 1240.055(g)(1): ➢ If the acquisition does not damage the easement, compensation is assessed as encumbered. ➢ If the acquisition does damage the easement, compensation is assessed as not encumbered. ➢ The total compensation of all interests shall not be less than, and shall not exceed, the fair market value of the fee simple interest as if it were not encumbered by the easement.
Open-Space Easements	• These apply only to open-space easements acquired by or on behalf of a city or county. **GOV Sections 51063 and 51095**	• Similar to the methodology for conservation easements above, with one exception: ➢ If the open space easement was gifted, then the compensation shall be calculated as if the easement does not exist.

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Easement Type	Scope of Law (Application)	Measure of Compensation
Wildlife Conservation Easements	• Applies only to state-agency acquired wildlife conservation easements [FGC Section 1348.3(a)(3)] as defined in CIV Section 815.1 and recorded in CIV Section 815.5. **FGC Sections 1300-1375**	• Not specified in FGC Section 1348.3 or related statutes. FGC Section 1348.2 provides that the (original) acquisition price "…shall not exceed the fair market value of the property." Suggested methodology consistent with similar special conservation easement valuations: ➢ The land fee owner is compensated for the fair market value as encumbered. ➢ The easement-holder is compensated for the value of the easement.
Agricultural Conservation Easements	• Applies to agricultural conservation easements acquired through the "California Farmland Conservancy Program" (PRC Section 10211), administered by the Department of Conservation and held by an entity defined in PRC Section 10212, "city, county, nonprofit organization, resource conservation district, or a regional park or open space authority…" **PRC Sections 10211-10212 and 10261**	• Allocation between the encumbered fee and the conservation easement as specified in PRC Section 10261(a): ➢ The land fee owner is compensated for the fair market value as encumbered. ➢ The easement-holder is compensated for the value of the easement.

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7.06.06.00 Outdoor Advertising Sites

Where a property is improved with an existing outdoor advertising sign and the comparable sales are not so improved, it will be necessary to analyze the additional contributory value of the outdoor advertising site. Any additional value may take the form of, and require the consideration of, either an interim use, an ancillary use, or a highest and best use.

Interim use value is defined as that increment in value which a short-range use, usually not exceeding five years, other than the highest and best use of the property, would contribute to the total value of the property.

Ancillary use value is defined as an additional source of income other than from highest and best use of the property which may or may not influence the economic rent of the dominant use.

Highest and best use is used in the regular appraisal context.

Complete Exhibit 7-EX-10. The value on Line 28 will be carried forward to the Land Valuation portion of the Appraisal Page under the heading of "Contributory Value of Outdoor Advertising Sign Site(s)."

The appraisal will contain sufficient explanation to document adjustments, conclusions, and assumptions, including "Comparable Sign Board Site Rental Adjustment Chart" (Exhibit 7-EX-10 pg. 3).

The valuation process described here is usually not used to value sites of outdoor advertising signs removed as a part of the Highway Beautification Billboard Removal Program. A formula method is used by the Region/District Right of Way Billboard Coordinators for that program's site valuations.

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7.07.00.00 - IMPROVEMENTS

7.07.01.00 General

Improvements will be appraised at the value they add to the land, assuming the land to be vacant and ready for development to its most probable highest and best use. As such, improvements will be appraised at their depreciated value in place, considering the effect of depreciation from all causes.

Appraisal of improvements at the value they add to the land, if vacant, does not assume that existing improvements are necessarily an improper development of the land. Appraisal by this method will reflect the amount the well-informed buyer would pay for the total property, considering the estimated remaining useful and economic life of the improvements and probable use of the land, if the improvements are removed.

(See the following Right of Way Manual (R/W Manual) Sections 7.07.04.00, 7.07.05.00, and 7.07.06.00 regarding classification of fences, water sources and agricultural improvements, and Exhibit 7-EX-9 regarding improvements.)

7.07.02.00 Single Family Residence and Two to Four Unit Multi-Residence - Form Appraisal

The Uniform Residential Appraisal Report form (URAR) may be used for appraising total acquisitions of either improved single family residential or 2 to 4-unit multi-residential properties. The acquisition may include excess property providing an appropriate allocation of land and improvement values between excess and right of way is made as set forth in R/W Manual Section 7.03.04.00.

The URAR form appraisal may be used only if the land's highest and best use is single family residence and the property is improved with one single family residence or, the land's highest and best use is a 2 to 4-unit multi-residence and the property is improved with one 2 to 4-unit multi-residence. This includes properties improved with mobile homes as realty. See R/W Manual Section 7.12.00.00.

When using the form appraisal, a Parcel Appraisal Page, Form RW 7-9, must still be included in the appraisal report for each parcel appraised, together with any other forms listed in R/W Manual Section 7.02.03.00 that are pertinent to the appraisal.

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When appraising a total acquisition of either a single-family residence or a 2 to 4-unit multi-residence, with no excess land to be acquired, an allocation between land and improvement values is not required.

When using the URAR form, the total price shown on the Comparable Data Page (Form RW 7-11) does not need to be allocated between land and improvements. However, a detailed description of the improvements located on the comparable must be shown on the Comparable Data Page.

The URAR forms may be purchased from various business form companies. The smaller region/districts not needing as many of the forms may consider obtaining them from a larger region/district having a greater need for the forms.

There are several books available providing instructions for using the URAR forms for appraising single family residences and 2 to 4-unit multi-residences. Information on the availability of these books can be obtained from HQ R/W Appraisal Branch. The URAR form appraisals may also be completed by use of a computer. There are various companies that sell computer software packages for the URAR form.

7.07.03.00 Miscellaneous Improvements and Landscaping

Normal and adequate landscaping and miscellaneous yard improvements (including residential Private Fencing, driveways, and walks) may be briefly listed and valued at their lump-sum contribution to the total value of the property. Normal and adequate porches, stairways, and breezeways need not be separately evaluated if they are considered in the basic building value. Private retaining walls are included in the land value.

Minor curative work, such as the relocation of very minor improvements, can be proposed in an appraisal without including a separate value for purchase. Mailboxes, gate posts, Private Fence end posts, yard lights, capping landscaping irrigation lines, and small signs are examples.

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7.07.04.00 Agricultural Improvements

Agricultural buildings and farm residences will be valued as Improvements at depreciated value in place.

If agricultural use represents only an interim use, particular care should be taken to consider only the value the improvements add to the land. If conversion of the land to a higher use is anticipated in the near future, agricultural improvements might better be valued under the "Improvement" headings at interim, salvage, or demolition values rather than included with the land. (See R/W Manual Sections 7.07.07.00 and 7.07.08.00.)

7.07.05.00 Valuation of Fences

Fences are defined and described in the Highway Design Manual, Chapter 700, Miscellaneous Standards, Topic 701 – Fences; and the Maintenance Manual, Chapter C5, Section 2 - Fences. For purposes of this chapter, fences are divided into two (2) categories: 1) Departmental Fences, and 2) Private Fences.

Departmental Fences are State owned and act as physical barriers to ensure integrity of access lines or right of way lines. All Departmental Fences are placed on State property either on the access lines or immediately adjacent to the right of way line and are maintained by the State. Departmental Fences are not valued as part of the requirement. Cost to install, replace or relocate Departmental Fences will be included in construction costs.

Private Fences are located outside the State's right of way. Private Fences are owned by the adjacent property owners and only serve the property owners' needs. The property owners maintain Private Fences. Private Fences are valued as follows:

A. Private Fencing Included in Land Value

Private Fences on agricultural, grazing, timber, desert, or undeveloped subdivision land, or Private Fence of marginal utility, should be included in the land value unless the comparable data indicates the contrary. Private Fence included in the land value will be briefly described as to type and condition under "Improvements" with a zero value and the remark that the value is included with the land. Specialized Private Fence may still be valued under "Improvements" at the contributory value it adds to the total property.

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B. Private Fencing Appraised as an Improvement

Any Private Fence within the requirement not included in land value will be valued as an improvement for the contributory value to the land. The method is to value the improvements at the depreciated value in place. Care should be exercised that double payment is not made for Private Fence owned by two property owners.

C. Damages to the Remainder for Private Fencing

After total Damages are assessed, the State may pay to mitigate those Damages by replacing, adding to, or internally rearranging Private Fences for permanent or temporary construction. The appraiser must be careful not to double pay for Damages. The amount paid as a Damage cannot be more than the difference between 100% cost of a new replacement Private Fence and the amount paid as the improvement (the depreciated value in place). (See Damages Section 7.09.00.00.) Damages may also be mitigated by reinforcing grantor's remaining Private Fence. Private Fences can be replaced or rearranged by construction contract work to mitigate Damages.

7.07.06.00 Valuation of Water Sources

Agricultural water sources and pumping and distribution systems will usually be included in the land value, as adjusted, to reflect the productivity of the water supply. The improvements being acquired, such as the pump, are to be fully described as to type, distribution and condition under the "Improvement" heading. Water sources included in the land value will be valued at zero with the remark that the value is included with the land.

Water sources which are replaced or relocated will be valued at zero. If an agricultural water source or system is to be relocated or replaced, the cost of such work will be shown under "Damage" or "Construction Contract Work," and must be justified as mitigating greater severance damages to remainder (see also Damages Section 7.09.00.00).

Nonagricultural water sources will be appraised as an improvement. If water-system equipment is proposed for relocation, the water source will be valued at the relocation cost estimate under "Improvement" subheading of "Relocation in Lieu of Purchase." This relocation cost estimate will include necessary expenses to reestablish a source of equivalent quality and quantity, including well drilling and test holes, if required.

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Increased size, capacity, power, etc., necessary due to relocation of a water source must be justified as mitigating greater severance damage to the remainder. Where physical relocation of the water source equipment is not feasible, the equipment will be valued at depreciated value in place under "Improvements." Additional expenses which become necessary to avoid greater severance damage due to loss of the water source must be shown under "Damages."

If relocation or replacement of a water system is proposed to be performed by a State contractor, the water source and equipment will be described under the "Improvement" heading and valued at zero value. The entire relocation or replacement cost will then be shown under "Construction Contract Work."

7.07.07.00 Improvements - Little or No Value

Occasionally, improvements add little or no economic value, or may even decrease the value of land suitable for a higher and better use. In these cases, the improvements will be described for Acquisition and Property Management purposes and valued at the amount they contribute to the market value of the property. This would be a positive amount if the improvements have a salvage value; such an amount should be identified as "salvage value." This would be a negative amount if the improvements have no salvage value and a cost would be incurred for their removal. This amount should be identified as "clearance" or "demolition" cost.

7.07.08.00 Improvements - Interim Value

Occasionally, improvements may have value due to a brief period of productive income until conversion of the land to a higher and better use. Such value should be identified and supported as interim value. Estimated short term net income, giving consideration to proper risk and expenses, may be an appropriate valuation method.

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7.07.09.00 Improvements - Purchase or Curative Work?

It may be more economical to relocate, rearrange, or alter improvements such as garages, other auxiliary buildings, storage sheds, on-premise signs, etc. For these cases, the primary appraisal must value the improvement for purchase. The curative work should be included as an alternate appraisal.

Where substantial savings may result if the grantor or the State relocates, rearranges, and/or severs and reconstructs improvements that would otherwise be purchased or damaged, only the curative approach need be included in the appraisal. An alternate providing for purchase may be included at the request of the Acquisition Branch. The alternate appraisal will be processed in accordance with Section 7.03.03.00.

Relocation curative work is normally considered economically feasible if the cost (including utility relocations and other damages) does not exceed the depreciated value of the improvements, less salvage value at State sale. This information will be included in the appraisal to support the feasibility of proposed relocation work.

7.07.10.00 Improvement Relocations or Replacements Exceeding Depreciated Value Less Salvage

Occasionally, improvements within the right of way (including excess) may be valued at their relocation or replacement costs rather than at their depreciated value in place to avoid greater severance damages to the remainder. The improvement will be described and valued at the relocation or replacement cost. If the relocation or replacement cost is greater than the depreciated value in place, less salvage, the additional cost must be justified as mitigating greater severance damage to the remainder. This additional cost will be shown under "Damage."

The only exceptions to these rules are relocation or replacement of improvements valued as part of the land or proposed for replacement in kind or utility by a State contractor. In these cases, the total relocation or replacement cost will be shown as a Damage or Construction Contract Work and must be totally justified as mitigation of greater severance damages.

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7.07.11.00 Relocation, Rearrangement, or Reconstruction Estimates

This work on minor improvements, such as mailboxes, sheds, Private Fencing, gates, cutting and capping utility lines, etc., may be briefly described and valued at lump sum amounts directly on the Appraisal Page. On major improvements, it must be supported by a work estimate included in the appraisal. The estimate may be made by the Appraisal staff based on the Region/District's cost experience and interviews with house movers, contractors, and the Region/District's Project Development, Property Management, and/or Utility Clearance Units.

The estimate will:

A. Include all necessary expenses involved in the proposed work, including storage, security, overhead, and supervision; but will exclude, or take credit for avoidable betterments.

B. Contain the source of the cost data. If the estimate involves highway construction contract work, it will be made or verified by the Project Development Unit. Certain estimates should be made or verified by the Region/District Property Management or Utility Clearance Units.

C. Show the estimated depreciated value in place and salvage value of building improvements proposed for relocation.

D. Show the Region/District's recommendation whether final bids are required prior to settlement.

Estimates involving relocation of improvements from within the right of way (including excess) will be shown under "Improvements" with the subheading "Relocation in Lieu of Purchase." The only exception to this rule is the relocation, from within the right of way (or excess), of improvements valued with the land or proposed for relocation by a State contractor. In these cases, the improvement will be listed under the "Relocation" subheading with a zero value. The relocation estimate amount will be shown under "Damage" or "Construction Contract Work."

All other rearrangement, replacement, and severance and reconstruction work will be considered as a Damage or as Construction Contract Work.

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Severance and reconstruction of improvements straddling the right of way line may involve payment for the portion of the improvement required as well as payment for the curative work.

7.07.12.00 Building Check Sheets

Exhibit 7-8 is for use in assembling the basic information required to describe residential improvements in a uniform, systematic manner with a limited amount of actual writing. The grid on the back is to record improvement measurements and is for field use. This exhibit without the grid will be inserted in the Report. If the URAR form is used, Exhibit 7-8 is not necessary.

Types of improvements not listed on the exhibit will be described in detail in the appraisal. This description will include the use, age, construction, condition, specialized features, if any, and any other factors which may be important in valuing the improvement.

7.07.13.00 Service Station, Commercial and Industrial Buildings

When appraising these, Exhibit 7-9 should be used to assemble the basic data.

The exhibit, without the grid, will be included in the Report.

7.07.14.00 Tenant or Lessee-Owned Improvements (Excluding Personal Property)

The appraisal will contain a specific list of tenant or lessee-owned improvements (realty) which include buildings, structures, other improvements and improvements pertaining to the realty. The appraiser will separately show the value of the improvements on the Appraisal Page according to their ownership, such as:

Lessor Owned (List improvements)	$100,000
Tenant or Lessee Owned (List improvements)	$25,000
Total Value of Improvements	$125,000

Tenant or lessee-owned improvements will be appraised at the amount they contribute to the fair-market value of the real property to be acquired or their

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fair-market value for removal from the real property, whichever is greater [49 CFR §24.105(c)].

Fair-market value for removal means "salvage value." It is the probable sales price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

The Appraisal Report will show both the contributory and salvage value of such improvements. The greater value will be carried forward to the Appraisal and Summary Pages.

If the salvage value is greater than the contributory value, the existing improvements may not constitute the highest and best use of the property. Where the tenant-owned real property improvements do not contribute any value to the property, the tenant is still entitled to any salvage value of such improvements.

In some situations, it is possible for both the contributory value and the salvage value of lessee-owned improvements to equal zero. In these cases, the improvements should be shown at "nominal" in the Report.

Structural improvements are normally classified as real property and not personal property. If there is any doubt whether a tenant or lessee-owned improvement is part of the real estate or personal property, the Division should be consulted and/or a legal opinion obtained.

In some cases, there may be controversy between lessors and lessees regarding ownership of the improvements (real property). Then, the appraiser will make a statement in the Report regarding the controversy of ownership to alert the Acquisition and RAP Branches of the problem.

The appraiser should separately show three categories, such as:

Lessor Owned (List improvements)	$100,000
Lessee Owned (List improvements)	$15,000
Ownership Claimed by Both Lessor and Lessee	$10,000
Total Value of Improvements	$125,000

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7.07.15.00 Retention Value

A separate retention value may be included in a Report when the owner wants to retain the structural improvements. This is in addition to either the full or part-take appraisal that proposes the purchase of the improvements, as applicable, and any "Relocation in Lieu of Purchase" alternate that may be appropriate. Retention value in this instance is the same as salvage value. It should normally be established through a comparative analysis of improvements sold at public sale.

It is not intended to allow "piecemeal" retention of portions of structural improvements which, if removed, would leave the structure in an unrentable condition. Also, this concept does not apply to improvements pertaining to the realty, such as machinery and equipment, as defined in the California Eminent Domain Law (Title 7, Chapter 9, Article 3, Section 1263.205 of the Code of Civil Procedure). These items are available to owners by other means.

Owner retention of improvements for salvage value is at the Department's option and is not a right of the owner. Accordingly, it should not be proposed in situations that have the potential of producing an indefensible windfall to the owner.

Retention value estimates will be provided on written request from the Acquisition Branch if they were not a part of the original appraisal. These requests will be processed like any other revised page(s) to the original appraisal.

The above instructions do not apply to those miscellaneous minor improvement items which grantors often wish to retain, e.g., drapes, antennas, etc. If a separate valuation of such items is requested, they will be listed with their contributory values.

7.07.16.00 Removal of Improvements Straddling the State's Right of Way Line

When buildings or improvements are discovered to be straddling the State's right of way line, a TCE is required to allow the Department to enter private property in order to modify/remove the buildings/improvements. The TCE should be designed, mapped and included in the appraisal report.
Care must be taken to avoid potential duplication of payment for any damages to the remainder of the property and the acquisition cost of the TCE. If a damage payment fully compensates the grantor for the loss in use

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during the modification or removal of the private building or improvement, the TCE may have nominal value. Please refer to 7-EX-20, "TCEs - Improvements Straddling the Right of Way Line Memorandum."

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7.08.00.00 - IMPROVEMENTS PERTAINING TO THE REALTY

7.08.01.00 General

Trade fixtures, equipment, machinery, and other items installed for use on a property will only be appraised if they are "improvements pertaining to the realty" as defined in Section 1263.205 CCP. These improvements include items that "...cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation." The appraiser must compare the value in place against the value if removed and sold.

This decision is a matter of economics. It must be fully documented so the decision can be supported without question. This requires a comparison of the items' depreciated value in place and its salvage value to establish that it cannot be removed "without substantial economic loss." The nature and extent of the damage must be explained.

Whenever a separate valuation of machinery and equipment or other specialty items is required by the Appraisal Branch, it shall be prepared by a qualified individual, either staff or independent. Separate specialty reports shall be prepared in accordance with current and appropriate standards and will contain cost sources for each item as shown in Section 7.05.04.00, "Cost Approach."

Independent specialty reports shall be reviewed by a specialist in those Regions/Districts staffed with building cost estimators before distribution to the real estate appraisers. In those Regions/Districts without cost estimators, a Senior assigned to the Appraisal Branch shall review independent specialty appraisals. The specialty reports shall be reviewed to the same degree as is now done on regular realty appraisals before being utilized in establishing the market value of the total property required.

When a separate valuation of trade fixtures, equipment, machinery, and/or other items pertaining to the realty is required, the value of such items shall not be arbitrarily added to the valuation of other realty. It shall be considered to the extent of their contributory value in establishing the value of the whole property. If the specialty appraisal is used to establish the value of the whole, a narrative discussion of the adjustments or lack of adjustments from the values in the specialty report will be included in the appraisal. The appraiser

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may consider the specialist's factual data, information, and opinions, but the final conclusions of value remain the appraiser's responsibility.

7.08.02.00 Appraisal Page Format

Trade fixtures, equipment, machinery, and other items determined to pertain to the realty will be listed on a separate page in the parcel appraisal with the following information:

- Item identification, including make, model, and serial number.
- Age (approximate age is sufficient where actual age is not known or is not appropriate due to extensive remodeling).
- Estimated new and remaining service life.
- General condition.
- Replacement cost new in place with cost sources.
- Depreciated value in place.
- Salvage value in place.
- Relocation expense estimate.
- Cost sources of each item and basis of relocation estimate.
- Photographs of major items.
- Comment on which items may be easily moved or utilized in circumstances other than the existing use.

Lessee-owned items will be separately shown. The items' value, relocation estimates, and salvage value totals will be appropriately proportioned between lessee and lessor.

The contributory value in place of trade fixtures, equipment, machinery, and improvements pertaining to the realty will be carried forward to the Appraisal Page (Form RW 7-9) and entered under the appropriate subheading under "Improvements." In partial acquisitions and alternate appraisals where grantor requests relocation in lieu of purchase and on minor improvements, the relocation estimate amount may be used in lieu of the contributory value in place.

7.08.03.00 Replacement Cost

Replacement cost new of equivalent machinery should be shown at catalog price plus freight, tax, cartage, and installation costs to yield cost new in place. Freight, tax, cartage, and installation costs should consider installation of the entire operation at one time and not as separately installed items. However, costs should be distributed to individual items when practical. Care

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should be exercised that specialized plumbing, electrical and structural work is not included in both the building appraisal and the installation charges.

7.08.04.00 Depreciated Value

Depreciated value in place is to reflect depreciation due to all causes as related to each item and to the total operation. This should include physical deterioration, functional obsolescence, and any economic obsolescence. A dollar or percentage breakdown of each type is not necessarily required. The appraiser should state whether the item contains functional obsolescence and provide a reasonable explanation of the depreciation basis.

While depreciation may be attributed to the entire operation, distribution of an estimate of depreciation to each item is desirable, when practical.

7.08.05.00 Salvage Value

Salvage value is the price the State would obtain for the equipment in place at auction with the buyer removing the equipment in a relatively short time.

7.08.06.00 Improvements Not Pertaining to Realty Under Section 1263.205

Appraisals of furnished or partly furnished rental homes, duplexes, motels, hotels, or apartment houses need to include an inventory of the improvements not pertaining to the realty under Section 1263.205 CCP. It should show the total estimated in-place market value. The State may have to purchase these items to prevent eviction of tenants who will be unable to continue their occupancy of the premises if such items are retained and removed by the owner. Items which would not cause the tenants to move from the premises if not purchased by the State are not to be included. The total value of such improvements not pertaining to the realty is not to be carried forward to the Appraisal Page nor included in the "Market Value of Required Property." This is in contrast to improvements which do pertain to the realty which shall be carried forward and included in the market value.

Purchase of furniture from vacated homes or homes which are not the permanent residence of the occupants would only be done when the property is purchased long enough in advance of right of way clearance that the State can amortize the cost of the furniture from increased rentals during the time the property will be available for rent.

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7.09.00.00 - DAMAGES, BENEFITS, AND CONSTRUCTION CONTRACT WORK

7.09.01.00 General

The possibility of damages and benefits will be investigated in every partial acquisition. This investigation will include local market data, similar after-condition land development and highest and best use analyses, and other applicable information.

Any damages and/or benefits will be supported and clearly documented in the parcel appraisal. Severance damages and benefits will be shown as separate totals. Benefits, if any, will be subtracted from severance damages. Any net benefits or damages will be shown separately.

The results and support of the investigation which reveals that no damages and/or benefits occur must be shown in the appraisal report. Such analyses may materially assist negotiations in cases where unsubstantiated claims for damages might be made.

Benefits which result due to construction of the project in the manner proposed should be described, valued, and supported even if it is determined that there are no damages. Benefits may presently be incapable of being valued; the nature of the benefits should then be described in the appraisal. Legal opinions should be secured when there is uncertainty regarding compensable damages.

7.09.02.00 Severance Damages

A severance damage is a loss in value to the remaining property after acquisition and construction in the manner proposed. Severance damages are valued by the appraisal of the remainder as a portion of the total property in the before condition and as a freestanding remainder in the after condition (disregarding the benefits of the construction project). The remainder is considered damaged if it is worth less after construction of the project due to a legally compensable reason. The after condition valuation requires the same support as the before condition valuation. Severance damage analyses should consider when the damages will occur (Code of Civil Procedure Sections 1263.420 and 1263.440).

The parcel appraisal must specifically state the reasons for the severance damage and discuss the comparable data or investigation results supporting

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the severance damage estimate. Comparable data used will be referenced under the heading "Market Data (After)."

Generally, any severance damages to a larger parcel functioning as a unit, especially under an agricultural use, will be measured by any decrease in market value of the remainder(s) (*Department of Public Works v. Lundy*). Under very narrowly described circumstances, damages to the continued operation of the remainder(s) as a unit may be considered (*Department of Public Works v. Cozza*); these include items such as increased cost, difficulty, and hazard. If this form of damages is considered applicable, the Region/District must furnish particulars to HQ R/W Appraisal Branch and request a legal opinion prior to completion of the appraisal.

Compensable damages to the remainder may be caused by either or both of the following (see CCP Section 1263.420):

(a) The severance of the remainder from the part taken.
(b) The construction and use of the project for which the property is taken in the manner proposed by the plaintiff, whether or not the damage is caused by a portion of the project located on the part taken.

7.09.03.00 Noncompensable Damages

The following types of damages have been found by the courts not to be compensable, or in certain respects, may be compensable only under laws other than those of eminent domain. Therefore, the following noncompensable damages should generally not be included in real property acquisition valuations:

A. *Damages to business*

However, loss of goodwill is compensable if proven by the owner. Handling of such losses is treated under R/W Manual Section 7.17.00.00.

B. *Expenses for moving personal property*

However, displaced property owners and tenants may be entitled to payment for moving personal property under the Relocation Assistance Program.

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C. *Temporary damages to the use and occupancy of property reasonably incident to construction requirements*

Unnecessary and substantial interference may be compensable. The appraiser should confer with HQ R/W Appraisal Branch and Legal to assist in the determination of damage compensability.

D. *Damage due to annoyance and inconvenience suffered by the public generally*

Exceptions to this may include diminution in property value of the remainder caused by noise, fumes, and/or other annoyances inherent in the daily use of a freeway. These types of severance damages are generally dependent on the specific circumstances in each case and must be measurable within the market. It is important to note that the damage must be sustained by the property itself rather than the owners. The appraiser should confer with HQ R/W Appraisal Branch and Legal to assist in the determination of damage compensability.

If noise damages are assessed in the appraisal, written documentation from Project Development will be included in the report. This documentation should confirm that no noise attenuation measures are included in the proposed construction plans.

E. *Circuity of travel caused by dividing a highway*

Damages concerning circuity of travel can occur under many circumstances. The appraiser should confer with HQ R/W Appraisal Branch and Legal to assist in the determination of damage compensability.

F. *Rerouting or diversion of traffic or changing of a two-way street to a one-way street*

G. *In general, all those types of damages which can be considered to be conjectural, speculative, and/or remote*

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7.09.04.00 Cost to Cure

Some severance damages may be mitigated or entirely eliminated by estimating the cost to cure the damage. The appraiser must first show the total estimated severance damages to the remainder which would occur if not cured. After the damage amount is estimated, the appraiser can explore potential costs to cure those damages. Damages are measured by the lesser of these two costs: the potential damage (loss in value) to the remainder or the cost to cure the damage. The estimated cost to cure may not exceed the estimated severance damage. Since cost to cure damages are a form of severance damages, they are to be offset by any benefits.

The supporting data and sources used to estimate cost to cure damages must be shown in the appraisal report in accordance with R/W Manual Section 7.05.04.00 relating the documentation of cost estimates.

7.09.05.00 Benefits

Benefits are valued by the appraisal of the remainder before and after the acquisition and construction of the project in the manner proposed. Benefits analyses should consider when the benefits will occur. (See CCP Sections 1263.430 and 1263.440.)

The appraiser must provide a descriptive analysis with adequate support for any estimated benefits.

Benefits are to be offset against any severance damages in the valuation. If benefits are estimated to the remainder, such benefits will be quantified and shown in the appraisal report, even if it is determined that there are no severance damages to the remainder. When excess benefits remain after the offset against severance damages, the excess benefits shall be shown in the report. Benefits can be used to offset any loss of goodwill that may occur to a business located on the property if owned by the fee owner. (See CCP Section 1263.410.)

7.09.06.00 Summary of Severance Damages and Benefits

Severance damages and/or benefits shall be summarized on a before-and-after value basis in the appraisal report. A "Summary of Severance Damages and Benefits" (Form RW 7-12) shall be used for the summary.

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In cases where severance damages and/or benefits are relatively minor, it will not be necessary to include a before-and-after value summary.

7.09.07.00 Damage Alternatives

The "Summary of Damage Alternatives" and "Discussion of Damages" (Exhibit 7-EX-6) are the suggested formats to be used to compare practical alternative damage approaches and to discuss damage elements. The "Discussion of Damages" section will be used in cases where damages, other than minor adjustment curative work, are present.

If no feasible curative work alternative can be proposed to mitigate severance damages, the "Discussion of Damages" will so state. If severance damage estimates are inconclusive using before-and-after valuations, or are impractical due to the size or nature of the remainder, or if the cost to cure the severance is the best measure, the "Discussion" will give the reasons for the approach used. If the severance damages are valued by market comparison, the "Discussion" will reference the comparable data used and explain the comparative analysis. If market data is inconclusive as a basis for the estimation of damages, the "Discussion" should include a description of the scope of the market investigation and the reason supporting the opinion of damages.

The formats contained in Exhibit 7-EX-6 should be used to substantiate a purchase of excess land, except in the following cases: (1) landlocked remainders; (2) properties with major improvements straddling the right of way line; (3) sites reduced below zoning minimums; (4) public utility or governmental properties. Even in these exceptions, comments should describe investigations of possible curative work alternatives and reasons for rejections.

It is important to note that in some cases, potential curative work alternatives may include substitute condemnation. The most common situation where substitute condemnation should be considered occurs where an acquisition would deprive a property of access to a public road or utility service. To restore the utility of such parcels, and in doing so, to minimize severance damages, the State may provide substitute access or utility service. CCP Section 1240.350 provides the discretionary authority for substitute condemnation of additional property "as reasonably necessary and appropriate (after taking into account any hardship to the owner of the additional property) to provide utility service to, or access to a public road from, any property that is not acquired for such public use but which is cut off from utility service or access to a public road as a result of the acquisition by

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the public entity." When proposing substitute condemnation as a means to minimize severance damages, the appraisal report (along with the resolution of necessity) shall specifically refer to CCP Section 1240.350 and include a statement that the substitute property is necessary for the purpose specified in this section.

7.09.08.00 Utility Service Damage

The grantor must be fully compensated for all justified damages due to relocation of utilities, including payment for severing water, sewer, and gas lines and wiring extending into the right of way area, if such work is to be performed by grantor.

7.09.09.00 Construction Contract Work

Occasionally, work in or outside of the State right of way is required to restore the utility of remaining property (i.e., road/driveway approach, cattle pass, utility sleeve) and may be most economically and/or practically performed by the State's highway contractor. The work and estimated cost will be described as "Construction Contract Work." The feasibility and cost of the proposed work must be estimated or verified by Region/District Project Development prior to submission of the appraisal. Sources of estimated costs will be included in the report and documented in the Region/District's appraisal file. Costs must be justified by the value of the remainder and must be less than the potential damage which would occur if the construction work was not performed.

Only work for the grantor's benefit to the remainder is considered to be "Construction Contract Work" as it is a form of a damage payment. Work of greatest benefit to the public or required by the highway construction will not be classified as "Construction Contract Work."

The appraisal must clearly show the computations and explain the reasons for proposing construction contract work that is not offset when benefits are present. Minor construction contract work for driveway reconstruction, domestic utility reconnections, etc., should be proposed regardless of the presence of benefits.

Construction contract work may also include curative work for a remainder which is to be performed by a clearance contractor or public utility agency. The feasibility and cost of the proposed work will be estimated or verified by the Region/District Property Management or Utility Clearance Branches prior to submission of the appraisal.

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The Appraisal Summary (RW 7-9) will show a "Construction Contract Work" heading for all partial acquisitions. The heading will show the remark "None Required" or contain a description and valuation of required construction contract work, including proposed engineering station locations. The total of all construction contract work will be carried forward to the Parcel Summary Page (if used).

Construction contract work can benefit more than one property. If multiple properties are benefited, the total amount of construction contract work will be split among the various properties at the amount of benefit each property receives. A reference will be made in each parcel appraisal that the construction contract work benefits other parcels.

7.09.10.00 Utility Main Relocations

Relocation of utility transmission lines up to the point of owner's service is usually included in agreements with the utility company. Such relocations need not be considered in the parcel appraisal, with the one exception: the extension of utility mains for the sole benefit of few properties remaining after State acquisition. In these cases, the utility main relocation costs must be justified by the values of the affected remainders.

If payment of severance damages or purchase of remainders is less costly, it should be considered.

7.09.10.01 Private Utility Connections

The relocation of private connections can be handled in one of the following ways:

- Reconnection by the grantor through a damage payment.
- Reconnection by the utility company as part of the utility agreement.
- Reconnection by the highway contractor as construction contract work.
- Reconnection by the clearance contractor as construction contract work.

Whenever possible, the appraisal analysis should anticipate how private relocations and reconnections will be accomplished. The estimated cost for work performed by the grantor will be shown as a "Damage." Reconnection by any other means will be shown as "Construction Contract Work." If construction plans or utility company plans are incomplete, the appraisal will describe the various utility services and discuss possible relocation and

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reconnection requirements, potential challenges (if any), and estimated costs.

An analysis will also describe the parcel's utility sources and possible relocation requirements, if any. Such analyses should consider grantor-owned well water, sewerage, and other utility systems.

7.09.11.00 Access Openings

All proposed openings within areas of access restriction to allow direct private access to the highway (either permanent, temporary, or locked gate) will be listed on the Appraisal Summary (RW 7-9) under the heading "Access Openings." Do not list public road openings included in Freeway Agreements or road approaches from conventional highways or frontage roads. Costs will be valued under "Damages" or "Construction Contract Work," if appropriate.

All access openings must be confirmed by Region/District Project Development. The necessity for locked gates or temporary openings must be fully explained in the parcel appraisal. All listed access openings will be properly delineated on the Appraisal Map and included on the List of Access Openings in the appraisal report.

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7.10.00.00 - REVISION AND REVIEWS

7.10.01.00 General

Offers may be made only on the basis of approved appraisals or authorized adjustments; therefore, it is imperative that revisions be made without undue delay.

The Region/District shall devise and maintain an efficient procedure for systematic appraisal review for "updating" unclosed parcels in areas where significant new data is revealed.

It is the Acquisition Branch's responsibility to develop any new data, make an investigation thereof and determine if such new data warrants further review by the Appraisal Branch. When requested, the Appraisal Branch shall investigate the new data and determine the applicability to unacquired parcels. If adjustment is not justified, the Acquisition Branch will be immediately notified.

If significant adjustment is in order, an appraisal revision will be immediately processed so negotiations may proceed without undue delay. Review will be expedited upon request.

7.10.02.00 Changes in Unapproved Appraisals Requiring Division Approval

If a report is returned to the Region/District without action, or a report is approved except for certain parcels, the Region/District will take such corrective action as necessary. A cover letter of transmittal will describe the action taken on the points raised by HQ R/W.

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7.10.03.00 Changes in Approved Appraisals-Unacquired Parcels

The contents or valuation of an unacquired parcel appraisal may be changed by one of the following methods, in accordance with current delegations:

- Revised appraisal pages.
- Revised parcel appraisal canceling and superseding an existing appraisal by inclusion in a later report.
- Memorandum of Adjustment.

7.10.04.00 Revised Appraisal Pages

Parcel appraisals may be revised by submitting revised appraisal pages for replacement in the approved report, providing the change can be substantiated without extensive changes in supplemental appraisal pages. The following are examples of cases in which revised appraisal pages may be used:

A. Mathematical or typographical errors.

B. A valuation change resulting from an orderly change in price level which can be clearly supported by new comparable data and the original appraisal relied predominantly on a market approach.

C. The change involves addition or deletion of a subparcel, or parcel split or merger with little change in value factors.

D. The change involves addition or deletion of minor improvements without effect on the land valuation.

E. The change involves increase or decrease in right of way requirements or excess with no significant change in damages, benefits, or construction contract work.

F. The change involves including an alternate appraisal with little change in the valuation of the total property.

G. The change involves parcel grouping.

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7.10.04.01 Submittal of Revised Pages

Revised pages and maps will be submitted with a memorandum of transmittal detailing the changes. A change in right of way requirement or access control will be approved by the Region/District Division of Design. Revised pages will have the word "Revised" and the revision date shown at the top of all pages. Revised maps, when necessary, will have only the affected parcel(s) colored and will have the word "Revised" and the date visible on the map when both opened and folded. A revised Comparable Data Map is required whenever new comparable data is used. A new Senior Field Review Certificate and a revised Certificate of Appraiser are required whenever there has been a change in the value, improvements affected, or area taken. Minor typographical corrections do not require new Certificates.

7.10.05.00 Revised Parcel Appraisals

If extensive changes are required, a revised parcel appraisal canceling and superseding the existing appraisal must be submitted. They will be submitted in succeeding reports and will be complete with all necessary information and supporting data.

The Appraisal Summary (RW 7-9) will contain a brief résumé of the reasons for the revision. At the top of the page, show the remark "Revises and Supersedes the Parcel Appraisal in Appraisal Report No. _____, Dated _____."

Revised parcels contained in a report with other parcels will be marked "Revised" on the Parcel Summary Page (if used) and on the front cover. In addition, the front cover will show the old Appraisal Report number. Revised parcel appraisals must keep the original parcel number, except that subparcels may be added or deleted.

7.10.06.00 Memorandum of Adjustment

This method will be used for nonsubstantial valuation adjustments and minor variations which do not warrant revised appraisal pages. The revision may be at the request of the Acquisition Branch or as a result of a subsequent appraisal or discovery of new information and data. Each Memorandum must follow the same approval process as the original appraisal.

If HQ R/W approved the original appraisal, it must approve the Memorandum. If there is not enough time for HQ R/W review and approval due to imminence of trial or possession date, the Memorandum will be

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prepared and submitted with a detailed discussion supporting the insufficiency of time and the need for the Memorandum. Telephone approval should be obtained and referenced in the Memorandum.

7.10.07.00 Changes in Approved Appraisals on Acquired Parcels

There are very few occasions where an approved appraisal can be revised after the parcel is acquired and escrow has closed. In certain instances, the Acquisition Branch may find it necessary to amend a Right of Way Contract to correct a situation discovered after close of escrow. Acquisition should direct a memo to Appraisals setting forth the reasons for the amendment and the need for a change in the approved appraisal. Appraisals will then prepare a Memorandum of Adjustment valuing the additional rights taken or damages incurred as if they were part of the original appraisal. The approval process will be the same as the original appraisal.

A. Additional right of way over a grantor's remainder requires a new appraisal under a new parcel number in a new appraisal report. Legal advice should be obtained concerning the use of before or after condition values in the appraisal of additional requirements.

B. If no new right of way is required, the Acquisition Branch may nonetheless find it necessary to amend a contract. In such an instance, when related to value, the Appraisal Branch shall, prior to such necessary amendment and at the request of the Acquisition Branch, prepare a Statement of Value, in the same form as a Memorandum of Adjustment, valuing the additional rights taken as part of the original appraisal. Approval of the Statement of Value will be in accordance with the existing delegations.

7.10.08.00 Parcel Splits and Mergers

Splits or mergers due to change in ownership, or addition and/or cancellation of subparcels, may be submitted by revised appraisal pages or revised parcel appraisals, as the extent of necessary reappraisal requires. Parcel splits will comply with the following instructions:

A. The original ownership (or one parcel) will retain the original parcel and appropriate subparcel numbers and will be identified as a revised appraisal.

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B. The new ownership will have new parcel and subparcel numbers issued. It will be considered a new appraisal.

C. The headings of both parcels' Appraisal Summaries (RW 7-9) will cross-reference the other parcel.

D. Both appraisals will be submitted concurrently if revised appraisal pages are used or in the same report if submitted as revised parcel appraisals.

In parcel mergers (merged after the initial appraisal), the merged parcels will be grouped under the lowest parcel number and appraised as a larger parcel. Originally assigned parcel and subparcel numbers for each parcel will be retained. The parcels will have typed in the upper margin "Revised (date), merges with Parcel _____ and supersedes the parcel appraisal in Appraisal Report No. _____ Dated _____." Revised maps are necessary showing new gross areas, vesting, and correct coloring.

7.10.09.00 Parcel Cancellations

Parcel appraisals may be canceled for any number of reasons. Typically, Design may change the requirements or the construction date is delayed and the project is no longer budgeted. Prior to cancellation, the Acquisition and RAP Branches must be advised and they must determine that there are no outstanding obligations to the owners or occupants of the property.

7.10.10.00 Review of Condemnation Parcels

Upon written request, the Appraisal Branch will investigate all new data discovered relating to condemnation parcels and will revise affected parcels.

Prior to engaging contract or staff condemnation appraisers, the Acquisition Branch will request the Appraisal Branch to make a review of a condemnation parcel and all pertinent data. Upon receipt of the Confirmation of Market Value request, the Appraisal Branch will issue an appraisal revision with a new date of value and new comparable data, if any, supporting the opinion of value as of the new date. For nonsubstantial valuation adjustments, a Memorandum of Adjustment should be used.

After engaging condemnation witnesses, the staff appraisal would not normally be revised except for mechanical changes (in areas, subparcels, etc.), substantial changes in design, or protracted delays or changes in data which would normally require significant adjustments in witnesses' reports. In

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these latter two cases, revision of the staff appraisal is optional with the Region/District considering the most cost-effective approach to acquisition.

7.10.11.00 Preparation of the Report Analysis for Expert Witness Appraisals

Preparation of the Report Analysis (7-EX-18) shall be consistent with current appraisal report approval delegations; if the acquisition report was approved in Headquarters through the Region/District cumulative review process, then Region/District will prepare the 7-EX-18 for Headquarters review and concurrence. The appropriate Headquarters Appraisal Liaison will prepare the exhibit for the Supervising Acquisition Agent and the State's attorney, keep the original to be filed with the corresponding staff report, and forward an electronic copy to the Region/District Supervising Acquisition Agent and State's attorney with copies to the Chief of the Office of Project Delivery. (Consistent with R/W Manual Section 9.05.11.00.)

The Report Analysis (7-EX-18) shall include the following:

- **Compliance** – Comment on compliance with applicable reporting and valuation standards. When comparing staff/independent reports, note and explain any significant differences.

- **Value** – Tabulate the major value conclusions in the current staff appraisal, the experts' appraisals, and/or other experts' appraisals received to date in the Analysis Section. If the submission is a revision of a previous appraisal, show both the original and updated amounts. Comment on major differences in value or other important information.

The Appraisal Branch shall neither approve nor disapprove the report. The analysis shall state if the report is in compliance with professional appraisal standards (e.g., the Uniform Standards of Professional Appraisal Practice [USPAP]), in addition to the valuation-related components of Federal and State laws applicable to the acquisition and appraisal of real property rights (e.g., the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs [Uniform Act], California Eminent Domain Law, etc.). The analysis will not contain recommendations as to possible settlement amounts or negotiation approaches.

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7.11.00.00 - OUTDOOR ADVERTISING SIGNS

7.11.01.00 Valuation

A. Signs owned by grantors or occupants, located on a subject property, and identifying or advertising the business or activity conducted on that property (known as on-premise signs) will be valued on the Appraisal Page under "Improvements" at depreciated value in place. If relocation of such signs is feasible, the relocation costs may be shown in parentheses for information purposes, or may be included on Alternate Appraisal Pages.

   Grantor or occupant-owned business signs located off the subject parcel may be subject to severance damages.

B. Signs owned by outdoor advertising companies will be valued by use of payment Schedules A, B, C, D, E, G, and H (Exhibit 7-EX-14). This valuation will be shown on the Summary of Outdoor Advertising Structures, Form RW 7-8. If the outdoor advertising company refuses the schedule, the signboard structure will be appraised as an improvement. See Section 7.11.05.00.

7.11.02.00 Definitions

A. On-Premise Sign - A sign identifying or advertising the business or activity conducted on the property where the sign is located.

B. Off-Premise Sign - All outdoor advertising signs other than on-premise signs.

C. Poster Panel - A structure designed to support a flat surface of 300 square feet upon which printed advertising or other messages are pasted to the panel built on one or more posts imbedded in the ground or attached to the wall of a building.

D. Back-To-Back Poster Panel - A structure designed to support two or more flat surfaces of 300 square feet built on one or more posts imbedded in the ground.

   Printed advertising or other messages are pasted to the panels.

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E. Roof Poster Panel - A Poster Panel built on one or more posts imbedded into the roof of a building. Each flat surface supported by such post(s) is a separate Roof Poster Panel.

F. 8-Sheet Poster Panel - A structure designed to support a flat surface of 72 square feet upon which printed advertising or other messages are pasted to the panel, built on one or more posts embedded in the ground.

G. Offset Sign - A sign constructed so that the advertising surface is supported upon horizontal members not less than 2 feet in length, and these members are joined to vertical posts imbedded into the ground.

H. Special Build - Any sign not covered under Schedule A, D, E, F, G, or H. Usually this type of structure is on one post imbedded in the ground and utilizes torque bar construction.

I. Urban Rotate - Painted bulletins which always have full illumination and the advertising facing sections are in modular form, designed and constructed to be moved from one structure to another on a periodic basis. The standard size is 14′ x 48′, but they are often larger and may have special embellishment features, such as cutouts, special lighting effects, freestanding letters, neon and space extensions to cover the advertisement of a specific product. The structures are usually steel and always have two back decks designed and constructed to State and local safety standards so that working crews can have easy and safe access to the back of the facing sections during the rotation process. They are generally found in urban areas in the more desirable locations at points of maximum advertising exposure. Their advertising message is most often of a national product or of regional interest.

J. Painted Bulletin - A structure designed to support one or more flat surfaces upon which at least one advertising or other message is painted in whole or substantial part, built on one or more posts imbedded into the ground or attached to the wall or roof of a building.

K. Wood Sign - A sign with wood posts.

L. Steel Sign - A sign with steel posts.

M. Illuminated Sign - A sign with attached lighting fixtures to make the advertising message visible at night.

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N. Outdoor Advertising Company - This refers to any business or individual who erects or maintains an outdoor advertising display.

O. Professional Signs - Well constructed signs with quality materials and workmanship evidenced throughout, providing a uniform appearance and extended physical life with minimum necessary maintenance. The advertising message is normally professionally lettered.

   Schedules A, B, C, D, E, G, and H should be utilized for signs in this classification.

P. Miscellaneous Signs - Signs normally built with minimum quality and amounts of material and may be characterized by "do it yourself" workmanship. This type of construction tends to shorten physical life and increase the necessity for maintenance over the life of the sign. In many instances, the advertising message is of a nonprofessional type and advertises the sign owner's business.

   Signs in this classification should be valued by the use of Schedule F.

7.11.03.00 Process

A. When starting an appraisal that includes outdoor advertising signs, the appraiser will take the following steps:

   1. Send a request to the Region/District Outdoor Advertising Coordinator for determination of the legality of the sign and feasibility of relocation. Use Exhibit 7-EX-11 as a format.

   2. When Schedule B is utilized for a special build, send a letter to the sign company requesting the information required on Exhibit 7-EX-12.

B. If a sign may be relocated pursuant to Business and Professions Code Section 5412 or 5443.5 or onto the grantor's remaining property, the relocation payment should be determined as follows:

   1. Poster Panel - Use Schedule C.

   2. Special Builds, Painted Bulletins or Urban Rotate Bulletins:

      a. Obtain an estimate from the sign company by use of Exhibit 7-EX-13, or

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b. Obtain an estimate from the Region/District Building Cost Estimator, or

c. Obtain estimates from at least two sign companies other than the company that owns the sign to be relocated.

C. For each structure, show the average height of the bottom of the sign panel above the ground (HAGL) on the Outdoor Advertising Structures Page. A close-up photograph of each sign will be included.

D. The photographs shall be placed in the Appraisal Report immediately following the Summary Page.

E. The appraisal must include the results of the legality and relocation determination from the Region/District Outdoor Advertising Coordinator. When a sign may be relocated, the relocation cost will be shown with the removal (i.e., purchase) cost shown in parentheses. If it is necessary to receive information from the sign company to complete the valuation and it is not available by the time the Appraisal Report is ready for completion, the sign will be listed in the "Summary" with the valuation space showing "N.A." The Remarks section should state when the letter was sent to the sign company.

F. Signs within the existing right of way are not entitled to payment but will be listed in the Summary of Outdoor Advertising Signs at a zero value.

G. Signs located on property under the Williamson Act (Government Code Sections 51200-51295) contract as an agricultural preserve may or may not be compensable, depending primarily on when they were erected.

1. A structure erected on 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. It will be listed on the Summary Page.

2. Property placed in an agricultural preserve with an existing structure in place.

Generally, the Surface Transportation Act of 1978 requires payment for the removal of any structure located adjacent to an Interstate or Primary highway, if it was legally placed prior to November 6, 1978. Not all aspects of the compensation provisions are clear. These payment provisions do not apply to structures located adjacent to highways not included in the

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Interstate or Primary systems. The Region/District should seek advice from the Legal Division prior to proceeding with the appraisal and acquisition of signs in these locations.

7.11.04.00 Payment Schedules/Application Renewal Permit Fees

The sign payment schedules (see Exhibit 7-EX-14) are to be used as follows:

- Schedule A - Payment Schedule for Poster Panel Removal (straight or offset single and double plus rooftop).

- Schedule B - Payment for "Special Build" removal and relocation of "Special Builds," Painted Bulletins (Professional and Miscellaneous), and Urban "Rotate" Bulletins based on sign owner cost claims.

- Schedule C - Payment Schedule for Relocating Poster Panels onto Adjacent Property or pursuant to Business and Professions Code 5412 or 5443.5.

- Schedule D - Payment Schedule for Urban "Rotate" Bulletin Removal. Painted Bulletins that do not fall under the definition of an Urban "Rotate" should be covered by Schedules B, E, or F.

- Schedule E - Payment Schedule for the removal of Painted Bulletins in the "Professional" category.

  This schedule is to provide a basis for payments in lieu of appraisals or cost claims (Schedule B) for painted bulletins not falling under the definition of Rotate Bulletin (Schedule D) or "Miscellaneous" Sign (Schedule F).

- Schedule F - Payment Schedule for "Miscellaneous" Sign Removal.

- Schedule G - Payment Schedule for 8-Sheet Poster Panel Removal.

- Schedule H - Payment Schedule for Relocating 8-Sheet Poster Panels onto Adjacent Property or pursuant to Business and Professions Code 5412 or 5443.5.

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7.11.05.00 Appraisal Procedures for Outdoor Advertising Signs

If the schedule is not used, the valuation of the real property, including the sign structure, will follow normal appraisal practice and must adhere to the Uniform Act and applicable statutes. The following items must be considered when appraising a sign structure:

- The sign will be considered an improvement and will be analyzed as a primary or secondary use in appraising the value of the land as consistent with its highest and best use.

- Only cost information and that market and income data attributable solely to the real estate should be considered. Using this real-estate-only data, accepted real-estate-valuation methods should be used to the extent necessary and possible to value the land and improvements. Since data can be difficult to obtain, the cost approach may be of primary importance.

- If the fair market rent of the structure as real estate, in contrast to advertising business income, can be determined, that income may be processed to an indicated value or be reconciled with one or both of the other approaches.

- Sign structures will be appraised at the amount they contribute to the fair market value of the real property. The value of the structure will be shown on the RW 7-9 as an improvement at its value in place and included as part of the total value for the parcel. Tenant-owned sign structures will be indicated as such.

- Even though a sign structure alone may not represent the highest and best use of a site as though vacant, it may still have value. If the sign is located on the site in such a manner as to not interfere with development of the site to its highest and best use, it remains an economically viable asset.

- In considering the sales comparison approach, the Appraiser should make a reasonable search for comparable sales that included a sign structure considered as realty.

- The application of multipliers to the advertising income is not proper in arriving at the value contributed to the property by the sign structure. Advertising revenues are to be distinguished from the economic rent for land and improvements.

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- The ground lease to the outdoor advertising company will generally add value to the fee. If the contract rent is less than the market rent, the outdoor advertising company may have a bonus value in the lease. The ground lease should be thoroughly reviewed to ensure a complete understanding of what it covers.

- As with any tenant business, the sign company compensation is provided for in the payment for the land and improvements or in the payment for compensable loss of goodwill.

- Each sign company should be advised of its right to claim a loss of goodwill due to the taking, and the fact noted in the diary sheet. If a claim and tax returns are filed, the business aspect and loss of goodwill, if any, can be determined by a goodwill appraisal.

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7.12.00.00 – MOBILE HOMES

7.12.01.00 Mobile Homes – General

Mobile home appraisals are treated somewhat differently than other types of appraisals only because of their unique nature. The first determination to be made is whether it is realty or personalty.

7.12.02.00 Mobile Homes – Realty

Mobile homes installed on the owner's land in compliance with Health and Safety Code Section 18551 may be shown on County Recorder's records as subject to real property taxation. Mobile homes so indexed should be considered real property and be appraised as such. See Section 7.07.02.00. If the mobile home is not so indexed, the appraiser should consider the following tests to determine if the mobile home should be classified as real property:

A. Does the physical manner in which the mobile home is affixed to land (particularly the nature of the foundation) indicate an apparent intention that the home be permanently annexed to the realty?

B. Would removal of the mobile home completely or materially render other significant real property improvements associated with the use of the mobile home (e.g., pads, utilities, etc.) to be unfit for their intended use? Minor improvements should not be considered in this respect.

If the mobile home clearly fits either of these tests, it should be considered real property and appraised accordingly. If there is doubt, a legal opinion should be obtained.

7.12.03.00 Mobile Homes – Personalty

Mobile homes classified as personalty are eligible for purchase by the State only if they are determined to be owner-occupied and to fall within one of the following categories:

A. The mobile homes do not meet "decent, safe, and sanitary" standards; or

B. There are not an adequate number of suitable replacement sites for the mobile homes being displaced; or

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C. The mobile homes cannot be made roadworthy and are thus incapable of being moved.

These mobile homes will be appraised only after the District/Region's Relocation Assistance Branch has determined that they qualify for purchase by the State. The Relocation Assistance Branch will normally initiate the appraisal by memorandum specifying the conditions requiring the appraisal. A copy of this memorandum will be included in the Report.

It is the responsibility of the appraiser to review all mobile homes when inspecting the parent property site. If it appears that any will not meet D. S. & S. standards, the Relocation Assistance Branch should be notified so that a definitive determination can be made.

7.12.04.00 Mobile Homes – Special Procedures

The parcel number to be used for mobile homes on rented or leased space (such as in a mobile home park) will be the parcel number of the property in which the mobile home is located, with an "MH" suffix added together with a unit number; e.g., 11456(MH-1). Mobile homes will be appraised in the same manner as other property, (i.e., fair market value in place). Normally, there should be ample market data available. Comparison factors should be based on industry standards. Although they should not be included in the report, current Mobile Home Appraisal and Condition Report forms are often available through lenders and dealers and list many of the factors considered in mobile home valuations. The Residential Building Check Sheet (Exhibit 7-EX-8) should be used in the appraisal. As an alternate, a modified URAR Form can be used. Additional considerations involved in the appraisal of mobile homes are the license or tax status of the unit and possible penalties to the seller, differences between nominal and actual length of the unit, the quality, condition and desirability of the mobile home park, and the impact of space rental rates on the subject and the comparables.

The industry "blue book" may yield useful information for arriving at a Replacement Cost New for a comparable unit, but not include the total cost of a new unit established on the site.

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7.12.05.00 Mobile Homes – Format

Mobile home appraisals will conform to normal format except that the following additional information is required:

A. Year built and manufacturer.

B. Nominal dimensions; e.g., 2.4 m x 12 m and actual dimensions (if different);
e.g., 2.44 m x 12.04 m.

C. Vehicle serial number.

D. Vehicle license plate number, State, and expiration date. Instead of a license plate number, some mobile homes will have a substitute State of California Title Control Number ("Q" series number) on the Ownership Certificate (if sold new in California after July 1, 1980, if sold more than 120 days after the expiration date of the license plates, and certain other circumstances). The number used should be the two-letter four-digit license plate or control number indicated on the title to the current owner.

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7.13.00.00 - SPECIAL APPRAISAL REPORTS

7.13.01.00 General

Some special appraisals shall be prepared in separate reports. Such Special Reports may have modified formats, and follow modified review and approval processes as discussed below. These Special Reports include appraisals for material and disposal sites; sites for maintenance stations, shops, and offices; joint acquisitions by the California Department of Transportation (Department) and other public agencies; and inverse condemnation actions.

7.13.02.00 Material Site Appraisals

If a material site is to be acquired in conjunction with a right of way acquisition, both requirements will be appraised as a whole and separated into two reports.

The "Introduction" will include economic justification for purchase of the site as compared with the cost of securing the material by royalty agreement. The approximate quantity of material to be taken from the site should be noted. A comparison can then be made as to the equivalent cubic meter cost should the material be secured by materials agreement. The going price for similar material in the vicinity on a metric basis should be indicated. The estimated salvage value of the land after removal operations have been completed shall also be shown.

The format, content, and approval process is the same as any other regular acquisition appraisal.

The appraisal will contain the following information:

A. A statement by the Region/District Materials Engineer as to the quantity and quality of the material.

B. The name of the office originating the request (Construction, Project Development, or Maintenance).

C. The termini of the project or projects on which the material is to be used.

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D. The budget or program in which the project or projects may be found (if there is a specially voted project by the California Transportation Commission, so state and indicate the date of the vote).

E. The average haul distance from the site to the project or projects, or to that portion of the project or projects on which the material is to be used.

F. A statement that the location of the material site does not violate any of the provisions of the Standard Specifications (prohibiting excavation which would result in scars which will present an unsightly appearance from any highway). If the provisions of the Standard Specifications cannot be complied with, a statement must be included to the effect that the Region/District will take such action as is necessary to correct any unsightly appearance.

G. A statement that the location of the material site is not in violation of any ordinance or zoning regulations.

H. Approximate date of termination of use.

7.13.03.00 Disposal Site Appraisals

If a disposal site is to be acquired in conjunction with a right of way acquisition, both requirements will be appraised as a whole and separated into two reports.

The introduction should include the same information as listed for material sites under 7.13.02.00 B through H.

7.13.04.00 Office and Maintenance Station Site Appraisals

Appraisals of new sites for maintenance stations, shops, or office buildings shall be separate reports. If the site is to be acquired in conjunction with a right of way acquisition, both requirements will be appraised as a whole even though separated into two reports. All other appraisals not a part of a right of way project will be in the standard format and content with the same approval process as a regular acquisition appraisal.

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7.13.10.00 Joint Acquisition Appraisals

The Department may enter into Cooperative Agreements with other public agencies for purchase of property for other public purposes. The date and title of the Cooperative Agreement will be referenced in the report. The highway requirements and the other agencies' requirements will be shown separately with the appropriate values distributed to each in accordance with the agreement.

The appraisal will assume that all agencies' acquisition and construction occur together and no damages or benefits caused by one shall affect the before value of the other. This does not preclude proper apportioning of damages occurring to remaining property due to specific construction features of one. Similarly, benefits due to the construction project of one agency may be used to offset damages caused by the other.

If the Cooperative Agreement provides for specific proportions for sharing right of way costs, these proportions will be used in the report and shown on the Appraisal Page.

Legal opinions should be obtained before condemnation of joint acquisitions.

7.13.20.00 Protection Appraisals

Protection acquisitions require prior approval by Project Development and Construction, and approval to proceed with a protection appraisal requires prior Region/District Manager approval. Upon receiving authority, the Region/District shall proceed to prepare an appraisal covering this acquisition. The appraisal will be prepared the same as a regular program appraisal, but identified as a "Protection" appraisal.

Appraisals submitted for HQ R/W approval must contain a reference to the date of the approval authorizing the protection acquisition. Any special funding approval must also be noted in the report.

7.13.30.00 Appraisals for Other Agencies

Appraisals prepared for other State or Local Agencies will be comparable in format and documentation to that of a staff appraisal for the Department except where the agreement with the agency specifies a different product.

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7.13.40.00 Staff Litigation Reports

An appraisal for condemnation or inverse litigation testimony shall be of sufficient detail, consistent with legal and professional requirements for format and documentation to present a clear and accurate opinion of value. The staff appraiser will be furnished all data that would be furnished a contract appraiser at the time of the assignment. A Report Analysis Form (Exhibit 7-EX-18) will be prepared by the District originally delegated the type of report or values. Condemnation appraisals are to be completed and submitted for review at least 14 days prior to exchange with opposing counsel and 60 days prior to the trial date. The completed Exhibit 7-EX-18 will be forwarded to the District, the State's Attorney of Record (Caltrans Legal Division), and Right of Way Headquarters Acquisition Section with a recommend or discommend approval for the Staff Report.

If the Legal Division requests preparation of a staff independent appraisal for purposes of inverse litigation, the report will conform to the same standards as a condemnation report, but will show the phrase "Inverse Condemnation Appraisal" on the front cover. A description of the claim will be included.

The following two statements will be included in the Certificate of Appraiser:

A. "This report is pursuant to the request of and for the confidential use by the Legal Division for the purpose of defending the State."
B. "Valuation conclusions are the result of using given legal assumptions for analysis purpose only and in no way imply acceptance or rejection of the validity of the claim to which this report relates."

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7.13.50.00 - UTILITY, RAILROAD AND GOVERNMENTAL OWNERSHIPS

7.13.50.01 Public Utility Property

Property owned in fee by public utilities (including governmental utility agencies, irrigation district/regions, and flood control district/regions) may be subject to special appraisal treatment, including the purchase of replacement land for exchange, where necessary. If the public utility and the State have entered into a master agreement at variance with instructions, the master agreement will prevail. In these cases, the title and date of the master agreement will be noted in the appraisal. Appraisers should first confer with the Utility Branch when assigned public-utility owned parcels to appraise.

7.13.50.02 Fee Land

A. If joint use of fee-owned property is proposed, the land required for highway use will be appraised at the market value of the underlying fee. This envisions the land utilized by the utility facility has a secondary use. For example, an electric tower line traverses a property. The area under the line may still be used for agriculture, parking or residential assemblage.

B. If the State proposes to replace the land in full required by exchange, land value of the fee-owned parcel should be shown as zero (Market Value may be shown in "Remarks"). In "Remarks," describe the location and parcel numbers of the replacement land, if determined.

   When the State is replacing the fee-owned utility right of way with a replacement right of way that is not as wide as the existing utility property being acquired, the valuation approach will be the same as set forth in Section 7.13.60.01 for valuation of railroad operating right of way.

C. If the public utility proposes to acquire the replacement property, the land value should be the market value of the minimum requirements of the replacement property. The basis of the valuation and description of the replacement property must be fully documented in the appraisal.

D. If the public utility proposes to abandon the use of the property without replacement, market value would be paid for the required property

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considering the property clear of the public utility use. Cost of abandonment and removal of improvements may be covered by utility agreement.

E. Public utility corporation yards, shops, office and other proprietary properties will be valued by normal methods.

7.13.50.03 Improvements

Relocation and/or replacement of buildings, equipment, and lines involved in the utility production or transmission will normally be handled by utility agreement. Improvements which are relocated and/or replaced under the utility agreement will be clearly described and assigned a zero value. Improvements which are not included in the utility agreement will be valued using normal appraisal methods, with depreciation and salvage value given full recognition.

7.13.60.00 Railroad Property General Prerequisites

All appraisals of railroad-owned properties are to be submitted to HQ R/W for review and approval, regardless of the monetary amount involved. All appraisals of railroad-operating properties connected with rights of way, depots, station grounds, switching yards, or public team tracks, etc., are specialized and require special handling, including being submitted to HQ R/W for review and approval, regardless of the monetary amount involved.

All railroad properties will be appraised in the full, narrative format at market value of underlying fee and be in compliance with all other sections in the Right of Way Manual for appraisal reporting (except where noted in this section). The Non-Complex Valuation of $10,000 or Less and the Waiver Valuation formats shall not be used. Railroad parcels are not eligible for the one-agent appraise/acquire process.

Proper handling of railroad properties requires a high degree of coordination between numerous departments, including Legal, Structures, Project Development, and Right of Way. The following prerequisites apply:

A. Upon assignment of a railroad property appraisal, the appraiser shall first confer with the Region/District Railroad Agent. The delivery of the Notice of Decision to Appraise letter shall be coordinated through the Region/District Railroad Agent. The Railroad Agent may also facilitate inviting a railroad representative on the inspection of the subject.

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B. Railroad appraisals are to be submitted on a construction project basis including all takings from the railroad ownership in a single appraisal.

C. Due to extraordinary lead time requirements, appraisals of land located within the railroad's transportation corridor must be submitted a minimum of 24 months prior to the project certification date. Single transverse crossings of railroad transportation corridor which do not require substantial relocation of rail facilities are excepted from this requirement and may be submitted one year prior to the certification date. Any other exception to this policy must have prior approval of HQ R/W.

D. The appraisal shall include a general description of the items, e.g., track and signals, which are proposed to be covered by a future construction and maintenance agreement or service contract.

E. The appraisal will include copies of the permanent and temporary easement deed language for property rights being appraised. If it is a Permanent Easement, the Appraiser will use the most recent version of the RW 6-1(Z) Deed form.

F. In all cases, the appraisal will include a clear statement describing the property rights held by the railroad in the property being acquired.

Railroad Property Terms:

Railroad Right of Way: Title, in fee and/or easement, or by adverse possession, to a strip of land between two points, all or a portion of which land is used for railroad purposes that include freight and/or passenger service.

Transportation Corridor: A corridor which includes existing operating and nonoperating railroad property with reasonably probable future transportation uses, including railroad tracks, excess width, utility lines, pipelines, fiber-optic lines, etc. These uses must not be speculative. See Section A.1.d. below.

Operating Railroad Property: The property necessary for operation of rail service over the railroad right of way. The area covered by the nonabandoned tracks plus the minimum additional clearance width as set by the Public Utilities Commission (PUC) and/or the safety standards set by the railroad. It may include switching yards, station sites and their parking lots, and crossing gates and associated equipment. All operating railroad property is located within a transportation corridor.

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Nonoperating Railroad Property: Anything other than operating railroad property; i.e., property which is not required to operate rail service on a right of way. This may include unused right of way where track has been removed, area required for flood protection, grading, land leased to others, administrative properties, etc. It is important to note that railroad property converted to hiking or biking trails might not change the "transportation corridor" status.

Abandoned Railroad Right of Way: A right of way for which a termination of rail services has been approved by the Surface Transportation Board, and all further requirements have been fulfilled.

7.13.60.01 Valuation of Railroad Properties

Takings from railroads may involve complex legal and appraisal problems in determining fair market value for all or a part of the transportation corridor being acquired. Whenever it becomes apparent that unusual problems exist or there is a problem with defining whether the property is located inside or outside of the transportation corridor, the Region/District should confer with the Region/District Railroad Agent, or if necessary, HQ R/W. In most cases, the following guidelines may be used:

A. Appraisals of Railroad-Owned Lands

1. Land within the transportation corridor:

a. Where the State proposes replacement of the required land or facility, the part taken will be assigned a nominal value. A description of the replacement land will be included in "Remarks" and delineated on the Appraisal Maps.

When the State is replacing the transportation corridor needed for the project with a transportation corridor that is not as wide as the existing transportation corridor, generally, only the portion replaced will be assigned a nominal value. For example, assume the existing transportation corridor is 80 feet wide and the State is proposing to convey a 60-foot wide transportation corridor to the railroad company as the replacement transportation corridor. Under this circumstance, the appraisal will show 60 feet of the existing transportation corridor at nominal (because it is being replaced). The remaining width, 20 feet in this example, will then be handled in one of two ways:

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1) If the additional width of the existing transportation corridor is required only because of uneven topography (slopes, etc.), it will also be valued at nominal.

2) Otherwise, the additional width will be appraised at market value.

The appraisal report will show as follows (on Form RW 7-9):

Total area taken – 80 x 500 feet =	40,000 sq ft
Area being replaced – 60 x 500 feet (30,000 sq ft) =	nominal
Area not being replaced – 20 x 500 feet (10,000 sq ft) @ $5.00/sq ft (market value) =	$50,000
Est. Total Value =	$50,000

However, if the existing transportation corridor is 80 feet wide because of an adverse terrain condition (cut or fill) and the replacement transportation corridor is on level ground thus only requiring 60 feet of transportation corridor to replace the utility of the existing transportation corridor, then the total area being acquired of 40,000 sq ft will be assigned a nominal value.

If the railroad company requests that the State acquire and convey a replacement transportation corridor which is wider than their existing transportation corridor to be acquired by the State for the project, then the appraisal will show the extra width at market value to be paid for by the railroad company in the exchange transaction.

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The appraisal report will show as follows (on Form RW 7-9):

Total area to be acquired – 60 x 500 feet =	30,000 sq ft
Replacement transportation corridor – 80 x 500 feet =	40,000 sq ft
Transportation corridor take – 60 x 500 feet (30,000 sq ft) @ nominal	nominal
Replacement area in excess of take – 20 x 500 feet (10,000 sq ft) @ $5.00/sq ft (market value) =	$50,000
Total amount to be paid to the State by railroad company	$50,000

However, if the replacement railroad transportation corridor is 80 feet wide because of adverse terrain condition (cut or fill) and the replacement transportation corridor merely replaces the functional utility of the existing transportation corridor, then the appraisal will show nominal value for an even exchange.

Width with utility will be the criterion. Length and area alone will not.

If the total area of the replacement transportation corridor is different from the total area of the existing transportation corridor to be acquired for the project merely because of the different lengths of the two transportation corridors, the appraisal will be nominal value as stated in the first paragraph of this Section.

b. Where the State does not propose replacement of the required land, the State's requirement shall be identified as either a transverse crossing or a longitudinal taking.

"Transverse Crossing" means any portion of a public road project physically crossing a transportation corridor from one side of the transportation corridor to the other regardless of the angle of the crossing.

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"Longitudinal taking or acquisition" means any taking of any portion of a transportation corridor other than a transverse crossing. However, a transverse crossing may also physically share a portion of the area within a longitudinal taking.

Where the State does not propose replacement of the required land, the longitudinal takings will be appraised at fair market value. An example of this type of taking occurs when the State is acquiring a longitudinal strip of existing transportation corridor and the railroad company is able and willing to continue its operations without any replacement transportation corridor; e.g., the existing transportation corridor is 80 feet wide and the State needs a 20-foot strip for the project and replacement transportation corridor is not required.

c. Where portions of the transportation corridor property may reasonably be converted to nontransportation uses by minor adjustments of facilities without affecting the reasonably probable transportation uses, the longitudinal taking will be appraised at market value, reflecting the costs of conversion.

d. Transverse crossings require special consideration by the appraiser. Existing California law establishes certain principles regarding the valuation of transverse crossings. The leading case in California establishing those principles is City of Oakland v. Schenck (1925) 197 Cal. 456. The main principle is that the public has the right to construct crossings necessitated by a public road project for a nominal consideration when the crossing does not interfere with the railroads' use. Subsequent cases have expanded the "rail use" to a "transportation use." This is why the transportation corridor is defined above. Information about railroad operations and uses should be obtained through the Region/District Railroad Agent.

   The transportation corridor may contain operating right of way, nonoperating right of way, excess land, communication corridor, pipeline corridor, Outdoor Advertising Structures, etc. The following are factors to consider in defining the transportation corridor and should be included when testing for uses which are physically possible, legally permissible, financially feasible, and maximally productive.

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1. Determine the area that is subject to PUC and Federal Surface Transportation Board (STB) regulation. Determine what restrictions, if any, the PUC and the STB place on railroad operations within the area subject to PUC and STB jurisdiction. This information should be obtained through the Region/District Railroad Agent.

2. Determine what interest the railroad has in the land, i.e., fee or easement. Determine what deed restrictions have been placed on the railroad's use of that area.

3. Determine whether the railroad has any documented plan for the use and/or development of its property. This information should be obtained through the Region/District Railroad Agent.

4. Railroad properties are not zoned by the Cities and Counties even though county zoning maps might show railroad properties zoned similar to adjacent parcels. This is due to the fact the counties have no authority of use over railroad properties. Railroad properties are under federal government jurisdiction acting through the Surface Transportation Board (STB) and are not accountable to county regulations.

5. Determine which uses are considered to be for legitimate railroad purposes. Some uses may be precluded by existing physical limitations, such as steep terrain. Legitimate railroad uses may include air or subsurface space, which may be reasonably usable for valuable nontransportation uses or for other transportation uses, and these uses are reasonably probable.

   The appraiser must also be familiar with the construction in the manner proposed to determine the impact on the existing and potential uses. The physical impact of construction should be analyzed as to its effect on the reasonable and probable transportation uses. Construction details, such as footings and pillars, shall <u>not be valued</u> separately, but shall be included in the analysis of the overall impact of the State's requirement.

   The valuation of permanent easements for transverse crossings is similar to other easement valuations. The value

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of the easement is the difference in the parcels value from the unencumbered condition and the encumbered condition (Right of Way Manual Section 07.04.10.00 on Permanent Easements). The appraiser must ask the following questions: 1) Does the exercise of the rights being acquired unduly interfere with the railroad's existing use of its transportation corridor for legitimate railroad and other existing transportation purposes? The appraiser must also determine whether the transverse crossing will interfere with a reasonably probable future transportation use. If it does not and there is no loss of use, utility or capacity in the after condition, the holding in City of Oakland v. Schenck (1925) 197 Cal. 456 applies, and the value is nominal. If the State's project does interfere with any one of the above uses, then two additional questions must be answered: 2) What are the reasonably probable uses that are impacted; and, 3) What is the market value of those impacts as measured by the loss in utility and desirability of the transportation corridor? When the State's transverse crossing interferes with any one of the above-listed uses, the impact will be reflected in the valuation. With respect to transverse crossings, after making the above-listed determinations, including the width of the corridor and the permitted uses, the transverse crossing will be valued by the loss in utility and desirability before and after the imposition of the encumbrance.

Each transverse crossing must be evaluated as described in the preceding paragraph. Merely including the Manual reference or the simple citation of California Case Law in the written appraisal is not sufficient documentation of the valuation. Based on the appraiser's thorough analysis when the value of the transverse crossing is nominal, the loss can be expressed as "nominal" in the equation instead of as a percentage.

Temporary Construction Easements (TCEs): In the valuation of TCEs, the appraiser must consider whether the easement is an exclusive or nonexclusive (shared use) easement (please refer to Right of Way Manual Section 07.04.09.00 on Temporary Easements). If the temporary easement is nonexclusive, the appraiser must determine the resulting loss of use the railroad has incurred during the

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easement term. That percentage of loss will be multiplied by the fee unit value, the rate of return to vacant land, and easement's term. It is important to note that the Schenck ruling can be interpreted to include Transverse TCEs if the appraiser's findings are consistent with the 'combined use' and nominal loss holding of the ruling.

A "Summary for the Basis of Just Compensation" is required to be included at the end of all appraisal reports. Appraisal reports for railroads are no exception. Where the easement values are determined to be nominal, a statement similar to the following paragraph shall be included in the appraisal to summarize the analysis:

> "The appraiser has ascertained that the Highest and Best Use of the subject property is as a transportation corridor including all legitimate railroad and other transportation purposes. The required transverse crossing will not diminish the market value of the railroads' property or unduly interfere with the railroads' use for legitimate transportation purposes, as ascertained by analysis of the before and after conditions. Therefore, the compensation is nominal, consistent with California state law."

e. Longitudinal takings that cross existing structural transverse easements will be appraised at market value if the existing transverse easement was obtained at nominal value. The effect on land uses or values because of the existing highway-railroad grade separation structure, within the new longitudinal easement area, will not be considered in estimating the market value of the longitudinal taking. The reasoning behind this premise is that if the original transverse crossing easement was obtained at nominal value and provided no benefit to the railroad, the new longitudinal taking should be paid for by the State.

2. <u>Land outside of the transportation corridor</u>:

Land considered to be outside of the railroad's present or future transportation corridor will be appraised at market value. Where the property is not capable of independent use or development, the appraiser should consider any potential additional use or utility of the property as assembled to the adjacent properties.

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B. Appraisals of Railroad-Owned Improvements

1. Railroad improvements (other than trackage) being acquired without replacements or relocation and lessee-owned improvements on railroad properties will be valued using normal appraisal methods, with depreciation and salvage value given full recognition.

2. Railroad improvements, including trackage, which are to be relocated or replaced under the terms of a construction and maintenance agreement will be clearly described and assigned a zero value.

7.13.70.00 Governmental, Indian, Functionally Replaced Publicly Owned Facilities, and State Land

A. Federal public lands, including national forests, will be appraised at zero land value, unless the Region/District believes land value may become an issue during acquisition. In this event, the land is to be appraised and shown at market value.

B. Federal military reservations and Federal reservoirs, canals, and flood control channels will normally be appraised at zero land value unless the Region/District believes value may become an issue during acquisition. In this event, the land is to be appraised and shown at market value.

C. Federal General Services Administration properties will usually be appraised at market value. There may be circumstances where the property will be conveyed at zero value if the use as a highway is compatible and a benefit to the Federal facility.

D. State School Lands will be appraised at market value.

E. Proposed acquisitions of public parks will be appraised at replacement cost. Per the Public Park Preservation Act of 1971, the acquiring entity pays sufficient compensation, or land, or both, to enable the operating entity to replace the park land and the facilities thereon. Ballantine's Law Dictionary defines "park" as a "tract of land acquired by a city, town, or other public authority, for ornament, and as a place for the resort of the public for recreation and amusement."

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The substitute land should be of comparable characteristics and of substantially equal size, located in an area that would allow for use by generally the same persons who used the existing park land and facilities. The cost will include the land and the cost of development into park land, including placing of substitute facilities thereon. See Sections 5400 through 5409 of the California Public Resources Code.

F. Indian tribal and allotted lands will normally be conveyed as easement title only and will therefore be appraised at market value less one dollar.

G. All other federal, state, county, special district, school district, and city lands will be appraised at market value except:

1. If State will purchase the replacement property and functional replacement of improvements is proposed, and the owning agency has waived its right to have an estimate of compensation for the acquisition parcel established by the appraisal process in preference to functional replacement, the subject acquisition parcel will be valued at zero value. It will be necessary that there be compliance with all provisions of 23 CFR 710.509, et seq. (See Acquisition Chapter 8 and Exhibit 8-EX-34.)

   The parcel numbers of the replacement land will be noted if available and the valuation basis discussed. The market value of the subject land will be included for information in "Remarks."

   It will always be necessary for the Appraisal Branch to supply cost-estimate data for the acquisition property. These data are for inclusion in the submittal to FHWA seeking their concurrence in functional replacement. This will normally occur during the project-development stage of a project.

2. If acquisition of replacement property by the governmental agencies is proposed, the value of the minimum requirements of the proposed replacement property may be used as land value of the subject. The basis of valuation and description of the replacement property will be fully documented in the appraisal. The market value of the subject land will be included for information in "Remarks."

   These instructions do not preclude donation, dedication, consent to joint use, or transfer of possession and control, without

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consideration, from any public agency to the Department for highway purposes.

City streets and county roads closed by freeway agreement will not be valued except as to the underlying fee for adjacent properties, if separate valuation of the underlying fee is necessary. Normally, the underlying fee is valued at $1 because the public has full control over the surface use and the only rights the underlying fee owner has is one of a reversion. See Section 83 of the S&H Code.

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7.14.00.00 - EXCESS LAND APPRAISALS

7.14.01.00 General

Requests for excess property valuations will originate in the Excess Land Branch or the Acquisition Branch. A copy of the written request will be included in the report, as well as the *Hazardous Material Disclosure Document-Disposal* (ENV-0001-D) to certify the property can be sold or exchanged.

Excess land Market Value Appraisals, Market Value Determinations (of $10,000 or Less), and Public Sale Estimates may be prepared by a Right of Way Agent, Range B, provided the Agent's qualifications are commensurate with the complexity of the valuation problem.

At the discretion of the Region/District Right of Way Manager (Region/District R/W Mgr.), Market Value Determinations and Public Sale Estimates of market value may be prepared by an agent assigned to the Excess Land Branch. However, the Market Value Determination must be reviewed and recommended for approval by a Senior Right of Way Agent assigned to the Appraisal Branch.

When the same agent prepares the Market Value Determination or Public Sales Estimate and conducts the sale, the RW 7-17A, Certificate of Market Value Determination, must be revised. It should contain the following statement:

> "That I understand I may be assigned as the sales agent for one or more parcels contained in this report, but this has not affected my professional judgment nor influenced my opinion of value."

Only in the instances cited above, may an excess land valuation be prepared by an agent assigned to the Excess Land Branch.

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7.14.01.01 Excess Land Methods of Disposal

The following are commonly used methods of disposal that typically require valuation:

A. Public sale by auction or sealed bid.

B. Private sale by auction or sealed bid between adjoining owners.

C. Direct conveyances.

   1. Direct sale to adjoining owner (Findings "A" and "B").

   2. To other governmental agencies.

   3. To public utilities.

   4. By Cooperative Agreements.

   5. Pursuant to legislation.

   6. To qualifying occupants under certain statutory requirements.

   7. Exchange pursuant to a contractual obligation.

D. Transfer of Jurisdiction to other State agencies.

7.14.01.02 Excess Land Valuations

There are three basic types of excess land valuations. They are Market Value Appraisals, Market Value Determinations (of $10,000 or Less), and Public Sale Estimates. A Market Value Appraisal or a Market Value Determination will be prepared for all properties to be sold at other than a public sale. All excess land valuations are based on the same definition of fair market value used in acquisition appraisals. All valuations shall be approved in accordance with the current delegations.

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7.14.02.00 Market Value Appraisals

A Market Value Appraisal will be prepared for all excess parcels unless they are to be sold at public auction or meet the criteria for a Market Value Determination ($10,000 or less). The Market Value Appraisal must consider the full market effect of all damages and benefits, and the economic effect of delay in the use of the property pending completion of construction of the transportation project. "Market value" is based on the value of the parcel at its highest and best use, which may be as assemblage to adjoining property.

There are some specific valuation concepts and considerations associated with Market Value Appraisals of excess land.

A. Excess property with a highest and best use as assemblage to an adjoining property will be appraised at plottage value, i.e., the increment of value created by assemblage. The before and after valuation method will be used. Thus, the adjoining property will first be appraised as a separate parcel and then as assembled with the excess property. Plottage value created by assemblage must then be allocated between the adjoining parcel and the excess parcel, recognizing that both parcels are needed to create plottage value, but taking into consideration what each contributes to that value. The portion of the allocation attributed to the excess parcel is the "market value" of the excess. Note: Where the excess parcel is a minor remnant and an analysis of the adjoining property indicates that the excess parcel is likely to add $5,000 or less to its value, a simple approximation of the value of the adjoining property is sufficient.

   In valuing the assembled parcels, the appraiser must also consider costs of physically joining the excess property with the adjacent property; for example, earthwork necessary to eliminate a substantial grade difference. The appraiser must also take into consideration soft costs such as time, carrying costs, and profit for any development required to realize the plottage value.

   When the excess parcel being valued adjoins more than one ownership, it will be appropriate to indicate the value of the excess parcel as assembled with each of the adjoining ownerships. The value as shown on page 1 of the Excess Land Market Value Sheet (Form RW 7-18) will be that which is the highest value. Lower values considering assemblage to other adjoining ownerships may be indicated by notation on the Excess Parcel Market Value Sheet or attachment thereto.

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In assemblage situations, the appraisal will include a map showing the excess and all adjoining ownerships.

When an adjoining property(s) requests decertification of right of way, the appraised value will not be reduced by the costs of relocating or reconstructing any necessary highway facilities such as freeway fencing, drainage facilities, slopes, landscaping, etc. The buyers of decertified right of way must pay for necessary costs of rearranging utilities, fencing, landscaping, and other improvements which may be affected by the decertification.

B. Utility easements to be conveyed to utility companies will be appraised at market value.

   1. If the valuation amount is between $0 and $500, show "nominal" in the amount column.

   2. If the valuation amount is between $501 and $2,500, show the actual amount rounded to the nearest $50, or, show "nominal" followed by the amount shown in parentheses.

C. Access rights will be valued at the difference between the values of adjoining property with and without encumbrance of the access rights.

D. Current market data are normally the best comparables. State sale comparables may be used if they meet normal criteria of comparability in time, desirability, market transaction, etc. State sales may best be used to demonstrate damage/benefit relationships between a State sale and contemporary market data in its locality. This relationship may be helpful in applying similar damage/benefit ratios to local market data and the subject parcel.

7.14.02.01 Format, Content, and Standards

A. Market Value Appraisals must follow the general standards of right of way acquisition appraisals.

   However, the amount of analysis and degree of documentation should be in proportion to the appraisal problem and valuation involved. Only relevant data should be included. The relevant data should be concisely stated and succinctly analyzed.

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The standard right of way acquisition appraisal format is used except that the Excess Land Appraisal Title Page (RW 7-16), Senior Field Review Certificate - Excess Lands (7-EX-24C), Certificate of Appraiser - Excess Land (RW 7-17), and Excess Land Market Value Sheet (RW 7-18) will replace the standard forms/exhibits used in the acquisition appraisal. The report will also include the excess land appraisal request and Director's Deed Map(s).

The excess land appraisal request from the Excess Land Branch or the Acquisition Branch should include the acquisition cost of the excess.

B. The Uniform Residential Appraisal Report form (URAR) may be used for appraising single family residential properties or 2 to 4-unit multi-residential properties. For further information regarding the use of the URAR form appraisal, see Section 7.07.02.00.

If the URAR form appraisal is used for proposed direct sales of excess pursuant to Government Code Section 54235 et seq. (SB 86, Roberti), the following is to be considered when preparing the appraisal:

- If improvement rehabilitation work is to be completed prior to sale and the parcel is appraised as though the work has been completed, list the rehabilitation work on a separate page attached to the form appraisal.

- The form may also be used to appraise the property before rehabilitation if the Excess Land Sales section requests such an appraisal. The appropriate premise must be indicated in the appraisal request letter from the Excess Land Sales section.

7.14.02.02 Dual Report Requirements

The District may determine that dual Market Value Appraisals are needed for excess land parcels of $500,000 or more that are proposed for direct sale to private parties. The criteria for determining the necessity for dual reports are similar to those related to project appraisals (Section 7.01.07.00) except for issues related to severance damages. The appraisals can be prepared by staff appraisers who shall be at the journey level or higher. Exceptions may be made by the Region/District for noncontroversial direct sales to private entities. The requirement for approval of the dual excess land appraisal remains with Headquarters Right of Way.

Proposed direct sales of excess property to a public agency do not require a dual appraisal and staff may prepare the single report. However, if the

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parcel is controversial, or politically sensitive, the Region/District should strongly consider hiring an independent appraiser.

Per Streets and Highways Code, Section 118.1, dual appraisals are required for the sale to a qualified occupant of commercial real property that was acquired by the Department for construction of a state highway but is no longer required because the construction will not take place. This is applicable when the current occupant is actively renting or leasing the real property from the Department, has used and occupied the real property, and has made improvements exceeding $5,000 in value at his or her own expense consistent with the terms of the rental/lease agreement. The Department must obtain at least two independent appraisals of fair market value from qualified appraisers. Reports may be prepared by either qualified staff or contracted fee appraisers. To maintain independence, qualified staff appraisers should report to different supervisors and the appraisals shall be reviewed and recommended for approval by each supervisor. Contracted fee appraisals shall be completed by separate appraisal companies. Dual reports shall be separate and fully independent in analyses and conclusions.

7.14.03.00 Market Value Determination of $10,000 or Less

A Market Value Determination can be substituted for a Market Value Appraisal if the Region/District determines that the latter is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at $10,000 or less based on a review of available data. The Market Value Determination (MVD) is not an appraisal but is used to document the fair market value of the excess land to be disposed of. Like the Market Value Appraisal, the MVD must consider the full market effect of all damages and benefits, and the economic effect of delay in the use of the property pending completion of construction of the transportation project.

The determination as to which parcel is uncomplicated rests with the Region/District. Among criteria to be considered in making the determination are:

A. There is no serious question as to highest and best use.

B. Adequate market data is available.

C. Substantial enhancement value to adjoining parcel will not occur with the assemblage of the excess parcel.

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An MVD cannot be used for a valuation problem that is considered complicated and/or complex, regardless of value. A preliminary analysis of potential plottage value, as detailed in Item A of Section 7.14.02.00, must be made in order to determine whether or not an MVD is appropriate.

The Market Value Determination may be based on a review of available relevant market data such as: comparable sales and listings already in the Region/District files, comparable sales and listings from multiple-listing services and commercial databases, opinions of Assessor's Office appraisers or real estate brokers, and other data sources. Comparable Data forms and sales location maps are not necessary.

A Market Value Determination can, subject to approval delegations, be approved at the Senior level. They may be prepared and recommended for approval by an agent of less than Associate grade. It is strongly recommended that the Agent preparing the Market Value Determination have a good understanding of appraisal valuation concepts.

When applicable, a Market Value Determination can be used to document the fair market value of excess land in a direct sale transaction to a public agency. In this case, the Market Value Determination would be approved at the Headquarters level consistent with the direct sale to a public agency delegation. (Reminder that all valuations involving direct sale to a public agency are currently delegated to Headquarters, regardless of dollar amount or reporting format.)

The same Agent who is assigned to sell the excess parcel can prepare a Market Value Determination. Refer to 7.14.01.00 for the proper statement to include in RW 7-17A when a single Agent is assigned both activities.

Members or candidates of professional appraisal organizations who are assigned to act in a dual role of Appraiser and Acquisition Agent should check with their organization's Code of Ethics for specific prohibitions and disclosure requirements.

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7.14.03.01 Format, Content, and Standards

Market Value Determinations of $10,000 or less may be prepared in the format shown in Memorandum – Market Value Determination (7-EX-16).

1. If the valuation amount is between $0 and $500, show the word "nominal" in the amount column.

   In addition to the 7-EX-16, the report includes a Senior Field Review Certificate - Excess Lands (7-EX-24C), Certificate of Market Value Determination - Excess Land (RW 7-17A), excess land appraisal request, and the Director's Deed Map(s). Photographs and narrative support of the valuation are not required unless HQ R/W approval is requested.

2. If the valuation amount is between $501 and $2,500, show the actual amount; or show "nominal" followed by the amount, rounded to the nearest $50, shown in parenthesis.

   Report requirements are the same as are given under item #1 above.

3. If the valuation amount is between $2,501 and $10,000, show the actual amount rounded to the nearest $50.

   In addition to the 7-EX-16 and the report requirements given under item #1 above, the Market Value Determination will ordinarily require a brief valuation analysis, and the content can be similar to that required for a Public Sales Estimate as indicated in 7.14.04.02 and 7.14.04.03.

   Any number of parcels on a single project with a like use can be valued on the same form.

   The excess land appraisal request from the Excess Land Branch or the Acquisition Branch should include the acquisition cost of the excess.

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7.14.04.00 Public Sale Estimates

A Public Sale Estimate will be prepared for all excess parcels to be sold by public sale, except where a Market Value Appraisal or Market Value Determination has already been prepared. It is an estimate of current market value, in brief written form, containing the minimum reasonable parcel description, value analysis and supporting data. While the intention is to complete the estimate as rapidly as possible, it is also important that the appraiser strive for a reasonable level of quality and accuracy.

It is intended to provide the Excess Land Branch with an estimate of market value in the least possible time. The estimate will be used as the basis for setting the minimum bid on property to be offered at public sale.

This estimate of market value is to consider the parcel at its highest and best use as a separate parcel. It must consider present zoning as it affects the value for such use, along with the potential for rezoning.

The full market effect of all damages and benefits including noncompensable damages and general benefits must be considered. Also consider the economic effect of delay in the use of the property pending completion of construction of the transportation project.

7.14.04.01 Format

The Public Sale Estimate report should usually be prepared in the format of Exhibit 7-EX-15 and have map(s) attached. The report may be typed, but a legibly written, reproducible estimate is acceptable.

7.14.04.02 Content

The essential items to appear on the report page(s) are:

- Excess property identification (Region/District, County, Route and Director's Deed number, Excess Land parcel number(s) and property address).
- Zoning of the property.
- Highest and Best Use of the property and comment in support thereof.
- A brief narrative description of the subject (including improvements), and its neighborhood setting.

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- A description of easements or other legal encumbrances.
- A brief statement about the supporting data used.
- A brief analysis.
- Estimate of market value, including separate land and improvement values if applicable.
- Date of value.
- Estimator's name, signature and date.
- Senior Appraiser's name, signature and date.
- Approving Right of Way Agent's name, signature, title and date.

7.14.04.03 Examples of Supporting Data

- Primary

  a. Comparable sale(s).

  b. Comparable listing(s).

- Secondary

  a. Market value opinion(s) from:

  b. County assessor or staff appraisal members.

  c. Real estate brokers or sales persons.

  d. Real estate developers.

  e. Real estate buyers and sellers.

  f. Real estate appraisers, public or private.

  g. Other people with credible knowledge about real estate values relevant to the subject.

- State excess land sales

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7.14.05.00 Review of Request for Proposal Submittals (RFP)

Proposal Forms received as the result of a Request for Proposals, in the course of sale of residential properties under Government Code Sections 54235 et seq., will be reviewed by the Region/District Appraisal Section. This is to validate the reasonableness of the offers received.

Upon receipt of written request from the Excess Land Sales Section, the Appraisal Branch's responsibility will be to review the Proposal Form to verify that the estimated operating expenses appear appropriate to the particular property involved. That is, fixed and variable operating expenses and reserves for replacements will be reviewed to see that they conform to local practice experience, market expectations and reasonable anticipated costs and economic life standards.

In addition, proposed rehabilitation work and its estimated cost as contained in the proposal should be reviewed to determine whether the work and cost appear appropriate. The review will be commensurate with the extent of the information furnished. Excess Land Sales is responsible for furnishing additional data for consideration if any is required.

The review memorandum should be signed by the Appraisal Manager and a copy retained in the Appraisal files.

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7.15.00.00 - AIRSPACE ESTIMATES, BID LEASE VALUATIONS AND APPRAISALS

7.15.01.00 General

Airspace appraisers should familiarize themselves with the Airspace Chapter and the Standard Airspace Development Lease to better understand the procedures and terms used by the Department.

Estimates, valuations and appraisals of airspace parcels will be made at the written request of the Region/District Airspace Branch. A copy of the written request will accompany the estimate or appraisal. Requests will provide necessary maps, plans and profiles of the freeway, the airspace parcel numbers and any available information pertinent to the valuation. The property (rights) to be appraised and any special conditions that would affect value must be defined.

The appraiser should include any collateral data useful in marketing the area to be leased. Whenever possible, the appraiser and the airspace agent will discuss the site prior to the start of the appraisal. There must be effective coordination between the Airspace Branch and Appraisal Branch as well as a mutual understanding of the functioning of each other's Branches. If special restrictions have a significant effect on value, the necessity for the restrictions should be reviewed and discussed between the appraiser and the seniors of the Appraisal and Airspace Branches.

The Airspace Branch will furnish, on an annual basis, by June 1 the projected airspace appraisals needed for the next fiscal year. This list will identify the lease areas to be appraised and the dates by which the appraisals are needed. It will form the priority basis for preparation of airspace appraisals. If the Airspace Branch must change this schedule, a written request for change and/or an updated schedule is to be furnished to the Appraisal Branch. Updates should be requested well in advance of the need.

The appraiser should consider all legal potential and proposed uses for the parcel. A proposed use should be discussed in the Report even if the appraiser subsequently decides that this use does not represent highest and best use. Each analysis must be thorough and complete so the reader/reviewer is clearly and logically led to the appraiser's conclusion. Among other questions, the analysis should answer those such as:

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A. Can the subject airspace parcel be legally developed as an independent parcel?

   1) Is it physically possible to develop it independently?

   2) What can it be used for as an independent parcel?

   3) What markets exist for the most profitable anticipated uses?

B. Can it be joined for use with an adjacent parcel?

   1) How are the adjacent parcels developed?

   2) Can the airspace parcel be used through joinder?

   3) Does it enhance/improve the use of the adjoining property?

C. The conclusion:

   1) Which will yield the highest net return, joinder or use as an independent site?

   2) What is the highest and best use and the reasoning leading to this conclusion?

Experienced associate grade appraisers should be assigned the preparation of airspace appraisals because of their specialized nature. The assignment should be for at least three years. Region/District airspace appraisers should meet periodically to exchange data and ideas. The need for such meetings should be expressed to HQ RW Appraisal Branch which will coordinate them. Free interchange of data and ideas between the Regions/Districts at all times is strongly encouraged.

Each Region/District should routinely transmit material which might be informative or useful to all Region/District Appraisal Branches. This would include market data indicating the effect of typical lease areas, impacts of physical or legal encumbrances, and copies of feasibilities studies.

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7.15.02.00 Estimates

Estimates may be requested to provide the Airspace Branch with a figure for preliminary discussions with potential users or for minimum value sites. A regular airspace appraisal can be made in lieu of an estimate if deemed necessary by either the Airspace or Appraisal Branch.

Estimates should be minimum-type valuations similar to letter-type appraisals. Only a minimum amount of comparable data to support the conclusions of value is necessary.

The estimate will consider all factors directly or indirectly affecting the utility of the rights to be leased. Full recognition will be given to any enhancement of real estate values in the area because of the location of the freeway. A statement of highest and best use will be made with supporting data and rationale. The appraiser should consider any possibility of plotting the airspace parcel with a State excess land parcel or a privately-owned parcel in the immediate area to determine the highest and best use.

A completed Form RW 7-19 will be accompanied by a vicinity and parcel map.

Airspace estimates will be Region/District approved and it will not be necessary to send copies to Division.

7.15.03.00 Appraisals – General

The parcel may have to be appraised based on various uses or premises; for example, as a separate parcel, in conjunction with uses of adjacent or nearby properties, etc. The primary appraisal will be the fair market value of the parcel based on its highest and best use. Any other requested values based on uses or premises that do not represent the highest and best use of the parcel will be shown separately in the Appraisal Report as alternate appraisals on separate Airspace Parcel Appraisal pages Form RW 7-21 labeled as "Alternate Appraisals." When alternate appraisals are included, the primary appraisal as described above will be labeled "Primary Appraisal."

The appraiser, after deciding on the highest and best use of the parcel and before proceeding with the appraisal, should consult with the Airspace Branch to advise them of the conclusion. Once the Airspace Branch knows the highest and best use, they may see a need for an alternate appraisal based on some other premise or use.

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For example, if the highest and best use is concluded as joinder with the adjacent ownership, the Airspace Branch may also need an alternate valuation as an independent parcel.

By holding these consultations during the initial appraisal process, any need for alternate appraisals can be identified at an early stage so the alternate can initially be done and included in the Appraisal Report.

7.15.03.01 Format

The format for airspace appraisals will generally be the same as for acquisition appraisals. However, airspace appraisals use Form RW 7-20 for the Appraisal Title Page and Form RW 7-21 in lieu of the Form RW 7-9. If the appraisal contains more than one parcel, include a summary page listing the parcels and the appraised values.

7.15.03.02 Standards and Methods

Regular market value airspace appraisals will be required for any airspace parcel that will be leased on a direct basis without calling for competitive bids, and those situations not meeting the specified criteria for bid lease valuations.

All airspace appraisals shall be performed to meet the same quality standards as used for acquisition appraisal reports with respect to analysis, documentation, market data, and market data analysis. Only one appraisal is required, even for airspace parcels to be directly negotiated.

Methods will be the same as those applied in appraising any right of way acquisition parcel, except that consideration should be given to all of the factors that may limit or enhance its utility because of the existence of the freeway improvement located on or near the parcel. Full recognition will be given to any enhancement of real estate values in the area because of the location of the freeway.

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7.15.03.03 Preparation

The appraiser must thoroughly discuss and analyze the effect that the freeway improvement has on the use of the parcel, with special emphasis on the restrictions imposed by the following jurisdictions:

- The Department of Transportation
- The State Fire Marshal (standard requirements are on file in the Region/District offices)
- 23 CFR, Section 710.405
- Local planning and building departments
- Any other agencies having controls

The appraiser should look closely at the location of the freeway structure across the parcel. If the viaduct structure were confined to one side of the parcel, it could have a different effect on the overall use of the parcel than if the structure traversed the center of the parcel only, leaving small strips of open land on each side.

Comparable data directly applicable to the physical condition of the subject may be difficult to find in the market. However, the appraiser must use what market data is available and make the necessary adjustments. The appraiser may use lease data in an income approach for the purpose of estimating the value of the parcel. Lease data from existing airspace leases may be useful if the data meets the normal comparability tests.

There should be a thorough analysis of adjustments with market-data support if possible. The use of dollar or percentage adjustments follows the same requirements as for acquisition appraisals. The appraiser must fully support the conclusion of value the same as is presently required in any appraisal of acquisition parcels.

All airspace appraisals will be reviewed for approval by the Division. Only the primary appraisal based on the highest and best use of the airspace parcel will be approved for lease purposes.

Alternate appraisals will be reviewed "as to value only" based on the premise used in the Report. Any subsequent use of the alternate appraisal for lease

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purposes will require prior administrative authorization by the Division Airspace Development Branch.

An Airspace Appraisal Summary Form RW 7-22 will be prepared and submitted to the Division with each parcel appraisal.

The summary will be given to the Airspace Advisory Committee of the California Transportation Commission for their review. The function of the Committee is to review proposed airspace leases and make recommendations to the Transportation Commission regarding acceptability. Form RW 7-22 shows the format to be used. For consistency purposes, please adhere to the format shown.

The summary should be brief, but long enough to adequately cover the important aspects of the appraisal. Under "Brief Property Description," include a description of the freeway facility that is located on or over the airspace parcel.

7.15.04.00 Bid Lease Valuations

An airspace bid lease valuation is used for establishing minimum rental rates for leasing airspace parcels on the basis of competitive bids. They will be approved according to the current delegations.

Each valuation will contain a range of value and will be prepared upon written request from the Airspace Branch.

Range of Value is defined for this purpose as the range of most probable sales price if the rights being valued were to be sold on the open market. The range should be based on the typical low and high prices paid for similar properties in the market adjusted for comparability.

Because the airspace rights so valued will be exposed to the market through the bid process, documentation and support need not be as extensive as in the standard airspace appraisal which estimates fair market value. Nevertheless, at least a reasonable amount of documentation and support must be presented. However, every bid lease valuation will contain a thorough, complete statement and analysis of the highest and best use of the rights under study. This analysis will be as comprehensive and definitive as one required for an airspace market value appraisal.

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7.15.05.00 Rental Rate Appraisals

In order to streamline the airspace appraisal process, for those qualifying nondevelopmental uses on directly negotiated airspace leases, Regions/Districts may use an Airspace Rental Rate Appraisal process in lieu of a regular airspace appraisal report.

The purpose of this airspace appraisal category is to facilitate the appraisal process for numerous noncomplex and noncontroversial airspace parcels. Appraisals responds directly to a request for a specific use rental rate by the Region/District Airspace Manager. In this specific case, the appraiser is not asked or required to perform an independent highest and best use analysis or resulting land valuation.

Generally, Airspace rental rate appraisals can be used for vacant:

1) Landlocked Parcels

2) Minimum-sized or oddly-shaped parcels that have little value or utility

3) Park-and-ride lots

4) Public parks (Marler-Johnson)

5) Parcels leased to bona fide public agencies

6) Parking and/or storage uses when there are ample comparable rents available

Rental rate appraisals will not be used for the following:

1) If comparable rents are scarce or nonexistent and rental value is not easily determined

2) If the proposed use is controversial or complex

3) If the parcel is to be leased for plottage to an adjoining owner to meet minimum use requirements or intensify the development of such a privately-owned parcel

Qualifying Rental Rate Appraisals will be Region/District approved in accordance with current Delegations, with a report copy forwarded to HQ RW. Regular full-market value appraisals are still required for all other

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proposed uses that will be leased on a direct basis without calling for competitive bids.

The decision to request a full appraisal or Airspace Rental Rate Appraisal is entirely that of the Region/District Airspace Manager.

The Region/District Airspace Manager also assumes exclusive responsibility for specifying the highest and best use/specific use to be assumed by the appraiser, and for providing all proposed rental information for use and reliance by the Appraisal Branch.

The written airspace request for a rental rate appraisal must clearly describe the proposed use, term and renewal options, any special conditions or credits, and any limitations to be placed on the parcel by the Department. The rental rate appraisal will therefore not contain a highest and best use determination, but will rely strictly on the use and parcel data information provided by the Region/District Airspace Manager. However, the Region/District Airspace Manager should consider any input from the Appraisal Branch, including whether comparables are available that provide a good indication of a market rental rate.

The rental rate appraisal will conclude a specific market lease rate as appropriate to the airspace parcel's attributes, limitations and benefits, and its proposed rental use and lease terms. In extenuating circumstances involving marginal market data only, the appraisal may as an exception include a lease rate range as supported by the limited market data.

The rental rate appraisal format will follow regular airspace appraisal standards and methodology. As with any appraisal, the amount of analysis and degree of documentation should be in proportion to the appraisal problem and valuation involved. Since the report will not include the appraiser's independent highest and best use analysis, but rather rely on the use proposed by the Airspace Manager, the appraisal will include the limiting conditions on the new Airspace Parcel Appraisal Form RW 7-21 in conformance with Uniform Standards of Professional Appraisal Practice, S.R. 2-2. The Airspace Advisory Committee does not review Rental Rate Appraisal Reports, and Summary Form RW 7-22 will not be included in these reports.

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7.16.00.00 - RENT DETERMINATION

7.16.01.00 General

A fair market rent determination is an estimate of the amount of rent which a parcel would command in the open market, if offered under the terms and conditions typical of the market for similar properties. The fair rent for property for which there is no relevant market data shall be estimated by any reasonable method that is fair and equitable. The justification for use of such method and a full explanation of the rationale on which the method is based will be set forth. The following process will be followed for both residential and nonresidential fair market rent determinations.

Property Management may prepare residential fair market rent determinations in accordance with Right of Way Manual Sections 11.04.02.00, 11.05.01.00, and 11.06.02.00.

The Appraisal Branch prepares, reviews, and approves fair market rent determinations for all nonresidential properties except as noted in R/W Manual Section 11.05.00.00.

This service is provided by the Appraisal Branch upon written request from Property Management. These requests should be scheduled so as to give Appraisals as much lead time as possible, and will include the following information:

- A map of the property.
- Parcel number, county, route, post mile (P.M.), and property address.
- Improvements that belong to the tenant and should be excluded from consideration.
- Special items on the property, such as machinery or equipment. An inventory should be available if needed.
- Whether construction of improvements on the property will be permitted.
- Term of the proposed lease and estimated length of time property will be available for rent.

Rent determinations will be updated upon written request from Property Management.

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7.16.02.00 Content

Fair market rent shall be based on the most reasonable highest and best use, taking into consideration the term of the State's proposed lease. Other appropriate market-related factors shall also be considered in the rent determination.

The rent determination will be a specific estimated fair market rent. Rent determinations will be rounded to the nearest $10. (Example: A fair market rent estimate of $545 will be rounded to $550.)

The rent determination will be based on current rents being paid in the area for comparable properties. An analysis of comparable rentals and other market data supporting and leading to the appraiser's conclusion of fair market rent must be included in the report. The amount of analysis, number of comparables used, and the degree of documentation required should be in proportion to the value of the property to be rented.

Property Management will use the rent determination as a benchmark from which to reach the actual rental rate. The actual rental rate will be concluded after any special adjustments which may be appropriate to Property Management's operation. Therefore, it is important that the appraiser clearly indicate those items for which adjustments were made in arriving at the appraiser's estimate of fair market rent.

Individual Rental Comparable Data Sheets shall be used, and should include the following information:

- Property identification
- Property description
- Condition and effective age of improvements, if any
- Present use and highest and best use
- Rental rate, including escalation rate, if any
- Date rental rate established
- Terms, including who pays utilities, taxes, and insurance and any other recurring expenses
- Period of lease
- Names of data sources
- Names of owner and tenant, if pertinent

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All fair market rent determinations will include parcel maps. Improved properties will include pictures showing the improvements. In addition, an index map, comparable data map, and comparable data pictures are required for all rent determinations where fair market rent is $5,000 per month or more. These latter three items are optional in Region/District approved rent determinations (where fair market rent is less than $5,000 per month).

Rent determinations requiring HQ R/W approval will be submitted with a transmittal page showing county and route, parcel number, and date of value. It will include the required signed recommendations for approval.

7.16.03.00 Review and Approval Process

The review and approval process is discussed in Sections 7.01.15.00, 7.01.16.00, and 7.01.17.00. The Senior who reviews and recommends the fair market rent determination cannot execute the resulting lease on the same parcel.

7.16.04.00 Special Circumstances

Occasionally, there will be requests for rent determinations for specific uses. In many cases, the property is already rented for some use consistent with constraints the Department has imposed. This existing use may not be the most reasonable highest and best use. If the appraiser's analysis indicates there is a significant difference between the existing use and the most reasonable highest and best use, this should be pointed out in the report. Both a statement of the most reasonable highest and best use and an estimate of the fair market rent under this use will be included. This analysis will be in addition to the rent determination for the specific use as requested.

An example of this is a parcel which has a highest and best use as a parking lot. For special reasons, it may not be feasible or practical to raze the existing improvements and put it to this use. A request for a rental determination on the parcel as improved is appropriate, provided the most reasonable highest and best use is cited and the estimated fair market rent, on this basis, is also included.

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7.16.05.00 Nominal Value Nonresidential Rentals

Many properties cannot be rented for more than nominal rental rates because of size, irregular shape, and/or location. Nominal rental for this purpose is defined as $2,400 per year ($200 per month) or less.

At the Region/District's option, the Appraisal Branch staff or the Property Management Branch staff may be used for rent determinations on nominal value nonresidential rentals.

In these cases, only an 11-EX-53 appraisal is required. It should identify and describe the parcel, and summarize the data and analysis that leads to the appraiser's conclusion of fair market rent. The nominal rental conclusion should be stated as a specific rental amount. A map of the appraised property is required (8½″ x 11″ print is sufficient); photographs are recommended. See 11.05.02.00.

The rent determination should include a signed statement that the appraiser has personally viewed and inspected the parcel. The determination should also be signed by the function's Senior.

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7.17.00.00 - BUSINESS GOODWILL APPRAISALS

7.17.01.00 Statute – Compensation for Loss of Goodwill

Code of Civil Procedure, Title 7, Eminent Domain Law, Chapter 9, Article 6, Compensation for Loss of Goodwill, Sections 1263.510, .520, and .530 provide the basis for compensating the owner of a business for the loss of goodwill. These sections should be reviewed by the appraiser prior to completing any appraisal involving a commercial property. See the reference volume.

7.17.02.00 Interpretation of the Eminent Domain Law, Court Cases, and Legal Issues

The courts are continuing to interpret the statutes on loss of goodwill. The first major court ruling by the State Supreme Court was the Department of Transportation v. Muller. This case has established that the increased cost of doing business at the replacement site is a compensable cost.

The Regions/Districts should consult with HQ R/W concerning any problems with interpretation of the compensability for loss of goodwill. Requests for legal opinions must be directed through HQ R/W for action by Sacramento Legal.

7.17.03.00 Burden of Proof

The law provides that a business owner shall be compensated for the loss of goodwill if the owner proves that the loss is caused by the State's taking of the property and that 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 to preserve the goodwill. The business owner has the burden of proof for loss of goodwill.

7.17.04.00 Notification Letter to the Business Owner (Form RW 7-30)

At the initiation of each staff real estate appraisal of a parcel occupied by one or more businesses, the appraiser will provide each business owner a written notification of the owner's right to claim a loss of business goodwill using Notification of Right to Claim Loss of Business Goodwill (RW 7-30). It is highly recommended that the RW 7-30 be sent to the business owner by certified mail, with return receipt requested. Form RW 7-30 includes a

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questionnaire asking for information about the business for the owner to return when claiming a loss of goodwill.

The RW 7-30 will set a reasonable time limit for the owner to respond. No follow-up requests by the appraiser are required. The appraiser must not delay the initiation and completion of the real estate appraisal while waiting for the business owner to respond. If the appraiser does not have the business owner's name and contact information at the time the real estate appraisal report is written (such as when outdoor advertising signs are present), it will be the acquisition agent's responsibility to send the notification letter as soon as the name and contact information become available.

The date the notification letter is sent to the business owner and any responses from the owner, written or oral, must be documented in the parcel diary. The section of the parcel diary with entries relating to business goodwill shall subsequently be copied and attached to the parcel diary for the goodwill appraisal or a separate goodwill diary can be initiated.

If the owner does not submit a claim or makes a claim but does not furnish copies of State Income Tax returns, as required by California Code of Civil Procedure Section 1263.520, the appraiser must so document in the parcel diary and the real estate report. The appraiser must still make a preliminary analysis and tentative conclusion as to whether or not the business owner will be able to relocate without a loss. The research and analysis for the tentative conclusion will be included in a separate section of the staff real estate appraisal or in the addendum to the report. The research and analysis will include, as a minimum, a statement of the observed availability of replacement sites.

7.17.05.00 Timing for the Preparation and Completion of the Goodwill Appraisal

It will be prepared as soon as possible after receiving the claim from the owner with copies of the owner's tax returns and any other supporting financial data that is furnished. To ensure confidentiality, only HQ R/W copy of the appraisal report will contain the owner's income tax returns. All goodwill appraisals will be in separate reports and not part of the real estate appraisal report.

The appraiser will not complete the goodwill valuation appraisal if the owner does not furnish copies of the State Income Tax returns. The business' "in-house" financial records do not constitute acceptable income and expense information. The appraiser will make a statement in the real estate

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appraisal report that since the owner has not furnished income tax returns, there is insufficient data to estimate whether or not the business possesses goodwill value in the before condition. Therefore, any loss of goodwill is indeterminable.

7.17.06.00 The Goodwill Appraisal Report

The report may contain more than one business under the same ownership. Each business will be valued independently in the before condition and the after condition. If the business goodwill in the before condition is $0.00 or a negative number, it is not necessary to calculate an after condition value. The report will be prepared by or under the direct supervision of, and will be signed by, a Right of Way Agent of at least Associate grade. The duties and responsibilities of the appraisers and reviewers are the same as those for real estate appraisals.

Upon receipt of the goodwill questionnaire from the grantor, if the Senior Right of Way Agent determines it is obvious that there is no goodwill in the before condition (e.g., negative net income for the previous three years) as shown from the loss of business goodwill claim and tax returns for the previous five years, the Region/District has the option of utilizing a memorandum appraisal format or a very succinct narrative appraisal to document these conclusions. The memorandum is to give a full explanation of the valuation and will contain sufficient supporting documentation.

7.17.07.00 Parcel Diary

The appraiser will initiate a parcel diary, Form RW 7-23, for each goodwill parcel appraisal. A copy of the diary shall be included in the report forwarded to HQ R/W.

7.17.08.00 Cross-referencing the Goodwill and Real Estate Appraisal Reports

The report for the goodwill appraisal will carry the same basic number as the real estate report with a subreference of the letter "G." For example, if the real estate report is AR-7, the goodwill report on a business located on the parcel will be numbered AR-7G1. Any subsequent reports made on other businesses located on properties appraised in AR-7 will carry AR numbers running consecutively, e.g., AR-7G2, AR-7G3, AR-7G4, etc.

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A goodwill appraisal which supersedes a prior valuation of the same business will be given a new AR designation. The new report will cross reference the prior appraisal(s). For example, "AR-7G8: This appraisal supersedes AR-7G3, approved (date)."

7.17.09.00 Parcel Numbering

The parcel numbers for goodwill parcels will be the same as the parcel number for the real estate on which the business is located with a subreference of G-1, G-2, G-3, etc., i.e., 12345 and 12345G-1.

7.17.10.00 Review and Approval Process

All staff and in-lieu of staff goodwill appraisals will be reviewed for approval by Headquarters Right of Way.

7.17.11.00 Project Influence

Goodwill valuations shall not include any increase or decrease in the value of the business that is attributable to the project. See Section 1263.330 of the Eminent Domain Law.

7.17.12.00 Appraisal Report Components and Sequence

- Appraisal Title Page - Business Goodwill Valuation (RW 7-24)
- Parcel Summary Page – Goodwill (RW 7-25)
- Business Goodwill Valuation - Senior Field Review Certificate (RW 7-26)
- Business Goodwill Valuation - Certificate of Appraiser (RW 7-27)
- Appraisal - Business Goodwill Valuation (RW 7-28)
- Business Sales Data Page – Goodwill (RW 7-29)
- Business Comparable Data Page – Goodwill (RW 7-31)
- Purpose of Appraisal

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- Date of Value

  The date of value shall be the date funds are deposited by the State into the grantor's escrow account unless the court otherwise stipulates the date. In the case of pre-condemnation, the date of value is the date of possession.

- Description of Business

  In addition to a comprehensive description of the business operation, include the name of business and the owner(s), location, history of the business ownership, areas of land and description of improvements used (owned or leased) by the business, lease/rental amounts and terms including expenses paid by tenant, geographical area served by the business, hazardous materials used by the business and hazardous waste observed.

- Recent sales of the subject business

  Each sale of the subject business during the last five years preceding the appraisal will be explained in detail. Use a separate sales data page for each sale. The most recent sale during the period shall be verified by the appraiser with both seller and buyer, if possible. If not verified with both parties, efforts to do so must be described. A complete verification of the most recent sale will be made including sale price, terms, and a breakout of the amount paid for tangible and intangible assets such as machinery, equipment, liquor licenses, and goodwill. Any difference between the appraised value of goodwill and the price paid for goodwill must be explained.

- Availability of suitable sites for relocation

  Include a detailed study of the availability or lack of availability of suitable replacement sites for the business. If the business has already relocated prior to the date of the appraisal, the analysis will state whether or not other suitable sites were available at the time of relocation and, if utilized, would have resulted in a lesser loss or no loss.

- Valuation

  The valuation section shall include a comprehensive analysis of the appropriate approaches to value and the conclusion of the goodwill value at both the existing location and the new or proposed location. This

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also applies to businesses affected by partial acquisitions that may continue operations on the remainder.

- Reconciliation of valuation approaches and final conclusion

  Where two or more approaches to value are used, the appraisal will reconcile the separate indications of value derived and include a reasonable explanation for the final conclusions of business goodwill. The final conclusion will state whether or not the business will suffer a loss of goodwill as a result of the taking. This will usually be a comparison of the goodwill valuation of the business at the old location and at the new or proposed location (before and after).

- List and valuation of tangible and intangible assets

- Comparable data pages and maps

- Index maps (if available), subject map, relocation site map

- Parcel diary

- Addendum

The addendum should include supporting data such as financial statements, copies of the State income tax returns, relocation site studies, market analysis studies, questionnaire supplied by business owners, etc.

7.17.13.00 Goodwill Valuation

The first step is to estimate the value of goodwill, if any, of the business at the location being taken or affected by the project.

The premises for the goodwill appraisal should be consistent with the premises used in the real estate appraisal. Examples of premises that are ordinarily expected to be consistent are highest and best use, economic rent, and value of business improvements such as fixtures, machinery and equipment. Any differences in these and other important elements must be explained in the report.

Normally, the value of the goodwill is not estimated directly but is derived by a residual process. The first step is to estimate the value of the total business enterprise and then subtract the value of the separately valued assets of the business, both tangible and marketable intangible, from the total value. The

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residual value, if any, represents the intangible asset of goodwill. The following is a summary of this residual process:

Total value of business
(-) less value of tangible assets owned by business
(-) less value of marketable intangible assets owned by the business
Value of goodwill (intangible asset)

(Intangible marketable assets are those which can be sold off separately from the business, such as a liquor license.)

If the analysis indicates no goodwill value, the appraisal process ends and the report is completed. If no goodwill value exists in the before condition, there cannot be a loss of goodwill.

If the analysis results in a goodwill value, the appraiser must proceed with the appraisal process. The next step is to repeat the above process for the business after project construction in the manner proposed (and if the business required relocation), to determine the value of the goodwill at the new or proposed location. If the business has already relocated at the time of the appraisal, the business operation must be analyzed by repeating the valuation process outlined above to determine the value of the goodwill at the new location.

The compensable loss is the amount, if any, that the value in the before condition exceeds the value in the after condition.

Example:

Estimated value of goodwill before	$15,000
Estimated value of goodwill after	-$10,000
Estimated compensable loss of goodwill	$ 5,000

If the business has not been relocated at the time of the appraisal, the appraiser and the relocation agent will make a comprehensive study regarding the availability of either existing suitable sites or those sites that are expected to become available within a reasonable period of time to which the business can relocate. A suitable site is considered to be one which a prudent business owner would select in attempting to preserve goodwill to the greatest extent possible. The report will contain a section detailing the appraiser's study of the availability or lack of availability of suitable replacement sites. If suitable sites are or will become available, the appraiser will value the goodwill in the after condition as described above as if the

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business were relocated to a property which would be selected by a prudent business owner seeking to preserve or enhance the value of the business goodwill. This is in keeping with the Eminent Domain Law (CCP Section 1263.510).

If the study shows that there are no available suitable relocation sites, and none can be expected within a reasonable period of time, then the estimated business goodwill value in the before condition will be the loss of goodwill shown in the report. In other words, there is a total loss of goodwill value to the business. If these circumstances exist, the appraiser must fully document, in detail, the reasons why the business is unable to relocate.

If a business is highly complex or specialized it may be necessary or advisable to contract with consultants for appropriate market analyses and/or relocation studies.

7.17.14.00 Business Valuation Methods

There are many methods by which the value of a business and its goodwill can be estimated. The following are three methods commonly used for business valuation:

A. Market Approach

The most common market approach is the utilization of income multipliers derived from the market transactions of similar businesses. For example, retail store businesses might sell for two times annual gross income. Particular market multipliers may be based on income or sales and vary widely, depending on the type of business.

B. Capitalization of Excess Earnings

This is an income approach where excess earnings are calculated by subtracting from business net profit, a return on and of depreciable tangible assets and a return on marketable intangible assets. The return of a depreciable tangible asset is made over the remaining economic life of the asset. If marketable intangible assets have a limited life, then it will be necessary to also subtract a return of the asset over its remaining economic life. The excess earnings of a business, if any, are then capitalized at an appropriate rate to estimate the value of the goodwill.

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C. Discounted Cash-Flow Analysis

This approach is focused on the projected earnings and expenses of a business over a period of time (usually the anticipated investment period). Value of goodwill is the present value of the projected net cash flow (either before or after taxes) for a period of years plus any reversion value of the goodwill. This method takes into account the effects of changes in the net return each year.

These are brief descriptions of the more commonly used valuation methods. For a more detailed explanation of the various valuation methods, the appraiser must refer to appraisal text books or other instructional materials on business valuations.

7.17.15.00 Analyzing Financial Statements and State Income Tax Returns

In processing the various business valuation methods, such as the "capitalization of excess earnings," it will be necessary to analyze financial statements and State income tax returns. As part of this process, the appraiser must reconstruct the income and expenses reported to arrive at a net income applicable to the value of goodwill.

The following list includes examples of items that must be considered in reconstructing the income and expenses reported:

- Depreciation must be deleted.

- Payments (principal and interest) on loans used to purchase the business must be deleted.

- Payments (principal and interest) on loans used to purchase real property must be deleted and an economic rent for the real estate used by the business substituted for the payment.

- Use economic rent instead of contract rent in the statement. Also, economic rent must be used at the new location. This approach is based on legal interpretation of the law. The appraiser must look at the real estate report to see what was determined to be economic rent. An explanation must be made by the goodwill appraiser if the economic rent used in the goodwill appraisal is different than the economic rent used in the real estate appraisal. There could be a difference in the economic rents if substantial time elapsed between the dates of the two appraisals.

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- Owner's salary and draws must be adjusted to reflect reasonable compensation for the owner's role or activity in the business operation. In some cases, corporation officers receive a salary even if they do not work in the business. These salaries may be disguised as profit-sharing compensation and must be deleted because they are not an expense.

- Use of unsupported future earnings are not acceptable. All earnings in the after condition must be factual and supportable. Expectations for growth on investment or changes in the economy cannot be utilized in the calculations.

7.17.16.00 Betterment at the Relocation Property

In the process of reconstructing and/or estimating an income and expense statement for the business at a relocated property, the appraiser must adjust the statement for avoidable property betterments. The following is an example of an avoidable betterment which must be adjusted in the income and expense statement as a part of the process of estimating goodwill value at the new business location.

Assume that the business at the old location occupied a building containing 9,700 sq ft with an economic rent of $10,000/month. Also assume that the business owner chose to relocate to a 15,000 sq ft building with an economic rent of $15,000/month, even though there were other suitable relocation properties on the market containing 9,700 sq ft at a rent of $10,000/month comparable to the old property. In this example, the appraiser must use an economic rent of $10,000/month in the statement instead of the actual rent of $15,000/month at the new location.

On the other hand, an adjustment should not be made if there were no other comparable replacement properties available in the market with 9,700 sq ft renting for $10,000/month, and the owner was forced to relocate to a 15,000 sq ft, $15,000/month rent in order to continue business and preserve the goodwill (patronage). This may be considered an "unavoidable betterment." In this case, the appraiser must use an economic rent of $15,000/month. However, if the business owner were forced to relocate to the larger 15,000 sq ft building, but could sublet the 5,000 sq ft of excess area for $5,000/month, then the appraiser must, of course, take that rental income into account at the new location.

The appraiser must be careful in deciding which betterments must be adjusted as part of the process of estimating the value of the goodwill at the relocated property in the after condition. The basis for the appraiser's

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decision that there is an "unavoidable betterment" must be included in the goodwill report. If the Region/District has any difficulty in identifying betterments which should be adjusted, HQ R/W Appraisal Branch should be consulted. There may be a need to request legal advice on specific issues.

7.17.17.00 Disadvantages at the Relocation Property

There may be certain conditions at the relocated property which cause a reduction of net income and, thus, a reduction from the level of goodwill value that the business had at the old location (loss of goodwill). Some examples are loss of net patronage and increased (economic) rent or other increased operating expenses. (The increased rent or other expenses must, of course, not be a result of avoidable betterments.)

Note that the phrase "loss of net patronage" is used in this section. The reason that the word "net" is used is because Eminent Domain Law Section 1263.510, paragraph (b), states "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." Therefore, if some of the old patronage was lost by the move, but an equal amount of new patronage was gained at the new location, there would be no net reduction of patronage.

If the Region/District has any difficulty with a particular appraisal in determining which disadvantages must be considered in estimating the compensable loss of goodwill, HQ R/W Appraisal Branch should be consulted. There may be a need to request legal advice on specific issues.

7.17.18.00 Compensation to Business Owners Under the Relocation Assistance Program (Pursuant to Section 7262 of the Government Code and 49 Code of Federal Regulation Part 24)

Certain compensable goodwill losses and Business Relocation Assistance Program items may fall into overlapping areas of the various laws. An owner is entitled to only one payment for a loss. Therefore, the appraiser must furnish the best information possible as to identifying the components of a loss of goodwill. It is then up to the Acquisition and RAP Branches to apply the information appropriately in determining proper payments. This will ensure compliance with 49 CFR 24.3 regarding no duplication of payments. The statute for compensation for loss of goodwill, California Code of Civil

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Procedure Section 1263.510, provides that there shall be no duplication of payments for loss of goodwill which are provided to the business owner pursuant to the Relocation Assistance Program. In addition, Section 1263.010 of the CCP provides "where two or more statutes provide compensation for the same loss, the person entitled to compensation may be paid only once for the loss."

The following are items for which the business owner may receive compensation under the Relocation Assistance Program. Some of these may also be included in a particular finding of a loss of goodwill. The Relocation Assistance Program covers the following:

A. Moving and related expenses that are actual, reasonable and necessary (49 CFR 24.301 and 303).

B. Reestablishment expenses (limit $25,000) (FHWA Guidance Letter, Implementation of MAP-21 Uniform Act Benefit and Eligibility Change, HEPR-10, March 25, 2014. Effective date: October 1, 2014). Only "small businesses" are entitled to compensation for these reestablishment expenses. A small business is defined [49 CFR 24.2(a)(24)] as "a business having not more than 500 employees working at the site being acquired or displaced. Sites occupied solely by outdoor advertising signs, displays or devices do not qualify as a business for purposes of receiving reestablishment benefits under 49 CFR 24.304."

1. **Eligible expenses** - Reestablishment expenses must be reasonable and necessary, as determined by the State. They may include, but are not limited to, the following:

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

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

   c. Construction and installation costs, for exterior signing to advertise the business.

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

   e. Advertisement of replacement location.

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

   i. Lease or rental charges

   ii. Personal or real property taxes

   iii. Insurance premiums, and

   iv. Utility charges, excluding impact fees.

g. Other items that the State considers essential to the reestablishment of the business.

2. **Ineligible expenses** – the following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

   a. Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

   b. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

   c. Interest on money borrowed to make the move or purchase the replacement property.

   d. Payment to a part-time business in the home which does not contribute materially to the household income [49 CFR 24.2(a)(7)].

C. In Lieu or Fixed Payment for a business, a farm operation or a nonprofit organization for not less than $1,000 nor more than $40,000. (FHWA Guidance Letter, Implementation of MAP-21 Uniform Act Benefit and Eligibility Change, HEPR-10, March 25, 2014. Effective date: October 1, 2014). (This is a fixed payment in lieu of actual moving and related expenses, actual reasonable reestablishment expenses, and loss of patronage.)

A business owner may be entitled to payments for eligible items listed under both Categories A and B. As an option, a business owner may elect to receive a payment under Category C, "In Lieu of or Fixed Payment." If the owner selects the "In Lieu of or Fixed Payment," the

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owner is not entitled to any payments under either Categories A or B. It should be noted that the portion of the in-lieu of or fixed payment that is not moving and related costs must be offset against goodwill.

To enable the Acquisition and RAP Agents to comply with the law and fully compensate the business owner for proper costs and/or losses, but still ensure there is no duplication of payment, the appraiser must show the following in any goodwill appraisal which finds a compensable loss of goodwill:

> The appraiser must list in the loss of goodwill report each of the items listed above which contributed to the loss of goodwill, i.e., any of the eligible reestablishment expenses and/or loss of patronage which contributed to the loss of goodwill. The amount of loss of goodwill attributed to each such item shall be shown separately, if possible.
>
> Example:
>
> Total estimated loss of goodwill: $18,000
>
> Allocation (causes of the loss):

1. Increased economic rent	$9,000
2. Necessary modification at new location	$4,000
3. Loss of patronage	$5,000
Total Loss	$18,000

If the goodwill appraisal report concludes a loss of goodwill, the appraiser is to include a statement in the appraisal that if any amounts relating to loss of goodwill were paid to the business owner under the Relocation Assistance Program, such amounts must be deducted from the amount of the loss of goodwill shown in the appraisal report. The purpose of the statement is to serve as a reminder to the acquisition agent and to the Relocation Branch that no duplication payments for loss of goodwill are to be made as provided in the Eminent Domain Code.

See the Relocation Assistance Chapter for further information.

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7.18.00.00 – DELEGATIONS

7.18.01.00 Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Appraisals 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**
	7.01.07.00	Approval of Option to Exercise Dual Appraisal Process	District	Supervising RW Agent or Review Appraiser
49 CFR §24.104	7.01.15.02 7.01.16.00	Approval to Implement Review Appraiser Concept and Process	HQ	Supervising RW Agent
	7.01.17.00	Appraisal Approval Authority – $1.5M or Less	District	Supervising RW Agent or Review Appraiser
	7.01.17.00	Appraisal Approval Authority – All Appraisals Over $1.5M (Excluding Full-Take SFRs)	HQ	Up to $5M: Senior RW Agent Over $5M up to $10M: Supervising RW Agent Over $10M: Division Chief

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Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	**RW Manual Section**	**Responsibility**	**Delegation**	**Lowest Level of Sub-Delegation**
	7.01.17.00	Appraisal Approval Authority – Full-Take SFRs (No Dollar Limit)	District	Supervising RW Agent or Review Appraiser
	7.01.17.00	Appraisal Approval Authority – All Dual Appraisals	HQ	Senior RW Agent
CCP §1263.410	7.02.08.00	Parcel Groups – Integrated Operation (Approval for Variance from Including All in One Appraisal)	District	Senior RW Agent
49 CFR §24.403	7.02.10.00 10.06.00.00	Approval of Replacement Housing Valuations (Excluding Last Resort Housing)	District	Senior RW Agent
49 CFR §24.403	7.02.10.00 10.06.00.00	Approval of Replacement Housing Valuations – Last Resort Housing	District	Up to $50K: Supervising RW Agent Over $50K: RW Manager
49 CFR §24.103	7.02.12.00	Approval of Noncomplex Valuations of $25K or Less	District	Senior RW Agent
49 CFR §24.102(c)(2)	7.02.13.00	Approval of Waiver Valuations in Lieu of an Appraisal ($10K or Less)	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**
	7.03.04.03	Avoid Large Windfall RAP Payments to SFR Owner-Occupants – Approval to Prepare Primary and Alternate Appraisals	District	RW Manager
	7.04.13.00	Approval of Nonprofit, Special Use Property Valuations	HQ	Senior RW Agent
	7.10.03.00	Approval of Changes in Approved Appraisals - Unacquired Parcels: Revised Appraisal Pages, Revised Parcel Appraisal, Memorandum of Adjustment	Follows original appraisal approval delegation	Follows original appraisal approval delegation
	7.10.07.00 (B)	Approval of Changes in Approved Appraisals - Acquired Parcels: Statement of Value	Follows original appraisal approval delegation	Follows original appraisal approval delegation
Article 1, California Constitution §19	7.10.11.00 9.05.11.00	Preparation of the Report Analysis (7-EX-18) for Acquisition Reports	Follows original appraisal approval delegation	Follows original appraisal approval delegation

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Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	**RW Manual Section**	**Responsibility**	**Delegation**	**Lowest Level of Sub-Delegation**
	7.13.20.00	Approval of Hardship or Protection Appraisals – (Authority to Proceed with Appraisal Requires Prior RW Manager Approval)	Follows original appraisal approval delegation	Follows original appraisal approval delegation
	7.13.60.00	Approval of Railroad Property Appraisals	HQ	Up to $5M: Senior RW Agent Over $5M up to $10M: Supervising RW Agent Over $10M: Division Chief
	7.14.02.00	Approval of Excess Land Market Value Appraisals – Direct Sale to Private Parties $500K or Less	District	Supervising RW Agent or Review Appraiser
CTC	7.14.02.00	Approval of Excess Land Market Value Appraisals – Direct Sale to Private Parties Over $500K	HQ	Up to $5M: Senior RW Agent Over $5M up to $10M: Supervising RW Agent Over $10M: Division Chief

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Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	**RW Manual Section**	**Responsibility**	**Delegation**	**Lowest Level of Sub-Delegation**
	7.14.02.00	Approval of All Excess Land Market Value Appraisals – Direct Sale to Public Agencies	HQ	Up to $5M: Senior RW Agent Over $5M up to $10M: Supervising RW Agent Over $10M: Division Chief
	7.14.04.00	Approval of Public Sale Estimates	District	Senior RW Agent
	7.14.03.00	Approval of Excess Land Market Value Determinations of $10K or Less	District	Senior RW Agent *D9 Senior RW Agent up to $25K*
SHC §104.12 CTC 23 CFR §710.405	7.15.02.00	Approval of Airspace Estimates	District	Senior RW Agent
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	7.15.04.00	Approval of Bid Lease Valuations	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**
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CCP §1263.510, et. seq.	7.17.10.00	Approval of Loss of Business Goodwill Appraisals	HQ	Up to $5M: Senior RW Agent Over $5M up to $10M: Supervising RW Agent Over $10M: Division Chief

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Exhibits are located online:

- External Exhibits site
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Forms are located online:

- External Forms site
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01.00 Delegations of Authority

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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.

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

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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

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.

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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 $10,000 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 $10,000 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.
B. For parcels with more than $10,000 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

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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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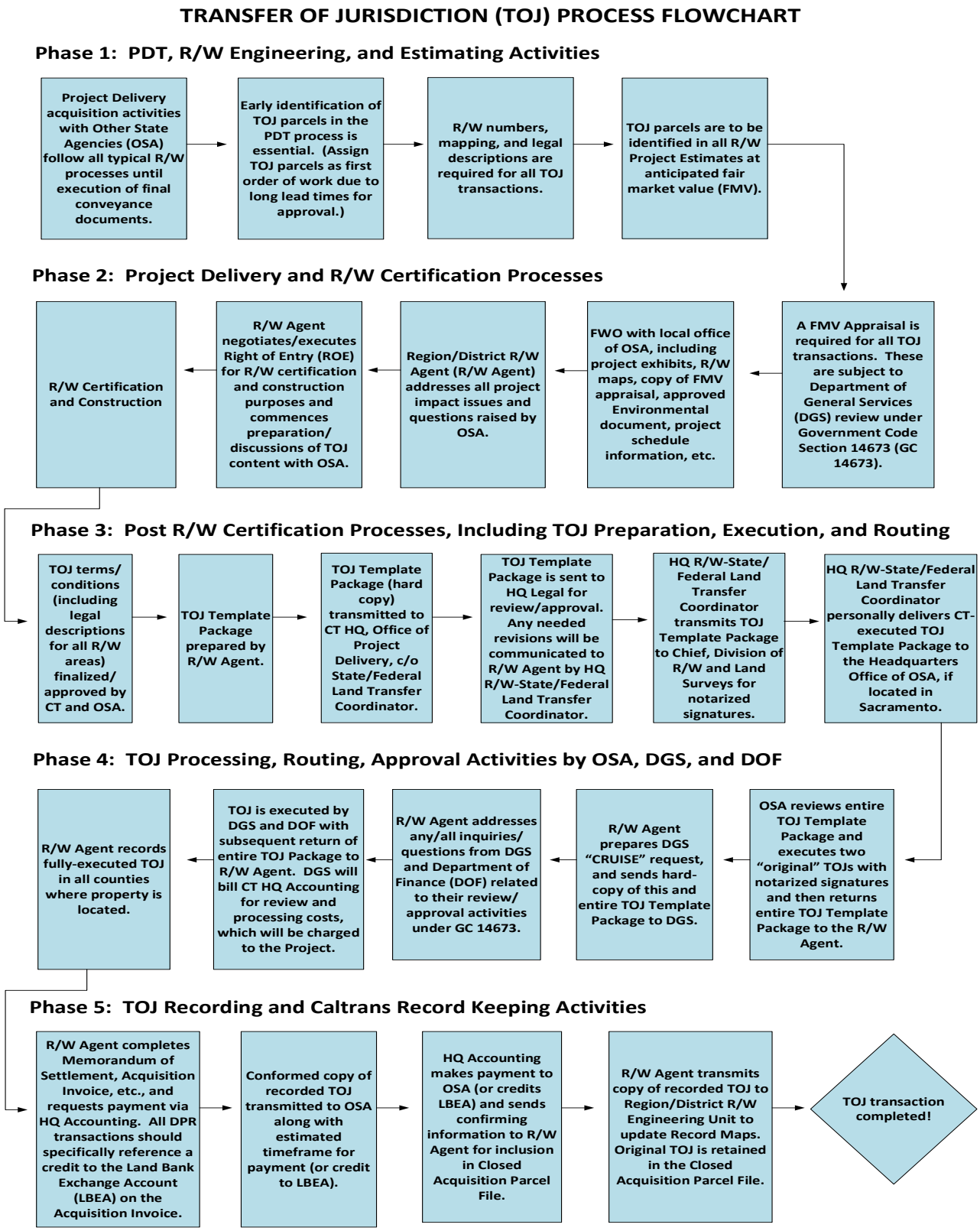
8.21.05.02 Transfer of Jurisdiction Process Flowchart



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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 $10,000, 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 $10,000. 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).

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

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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 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.

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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 $10K: Senior RW Agent Over $10K: 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:

- External Exhibits site
- Internal Exhibits site (internal Caltrans link)

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9.08.00.00 POSSESSION PRIOR TO JUDGMENT

01.00 Order for Possession
02.00 Issuance of Order for Possession
03.00 Service of Notice of Deposit and Summary of the Basis for the Appraisal
04.00 Increase or Decrease in Amount of Deposit
05.00 Deposit Initiated by Defendant
06.00 Conformed Copies of Order for Possession
07.00 Preparation of Excess Land Inventory Record
08.00 Service of Order for Possession
08.01 Time Requirements
08.02 Circumstances
09.00 Emergency Situations - No Appraisal
10.00 Order for Possession - 3-Day Notice
11.00 Declaration of Service of Order for Possession
12.00 Notice of Tax Cancellation
13.00 Stay of Order for Possession Because of Hardship
14.00 Disposing of Building Improvements on Property Under Order for Possession
15.00 Owner Abandons Personal Property

9.09.00.00 WITHDRAWAL OF DEPOSIT BEFORE JUDGMENT

01.00 Defendant's Rights
02.00 Objections to Withdrawal
03.00 Application for Withdrawal of Deposit
04.00 Service of Application for Withdrawal and Declaration of Service
05.00 Procedure for Withdrawal
06.00 Waiver of Defense
07.00 Waiver of Objection
08.00 Deposit—Conflicting Claims to Amount Withdrawn
09.00 Repayment of Amount of Excess Withdrawal

9.10.00.00 JUDGMENT OF CONDEMNATION

01.00 General
02.00 Judgment by Default
03.00 Time of Paying Judgment
04.00 Method of Paying Judgment

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9.11.00.00 DEPOSITS AND SCHEDULES

01.00 Deposit of Award and Costs
02.00 Interest for Possession
03.00 Interest on Award
04.00 Offset Against Interest
05.00 Payment of Judgment
06.00 Appeal or Motion for New Trial by Defendant - State in Possession
07.00 Scheduling of Judgments for Payment
08.00 Tax Identification Numbers

9.12.00.00 FINAL ORDER OF CONDEMNATION

01.00 Recording of Final Order of Condemnation - Vesting of Title

9.13.00.00 SETTLEMENT AND DISMISSAL

01.00 Settlement by Judgment After Entry into Right of Way Contract
02.00 Settlement by Right of Way Contract
03.00 Settlement After Withdrawal of Deposit
04.00 Approval of Stipulated Judgments
05.00 Release of Deposit - Settlement by Judgment
06.00 Abandonment of Proceedings

9.14.00.00 DEPOSIT RELEASES

01.00 Responsibility for Release of Deposit
02.00 Release of Deposit, or Cancellation of Deposit, after Filing of Suit
03.00 Cancellation of Deposit Prior to Filing of Suit
04.00 Processing of Order for Release of Deposit

9.15.00.00 GENERAL CLOSING PROCEDURES

01.00 Ordering Policy of Title Insurance
02.00 Record of Condemnation
03.00 Improvements Acquired
04.00 Prepaid Tax Cancellation
05.00 Filing of Recorded Document

9.16.00.00 CONDEMNATION TIMELINE AND FLOWCHARTS

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9.17.00.00 DELEGATIONS

01.00 Delegations of Authority

(REV 1/2020)

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9.00.00.00 - CONDEMNATION

9.01.00.00 - EMINENT DOMAIN

9.01.01.00 General

Eminent domain is the inherent power of government to acquire private property for public use. The owners of such private property shall not be deprived of their property without just compensation as provided in the Fifth and Fourteenth Amendments to the United States Constitution and Article I of the California Constitution.

Condemnation is the legal proceeding by which the power of eminent domain is exercised.

The Department may condemn property to be used for highway and related purposes by authority of S&H Code Section 102. The CTC must first adopt a Resolution of Necessity pursuant to Section 1245.230 of the Code of Civil Procedure (CCP).

9.01.02.00 Record of Condemnation Case Status

The District Condemnation Unit, hereinafter referred to as District, maintains a record of the status of condemnation cases commencing with submittal of the District's Request for Resolution of Necessity to Headquarters. The record is kept current through the duration of the action.

9.01.03.00 Condemnation Process

The condemnation process requires continuous communication between the District, Legal, and HQ R/W. District Management's involvement early and often throughout the process is crucial to help identify and offer guidance for the resolution of issues. Respective roles and responsibilities are set out in the flowcharts in Section 9.16.00.00 at the end of this chapter. The flowcharts provide an overview of the process; the steps involved and the sequence of action may vary. In addition, the flowcharts outline actions taken by Legal that may not be discussed in this chapter.

Condemnation must be completed within a short time frame, and all eminent domain actions are subject to fast track rules that accelerate the process. (See Section 9.02.15.00.) Although timelines may vary depending on local court rules, the typical time frame should closely follow the indicated schedule.

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9.01.04.00 Notice of Intent to Adopt Resolution of Necessity

CCP Section 1245.235(a) states that "The governing body of the public entity may adopt a resolution of necessity only after the governing body has given each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll notice and a reasonable opportunity to appear and be heard on matters referred to in Section 1240.030." The District initiates condemnation by mailing a Notice of Intent to Adopt Resolution of Necessity to property owners whose property is required (Exhibit 9-EX-1). The Notice must be signed by a senior level Right of Way Agent or above.

NOTICE REQUIREMENTS

- Include one of the following forms of property identification as "Exhibit A": Resolution of Necessity Maps and/or Legal Description,

  or

  Specific property address and appraisal map clearly showing property, or tax assessors map,

  or

  Department's Grant Deed

- Send Notice to owners listed in the last equalized county assessment roll, other verified owners of the real estate that are not identified on the tax rolls, and lessees and month-to-month tenants **only** if they own realty improvements within the acquisition area (as opposed to possessing a right to occupy) **and** are on the tax rolls.

- Serve or mail Notice no later than 30 days prior to the date of the meeting at which the CTC will consider the Request. Notices may be sent even earlier to accommodate an anticipated Condemnation Evaluation Meeting or Condemnation Panel Review Meeting and avoid rescheduling a selected CTC meeting.

- Personally serve or mail Notice First Class, Return Receipt Requested.

If the owner refuses service or delivery, mail Notice First Class (without Return Receipt Requested). Prepare an affidavit detailing the steps taken to provide the required notification.

If the owner(s) cannot be located with reasonable diligence, the Notice should be mailed to the last known address and to the person on the tax rolls at the address listed with the tax assessors. Documentation of all research to locate the owner must be included in the parcel diary. This documentation may be needed for inclusion in a

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Declaration of Due Diligence and, when signed by the agent, may be required as a support document for the Application to Publish (CCP 1245.230 and 1245.235).

9.01.04.01 Notice of Intent to Adopt a Resolution of Necessity for Properties That Are Subject to a Conservation Easement

In addition to the Department's standard Notice of Intent (Notice) requirement as outlined above per Section 9.01.04.00, CCP Section 1240.055 establishes additional Notice requirements for the acquisition of properties which are subject to a conservation easement. In order to comply with the provisions of CCP 1240.055, Exhibit 9-EX-1A shall also be used for these special types of acquisitions.

The Department shall provide notice (Exhibit 9-EX-1A) to the holder of the conservation easement not later than 105 days prior to the respective hearing in which a Resolution of Necessity (RON) will be sought for the subject property, or at the time of the first written offer, whichever is earlier. However, to comply with Federal Regulations, the conservation easement holder shall still be provided a reasonable time to consider the first written offer (at least 30 days) prior to sending out said Notice of Intent.

The intent of CCP 1240.055 is to encourage the parties to consult early in the process and assist in identifying potential and significant impacts of the proposed acquisition and the feasible alternatives or mitigation measures that will avoid or substantially lessen significant impacts on the conservation easement in order to avoid delays in the eminent domain proceeding. As a result, the following items are included in Exhibit 9-EX-1A:

- A description of the public use or improvement that the Department is considering for the property subject to a conservation easement.
- That written comments on the acquisition, including identifying any potential conflict between the public use proposed for the property and the purposes and terms of the conservation easement, may be submitted no later than 45 days from the date the Department mailed the Notice of Intent to the holder of the conservation easement.

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- That the holder of the conservation easement, within 15 days of receipt of the Notice of Intent, shall do all of the following:

  - Send a copy of the Notice of Intent by First Class Mail to each public entity that provided funds for the purchase of the easement or that imposed conditions on approval or permitting of a project that were satisfied in whole or in part by the creation of the easement.
  - Inform the public entity that written comments on the acquisition may be submitted no later than 45 days from the mailing of the Notice of Intent.
  - Inform the Department of the name and address of any public entity that was sent a copy of the Notice of Intent.

- That the holder of the conservation easement (and any public entity who has been provided a copy of the Notice of Intent by the holder of the conservation easement) have the right to appear and be heard on the matter referred to in Code of Civil Procedure Sections 1240.510 and 1240.610.

The Department, within 30 days after receipt of any comments from the easement holder or any public entity with regard to the acquisition, shall respond in writing to the comments via First Class Mail. Depending on the comments received, close coordination between the District Right of Way and Environmental offices will be required to adequately address and provide the Department's written response in a timely fashion.

Where property subject to a conservation easement is sought to be acquired, the Resolution of Necessity shall refer specifically to either Code of Civil Procedure Section 1240.510 (compatible use) or 1240.610 (more necessary use) as the appropriate authority.

9.01.05.00 Change in Notice

If either of the following occurs, the District must immediately notify the owner(s) by mail that the Request will not be considered on the date of which they were notified and that a new Notice will be provided.

- If for any reason (such as a design change) information in a Notice or legal description already provided to the owner(s) ceases to be correct prior to adoption by the CTC.

- If the District elects to defer CTC consideration from the time set forth in the original Notice.

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The District must provide a new Notice, subject to all of the above requirements, before a revised resolution request may be submitted for CTC consideration.

A new Notice of Intent (Exhibit 9-EX-1 and/or Exhibit 9-EX-1A) is not required if CTC consideration has been deferred at the owner's request or if the owners request to appear results in a District Condemnation Evaluation or Condemnation Panel Review Meeting. The District must, however, provide written notification of the deferred date and location to the owner at least 15 days in advance of the new meeting. This notification should be in the form of a one-page letter informing the owner of the deferred date and location, and must have the original Notice of Intent as an attachment.

If the Notice was mailed and the date of the CTC meeting or the location is in error or has changed, a Correction Letter (see Exhibit 9-EX-6A) may be mailed in lieu of a new Notice. The letter should be sent by First Class Mail, Return Receipt Requested.

9.01.06.00 Grantor's Request for Appearance

If an owner believes that their property should not be required or that the transportation project should be modified to avoid their property, the owner may request an appearance before the CTC regarding the Resolution of Necessity. Pursuant to CCP 1245.235, this request must be made in writing and on file with the CTC within 15 days from mailing of the Notice. In response to the request, the District conducts a Condemnation Evaluation Meeting, and coordinates with Headquarters to facilitate a Condemnation Panel Review if necessary, which continues the negotiating process and assures that all issues are identified and resolved, if possible, prior to the CTC meeting.

In order for the Department to adequately address the owner's issues, it must fully review all proposals presented by the owner. Design and other functional units' responses to the issues raised during the negotiation process may vary in the level of analysis and consideration. To assure that the owner is receiving fair consideration and that the Department is presenting a credible basis for its design criteria, Right of Way agents are to document property owner specific issues and forward these issues in writing to the appropriate functional unit(s) for a written response to facilitate the agents' follow-up discussions with the property owner. By formalizing the response process, the issues, the consideration and justification or modification for the design will be clearly defined and conveyed to the owner at the earliest possible time in the negotiation discussions.

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9.01.06.01 Local Boards

By statute, local government boards (City Council and County Boards) may at the request of the Department hear resolution of necessity requests on State Highway projects (Right of Way Manual Chapter 17, Section 17.04.09.03). The process is described in Exhibit 9-EX-8, "Resolution of Necessity (First and Second Level Reviews) Guidelines for Local Agencies Performing Work on the State Highway System."

For additional information regarding "Processing Department Resolutions of Necessity (RON) through the California Transportation Commission (CTC), County Board of Supervisors (Board), or City Councils (Council)," reference is made to Exhibit 9-EX-9.

9.01.07.00 District Condemnation Evaluation Meeting (Formerly Known as First Level Review Hearing)

The purpose of the District Condemnation Evaluation Meeting is to identify and resolve all property owner's issues, if possible, at the District Level. The District conducts the Condemnation Evaluation Meeting, which is attended by the District Director, Deputy District Directors from Design and Right of Way, and the owner(s) and/or their representative(s). The 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 the necessity of purchasing the owner's property; the CTC will not consider issues of compensation.

If during negotiations the District determines that there is a high probability that the owner will request an appearance before the CTC, to facilitate project scheduling control the District Condemnation Evaluation Meeting may be held either prior to sending the Notice of Intent, or thereafter, but prior to receiving a formal request to appear by the owner. The decision to have the Condemnation Evaluation Meeting prior to sending the Notice of Intent will be considered on a case-by-case basis and requires the prior approval of a District R/W Manager. This is another option that allows the District total control and timing of the Condemnation Evaluation Meeting, and the opportunity to identify and find early resolution of issues with the property owner.

Prior to the Condemnation Evaluation Meeting, the District shall have a District Management briefing meeting with the District Director and/or other appropriate District Management personnel regarding all the issues related to the parcel, as well as a strategy for moving forward. Having a full understanding of the issues, alternatives,

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and the legal or design limitations will improve the decision process for District Management.

If after the Condemnation Evaluation Meeting the owner decides not to appear before the CTC, the owner must send a letter to the Executive Director of the CTC withdrawing their previous request to appear. The District may prepare the letter for the owner. An executed copy is forwarded to HQ R/W&LS.

9.01.08.00 Condemnation Panel Review Meeting (Formerly Known as Second Level Review Hearing)

The purpose of the Condemnation Panel Review Meeting is for the Panel to conduct an independent review of the project and its impact on the subject property, and to evaluate all issues brought forward. If issues concerning the adoption of the Resolution remain unresolved after the Condemnation Evaluation Meeting and the District's recommendation is to proceed with the project, District Design in coordination with Right of Way prepares an Appearance Information Sheet (AIS) and Fact Sheet. For additional information regarding these two documents, please refer to Appendix JJ of the Project Development Procedures Manual. These documents include a complete report of the Condemnation Evaluation Meeting and are sent to the Headquarters Division of Design (DOD) Chief, Attn: RON Appearance Request, Mail Station 28, with a copy to the Headquarters Division of Right of Way and Land Surveys (HQ R/W&LS) Chief, Attn: Office Chief R/W Project Delivery, Mail Station 37. This submittal, which is recommended by the District Deputy Directors from Design and Right of Way, and approved by the District Director, is the District's request to proceed with a Condemnation Review Meeting. The District Director's approval may not be delegated.

In response to this submittal, the Chief, Division of Design (or delegate), after consulting with the Chief, Division of Right of Way and Land Surveys (or delegate), may take the following actions: 1) Refer the request to the Condemnation Panel, to develop a recommended course of action for the Chief Engineer, or 2) Refer the project back to the District for additional design studies or modifications.

If the request for Appearance is referred to the Condemnation Review Panel to proceed with a Condemnation Panel Review Meeting, HQ R/W convenes the Panel. The standing Panel membership consists of the Division of R/W&LS Office Chief, Project Delivery; the Division of Design Office Chief, Resolutions of Necessity; and the Legal Division Assistant Chief Counsel, Real Property. To ensure scheduling flexibility, the standard Panel membership may be supplemented as necessary by the HQ Design Coordinators, the Assistant Chief of the Division of Design, the Assistant Chief of the Division of R/W&LS, or an attorney from the appropriate Region/District Legal Office. The R/W Panel member will act as the Panel chairperson and designate a Right of

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Way staff person to serve as the secretary to the Panel. Representatives from District R/W and Design attend the meeting, but are not members of the Panel.

Attendance at the Condemnation Panel Review Meeting shall include the owner and/or their representative(s), the Panel, the Panel secretary, the District Director and the Deputy District Directors from Design and Right of Way. The meeting should be limited to active participants and decision makers only. Department representation at this meeting should be minimized and limited to the managers listed, with potential expert presenters and other staff available on standby, if necessary. For locally funded projects or consultant-designed projects, the District may invite additional representatives to the Condemnation Panel Review Meeting to provide detailed information.

The purpose of the Condemnation Panel Review Meeting is for the Panel to conduct an independent review of the project, its impacts to the subject parcel, and to evaluate all issues brought forward. Should the Department be unable to reach mutual agreement with the owner, the Panel's review serves to validate that the proposed design provides the greatest public good while imposing the least private injury. This step is necessary in order to provide the Chief Engineer with an appropriate recommendation that will allow the Department to move forward with the Resolution of Necessity.

The Panel chairperson or designated secretary to the Panel will begin the Condemnation Panel Review Meeting by explaining the purpose of the meeting and the procedures to be followed. District Managers make a presentation to the Condemnation Review Panel and the owner describing the project using suitable maps and plan exhibits. This presentation shall be conducted by management level persons from both Design and Right of Way. The Design manager will present the design portion, and the R/W manager will present the real estate portion. The property owner will be asked to present their concerns about the project or the proposed acquisition as presented, along with any suggestions they may have to reduce or mitigate project impacts.

If issues remain unresolved at the conclusion of the Condemnation Panel Review Meeting, the Panel secretary in coordination with the Panel members prepares a Panel report and recommendation to the Deputy Director Project Delivery (also known as the Chief Engineer) for presentation of a Resolution of Necessity to the CTC.

HQ R/W prepares a package for the CTC that contains a Summary of Issues, Condemnation Review Panel Report, Fact Sheet, and Maps. HQ R/W notifies the owner by certified mail of the date, time, and location of the CTC hearing, and includes a copy of the same package created for the CTC.

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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, and provide a written response to the property owners addressing the issues they raised. 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.

9.01.08.01 Combined District Condemnation Evaluation and Condemnation Panel Review Meetings

The Chief Engineer has delegated the District Directors 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. Exceptions to this are considered on a case-by-case basis and require prior documented support of both Chiefs of DOD and Division of Right of Way & Land Surveys. 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 held in Headquarters. The Single Focal Point will coordinate the District's handling of the necessary deliverables and assessing potential risks for the District. The Chief Engineer will determine at the conclusion of the District's Resolution of Necessity 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 Appearance Information Sheet and Fact Sheet are found in Chapter 28 of the Project Development Procedures Manual.

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Although the Resolution of Necessity process usually occurs well after most required project approvals have been obtained, its importance cannot be minimized. Projects have been delayed or modified as a result of property owner challenges. Careful and complete documentation of the project need and design throughout the entire project development process is essential. As such, District management's involvement early and often throughout the entire process cannot be overemphasized. The goal of the process is to find early resolution of issues that benefits both the public and the property owner, without the necessity of filing an action of eminent domain.

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DISTRICT CONDEMNATION EVALUATION AND CONDEMNATION PANEL REVIEW MEETINGS

Responsible Party	Action
District	Sends notice to the owner of the CTC meeting at which the Resolution of Necessity will be considered. (See Exhibit 9-EX-1 and/or Exhibit 9-EX-1A.)
Owner	Notifies the CTC of intent to appear at the CTC meeting to object to the Resolution of Necessity.
HQ R/W	Notifies the owner that consideration of the Resolution of Necessity by the CTC will be delayed pending further investigation. (See Exhibit 9-EX-3.)
HQ R/W	Asks the District to conduct a Condemnation Evaluation Meeting. (See Exhibit 9-EX-4.)
District	Notifies owner of the date, time, location, and purpose of Condemnation Evaluation Meeting. (See Exhibit 9-EX-5.)
District	Conducts meeting to brief District Management on all known issues prior to the Condemnation Evaluation Meeting.
District	Conducts Condemnation Evaluation Meeting. Provides follow-up letter to property owner to address the issues that were raised during the Condemnation Evaluation Meeting.
District	Design and R/W prepare an Appearance Information Sheet and Fact Sheet and submit to HQ Division of Design with a copy to HQ Division of Right of Way. See Chapter 28 of Project Development Procedures Manual **OR** — Obtains a written withdrawal of the owner's request to appear.

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DISTRICT CONDEMNATION EVALUATION AND CONDEMNATION PANEL REVIEW MEETINGS (CONTINUED)

Responsible Party	Action
District	R/W schedules the Condemnation Panel Review Meeting after coordinating with the Condemnation Panel members, the District managers, and the owner.
District	Arranges for a meeting location.
District	Notifies the owner by letter of the date, time, location, and purpose of the Condemnation Panel Review Meeting. (See Exhibit 9-EX-6.)
District	R/W coordinates with the Condemnation Panel for a field inspection of property (usually held the day of the Condemnation Panel Review Meeting).
Condemnation Panel	Conducts the Condemnation Panel Review Meeting.
District Managers	Makes presentation to the Condemnation Review Panel and the property owner at the Condemnation Panel Review Meeting describing the project and impacts to the subject property. The Design Manager presents the design portion and the R/W Manager presents the R/W portion.
District	Notifies owner of the date and location of the CTC meeting (see 9.01.05.00).
Condemnation Panel	Reviews statutory and Department requirements. If requirements are met, prepares the Panel Report and recommendation to the Chief Engineer to proceed with a Resolution of Necessity for presentation to the CTC.
HQ R/W	Prepares CTC package and notifies the owner by certified mail of the CTC hearing. (See Exhibit 9-EX-7.)

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9.01.09.00 Requesting the Resolution of Necessity

A separate Resolution must be obtained for each ownership. An ownership may consist of more than one parcel, but no more than one ownership may be included in a Resolution, Request, or Notice.

The legal and policy requirements below must be met for each ownership prior to submitting the Request to HQ R/W.

LEGAL AND POLICY REQUIREMENTS

- There must be an approved appraisal report on the property, and the full amount of that appraisal must have been offered. A "Waiver Valuation" is not an appraisal and cannot be used for condemnation purposes. It must be upgraded to an appraisal prior to requesting a Resolution of Necessity (see 8.01.08.00). In addition, a minimum value offer of $1,000 is required prior to submitting a request for a Resolution of Necessity (see 8.01.26.00).

- A reasonable number of acquisition calls must have been made on the property owner, and the owner must have been allowed a reasonable time to consider State's offer [49 CFR 24.102(f)]. For most properties, no less than three personal calls and 30 days would be considered reasonable.

- Where improvements on the remainder or that straddle the right of way line are to be acquired, Acquisition must advise R/W Engineering of the necessity of including either the Condemnation Improvement Removal Clause or the Condemnation Improvement Severance Clause in the legal description. See 6.12.08.00, 6.12.08.01, and 6.12.08.02.

- A personal acquisition call must have been made on the owner within 30 days prior to serving or mailing the Notice. The owner(s) must have been advised that:
    - The State will proceed with condemnation and will serve or mail the Notice soon.
    - The owner has a right to appear before the CTC to be heard on matters referred to in CCP 1240.030; the CTC may not consider issues of compensation.
    - The owner must file a request to appear within 15 days of service or mailing of the Notice. Otherwise, the right to appear before the CTC will have been waived.

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LEGAL AND POLICY REQUIREMENTS (CONTINUED)

- A Notice (see Exhibit 9-EX-1 and/or Exhibit 9-EX-1A) must have been provided to all parties with an ownership interest in the real estate (see 9.01.04.00; 9.01.04.01).

- There must be an updated Litigation Guarantee for condemnation purposes, or a Preliminary Title Report must have been upgraded to a Litigation Guarantee. The Litigation Guarantee, Title Report, or Title Report Supplement must be current (no older than six months) at the time the Notice of Intent (NOI) is mailed. If a Title Report is used in lieu of a Litigation Guarantee, a Litigation Guarantee must be ordered at the time of mailing the NOI. An update of the Litigation Guarantee must be ordered after recording of the Lis Pendens. See Section 9.02.11.00.

9.01.10.00 Submission of Request for Resolution

The District should submit the Request for Resolution to HQ R/W a minimum of 45 days prior to the CTC meeting to ensure processing.

The CTC office semiannually establishes dates and locations of CTC meetings. HQ R/W sends this information to the districts as soon as it is available.

9.01.11.00 Preparation of Resolution

HQ R/W reviews the Request for Resolution based on information provided in the District's request package. Each package must contain the following items:

RESOLUTION REQUEST

- Resolution of Necessity (RON) Request (Form RW 9-8) or, alternately, the electronic request from the RON Generator (for Department use only).
- Completed Request for Confirmation of Market Value (Exhibit 8-EX-5).
- Copy of Notice of Intent.
- The legal description.
- Resolution of Necessity Maps: Index Map marked "Exhibit A" and detailed Resolution of Necessity Map marked "Exhibit B," etc.
- Declaration of Mailing or Affidavit of Service of Notice.
- Copy of the vesting page from a current (not older than six months from the time the NOI is mailed) Title Report or Litigation Guarantee.

Per existing delegations, all Resolution Packages are to be approved by the Region/District Right of Way Manager prior to submittal to HQ R/W.

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9.01.12.00 Specific Statutory Authority

See the list at the end of this section for a summary of condemnations for which specific statutory authority must be cited in the Resolution.

9.01.13.00 Adoption of Resolution

If the CTC votes to adopt the Resolution, HQ R/W immediately sends a notice to the District indicating the Resolution was adopted and follows up by sending the original and two copies of the Resolution. Headquarters Legal sends a certified copy of the Resolution to the Regional Legal Office.

9.01.14.00 Rescission of Resolution

The Region and District should request a rescission of a Resolution where it is impractical, due to design revisions or for other reasons, to pursue acquisition of a parcel based on the original resolution authorizing condemnation. This lessens the Department's exposure to inverse condemnation actions under the provisions of CCP Section 1245.260.

Regions and Districts will submit a request to HQ R/W&LS for rescission using the Resolution of Necessity request package format. This may be done manually or electronically. If a suit has been filed and subsequently dismissed, the date of dismissal should be included in the package.

The existing electronic RON Generator (for Department use only) contains an option to produce a rescinded Resolution of Necessity package using the same data input as would be used to create a request for Resolution of Necessity. The RON Generator automatically produces the language needed for the rescission package. This is the preferred method.

The manual method will include resubmitting all the data from the original Resolution of Necessity Request using Form RW 9-8. HQ R/W&LS will produce an electronic package using the resubmitted data and submit the request for rescission to the CTC. The original resolution item number, consent item language, ownership information, parcel number, map and legal description, explanations, etc., are to be included for reference. If copies of the original resolution request are to be used for the resubmittal, the transmittal must clearly state that a rescission is being requested and provide a reason for the request.

The rescission will become a voting item on the CTC agenda of a specific month. Adoption of the rescission by the CTC removes the Department's right to condemn the

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subject property rights. If Regions or Districts subsequently decide to condemn the parcel, the Resolution of Necessity process must begin anew.

9.01.15.00 Filing of Suit Within Six Months of Adoption

The District should request a Resolution only if it intends to file a suit within six months after the Resolution is adopted. CCP Section 1245.260 provides that if eminent domain is not commenced within six months, the property owner may bring an inverse condemnation action. The court could require the Department to acquire the property, allow the owner to recover damages for any interference with the possession and use of the property, or both. It is important, therefore, that the District request, file, and serve suit papers as soon as possible after a Resolution is adopted. Or, if the suit is not filed within six months, the District must request rescission of the Resolution.

Note: To speed the filing process, the District should consider requesting the suit papers when issuing the Notice of Intent.

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SPECIFIC STATUTORY AUTHORITY – SUBSTITUTE CONDEMNATION

Explanation:
Whenever the Department requires property for highway purposes and the property is devoted to, or held for, another public use for which the power of eminent domain might be exercised, the Department may condemn substitute property to be exchanged for the required right of way if the owner of the required right of way consents in writing to the exchange.

When the Department acquires substitute property in its own name, relocates the public use, and then conveys the improved property to the owner of the required right of way, the Department is acting under CCP 1240.330. The Department must follow this procedure when either a court order, a judgment in eminent domain proceeding, or a written agreement requires the acquisition of substitute property that will be devoted to the displaced public use.

If the owner of the required right of way does not have the power to condemn substitute property, the Department must rely on either CCP 1240.330 or 1240.350. (See Form RW 9-10.)

If the Department is condemning property pursuant to CCP 1240.350 to provide utility service to, or access to a public road from, property that is not acquired for public use but that is cut off from utility service or public road access as a result of the Department's acquisition, the owner's consent is desirable, but not a prerequisite. However, the Department must take into consideration the cost and hardship to the owner whose property is to be condemned or acquired to provide the utility service or access.

Requirements:
It is necessary to set forth:

- Date and terms of the agreement between the Department and the other party.
- Degree of title owned by the other party.
- Degree of title the Department will condemn for exchange purposes.

In addition, the map forwarded with the Resolution Request shall delineate the right of way the Department will acquire from the other party.

The Resolution shall specifically reference CCP 1240.320. (See Form RW 9-9.)

The Resolution shall include a statement that the property is necessary for the purpose specified in CCP 1240.330, if applicable.

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SPECIFIC STATUTORY AUTHORITY
– SUBSTITUTE CONDEMNATION (CONTINUED)

When the Department acquires rights for a utility company, care should be exercised to ensure the legal description includes all rights, restrictions, and limitations required by the company. As a general rule, the legal description should not provide for acquisition of greater rights than the utility company holds in its present right of way. However, special circumstances may dictate otherwise. For example, the PUC may impose higher standards on replacement construction. If the Regional Legal Office wants to amend the utility company's legal description for the Resolution, the Regional Legal Office and utility company should confer and agree upon the change.

Authority:
S&H Code 104(b)
CCP 1240.320
CCP 1240.330
CCP 1240.350

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SPECIFIC STATUTORY AUTHORITY – CONDEMNATION OF EXCESS LAND

Explanation:
If the Department proposes to condemn property that is excess to its needs, the property is classified as either a remnant or excess. (Condemnation of a remnant is discussed below.) The Department may acquire property as excess when the remainder or a portion of the remainder will be left in such size, shape, or condition as to be of little value to its owner or to give rise to a claim for severance or other damages.

Requirements:
Section 1240.150 provides broad authorization for the Department to acquire remainders by a voluntary transaction or a condemnation action initiated with the owner's consent. If acquisition of only a portion of a property would leave the remaining portion in such shape or condition as to constitute an uneconomic remnant, the Department shall offer to acquire the entire property and may do so if the owner agrees. Since exercise of authority under this CCP section depends upon consent and concurrence of the owner, the language is broadly drawn to authorize acquisition whenever the remainder would have little or no value to its owner rather than little market value.

Authority:
Acquisition by any means is authorized under CCP 1240.150 when owner expressly consents.

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SPECIFIC STATUTORY AUTHORITY
– CONDEMNATION OF EXCESS LAND – PARTIAL STRUCTURE

Explanation:
If the property is needed for public use and a structure is located partly on the property to be acquired and partly on other property, the Department may acquire the entire structure by agreement with the owner or by condemnation initiated with the owner's consent.

Requirements:
There are a number of alternatives available to the parties that may be less costly or more convenient than taking only part of the structure and paying severance damages on this basis. In some cases, severance may so destroy a structure that total demolition in one operation is the only economically or practically feasible alternative. The parties may also agree that the Department will purchase the structure and relocate it.

Authority:
CCP 1240.150

For authority to condemn the structure where the parties cannot agree, see CCP 1263.270 (court order to acquire entire improvement).

For other possibilities, see CCP 1263.610 (Department to relocate structure or perform other work for owner).

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SPECIFIC STATUTORY AUTHORITY – CONDEMNATION FOR COMPATIBLE USE

Explanation:
The Department may acquire property appropriated to public use if the proposed use will not unreasonably interfere with or impair the existing public use or future public use that can be reasonably expected.

Requirements:
The Resolution must specifically reference CCP section.

Authority:
CCP 1240.510

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SPECIFIC STATUTORY AUTHORITY
– CONDEMNATION FOR MORE NECESSARY PUBLIC USE

Explanation:
The Department may acquire property appropriated to a public use if the Department's use is a more necessary public use.

The Department's authority under this CCP section will not prevent continuance of the appropriated use if such use will not unreasonably interfere with, impair, or require a significant alteration of the Department's project (see CCP Section 1240.630).

Requirements:
A Letter of Consent should be obtained. If not, the Department must be able to prove to the Court that its use is a more necessary public use than the use to which the property is appropriated.

A statement as to the more necessary public use is required.

The Resolution must specifically reference CCP section.

Authority:
CCP 1240.610

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SPECIFIC STATUTORY AUTHORITY – CONDEMNATION FOR FUTURE USE

Explanation:
The Department may condemn property for future use only if there is a reasonable probability that its date of use will be within seven years from the date the Complaint is filed or within such longer period as is reasonable. The date of use is the date the property is actually devoted to the use or project construction is commenced (i.e., the date the contract is awarded).

Requirements:
All projects, except Federal Advance Acquisition Fund projects and those requiring reasonably longer periods should be commenced within the seven-year period. The Resolution and Complaint must reference CCP 1240.220 and give estimated date of use.

If the project will be awarded within such longer period as is reasonable, and not within the seven years, the Resolution and Complaint must state that the acquisition is pursuant to Federal Highway Act of 1973 and give the estimated date of use.

Authority:
CCP 1240.210 through 1240.250.

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SPECIFIC STATUTORY AUTHORITY
– CONDEMNATION OF AN EASEMENT TO REMOVE IMPROVEMENTS

Explanation:
See Manual Section 6.12.08.01, CCP Section 1263.270, and Form RW 9-12.

Requirements:
The legal description shall include the Condemnation Improvement Removal Clause.

Authority:
CCP 1263.270

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SPECIFIC STATUTORY AUTHORITY – CONDEMNATION OF AN EASEMENT TO SEVER IMPROVEMENTS AT OR NEAR THE RIGHT OF WAY LINE

Explanation:
See Manual Section 6.12.08.02.

Requirements:
Consent of the owner is required, and the legal description shall include the Condemnation Improvement Severance Clause.

Authority:
CCP 1263.610

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SPECIFIC STATUTORY AUTHORITY – CONDEMNATION OF REMNANTS

Explanation:
The Department may acquire property as a remnant when it would be left in such size, shape, or condition as to be of little market value. Owners may prevent condemnation if they prove the Department has reasonable, practicable, and economically sound means to prevent the property from becoming a remnant.

A taking of excess property is not authorized to:

- Avoid the cost and inconvenience of litigating the issue of damages.
- Preclude payment of damages, including substantial amounts in appropriate cases.
- Coerce the owner to accept whatever price the Department offers for the property actually needed.
- Afford the Department an opportunity to recoup damages or unrecognized benefits by speculating on the future market for the excess property. (See Form RW 9-11.)

Requirements:
Facts establishing the applicability of reasonable, practicable, and economically sound criteria should be specifically stated. Even where these criteria apply and consent of owner is not a condition precedent to the taking, the Department is required to seek such consent. The Regional Legal Office and District Right of Way should confer on any proposal to condemn as a remnant.

The request shall contain the following information:

- Area and value of the right of way including improvements.
- Area and value of the excess or remnant before acquisition.
- Value of the excess or remnant after acquisition.
- Amount of damages in excess of benefits if not acquired.
- Discussion of any new easements proposed for the excess land in the "after" condition.
- Reasons why there are not reasonable, practicable, and economically sound means to prevent the property from becoming a remnant.

Owner's opinion or reasons for refusing consent to acquisition.

Authority:
CCP 1240.410

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9.02.00.00 - CONDEMNATION SUITS

9.02.01.00 Request for Suit Papers

Immediately after passage of the Resolution by the CTC, the District requests the appropriate Regional Legal Office to prepare the papers necessary for filing suit.

One Resolution covering each ownership is mandatory, and a separate condemnation suit on each ownership is the normal practice. However, a multi-ownership condemnation suit is permissible when the District and the Regional Legal Office agree such action is desirable.

INFORMATION REQUIRED FOR SUIT PREPARATION

- Parcel Résumé
  - Brief parcel description.
- Staff Appraisal
  - Appraisal report prepared by District Appraisal staff.
- Appraisal Summary Statement
  - Appraisal Summary Statement prepared and signed.
- Title Reports
  - Furnish litigation guarantee report and supplemental reports bringing title up to date. Preliminary title reports must be upgraded to litigation guarantees prior to obtaining a resolution of necessity.
  - Make explanatory notations as to specific exceptions in the left-hand margin of the reports where title is to be taken subject to exceptions or the exceptions do not affect the parcel sought to be condemned.
  - A copy of the title exception identified as "excluded" by the agent may be requested by Legal to confirm that it is unnecessary to include the defendant identified in the exception.

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INFORMATION REQUIRED FOR SUIT PREPARATION (Continued)

- Title Reports (Continued)
  - Easements and other interests identified as exceptions in the Title Report/Litigation Guarantee which are excluded, due to the belief they are outside of the needed right of way, should be confirmed by Right of Way Engineering prior to note of exclusion by the Right of Way Agent. Make note on Title Report that exception was omitted with concurrence from Right of Way Engineering.

- Expenditure Authorization
  - Include the EA number below the file reference so the Regional Legal Office can apportion charges.

- Maps & Exhibits
  - Two copies of the identified exhibits are to be included in the suit request: one for the legal pleadings and one for the legal file.
  - **Legal Description** - a copy of the legal description that was approved as part of the CTC Resolution is included. The legal description is incorporated into the Complaint.
  - **Exhibit Maps** - The Maps which were submitted as part of the Resolution package must be included. The maps are attached as Exhibits "A" and "B," etc., in the Complaint. "Exhibit A" is the Index Map. "Exhibit B," etc., are the Parcel Maps.
  - **Appraisal Summary Statement** - The Appraisal Summary Statement is included as an Exhibit for the Summary of the Basis of the Appraisal.
  - **CA-13 (Transfer of Funds)** - is attached as an Exhibit for the Notice of Deposit in some County Courts.
  - **Copy of Certified CTC Resolution** - is attached as an Exhibit for the Declaration in Support of the Order for Possession in some County Courts.

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INFORMATION REQUIRED FOR SUIT PREPARATION (Continued)

- Names
  - Include full names of owners and tenants owning realty. Also identify and include full names of any persons, including spouses, actually in possession of the property or claiming an interest therein that do not appear in the title report so they can be properly named as defendants. Include lessees impacted by project if unrecorded lease and not in Title Report.
  - If vesting indicates a married person, as to his sole and separate property, the spouse must be identified and the name included in the interests not named in the Title Report. California is a community property State and all care must be taken to clear potential ownership interests.

- Taxing Agencies
  - Name counties only if they have interests other than *ad valorem* property taxes. Review CCP Section 1250.250 for specific requirements. (See also Sections 9.02.08.00 and 9.15.04.00.)

- Order for Possession
  - When requesting an OP, include the appraiser's name and qualifications to allow preparation of the Summary of the Basis for the Appraisal.
  - Segregate the summary as to value of the property to be acquired, severance damages, benefits, and goodwill, if applicable.

- Other Information
  - Include any other advice or information on the various exceptions that may assist the Regional Legal Office in the preparation of suit papers.

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9.02.02.00 Information Required for Suit Preparation

The District reviews the parcel legal description prior to requesting suit papers to assure it is identical to the legal description in the Resolution of Necessity. If the legal description differs from the legal description in the adopted resolution, a note needs to be included communicating why and how the descriptions differ. The information in the table on the preceding page is forwarded to the Regional Legal Office with the suit request, along with the declarations and staff appraisal.

The Index Map and Parcel Map submitted to headquarters in the resolution package are to be included in the suit request forwarded to the Regional Legal Office, as well as a copy of the Appraisal, Appraisal Summary Statement, Transfer of Funds, and a copy of the Certified CTC Resolution. The information in the table on the preceding page is forwarded to the Regional Legal Office with the suit request.

9.02.03.00 Suits Involving Public Utilities

Suits involving public utilities usually are not necessary, especially if the utility owns easement title. Arrangements normally can be made by using a Joint Use Agreement or Consent to Common Use Agreement that will satisfy all parties.

When fee-owned public utility land is necessary for a transportation project, a controversy may arise regarding valuation of the property or the type of interest the State is to acquire. If either is probable, the District should consult with the Regional Legal Office and R/W HQ Office of Project Delivery immediately.

If no agreement is reached and eminent domain appears likely, the District mails the Notice of Intent specifying the type of title to be condemned, i.e., fee reserving an easement to the utility or an easement out of the utility company's fee. The District must identify the relevant Code Sections to be included in the Resolution Request (see CCP 1240.320, 1240.330, 1240.510, and 1240.610).

The District should not presume that Rights of Entry with or without the waiver clause will always be available from the utility company.

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9.02.04.00 Suits Involving Railroads

Suits involving nonoperating property owned by railroad companies are handled like any other property.

If the required property is used for operating railroad purposes, consult R/W HQ before initiating condemnation procedures. Every effort should be made to avoid condemnation of railroad operating property by obtaining rights of entry and construction agreements. (See the Railroad Section of the Acquisition Chapter.)

When a project involves crossing the railroad right of way at grade or by a grade separation structure, the California Public Utilities Commission (PUC) must approve the construction. Approval of the PUC is subject to an agreement between the State and the railroad. Beginning July 1, 2003, the Division of Right of Way will prepare and process Service Agreements for grade crossings and Construction and Maintenance Agreements for grade separations. Although a suit can be filed and the Superior Court may grant an OP, construction cannot begin on the parcel until PUC approval has been obtained.

If the railroad disagrees with the State's plans for the project, the PUC will hold a hearing. The PUC hearing process can take six months or more to complete.

9.02.05.00 Filing Suit Papers

The Regional Legal Office prepares the following and forwards the originals to the District for filing and/or recording:

- **Summons and Complaint** - originals.
- **Lis Pendens** - original.
- **Application and Declaration for Order for Possession** - original, if requested.
- **Order for Possession** - original, if requested.
- **Notice of Deposit and Summary of the Basis for the Appraisal** - original, if requested.
- **Civil Cover Sheet** - original.
- **Declaration in Support of the Order for Possession** - original.

Pursuant to Government Code Section 6103, the Department does not pay filing fees.

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For purposes of determining date of value, suit papers should be filed prior to depositing the amount of probable compensation with the court.

9.02.06.00 Recordation and Service of Lis Pendens

Immediately after filing of the suit, the District must record the original Lis Pendens with the county recorder of each county in which the property affected by the suit is located. Service of the Lis Pendens is concurrent with service of the Summons and Complaint. (See CCP Section 1250.150.) Court rules and County Recorder's procedures vary in each county. The original Lis Pendens should be forwarded to the attorney upon receipt, as it is used as a trial exhibit.

9.02.07.00 Filing Complaint and Issuance of Summons

The District shall arrange for filing of the original Complaint and for issuance of original Summons by the clerk of the court within six months of adoption of the Resolution. In most cases, the county clerk acts in the capacity of the clerk of the court. The District retains the original Summons until such time as proof of service or return to the court is necessary. The original Summons must be submitted to the Court when filing a Default.

The District and the Regional Legal Office should confer on the safekeeping of the Original Summons to ensure it is not misplaced.

See Section 9.03.04.00 for return of original Summons to the court.

9.02.08.00 Request for Segregation of Taxes on Partial Takings

For partial takings of locally assessed properties, the District processes a request for segregation or prorating of taxes immediately after the taxes are subject to cancellation. This occurs on the effective date of possession as set forth in the OP or, in the absence of an OP, upon the recordation of the document (Deed or Final Order of Condemnation) conveying the property to the State.

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9.02.09.00 Conforming Copies of Summons, Complaint, and Lis Pendens

When filing the Suit Papers with the Court, it is recommended that the District submit the following to the Court:

- **Civil Cover Sheet, Summons and Complaint** - one original copy and at least one copy to be conformed.
- **Lis Pendens** - one original copy to be retained by the agent and at least two copies. The original and copies should be stamped by the Court to identify the case number and other identifying information which the County Court stamps (Judge, Department, etc.). Some Courts will retain a copy to be made a part of the Court file. This practice varies depending on the County and the Branch. The Original must be retained to be filed with the County Recorder. If the parcel crosses county lines, two original documents must be prepared so an original can be filed with the County Recorder of each county in which the parcel is located. The original must be stamped with the Government Code Section 6103 to alleviate the requirement of paying recording costs. Some Counties will require the paying of the recording costs. This is a courtesy which most counties honor; but due to budget shortages, some counties will require the payment of fees.
- **Application and Declaration for Order for Possession** - one original copy, one copy to be marked "received" and one copy for conforming.
- **Notice of Deposit and Summary of the Basis for the Appraisal** - one original copy, one copy to be marked "received" and one copy for conforming.
- **Order for Possession** - one original copy, one copy to be marked "received" and one copy for conforming to be left with the Court Clerk.
- **Ex-Parte Application for Order for Possession**

Before they are served on the defendants, each copy of the Summons, Complaint, and Lis Pendens must be conformed to agree with the originals. Maps must be inserted in the copies of the Complaint in the same manner and form as contained in the original. See Section 9.08.03.00 if an OP is also being served.

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9.02.10.00 Coordination with Regional Legal Office

The Regional Legal Office forwards copies of each pleading filed with the court or received by Legal to the District so that a complete file is maintained, or as agreed to by the District and the Regional Legal Office. The Regional Legal Office and the District should coordinate activities and maintain communications necessary to meet timetables required by the CCP or the courts. The District should advise the Regional Legal Office of the status of action and any settlements made through Right of Way Contract. The Regional Legal Office must be advised by the District immediately when escrow closes so the case can be dismissed.

9.02.11.00 Status of Title When Suit Is Filed

When the necessary suit filing procedures have been completed, the District orders a litigation guarantee report or supplemental report from the title company to show the condition of title as of the recordation date of the Lis Pendens. This permits a current review of the status of title to assure that all parties having an interest in the property are served. It is essential that status of title is current in the event of a withdrawal of deposit application. See Section 9.09.03.00.

9.02.11.01 Review Litigation Guarantee

The agent should review the updated litigation guarantee to identify additional interests to be added to the suit as "Does" (new defendants), and to identify exceptions which have been cleared and may be dismissed from the suit. The agent with the notations of new findings should send a copy of the update to the attorney of record upon receipt.

9.02.12.00 Suits with Orders for Possession

See Sections 9.03.00.00 and 9.08.00.00 for procedures to follow after the filing of the Complaint.

9.02.13.00 Rearrangement of Improvements Involved in Condemnation Action–Stipulations

After a condemnation action has been filed, expenditures shall not be made for rearrangement of buildings, fences, or roadways; restoration of water supply; changes in irrigation pipelines; construction of ditches; etc.; for the

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purpose of mitigating damage except under specific agreement (stipulation). The stipulation shall be executed by all parties who would have to execute an agreement for the sale of the property. The Regional Legal Office drafts the stipulation based on information provided by the District.

The terms of any partial settlement of a transaction shall be included in a stipulation to be filed in the proceeding. The stipulation shall provide that in the event of trial, the defendant will not claim damages for any of the items covered by the stipulation.

9.02.14.00 Memorandum of Case Status

Promptly after filing the suit, the Region or District completes a Condemnation Status Report in the form required by the Regional Legal Office. The memorandum is used regularly to transfer R/W information to the Legal Office for the suit. Regions and Districts will coordinate with the Legal Office to establish format, content, and scheduling of the memorandum.

9.02.15.00 Fast Track Procedures

9.02.15.01 General

The Trial Court Delay Reduction Act of 1986 (Fast Track) is intended to expedite the processing of condemnation cases through the court system. The Act is contained in the Government Code, commencing with Section 68600, and is implemented by Title 4 (Rule 1901-1914) of the Rules of Court. It requires that each county adopt rules to implement the Act. Each District should obtain the rules for its respective counties.

The program ensures that general civil matters filed in the Court are expeditiously pursued from filing to trial. To accomplish this early resolution of cases, the Court will monitor and, where necessary, direct the progress of proceedings.

9.02.15.02 Procedure

The Regional Legal Office has overall responsibility for compliance with the Act. Since procedures and forms vary from county to county, the District should check with the Regional Legal Office on procedures to be followed.

At the time the Complaint is filed, the case is set for a Case Management Conference within 120 days and may be assigned to a judge. At the time of

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the conference, the Court will review the status of proceedings and make orders necessary to ensure that the matter is ready for trial at the earliest possible date. Where appropriate, the Court will set the matter for further conferences.

Legal must file an At-Issue Memorandum in order to secure a trial date. The Court Executive Officer will set the trial within 90 days of the Case Management Conference, unless specifically ordered otherwise by the Court.

The Judicial Council of California has adopted two forms that are important in the implementation of the Act. They are Notice of First Case Management Conference, Form DR-100, and Case Management Conference Questionnaire, Form DR-110.

All the following documents must be served to all defendants within 60 days and proof of service returned to the court as soon as practicable.

- **Summons** - one endorsed copy.
- **Complaint** - one endorsed copy.
- **Lis Pendens** - one recorded copy of the Lis Pendens and one endorsed copy. The original is forwarded to Legal after recording is completed.
- **Notice of First Case Management Conference**

The Department is responsible for serving a copy of Notice of First Case Management Conference on each defendant and providing the Court with proof that such service was accomplished.

The following is suggested language to use as a Notice:

> In accordance with the California Rules of Court 1901 through 1914 and the Trial Court Delay Reduction Rules of _____ County.
> The matter is set for a Case Management Conference on _____. Pursuant to Rule 1905, this case is assigned to The Honorable _____.

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9.03.00.00 - SERVICE OF SUMMONS, COMPLAINT, AND LIS PENDENS

9.03.01.00 General

The DDC-R/W is responsible for arranging service. The District shall proceed with service unless directed by the Regional Legal Office to wait for their instructions.

9.03.02.00 Time for Defendant to Answer

After personal service has been made, the defendant has 30 days to appear.

9.03.03.00 Establishing Date of Value

The District shall promptly serve all defendants in the condemnation action when it is apparent negotiations have reached an impasse. The date of value is the date the complaint is filed (commencement of the action) if the case is brought to trial within one year of the filing. To retain the date of value, extended delays should not be allowed.

If the case is not brought to trial within one year, the date of value is the date the trial begins. Except, if the delay is caused by the defendant, the date of value is the date the complaint is filed. A date of value is also established on the date when a deposit of probable compensation has been made (CCP 1263.110 through 1263.150).

To reduce appraisal revisions, re-appraisals, or revising offers due to challenges of a fair market value offer (Government Code 7267.2), the deposit of probable compensation should be made after the suit is filed. This ensures that, if they so desire, property owners can immediately withdraw the amount deposited, which reflects current market value.

9.03.04.00 Return of Summons

A condemnation action shall be dismissed and no further proceedings taken if Summons and Complaint have not been served and returned into court within three years from the commencement of the action (CCP Sections 583.210 and 583.250). Local "fast track" rules may require return of summons within a short period of time, e.g., 60 days, after commencement of the action. Violation of these rules may result in sanctions, including

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dismissal of the action if lesser sanctions are ineffective. Therefore, return of summons or other proof of service must be made to the Legal Office within 50 days so the documents can be filed with the court within 60 days. This requires the Right of Way Agent to check services of Summons, as shown by the condemnation record on any given action, sufficiently in advance of the expiration of the three-year period. This permits the service of any unserved defendants with whom settlement has not been made or who have not filed an answer or other appearance in the action.

As noted in Section 9.03.20.00, subsequent or additional Summons may be issued. However, an additional Summons does not extend the three-year period within which the Summons must be served.

In some cases, it may be necessary to publish Summons, ordinarily for 30 days. Time is required to investigate and prepare papers to obtain an Order for Publication. The defendant is allowed an additional 30 days after completion of publication to answer before a default can be entered. For these reasons, matters relating to service of Summons must be checked and final decisions made and implemented not later than two and one-half years (30 months) after the case has commenced.

9.03.05.00 Manner of Service

The District should make every effort to make service by personally delivering a copy of the Summons, Complaint, and Lis Pendens to the defendant or to a person authorized to receive service of process. Making service by leaving and mailing copies may be used when personal service has been unsuccessful.

The four methods of service of the Summons, Complaint, and Lis Pendens are listed below in "Methods of Service."

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METHODS OF SERVICE

- **Personal Delivery**
  A person may be served by personal delivery of a copy of the Summons, Complaint, and Lis Pendens to the individual or to a person authorized by the condemnee to receive service of process.

- **Leaving and Mailing Copies**
  In lieu of personal delivery on a corporation, association, or public entity, service may be made by leaving a copy of the Summons and Complaint in the office of the person who was intended to be served with the person apparently in charge during the usual office hours. Thereafter, copies should be mailed by First Class Mail, postage prepaid, to the person who was intended to be served at the place where the Summons and Complaint were left.

  Substitute service of an individual or person authorized to receive service is not available for individual defendants unless personal service was first attempted. (Two or three attempts to personally serve the defendant at a "proper place" ordinarily qualify as "reasonable diligence.")

  If a copy cannot be personally served upon an individual or a person authorized to receive service (or a minor or a conservator) with reasonable diligence and at least two or three attempts, a copy may be left at such person's house or usual place of business. A competent member of the household or a person apparently in charge of the place of business who is at least 18 years of age must be present at the time the copy is left. The person must be informed of the contents of the Summons, Complaint, and Lis Pendens. Thereafter, a copy must be mailed by First Class Mail, postage prepaid, to the person intended to be served at the place where the copy was left. (See Form RW 9-13.)

  As pertains to husband (H) and wife (W), personal service on Spouse W is not deemed service on Spouse H unless Spouse H authorized Spouse W to accept service on his behalf. The authority is based upon an oral or written statement by Spouse H. Spouse W's saying she has authority to accept service on behalf of Spouse H is not sufficient. Similarly, service on a person's lawyer is not sufficient if that lawyer is not specifically authorized to accept service in the action.

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- **Service by Mail**
  A copy of the Summons, Complaint, and Lis Pendens may be mailed by First Class Mail, postage prepaid, to the person to be served. A return envelope addressed to the sender, postage prepaid, two copies of a Notice and Acknowledgment of Service, and an unsigned copy of the Declaration of Mailing must be included. (See Forms RW 9-13, RW 9-14, and RW 9-16.)

  If the person to be served by mail fails to comply and return the acknowledgment within 20 days from the date of mailing, that person is liable for reasonable expenses incurred thereafter in serving or attempting to serve the individual by any other authorized method.

- **Service by Publication**
  If service cannot be made by any other authorized manner after reasonable diligence, service may be made by publication. See Section 9.03.13.00.

9.03.06.00 Service on Person Outside State

Besides all the other authorized methods of service, a person located or residing outside the State may be served by sending a copy by First Class Mail and obtaining a return receipt. Service of a summons by this form of mail (certified or registered mail with return receipt requested) is deemed complete on the tenth day after such mailing. (Code of Civil Procedure Sections 415.40 and 417.20.)

9.03.07.00 Service on Minors, Incompetents, and Trustees

Although the following relates to making personal service on minors, incompetents, and trustees, the alternate methods of making service listed under Section 9.03.13.00 may also be used.

When service is made on a minor under the age of 18 but over the age of 12, a copy is delivered personally to the minor's mother, father, guardian, or, if no such person can be found with reasonable diligence, whatever person has care or control of the minor or resides with the minor. If the minor is under 12 years of age, service is made on the parent or guardian only.

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Where service is made on a person who has been judicially declared incompetent and for whom a guardian or conservator has been appointed, service must be made personally on both the incompetent and the guardian or conservator. In certain situations, the court can authorize dispensing with service on the incompetent for good cause.

When a named defendant is sued as a trustee and as an individual, service should be made in each capacity, i.e., one copy served on defendant as trustee and another copy served on defendant as an individual.

9.03.08.00 Service on a Corporation

Service on a domestic or foreign corporation is made by personally delivering a copy of the Summons, Complaint, and Lis Pendens to the president or other head of the corporation, vice president, secretary, assistant secretary, treasurer, assistant treasurer, general manager, or person designated for service of process or authorized to receive service of process. (See CCP Section 416.10, Corporation Code Section 1502.)

If service is to be made on a bank, the copy may be delivered to the above-enumerated officers, or agents thereof, or to a cashier or assistant cashier thereof.

CCP Section 412.30 requires that the copy of the Summons served on a corporation shall contain a notice stating in substance that the person served has been served on behalf of the corporation, which must be designated by name in the notice. An appropriate form of this notice has been incorporated in the Summons form under the title "Notice to the Person Served."

The summons itself must notify the person to whom it is delivered of the capacity in which he or she is being served or if he or she is being served on behalf of another. In an action against a corporation, partnership, or other unincorporated association, the summons form itself must notify the person to whom it is delivered that he or she is being served on behalf of a specific entity defendant (and also individually, if such is the case). It is not enough that the corporation or partnership is named as a defendant in the action. Nor is it sufficient that the process server tells the person served that he or she is being sued on behalf of the entity-defendant.

Consult with the Regional Legal Office for guidance in making proper service if a corporation has forfeited its charter or right to do business, has been dissolved, or is in bankruptcy.

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9.03.09.00 Service Where Appropriate Agent of Corporation Cannot Be Found

If the agent designated for service of process cannot be found with reasonable diligence, if no person has been designated, or if none of the officers or agents of the corporation enumerated in Section 9.03.08.00 can be found, service can be made by personal delivery to the Secretary of State after the necessary court order is obtained. The Regional Legal Office will prepare the necessary papers and have the proper order made.

9.03.10.00 Service on a Partnership or Unincorporated Association

CCP Section 412.30 requires that the copy of the Summons that is served shall contain a notice stating, in substance, that the person served has been served on behalf of the partnership or unincorporated association, which must be designated by name in the notice. Service is to be performed as shown in the following table. If questions arise concerning service, consult with the Regional Legal Office for guidance.

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PARTNERSHIPS OR UNINCORPORATED ASSOCIATIONS

Type of Association	Conditions	Service
General or Limited Partnership	Agent has been designated for acceptance of service of process with the office of the Secretary of State.	Serve the person so designated, a general partner, or the general manager of the partnership.
Not a General or Limited Partnership	Agent has been designated for acceptance of service of process with the office of the Secretary of State.	Serve that person, the president or other head of the association, vice president, secretary, assistant secretary, treasurer, assistant treasurer, or general manager.
Unincorporated Association	No person has been designated as agent for acceptance of service of process with the office of the Secretary of State or that person cannot be found at the address specified with the office of the Secretary of State and no person listed above can be found within the State after a diligent search.	Regional Legal Office must apply to the court for an order that service be made by delivering a copy of the process to any one or more of the association's members designated in the order and by mailing a copy of the process to the association at its last known address.
Unincorporated Association	No officer or other person on whom Summons may be served can be found within the State.	Regional Legal Office must apply to the court for an order authorizing service to be made by publication of summons.

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9.03.11.00 Service on Public Agencies

CCP Section 416.50 provides the following procedure for service on a public agency:

"(a) A summons may be served on a public entity by delivering a copy of the summons, and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body.

"(b) As used in this section 'public entity' includes the state and any office, department, division, bureau, board, commission, or agency of the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state."

The District should contact the public agency to determine who is authorized to accept service on behalf of the agency. Service on a public agency should include the Lis Pendens.

When another State agency has an interest, the Department's practice is to mail informational copies of Summons, Complaint, Lis Pendens and title report to that State agency and the Attorney General's office.

9.03.12.00 Service on Tax Collecting Agencies

It is not necessary to name a tax collecting agency in the complaint when its only interest is an *ad valorem* tax lien. However, a courtesy copy of the Summons and Complaint should be provided as notice for computation of the amount of tax to be paid out of the judgment. (See Section 9.02.08.00.) If prepaid taxes are involved, see Acquisition Section 8.04.24.00.

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9.03.13.00 Service by Publication

The law authorizes service by publication in the following cases:

- Defendant cannot be located with reasonable diligence.
- No person who may be served on defendant's behalf can be located.
- The identity of the defendant is unknown, e.g., there are heirs or devisees, or all persons are named as defendants under CCP 1250.220.

  (See Section 9.03.09.00 and CCP 415.50 and 1250.130.)

Publication is authorized under CCP Section 1250.125 even if the offer required by Government Code Section 7267.2 has not been made. This requirement is a prerequisite for securing a Resolution of Necessity. [See CCP Section 1250.125(c) for a conditional exception.]

The Department's practice is to publish Summons against those defendants who cannot be located even though the property in question may be of low value.

An Order for Publication of Summons must be obtained from the court. The Order will designate the newspaper or other publication in which the Summons is to be published as well as the period of publication. When publication is ordered, personal service of a copy of the Summons and Complaint on a defendant out of the State is effective on deposit in the post office, mailed to defendant at defendant's last known address. A service is complete at the expiration of the time prescribed in the Order of Publication and the date of deposit in the post office.

To obtain an Order for Publication, a Declaration or Declarations must be filed with the court to support the Order. These Declarations are required to show the court that all available means of locating and serving the defendant have been exhausted. Facts must appear in the Declarations indicating a sincere desire and honest effort to locate the defendant.

The statutes provide that reasonable diligence must be exercised in order to obtain an Order for Publication of Summons. Reasonable diligence means more than a perfunctory search and requires more than a casual inquiry of one or two former neighbors or a letter written at random. It means that a systematic investigation and inquiry must be conducted in good faith.

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Declarations must state the facts and not mere conclusions of law or fact. Hearsay is not acceptable, and the information should be recent. If the information is contained in a letter, the letter should be attached to the Declaration.

Statements relative to the last known address of a defendant will carry little weight unless the source of this knowledge is given. The Declaration should contain the names and addresses of all relatives, friends, or employers of the defendant interviewed and the dates of such interviews. It should contain information about the inquiries made at or around every place the defendant is known to have resided or been employed.

The Declaration must show a search of the latest city directory, telephone books, tax rolls, and register of voters was made, giving dates. In cases where a name similar to the defendant's is found, the Declaration must show inquiry about the defendant at the address given and must set forth the information obtained by such inquiry. If a name similar to that of the defendant is not found, the declaration must so state. The names and addresses for all persons contacted and the actual statements made by each person, not the declarant's conclusion therefrom, should be noted.

The District should give the facts pertaining to the search for the defendant to the State's attorney, who will prepare the necessary Declaration to be made by the agent. It is important that the search be made within a reasonable time of the filing of the Declaration. If the information is stale, the court will refuse to make its Order for Publication.

The publication of the Summons should be commenced immediately after obtaining the Order. The Order will require the Summons and Complaint to be posted on the property within 10 days of the order. In instances where the last known address is given, the Order will provide for the mailing of a copy of the Summons and Complaint to defendant at the last known address. A Declaration of Mailing is necessary.

9.03.14.00 Service by Publication—Unknown Defendants

CCP Section 1250.220 provides for effecting service on "all persons unknown claiming any title or interest" and "the heirs and devisees of (naming such deceased claimant), deceased." Consult the Regional Legal Office for procedure. (See Section 9.03.13.00.)

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9.03.15.00 Service on Intervening Interest

The recording of the Lis Pendens furnishes notice to all persons of the pendency of the action. Any person who may acquire an interest in the property subsequent to the institution of the proceeding is bound by the judgment made therein. It is the Department's practice, when feasible and practical, to serve Summons and Complaint upon such person or persons who purchase or obtain any interest in the property under condemnation. This is done primarily to avoid the possibility of any adverse claim.

9.03.16.00 Service on Fictitious Defendants

A person or a corporation not named in the Complaint as defendant can be served under the provisions in the Complaint naming a fictitious defendant. If an interest is found that was not known at the time the suit was prepared, the person or corporation holding this interest can be served by designating such person or corporation by one of the fictitious names.

Service must be made on fictitious defendants in the manner in which they are named and sued in the Complaint. If Doe One to Doe Ten have been sued specifically as heirs of a deceased person, Doe Eleven to Doe Thirteen as trustees, and Jane Doe or John Doe as the unknown spouse of a listed defendant, these designations must be used when the true names are ascertained. In the event that a corporation is served as a "Doe," the summons must notify the person served that he or she is being served on behalf of a specific corporation, and that the corporation is being served as a specific "Doe."

The party making service on fictitiously named defendants must comply with CCP Section 474. The appropriate notice required is shown on the Summons under Notice to the Person Served. Reference to the appropriate type of service must be marked. If in the Complaint the numbers of the fictitious defendants are written (e.g., DOE ONE to DOE THIRTY), then the designation of the particular DOE NUMBER required in the above notice should also be written (e.g., DOE TWENTY, not DOE 20).

9.03.17.00 Proof of Service - Named Defendants

The District should send all Proofs of Service (Form RW 9-13) to the Regional Legal Office immediately after service has been made. The Regional Legal Office and District will coordinate to decide which office will take the lead in filing all Proofs of Service with the Court.

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The name of the month should be written out instead of using numerals representing the month. The specific address of service should be shown. The number of the parcels in which the various defendants have an interest should be shown only on the copy of the Proof of Service.

The name of the defendant must appear in the Proof exactly as it appears in the Complaint and the Summons. If the name was incorrect or if the party has been sued under an erroneous name, the party should be served as one of the fictitiously named Doe defendants and the appropriate proof of service made. (See Section 9.03.16.00.)

When a named defendant is sued as a trustee, this designation should appear wherever the name does. If such a defendant is sued both as a trustee and as an individual, the Proof should show service upon each, just as the name appears in the Complaint.

9.03.18.00 Proof of Service - Domestic or Foreign Corporation, Partnership, or Unincorporated Association

If notice of the capacity in which a person is served is required on the copy of the Summons, the Proof of Service must recite that such notice appeared on the copy of the Summons that was served, per CCP Section 417.10. (See Section 9.03.08.00.) Since the form of Proof of Service includes an appropriate statement, it is important to verify that this notice was appropriately marked on the copy of the Summons served when signing the Proof.

9.03.19.00 Proof of Service - Fictitious Defendants

The Proof of Service upon a fictitiously named defendant must comply with the provisions of CCP Section 474 before the default can be entered. (See Section 9.03.16.00.) The form of Proof of Service includes an appropriate statement of proper notice being given.

9.03.20.00 Subsequent or Additional Summons

If the Complaint has been filed, subsequent or additional Summons may be issued against any or all defendants on the request of the plaintiff. A plaintiff may secure the issuance of a Summons at any time up to the expiration of the three-year limitation on service and return of Summons. More than one Summons for a defendant may be outstanding at one time. No distinction is made between the original and subsequent or additional Summons.

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If a Summons is lost after service has been made but before it is returned, its return is excused. CCP Section 417.30 provides that a declaration of the process server may be returned in lieu thereof. Consult the Regional Legal Office if it appears that an additional Summons may be necessary.

9.03.21.00 Service Complete

Personal service is complete at the time of delivery (CCP Section 415.10). Substitute service is deemed complete on the tenth day after the mailing (CCP Section 415.20). Service by mail and acknowledgment of receipt are deemed complete on the date the defendant signs the acknowledgment [CCP Section 415.30(c)].

9.03.22.00 General Information

As part of the "Notice to the Person Served," there is a place on the bottom of the front page of the summons form for the server of the summons and complaint to insert the date on which the summons was served. The purpose of entering this date is to assist the defendant in determining the due date of his or her responsive pleading. However, failure to enter the date does not affect the validity of service. [See CCP Sections 415.10 and 412.20 (a).]

The person serving the summons and complaint should also obtain information that may later be needed to prove validity of service or to prove up a default. This information includes:

1. The full name of the person served, and, if such person is being served on behalf of a corporation or other entity, his or her office or capacity, and

2. If the defendant is in military service.

Federal law requires an affidavit or declaration that the defendant is not in military service before any default judgment can be rendered (Soldiers' and Sailors' Civil Relief Act, 50 USC Section 520). Since the acquisition agent is required to execute this portion of the request for entry of default, he or she may want to verify that the defendant is not in military service.

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9.04.00.00 - USE OF INDEPENDENT EXPERTS

9.04.01.00 Qualified Independent Experts

The District shall maintain records of individuals and firms qualified as experts in appraising property rights in their geographic area. These records shall show the education, experience, and other qualifications of each individual and firm. Although a contract may be entered into with a firm, the name of the individual must be designated to guarantee the report is prepared by a qualified expert.

9.04.02.00 Prequalification of Independent Experts

When it is necessary to contract for independent expert services with individuals or firms not previously qualified, the District shall obtain from a candidate for qualification:

- A completed application for independent expert.
- An appraisal report previously prepared as an example of the expert's work.

The District is responsible for approving the qualifications for all independent experts.

The District's investigation of an expert's qualifications should reveal if an expert is already prequalified in another district. Information obtained by the other district may be useful in determining an expert's qualifications.

9.04.03.00 Time and Method of Selection

As soon as it becomes apparent an eminent domain complaint will be filed, the DDC-R/W or the delegated representative shall consult with the Regional Legal Office on whether to employ independent experts. The District Condemnation Branch and the District Appraisal Branch shall coordinate their efforts in determining the experts qualified to appraise the particular property and deliver the report within a specified time. The District shall transmit the names of the experts to the Regional Legal Office for concurrence on the experts to be employed.

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9.04.04.00 Non-Civil Service Extended Employment

In exceptional cases, an independent expert may be employed on a per diem basis. This employment must be coordinated through the District Personnel Branch.

Time sheets are prepared for signature of the independent expert. The Regional Legal Office approves the total number of days for pretrial conference and court appearance, and the DDC-R/W approves time spent for field investigation and appraisal preparation.

9.04.05.00 Use of Staff Independent in Lieu of Hiring Independent Appraisers

The District should consider the use of staff independent appraisers where feasible and permissible under provisions of the Government Code.

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9.05.00.00 - CONTRACTS WITH INDEPENDENT EXPERTS

9.05.01.00 Contract Form

Standard contract forms are used to contract with independent experts for appraisal and expert witness services.

9.05.02.00 Contract Requirements

The table on the following page lists provisions that must be included in the contract when the expert is required to prepare a report and/or to act as an expert witness in a condemnation trial.

9.05.03.00 Rate of Pay

The expert is paid an hourly rate for preparation of the appraisal report up to a specified maximum fee. In establishing the hourly rate, the District should consider the type and class of expert suitable for the particular assignment and the expert's current employment in other districts. The District should estimate the number of hours required to complete the assignment, taking into consideration, but not restricted to, the following:

- State's appraisal of subject property.
- information on local economic conditions.
- available sales and listing information.
- whether the joint factual data system is to be employed.
- number of parcels involved.
- previous fees paid for view and inspection.
- if the expert has recently worked in the same neighborhood on similar types of property.
- any special estimates that may have been secured and paid for by the expert.

An estimate of the fee should then be based on the number of hours required, multiplied by the hourly rate.

In addition, the expert is paid an hourly rate for additional services not within the scope of the original report, such as pretrial conferences with the State's

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attorney and appearances in court or at depositions. (A normal court workday consists of the regular hours the court generally is in session.)

Where the expert is employed on a strict hourly basis, the fee for services shall be based on the expert's ability as required for the specific case.

9.05.04.00 Responsibility for Final Terms and Proper Fee

The District Approving Manager has final responsibility for determining the final terms of the contract and the proper fee for the report. In addition, he/she must recommend approval of the contract after it is signed by the expert.

The DDC-R/W, or authorized representative, shall approve the appraisal fee and hourly rate before the contract is submitted to the expert.

9.05.05.00 Presubmission Conference

A presubmission conference with the District and the State's attorney shall be required as a term of the expert's contract. This requirement assures that all contract obligations are met before the final report is submitted. The District arranges for the presubmission conference and notifies the State's attorney of the time and place of the conference. The Acquisition Agent and/or Senior should attend the Presubmission Conference. Presubmission conferences should be held at least two weeks before the date set for the exchange of lists of expert witnesses and statements of valuation data.

9.05.06.00 Specialty Contracts

Contracts with independent specialty appraisers shall include attachments with specific instructions to assure that the specialty appraiser is aware of all report requirements. The real estate appraiser and the specialist should confer on the valuation after both have inspected the property. They should determine any differences of opinion on the function or utility of individual items of machinery and equipment and on the valuation procedure to be followed.

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CONTRACT REQUIREMENTS

Provision	Requirement	Explanation
Scope of Work	1. Description of property by Superior Court case number and parcel. 2. Date of valuation (as specified by State's attorney). 3. Statement of exact nature of the service to be performed.	Indicate if the services include preparation of an appraisal report, acting as an expert witness, or other valuation duties.
Report Format	The appraisal report format shall conform to the requirements of the Appraisal Chapter of the Right of Way Manual.	Per delegations, the District or HQ's Appraisal Branch reviews the report for proper appraisal procedure and conformance with the Manual (see Section 9.05.11.00). The Regional Legal Office and Acquisition Branch will not use the report in any manner until this review is complete and authorization to use the report is granted.
Report Delivery	1. Date of report delivery. 2. Report delivery date may not be extended without written authorization by Legal or authorized representative. 3. Report shall be addressed to the attorney in charge of the Regional Legal Office, c/o of the DDC-R/W or authorized representative.	If extension of the date for report delivery is necessary, the State's attorney makes arrangements through the DDC-R/W or authorized representative. Legal sends written authorization to the expert granting the extension.
Term	1. Beginning date and termination date. 2. Contract is of no force and effect until approved by the State. 3. Payment cannot be made for work performed prior to date of the agreement or after its termination date.	In establishing a termination date, the Legal should allow sufficient time for completion of the trial prior to termination of the contract. Legal should advise the expert that any work performed prior to receiving an executed copy of the contract is at the expert's own risk.

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CONTRACT REQUIREMENTS (Continued)

Provision	Requirement	Explanation
Payment	1. Total payment for all services, showing the fee to be paid for each parcel included in the contract. 2. Payment for the complete report. 3. A sum per hour for pretrial conferences with the State's attorney or additional services not within the scope of the original report. 4. A sum per hour for appearances in Court or at depositions as a witness.	Legal shall authorize additional services in writing. The expert shall act as a witness pursuant to directions from the State's authorized representative.
Termination	Statement that the expert must cease work at the State's request whereupon payment shall be prorated on the ratio of work completed to total work required to complete the report.	The expert shall furnish written documentation justifying prorated payment for completed work. If the parcel involved is acquired by negotiations, Legal must immediately notify the expert and District in writing so that unnecessary work is not done at State's expense.

9.05.07.00 Contract to View and Inspect

If an OP is obtained and imminent construction requires the use of property, arrangements should be made with the experts to spend such time as necessary inspecting, measuring improvements, and taking pictures of the property prior to clearing the right of way. This is essential to ensure that experts are properly qualified to testify in court about the values and damages involved.

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Type	Description
Scope	The contractor shall view, inspect, and take the necessary measurements, photographs, notes, etc., of the parcels described and notify the State's attorney of the completion of the assignment on or before a specified date.
Additional Services	The contract shall provide that the contractor will enter into an additional contract in the event services are required for a complete appraisal and testimony involving any or all of the parcels described.
Termination Date	The termination date for the view and inspect contract shall be sufficiently far enough in the future so the contract will still be in effect on the date the State might require the contractor's service in preparing a complete appraisal.

9.05.08.00 Amendments to Existing Contracts

An amendment is required if it appears a contract will expire before the required services are completed for reasons beyond the control of the contractor or if additional funds are required because the scope of work is enlarged. Legal submits an Amendment request in the same manner as an original contract request, and the amendment should be executed prior to expiration of the original contract.

It should be made clear to the contractor that additional work must be authorized in writing and with a mutual understanding of the nature of the work and approximate charge prior to performance.

9.05.09.00 Date of Valuation

Generally, the date of valuation is the date of Deposit of Probable Compensation which should typically occur after the suit papers have been filed. If no deposit has been made and the trial commences one year after the filing of the Complaint, the date of valuation becomes the date of the trial, unless the delay has been caused by the defendant. If the trial commences within one year of the filing of the Complaint, the date of valuation is the date the Complaint was filed.

The value of the part to be acquired, any damages, and benefits are based on conditions at the time of the filing of the Complaint. Improvements made subsequent to the date of the service of the Summons and Complaint shall not be taken into account in determining compensation unless one of the conditions in CCP Section 1263.240 is established. If improvements are

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removed or destroyed, the general rule is that the person in possession bears the risk of loss. (See CCP Section 1263.230.)

9.05.10.00 Special Litigation Information

An independent appraiser should be impartial, not partisan. The State's attorney must rely heavily on the appraiser for advice and education on the technical problems of the case. While not concerned with the tactics of the case, the appraiser must be in a position to not only consult with the attorney on the forensic aspects of the litigation, but to point out any matters the attorney should be prepared to handle.

The entire report serves to assist the State's attorney in meeting with the adversary and rebutting their contentions. In addition, the appraiser should have information in their file not to be relied upon, but that might be of particular value to the attorney in this regard. Examples of matters that might be included are listed below:

- Sales the appraiser might have used except for special facts surrounding the transactions.
- Listings, offers, and options.
- Rents being asked for on the subject and comparable properties.
- Indications of the owner's valuation theory when in conflict with the appraiser's conclusions.
- Speculative matters not relied upon, but that should be known to the trial attorney.
- All other matters that might be of assistance to the trial attorney, but not relied upon by the appraiser.

There are certain matters that cannot be relied upon by an expert as a basis for an opinion of value. These matters are listed in the Evidence Code, Section 822.

9.05.10.01 Independent Appraisers

The independent appraiser shall not be given a copy of the staff appraisal, the Appraisal Summary Statement, the Valuation Summary Statement, or the value of the appraisal. It is imperative that the expert's opinion is impartial and not influenced by the staff appraisal.

If a copy of the Notice of Deposit is provided to the independent appraiser, the value should be blacked out.

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9.05.11.00 Report Analysis

After the independent appraiser has had an opportunity to resolve any suggested corrections, the District or HQ's Appraisal Branch, depending on delegations, prepares a separate Report Analysis (Exhibit 7-EX-18) for the completed appraisal of each trial ownership in the report. The staff appraiser who prepared the acquisition appraisal will not prepare the Report Analysis. The analysis is also used for subsequent revisions and is modified for other expert studies and reports.

The instructions above also apply to other condemnation reports prepared by staff expert witnesses, however they do not apply to loss of goodwill reports. The Appraisal Branch includes the following in the Report Analysis:

- **Compliance** - Comment on compliance with report standards and compare staff and independent reports. If a significant difference exists between the staff and independent appraisals or between independent appraisals, explain the difference.

- **Value** - Tabulate the major value of the current staff appraisal, the experts' appraisals, and other experts' appraisals received to date in the Analysis Section. If the submission is a revision of a previous appraisal, show both the original and updated amounts. If the transaction has been concluded by settlement or judgment, show the amounts and explain the delay in transmittal. Comment on major differences in value or other important information.

The Appraisal Branch returns the report to the Project Delivery (Acquisition) Branch with the originals and sends a copy of each analysis to the State's attorney. The Appraisal Branch shall neither approve nor disapprove the report. The analysis will not contain recommendations as to possible settlement amounts or negotiation approaches.

The Project Delivery (Acquisition) Branch then authorizes use of the appraisal to reach a settlement either by negotiations or trial, after considering court exposure, effect on other transactions, etc. (See Section 8.01.28.00.)

This section is not in conflict with the approval of fee payment on Independent Expert Claim (Form RW 9-18). Fee payment approval is dependent upon the expert's compliance with the contract regardless of the acceptability of the appraisal conclusions.

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9.05.12.00 Pretrial Settlements Over Approved Appraisal Amount

To meet State and Federal requirements for establishing and updating just compensation, the District will handle all settlements that exceed the amount of the approved staff appraisal as follows:

- Prior to filing of an eminent domain suit and hiring of an independent expert witness, any settlement for property that exceeds the amount of the approved staff appraisal is considered an Administrative Settlement (see Section 8.01.29.00).

- Once an eminent domain suit has been filed and independent expert witness has been hired, any settlement proposal based upon new appraisal data from the expert witness is considered a Legal Settlement (see Section 8.01.29.01). For Legal Settlements, an Attorney's Legal Settlement Memo must be received and approved prior to delivery of any payment. This does not preclude processing the check request (Form RW 9-20) through the Division of Accounting as soon as settlement is confirmed.

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9.06.00.00 - CLAIMS AND PAYMENT

9.06.01.00 Requesting Payments for Independent Expert Claims

Independent expert claims are submitted on Form RW 9-18 in two stages:

- **Initial Claim -** for completion of the required report or special contractual assignment.
- **Supplemental Claim(s) -** for pretrial conferences, trial time, and authorized additional work.

If the report covers only one ownership, the initial and supplemental claims may be consolidated on the same form.

The District includes the expenditure authorization number and appropriate stamp in the upper margin for claims on Federal program projects.

9.06.02.00 Initial Claims

The expert must submit a single initial claim to cover all work not withdrawn by the State. Partial payments of the initial claim for partially completed reports are not allowed. Any deviation from this policy must be explained in Remarks. The District must not recommend payment for work not complying with accepted professional quality standards.

If the State withdraws parcels, the State and the expert must reach an understanding regarding the proper amount of the adjusted claim. The expert submits an invoice for the remaining contracted work in accordance with the contract and with the adjusted invoice amount.

9.06.03.00 Supplemental Payments

Pretrial conferences, trial time, and authorized additional work are billed after completion of all work required for single trial ownership. A single claim for all supplemental work performed for a trial ownership is preferred but exceptions may be allowed in protracted cases. A supplemental claim is not to cover more than one trial ownership.

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The description of additional work must specifically detail the type of work involved and the dates such work was completed. Sufficient substantiation must be included to show the work is outside the scope of the original report. The Continuations section or extra pages can be used if necessary.

The State's attorney certifies with a certification stamp and his or her signature any claims for Pretrial Conferences, Trial Dates, and Additional Work requested in Item B. The Legal contract manager audits and certifies all claims for additional work with the receiving record stamp, and approves payment of claims by signing the Receiver.

9.06.04.00 Right of Way and Legal Expert Witness Contract Process and Payment Guidelines

Refer to the following link for the current Right of Way and Legal Expert Witness Contract Process and Payment Guidelines:
The Right of Way and Legal Expert Witness Contract Process and Payment Guidelines ((internal Caltrans link).

9.06.05.00 Business Goodwill Appraisal Experts

Business goodwill appraisals are no longer reviewed and approved by the Division of Right of Way and Land Surveys. The Department's four Legal offices have full discretionary power as relates to the use of contracted business goodwill appraisals that are intended to be used in support and preparation for litigation.

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9.07.00.00 - TRIAL PREPARATION PROCEDURES

9.07.01.00 General

It is Departmental policy to strive for settlement in each case, including the time during which the parcel is subject to condemnation proceedings. The assigned acquisition agent should attend all settlement and pretrial conferences.

9.07.02.00 Final Offer of Compensation to Defendant

Subsequent to trial, the Court may determine that the State's final offer of compensation was unreasonable and defendant's offer of settlement was reasonable in light of evidence submitted and compensation awarded. In this case, costs allowed to defendant shall include defendant's litigation expenses (CCP Sections 1250.410, 1033.5, and 1255.140). Litigation expenses include reasonable attorney fees, appraisal fees, surveyor fees, and fees of other experts.

A statutory offer, while made in contemplation of the possible exposure to litigation costs, is not to be justified solely on that basis. The CFRs must also be used to justify such an offer.

Since it is imperative that the required final offer reflect all the compensation in the proceeding, the DDC-R/W and the State's attorney must discuss and have complete understanding on all matters relating to the compensation in the proceeding. The State's attorney files and serves such final offer.

The District must observe the following procedures in cooperation with the Regional Legal Office.

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PROCEDURES FOR FINAL OFFER OF COMPENSATION

- The fee appraiser or staff independent appraiser submits the appraisal to the Regional Legal Office 90 days or more prior to trial.
- The Regional Legal Office forwards a copy of the appraisal to the District with a recommendation that it be authorized for use in negotiation or trial.
- The District may use the condemnation appraisal for either negotiation or trial purposes as authorized by Legal.
- Forty-five (45) days or more prior to trial, the State's attorney and the DDC-R/W, or authorized representative, determine whether it is in the best interest of the Department to file a final offer of compensation (statutory offer) with the Court in an amount that exceeds the authorized appraisal.
- The Regional Legal Office files the statutory offer at least 20 days prior to the date of the trial (CCP Section 1250.410). A statutory offer should be supportable by the CFRs and the Administrative Settlement guidelines. Said statutory offer shall include all elements of required compensation, including compensation for loss of goodwill, if any, and shall state whether or not interest and costs are included.
- If the final offer is accepted, the District R/W representative summarizes the discussions with the attorney in writing to support and document acceptance and settlement. This agreement may be placed in the Parcel file if no confidentiality is intended.

9.07.03.00 Photographs

The District should take sufficient photographs showing the condition of the subject property so the State's attorney will have a complete picture of its condition. The photographs should be taken prior to construction and conform to the date of the commencement of the action, as nearly as possible. The person taking the photographs should number them and keep a record of the date(s) taken.

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9.07.04.00 Court Exhibit Maps and Engineering Expert Witness

The District provides R/W Engineering testimony and preparation of exhibit maps for use in the court trial. See the Right of Way Engineering Chapter 6, Sections 6.01.05.00 and 6.01.08.00, for additional information.

9.07.05.00 Setting Case for Trial

A parcel in condemnation should be set for trial after all parties having an interest therein have been served, have filed appropriate appearances, or are in default. The DDC-R/W, or designated representative, is responsible for advising the Regional Legal Office to request that the parcel be set for trial.

9.07.06.00 Jury Fees

Once a jury has been demanded, it is the District's responsibility to ensure that jury fees are deposited with the court at least 25 days prior to the trial date. It is also the District's responsibility to ensure jury fees and court reporter fees are paid during and after a trial. County courts vary on their requirements of the paying of jury costs during the trial. If the costs must be paid on a daily basis, the District may use a credit card or a draft purchase order. If the Court is able to delay receipt of the costs until the trial concludes, obtain an invoice from the Court Clerk and order an expedited check. The District is responsible to deliver the check to the Court and obtain a receipt.

9.07.07.00 Other Court Deposits

Allowance of fees and payment procedures are included in Sections 8.01.35.00, 8.63.11.00, and 8.68.02.00.

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9.08.00.00 - POSSESSION PRIOR TO JUDGMENT

9.08.01.00 Order for Possession

The Department should not obtain an Order for Possession (OP) until physical possession of the property is needed for construction or related purposes. An OP may be applied for *ex parte* concurrently with filing of the Summons and Complaint papers or later. The Court issues the OP if it determines the Department is entitled to acquire the property by eminent domain and has deposited the probable compensation. An OP is supported by depositing probable compensation in the Condemnation Deposit Fund of the State Treasury.

Only one deposit is made on a case, regardless of the number and kinds of interests in the parcel. No deposit is made for fictitious defendants or any separate interest. The need for the OP and variations in amount requested from the approved appraisal must be explained.

A completed Request for Transfer of Funds (Form RW 9-19) is sent to District P&M in sufficient time to allow for verification of funding availability and encumbrance of the required amount prior to application to the court for an OP. See Condemnation Flowchart Item 10. P&M transmits Form RW 9-19 to R/W Accounting to request issuance of CA-13, Notice of Transfer of Funds.

9.08.02.00 Issuance of Order for Possession

Based on information supplied by the District, the Regional Legal Office prepares a Notice of Deposit and Summary of the Basis for the Appraisal for signature by the Appraiser. The District inserts the date of the deposit of funds in the Notice using the CA-13 date. The Notice and Summary must accompany the Application and Order for Possession (also prepared by the Legal Office) when the District submits them to the Court. Actual appearance in court may be required in some jurisdictions.

The District requests a Superior Court judge to sign the OP submitting the CA-13, Notice, and the Application. The original OP is filed with the County Clerk, together with the Notice and the Application. The Court may ask to see the CA-13 when the OP is signed, or it may require the CA-13 to be attached as an exhibit for the Notice of Deposit in the County Clerk's case file. When the documents are filed, sufficient copies must be conformed and sent to the Regional Legal Office for service.

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9.08.03.00 Service of Notice of Deposit and Summary of the Basis for the Appraisal

The District makes initial service of the Notice if the OP is to be served at the same time as the Summons and Complaint. CCP Section 1255.020 requires such service to be made on all parties named in the suit in the same manner as provided in CCP Section 1255.450 for service of OPs. This fulfills technical service requirements set forth in CCP Section 1255.020.

Occasionally, it is necessary to serve the OP after service of the Summons and Complaint. Then, either the District or the Regional Legal Office serves the Notice in accordance with CCP Section 1255.450. This must be a joint determination to ensure an orderly process of service.

A court award draws interest from the date possession is to be taken, as specified in the Order. If any portion of the deposit is withdrawn prior to judgment, that portion does not draw interest.

9.08.04.00 Increase or Decrease in Amount of Deposit

The Department, or any other party having an interest in the property, may move to have the Court redetermine and order the appropriate deposit. Or, the Court on its own motion can order the deposit increased (CCP Section 1255.030). The District notifies the Regional Legal Office immediately when redetermination of the deposit is sought by the District, other party, or the Court.

If the deposit is to be decreased pursuant to CCP 1255.030 (a) and (e), the Regional Legal Office prepares a Notice of Motion for Order to Decrease Deposit and to Release Balance of Deposit to Plaintiff, at the request of the Condemnation Section. The District serves the Notice of Motion on all parties along with the Declaration in Support of Motion for Order to Decrease Deposit and to Release Balance of Deposit to Plaintiff. Decrease below the amount already withdrawn is prohibited by statute.

The State's attorney prepares the Motion and Order. After the Order is signed by the Court and filed, the District serves the Order on all parties.

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9.08.05.00 Deposit Initiated by Defendant

When the property to be acquired is a dwelling of not more than two units and at least one is occupied as a residence by a defendant owner, or the property is subject to a leasehold interest, the resident or the lessor may initiate a deposit. The resident or lessor serves a notice on the Department requiring the Department to deposit the probable compensation at a specified date and not earlier than 30 days after service of said notice. CCP Sections 1255.040 and 1255.050 provide certain sanctions against the Department if such deposits are not made. The District should contact the Regional Legal Office if it receives such a notice.

The Regional Legal Office will probably receive the notice and will forward the notice and request for deposit to the District to arrange for the deposit.

The Department may obtain an OP, if it chooses, 30 days after making a deposit under this section. The District should inform the Regional Legal Office whether possession is desired.

9.08.06.00 Conformed Copies of Order for Possession

Before being served on a defendant, each copy of the OP must be conformed to agree with the original as filed.

9.08.07.00 Preparation of Excess Land Inventory Record

The Condemnation Section, at the time of filing the OP, notifies the acquisition agent whenever excess lands are included in an OP. The acquisition agent must prepare an Excess Land Inventory and Disposal Record inventory card and forward it to the Excess Land Section.

9.08.08.00 Service of Order for Possession

The District is required to serve a copy of the OP on all record owners of the property and on all occupants, if any. A record owner is defined as the owner of the legal or equitable title to the fee or lesser interest in property as shown by recorded deeds or other recorded instruments.

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Service of the OP shall be made by personal service except as follows:

- If the person on whom service is to be made has previously appeared in the proceeding or been served with Summons in the proceeding, service of the OP may be made by mail upon such person and their attorney of record, if any.

- If the person on whom service is to be made resides out of the State, has departed from the State, or cannot with due diligence be found within the State, service may be made by registered or certified mail addressed to such person's last known address.

- The Court, for good cause shown on *ex parte* application, may authorize the plaintiff to take possession of the property without serving a copy of the OP on a record owner not occupying the property. In such cases, the District should immediately request the Regional Legal Office to obtain a Court order allowing the Department to dispense with service of the OP.

- A single service on or mailing to one of several persons having a common business or residence address is sufficient. For instance, service on husband or wife is sufficient for a family unit.

9.08.08.01 Time Requirements

If the property is lawfully occupied by a person dwelling thereon or improved as a farm or business operation, service of the OP and the 90-Day Notice (issued by the Relocation Assistance Section) may be made concurrently. When there is concurrent service, the effective dates of both documents must coincide. The Relocation Assistance Branch will serve a 30-Day Notice to Vacate at the end of the first 60 days of the Information Notice. Close coordination is required between Relocation and Acquisition to have the effective dates coincide. (See Section 10.03.10.00.)

In all other cases, service shall be made not less than 30 days prior to the time possession is to be taken. If uncertain, always give 90 days' notice. Service of the OP may be made at the same time as or following service of Summons.

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9.08.08.02 Circumstances

Service shall be made not less than 30 days prior to the time possession is to be taken pursuant to the Order under the following circumstances:

1. The Department has deposited probable compensation pursuant to a deposit initiated by an owner (CCP 1255.040 and 1255.050) **or**

2. The Department has deposited the probable compensation and the defendant in possession has either:

    - Expressed in writing a willingness to surrender possession of the property on or after a stated date, **or**

    - Withdrawn any portion of the deposit.

If the District seeks possession on either of the two conditions in 2. above, CCP Section 1255.460 requires that the OP:

- Recite that the OP is made pursuant to CCP Section 1255.460.

- Describe the property to be acquired. The description may be by reference to the Complaint.

- Include the date after which the Department is authorized to take possession. This can be the date requested by the defendant, or, if a portion of the deposit is withdrawn, not less than 30 days after the date the deposit was made.

9.08.09.00 Emergency Situations - No Appraisal

Emergency projects are those that preserve health, safety, welfare, or property. In emergency situations where there is insufficient time to complete an appraisal of a required property prior to the date possession is needed, Regions/Districts have the authority to approve use of an estimated compensation. The appraiser executes an affidavit stating:

- The reasons why possession must be obtained immediately.

- That an adequate appraisal cannot be made in time.

- The status and estimated date of availability of the appraisal.

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- A good faith estimate of the probable amount of compensation.

CCP Section 1245.230 requires an appraisal and offer thereof be made within 90 days of the adoption of a Resolution of Necessity. The Regional Legal Office prepares a motion requesting the Court to accept the estimated compensation as the deposit. The motion accompanies the Notice of Transfer of Funds, the OP, and the affidavit. The Court issuance of the OP requires compliance with the affidavit, which must be as accurate as possible.

9.08.10.00 Order for Possession - 3-Day Notice

The Court may make an OP to be effective in not less than three days and as it deems appropriate under the circumstances of the case if a deposit of probable compensation has been made and the Court finds:

- The Department has an urgent need for possession, and

- Possession will not displace or unreasonably affect any person in actual and lawful possession.

When asking the Regional Legal Office for a 3-day OP, the District shall state the justification. The Regional Legal Office prepares the Application, the Declaration, and the OP and sends them to the District. The designated Right of Way Agent shall review and sign the Declaration and follow procedures for filing the OP.

9.08.11.00 Declaration of Service of Order for Possession

Where service of the copy of the OP is by regular or certified mail, a Declaration of Mailing (Form RW 9-14) shall immediately be executed and transmitted to the Regional Legal Office.

Where a copy of the OP is personally served, the District sends the Proof of Service to the Regional Legal Office. The Declaration of Personal Service should state that the person served is a record owner or a person in possession.

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9.08.12.00 Notice of Tax Cancellation

Upon securing possession under OP, the District must notify the appropriate local taxing authorities of the action taken. (See Acquisition Section 8.66.04.00 for variations in notice requirements.)

9.08.13.00 Stay of Order for Possession Because of Hardship

Within 30 days of service of an OP, a defendant or occupant may request the Court to stay its Order and set a new possession date or impose terms and conditions on the property's use. The Court may do this upon a dual finding of fact, e.g., substantial hardship on the defendant or occupant versus the Department's need in seeking early possession. The Court may make an Order appropriate to the circumstances.

A defendant may make a motion to stay the Order, in which case the Regional Legal Office coordinates with the District to present evidence in support of obtaining the OP.
Where a person occupying property refuses to move by the possession date indicated in the OP, possession can be obtained through a Writ of Assistance. The District notifies the Regional Legal Office to initiate this process as necessary.

9.08.14.00 Disposing of Building Improvements on Property Under Order for Possession

The right to use the land under OP includes the right to dispose of improvements. The Property Management chapter includes instructions covering the issuance of Bills of Sale for such improvements. Right of Way Improvements and Personal Property Inventory and Disposal Record must be prepared at the time of obtaining possession. If there is a dispute as to whether an item is an improvement, the court can be asked to make a determination. (See CCP 1260.030.)

9.08.15.00 Owner Abandons Personal Property

If an owner refuses to remove personal property or abandons it, the District shall refer the problem to the Regional Legal Office. It may be necessary to arrange through a law enforcement agency for removal and storage of the personal property in a public warehouse for the account of the owner.

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9.09.00.00 - WITHDRAWAL OF DEPOSIT BEFORE JUDGMENT

9.09.01.00 Defendant's Rights

Under CCP Section 1255.210, a defendant may file and serve a verified application for withdrawal of all or a portion of the deposit. Defendant can also have the deposit invested for the benefit of all defendants upon proper motion to the Court (CCP Section 1255.075). Interest on the amount withdrawn ceases at the time of withdrawal.

9.09.02.00 Objections to Withdrawal

The Department has 20 days after receipt of service of the Application to object to the withdrawal or until the time for all objections has expired, whichever is later. The Regional Legal Office shall immediately prepare the necessary objection on verification from the District that there are currently other parties to the proceeding or parties believed to have interests in the property.

The Department may file an objection to the withdrawal when other parties to the proceeding are known or believed to have an interest or when the bond filed by the applicant (or sureties therein) is insufficient. The Court may require that a bond (undertaking) be filed when there are conflicting claims to the amount sought to be withdrawn or when the amount to be withdrawn exceeds the original deposit, which had been increased. (See CCP Sections 1255.230 and 1255.240.)

The Regional Legal Office must file the objection with the Court and serve the applicant within 20 days of receipt of service. Then the District must expeditiously serve all other interests with a notice advising that they may appear within 10 days of service of the notice to object to the application for withdrawal.

9.09.03.00 Application for Withdrawal of Deposit

Because of the limited time involved, the District must send, without delay, a verified application to the Court with a copy to the State's attorney. The application shows the applicant's interest in the property and the amount to be withdrawn. The State's attorney contacts the District to get the names and addresses of all parties having an interest in and/or possession of the property.

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Since this information must be provided at once, it is imperative that the District have a current title report or litigation guarantee. It is the District's responsibility to provide the address of all defendants to Legal. After receipt of the information, the State's attorney prepares a Notice of Application for Withdrawal of Deposit and Declaration of Service and serves it on the parties whose names and addresses are set forth therein. The Notice must be served in time for a return of service to be made to the Court within the required 20-day period.

At the time the suit is requested, the agent should provide to Legal a list of all recorded and unrecorded interests. The agent should identify which funds are to be allocated to a lessee and which amount to the owner. The attorney should be informed if the defendants are disputing allocation of funds.

9.09.04.00 Service of Application for Withdrawal and Declaration of Service

The Regional Legal Office prepares a Notice and Declaration of Service of Application of Withdrawal and forwards it to the District. The District serves the Notice and Declaration on all parties who have not previously appeared or who have not been served with a Summons. Service is by personal service unless the party resides out of state, has departed from the state, or cannot be found with due diligence within the state. Then, service may be made by registered or certified mail sent to such party's last known address.

The Regional Legal Office serves, by regular mail, those parties who have previously been served with a Summons or who have appeared in the proceeding and their attorneys of record. The service includes parties whose default has been entered, but not parties who have disclaimed or who have been dismissed.

The District shall forward the Declaration of Service to the State's attorney without delay once all parties have been served. The Regional Legal Office prepares a report of service and files and serves the report on the applicant. The report contains the names of parties served and the dates of service, as well as the names and last known addresses of parties known to or believed to have an interest but who have not previously appeared or who have not been served personally.

It is important that the Right of Way records reflect any withdrawal so the amount is credited when settlement is reached. The withdrawal must also be reflected in the record of deposits to assure that any subsequent Order authorizing withdrawal of Deposit directs the release of no greater amount

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than the balance remaining on deposit after payment of the earlier withdrawal.

The Court order to withdraw all or any portion of the amount deposited by the State will not include interest on such amount to the date of withdrawal. Payment of interest is made only after judgment has been rendered. Separate computations are necessary in all cases where a withdrawal has been made from the deposit. Interest is computed in the judgment on the principal amount of compensation from the OP date to date of payment of the amount withdrawn. A separate computation is made on the balance of the award from the date of withdrawal to the date of payment of the remaining balance.

9.09.05.00 Procedure for Withdrawal

After all notices are given, the Court holds a hearing to determine the amounts to be withdrawn and who shall withdraw them. If no other parties have an interest in the property, no hearing is necessary. If no party having an interest in the property appears and objects within 10 days after service of notice, all objections are waived and a hearing is not necessary.

The Order of the Court authorizing the withdrawal directs either the State Treasurer or the Court (County Clerk) to pay the amount authorized to the defendant or other persons determined to have an interest in the property. Prior to issuing payment, the defendant or other persons authorized to receive payment are to complete the Payee Data Record (STD. 204). This information is to be forwarded to the appropriate entity processing the payment request. Whether the Order is directed to the State Treasurer or to the County Clerk depends on whether the original deposit was made with the County Clerk or into the Condemnation Deposits Fund in the State Treasury. In most cases, the deposit is in the State Treasury (CCP 1255.070).

It is preferred that the State Attorney take the lead on the mailing of the Certified Order to the State Treasurer rather than have the owner's attorney do it. Payment is made as directed by the Order, usually to the defendant or defendant's counsel. The Department Cashier will provide the designated person in each district, as well as the State Attorney, with a copy of a Claim Schedule. Payment is made directly to the defendant or other parties authorized in the Order. The District should follow up on applications for withdrawal to determine whether such payments have actually been made. The State's attorney obtains copies of the Order and forwards one copy to the District.

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9.09.06.00 Waiver of Defense

If any portion of the money deposited is withdrawn, the party waives all defenses to the action except a claim for greater compensation. The amount withdrawn shall be credited upon the judgment ultimately entered in the proceeding.

9.09.07.00 Waiver of Objection

If no other party has objected and there is no independent reason for the Department's objection, the Department's objection shall be waived when the Regional Legal Office forwards the Report of Service, Notice of Application for Withdrawal, and Declaration of Service to the Court. The Regional Legal Office shall file a copy of the waiver signed by the State's attorney with the Court and serve it on the applicant.

9.09.08.00 Deposit–Conflicting Claims to Amount Withdrawn

The Court must determine whether the applicant shall file a bond (undertaking) to secure a third party claimant. If the Court allows withdrawal and parties have not been served, the Court may require a bond by the applicant to indemnify the Department against liability. Unless the bond is required because of an issue as to title, the applicant can recover premiums paid as part of recoverable costs in the eminent domain proceeding.

9.09.09.00 Repayment of Amount of Excess Withdrawal

A party who withdraws an amount in excess of any entitlement, as finally determined, must pay the excess to the party entitled thereto. The Court enters judgment to that effect.

The judgment does not include interest except in the following cases:

- **Withdrawal by Another Defendant** - An amount to be paid to a defendant shall include legal interest from the date of its withdrawal by another defendant.
- **Excess Withdrawal** - If the defendant who requested the Department to increase the original deposit has made an excess withdrawal, any amount of the excess attributable to the increased deposit shall be repaid to the Department including legal interest from date of withdrawal.

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In the case of an excess withdrawal, the Court may grant a defendant up to one year to repay the Department. If the Court authorizes such delay in repayment, the District records an abstract of the judgment in the appropriate county. If repayment has not been made by the expiration of the authorized delay period, the District shall notify the Regional Legal Office. It determines the appropriate means to recover the excess withdrawn plus interest, if applicable.

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9.10.00.00 - JUDGMENT OF CONDEMNATION

9.10.01.00 General

The Regional Legal Office prepares the Judgment and forwards the documents to the District for filing with the Court.

9.10.02.00 Judgment by Default

The Department takes defaults in condemnation proceedings only after making a diligent effort to induce the property owner to answer. Prior to entering a default under any condemnation proceeding, the Regional Legal Office sends a letter to the property owner giving a final date for appearance.

The Court requires military affidavits before granting a judgment by default. The party serving the Summons and Complaint must obtain sufficient facts to thereafter make a military affidavit, if required.

9.10.03.00 Time of Paying Judgment

CCP Section 1268.010 requires the plaintiff to pay the full amount required by the judgment within 30 days after final judgment.

The District will make every reasonable effort to pay the amount of the award on the date the judgment is entered to keep payment of interest to a minimum. The District should not have the judgment signed until it is in a position to deposit the award, plus interest under OP if any, computed to the date the judgment will be signed and entered. If a motion for a new trial will be made by the State, State's attorney will request the District to delay making the deposit.

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9.10.04.00 Method of Paying Judgment

Payment is made by either or both of the following methods:

- **Payment of Judgment Directly to the Defendant** – Any amount that the defendant has previously withdrawn shall be credited as a payment on the judgment.
- **Deposit of Money with the Court Pursuant to CCP Section 1268.110** – It is State's practice to pay the defendant directly rather than deposit into Court. The State may deposit with the Court when there are outstanding issues regarding settlement.

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9.11.00.00 - DEPOSITS AND SCHEDULES

9.11.01.00 Deposit of Award and Costs

The District makes two separate deposits and/or payments:

- **Amount of Award** - plus interest on possession (if any), computed to the date of payment of the award computed at the apportionment rate. (See CCP Sections 1268.310 and 1268.350.)

- **Amount of Defendant's Costs** - the State's attorney will advise the District of the amount of the property owner's legal costs. (See Section 8.01.35.00.)

9.11.02.00 Interest for Possession

If an OP is involved, the District pays the award, together with interest, to the party directed in the judgment. The payment may be made to the defendant, defendant's counsel, or to the court.

9.11.03.00 Interest on Award

Compensation, including damages, awarded in an eminent domain proceeding draws interest pursuant to CCP Section 1268.310 from the earliest of the following dates:

- The date of entry of judgment.

- The date the plaintiff takes possession of the property.

- The date after which the plaintiff is authorized to take possession of the property as stated in an OP.

The compensation award ceases to draw interest pursuant to CCP Section 1268.320 on the earliest of the following dates:

- The date the amount deposited as probable compensation has been withdrawn by the person entitled thereto.

- The date of deposit of the amount of the award.

- The date a person is paid the amount to which they are entitled.

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9.11.04.00 Offset Against Interest

If after the date interest begins to accrue (date of possession), the defendant continues in actual possession of or receives rent, issues, or profits from the property, the value of such possession and of such rents or other income is offset against the interest that accrues during such period.
[CCP Section 1268.330(b)] Value of possession should be presumed to be the rate of interest on the compensation award for the period defendant continues in possession and receives rent or other income. The District gathers the necessary facts to determine whether an offset against interest should be made so this issue may be tried in the condemnation proceedings.

9.11.05.00 Payment of Judgment

When the judgment payment is deposited with the Court, the District must obtain a receipt from the County Clerk in order to obtain the FOC and to schedule payment of the judgment.

When the judgment payment is paid to the defendant or to the defendant's counsel, the District must have the party sign a receipt of funds and provide a satisfaction of judgment or partial satisfaction of judgment for the defendant or the defendant's counsel to sign. The District or Regional Legal Office will determine who will file the document once it is accepted.

9.11.06.00 Appeal or Motion for New Trial by Defendant - State in Possession

The District should deposit the amount of the judgment at time of entry of judgment to stop the accrual of interest. Except where the defendant has withdrawn the judgment award, the State should not obtain the FOC until the appeal is terminated and the judgment becomes final. Otherwise, the State would be responsible for creating a cloud on the title should the judgment be reversed.

It is particularly important that the Department not withdraw the deposit under an OP during the pendency of an appeal. If the judgment is reversed, State's possession would not be supported by the constitutionally required deposit.

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9.11.07.00 Scheduling of Judgments for Payment

To schedule payment for judgments, the district submits Form RW 9-20, Condemnation Check Request-Invoice, to R/W Accounting together with, but not limited to, the following items:

- **Judgment in Condemnation** - A certified copy specifying the amount of compensation to be paid by State.
- **Interest Calculation Worksheet** - one copy, if applicable.
- **Federal Participation Memo (Form RW 8-16)** - two copies.
- **Payee Data Record (Form STD. 204)**

Explain in detail any difference between the amount of the judgment and the amount being scheduled and not accounted for above.
A certified copy of the FOC is retained in District files. A certified copy is defined as a copy that has been formally certified by the County Clerk as a true and correct copy of the original on file. Endorsed or conformed copies are identical to the original, but have not been certified as true and correct copies.

9.11.08.00 Tax Identification Numbers

Requirements for securing Tax Identification Numbers in condemnation cases are identical to the regular acquisition procedures described in Manual Section 8.04.43.00. Every effort should be made to secure Payee Data Records for all condemnees.

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9.12.00.00 - FINAL ORDER OF CONDEMNATION

9.12.01.00 Recording of Final Order of Condemnation - Vesting of Title

CCP Section 1268.030(c) provides that title to the property described in the Final Order of Condemnation (FOC) vests in the State upon the date that a certified copy is recorded in the Office of the Recorder of each county in which the property is located. After the judgment has been entered and the judgment is paid, the Judge signs the FOC upon being shown the receipt for deposit or a signed, full Satisfaction of Judgment. A Satisfaction of Judgment signed by the defendant or defendant's attorney must be presented with the FOC if payment has been made directly to the defendant. Since payment for the property will have been deposited prior to issuance of the FOC, it is essential that the required certified copy be recorded immediately to vest title to the property in the State.

After the FOC is recorded, the Regional Legal Office prepares, serves, and files a Notice of Entry of Judgment, Deposit Pursuant to Judgment, and Notice of Recording of Final Order on all defendants or the defendant's counsel unless Notice has been waived in the judgment. If Notice is waived, a courtesy copy of the FOC may be mailed to the previous owner of the property.

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9.13.00.00 - SETTLEMENT AND DISMISSAL

9.13.01.00 Settlement by Judgment After Entry into Right of Way Contract

In some cases where a negotiated settlement has been made with a defendant through a Right of Way Contract, it may be necessary to secure a Judgment in Condemnation or a Default Judgment for technical or other reasons, such as clearing the remaining interest from title. Before Judgment in Condemnation is secured, a written agreement should be entered into with the defendant or the defendant's attorney providing for the cancellation of all contractual obligations included in the Judgment. Failure to do this creates duplicate obligations.

The Agreement of Cancellation should be executed in duplicate and distributed as follows:

- One copy to the defendant or the defendant's attorney.
- One copy affixed to the executed original Contract in the District file.

If the defendant, or the defendant's attorney, refuses to enter into such a written agreement, the District should submit complete information to the Regional Legal Office with a request for instructions on how to proceed to complete the acquisition.

A DM Series - Actual Possession clause must be included in the Deed whenever the State has the right to take possession under Court order or has taken actual possession through Right of Entry or OP. (See Section 6.06.11.00.)

9.13.02.00 Settlement by Right of Way Contract

Whenever a parcel included in a condemnation suit is settled by Right of Way Contract, the action shall be dismissed. If a deposit has been made for an OP, provision should be made for its release.

The District should not request a dismissal until it obtains consent from all attorneys who have filed an answer alleging an interest in the parcel and escrow has closed. The attorneys representing such interests should be advised of the proposed settlement and the provisions concerning the distribution of the payment.

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9.13.03.00 Settlement After Withdrawal of Deposit

Whenever a withdrawal of funds has been made by the defendant and a negotiated settlement is subsequently reached, the Contract shall include a provision wherein the defendant acknowledges receipt of the amount withdrawn as a credit to the State against the total payment provided for in the Contract. A similar provision shall also be included if settlement is by stipulated judgment.

9.13.04.00 Approval of Stipulated Judgments

The District will secure approval from HQ R/W before entering into a Stipulated Judgment whenever:

- The amount of the stipulation is substantially in excess of the highest value based upon an authorized appraisal report that would have been testified to if the action had proceeded to trial. Any limitations under current delegations will apply.

- When the proposed payment is not substantially at variance with the authorized appraisal report but where the settlement (with the exception of the form of the instrument) does not conform to the criteria and conditions for district-approved contracts. (See Acquisition Chapter.)

- When it is proposed to exchange noncontiguous excess land. (See Section 8.03.07.00.)

After approval is secured by letter, fax, or telephone, the District shall submit to HQ R/W a Memorandum of Settlement fully explaining the details of the stipulated settlement.

9.13.05.00 Release of Deposit - Settlement by Judgment

The Order for Release of Deposit can be filed with the Final Order of Condemnation. The District should notify the attorney of record upon payment of the judgment, as specified in the judgment, so the FOC and Release can be prepared.

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9.13.06.00 Abandonment of Proceedings

Under certain circumstances, the Department may abandon all or part of a parcel after suit has been filed. If an abandonment is contemplated, the District should consult with the Regional Legal Office.

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9.14.00.00 - DEPOSIT RELEASES

9.14.01.00 Responsibility for Release of Deposit

The DDC-R/W is responsible for the prompt release of deposits. The District should review the status of these deposits periodically to ensure release immediately following the vesting of the property in the State, regardless of whether title was acquired through Court proceeding or by deed.

9.14.02.00 Release of Deposit, or Cancellation of Deposit, After Filing of Suit

When a parcel is settled by a Judgment in Condemnation, the condemnation deposit is released by court order (Request and Order for Release of Deposit). The Regional Legal Office will prepare said document and will coordinate with the District, the responsible party, for the filing of the Order. It is preferred that the Order for Release of Deposit be filed concurrently with the Final Order of Condemnation. Three copies of the Order should be delivered to the Court. One of the copies is to be received by the Court along with a request that the Court certifies two copies of the Order, upon filing of said documents. The Division of Accounting, Cashiering Unit, requires two certified copies of the Order.

If the case is dismissed, the District is responsible to cancel the deposit. The standard release request form, RW 9-21, should be filled out canceling the deposit and stating the reason the deposit is canceled. The reason for the cancellation is identified on the form by checking the appropriate box. A court order is not required.

9.14.03.00 Cancellation of Deposit Prior to Filing of Suit

A condemnation deposit on a parcel settled by right of way contract or decertified prior to a case being filed needs to be canceled by the District. The standard release request form, RW 9-21, should be filled out by the District canceling the deposit. The appropriate box should be checked providing the Division of Accounting, Cashiering Unit, and the State Treasurer with the reason the deposit is canceled. The original form is then sent to the Division of Accounting, Cashiering Unit.

The standard release request form, RW 9-21, Release of Condemnation Deposit, contains the necessary language for the District's affidavit; necessary explanatory data is added in the appropriate boxes. In addition, for

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stipulated and court-ordered judgments, two court-certified copies of the Request and Order for Release of Deposit must be included.

9.14.04.00 Processing of Order for Release of Deposit

The District shall transmit the Release of Condemnation Deposit (RW 9-21) and two certified copies of the Order for Release of Deposit, if applicable, to the Division of Accounting, Cashiering Unit, for processing. Accounting arranges for the transfer of the deposit from the Condemnation Deposits Fund to the State Transportation Fund. After this transfer has been made, the transaction will appear on the R/W Accounting Weekly Report, which is then forwarded to the District P&M Office to confirm the deposit has been released.

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9.15.00.00 - GENERAL CLOSING PROCEDURES

9.15.01.00 Ordering Policy of Title Insurance

After recordation of the FOC, the District shall secure a Policy of Title Insurance to insure the interests acquired by State.

9.15.02.00 Record of Condemnation

Upon completion of a trial, the District forwards a copy of the attorney's Trial Report to HQ R/W. Two copies of the MOS are forwarded to the Regional Legal Office. Trial Reports are required when there is a contested award. Trial Reports are not required for stipulated judgments, but written concurrence from Legal is necessary for all Legal Settlements. The District submits Supplemental Memoranda to HQ R/W as events occur covering retrials, appeals, or situations where the Court has amended the original verdict.

9.15.03.00 Improvements Acquired

The District lists improvements acquired through condemnation trial or secured under an OP on Right of Way Improvements and Personal Property Inventory and Disposal Record in the same manner as those acquired through Right of Way Contract. When improvements are acquired by condemnation but without an OP, the inventory is prepared concurrently with Page 3 (Alternate) of the MOS.

9.15.04.00 Prepaid Tax Cancellation

Prepaid current taxes on property acquired after the lien date, which would have been subject to cancellation if unpaid, are recoverable from the State. Money owed by the State for the tax refund is paid as part of the defendant's cost bill. The State arranges to recover this money from the taxing agency pursuant to the Revenue and Taxation Code.

When property is acquired by eminent domain, the following requirements apply to recovery of prepaid taxes:

- If the State has taken possession of the property prior to judgment, the property owner must claim payment for these taxes as part of the cost bill filed after judgment in condemnation.

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- If the State has not taken possession of the property prior to judgment, the property owner must claim payment for these taxes by means of a supplemental cost bill filed not later than 30 days after recording of the FOC. (See Section 8.66.03.00 of the Acquisition Chapter.)

9.15.05.00 Filing of Recorded Document

Procedures for filing of recorded documents are set forth in the Acquisition Chapter, Section 8.67.00.00, "Filing of Completed Transactions."

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9.16.00.00 - CONDEMNATION TIMELINE AND FLOWCHARTS

EMINENT DOMAIN LITIGATION TIMELINE

Month	Action
0	File summons, complaint, and order for possession, deposit amount of probable compensation
1	Contract for Independent Appraiser/Expert Witness
2	Complete service of summons, complaint, and order for possession
3	Answers filed by all defendants
4	
5	File joint at-issue memorandum
6	
7	Trial setting and status or case management conference
8	Presubmission conference - Legal, Right of Way, and Independent Appraiser
9	Review for contract payment of independent appraisal
10	Authorization to use independent appraisal for negotiation
11	Exchange of valuation data
12	Statutory final offer and mandatory settlement conference
13	Trial begins

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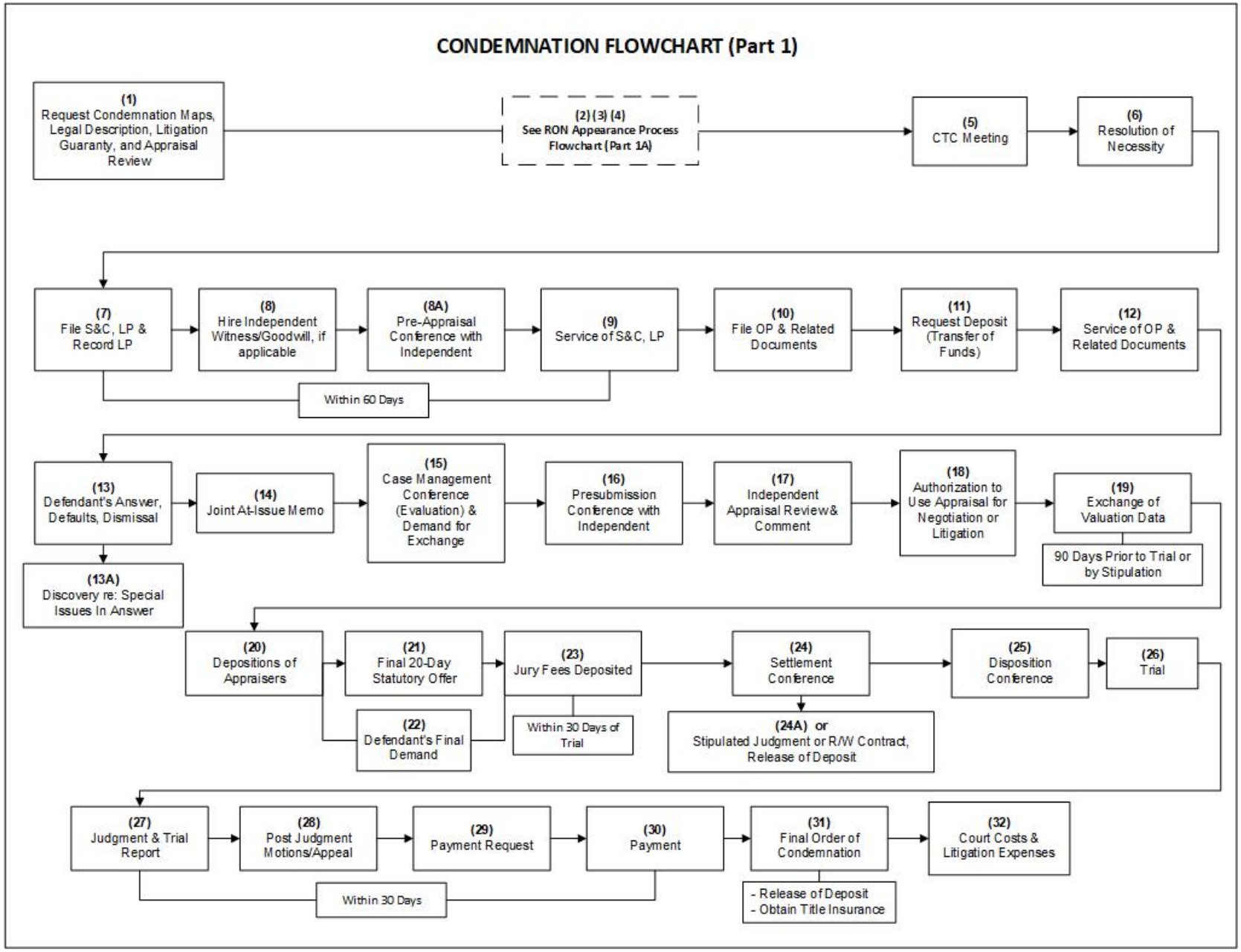

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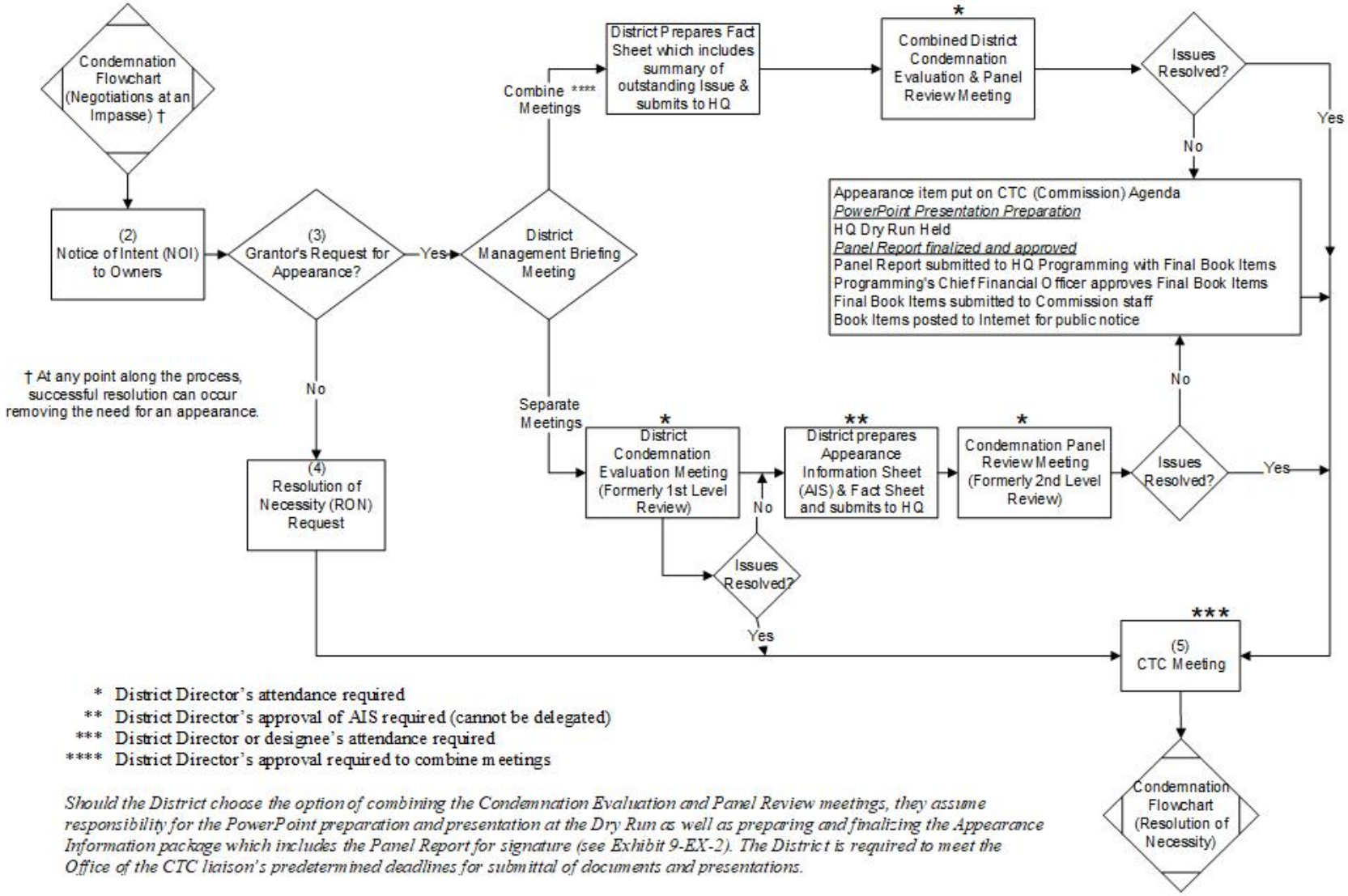
RESOLUTION OF NECESSITY (RON) APPEARANCE PROCESS FLOWCHART (Part 1A) †



* District Director's attendance required
** District Director's approval of AIS required (cannot be delegated)
*** District Director or designee's attendance required
**** District Director's approval required to combine meetings

Should the District choose the option of combining the Condemnation Evaluation and Panel Review meetings, they assume responsibility for the PowerPoint preparation and presentation at the Dry Run as well as preparing and finalizing the Appearance Information package which includes the Panel Report for signature (see Exhibit 9-EX-2). The District is required to meet the Office of the CTC liaison's predetermined deadlines for submittal of documents and presentations.

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RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2)

Activity	Responsible Party	Summary of Responsibilities
1	District R/W Office	Requests documents from R/W Engineering. Also, requests litigation guaranty or update, if dated.
1a	District R/W Engineering	Prepares maps and legal descriptions.
1b	District R/W Office	Requests Appraisal Branch to confirm market value (Confirmation of Market Value Memo). Can be requested earlier.
2	District R/W Office	Makes decision to seek Resolution of Necessity. Determines parties receiving notice. Sends a minimum of 30 days prior to CTC meeting date (personal call required within 30 days of mailing). Checks maps and descriptions.
3	District R/W Office	If grantor requests an appearance, responsible for initiating the process and conducting the District Condemnation Evaluation Meeting; Having a District Management briefing meeting prior to the District Condemnation Evaluation Meeting; Preparing the Appearance Information Sheet and Fact Sheet. Setting up the Condemnation Panel Review Meeting, if required.

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RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

Activity	Responsible Party	Summary of Responsibilities
3	District R/W Office	**OR:** If the District chooses to combine the Condemnation Evaluation and Condemnation Panel Review meetings, then the District is responsible for: Having a District Management briefing meeting; Preparing a Fact sheet, which includes a summary of the owner's outstanding issues; Setting up the combined Condemnation Evaluation and Panel Review Meeting.
	HQ R/W	Conducts the Condemnation Panel Review Meeting, if required, or the combined Condemnation Evaluation and Panel Review Meeting.
4	District R/W Office	Submits Resolution of Necessity request to HQ R/W a minimum of 45 days prior to CTC date. R/W Agent completes the form based on information from the map, the appraisals, and the parcel diary.
5	CTC	CTC adopts Resolution of Necessity.
6	HQ Legal	Sends certified Resolution to Regional Legal Office.
	HQ R/W	Sends original plus copies of Resolution to District R/W.

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RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

Activity	Responsible Party	Summary of Responsibilities
7	District R/W Office	Compiles the necessary information required for Legal to prepare the Summons and Complaint and Lis Pendens documents (title report, appraisal, parcel diary, legal description and maps, and the CTC Resolution). **Note:** Compiling information, transmitting to Legal and preparation of suit papers can be done prior to passage of the CTC Resolution.
	Legal	Prepares the Summons and Complaint, Lis Pendens, and maybe OP documents.
	District R/W Office	Files Summons and Complaint and Lis Pendens, then records the Lis Pendens, deposits amount of probable compensation.
8	District R/W Office	Hires independent(s) with Legal's concurrence.
8a	District R/W Office	Legal and District R/W should hold a pre-appraisal conference with the hired witness to discuss the appraisal problem, legal concepts, etc.
9	District R/W Office	Completes services to all named defendants; completes proofs of service and submits to Legal.
	Legal	Checks proofs for completeness and correctness, and files with the Court.

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RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

Activity	Responsible Party	Summary of Responsibilities
10	District R/W Office	Sends Legal the necessary information for preparation of the Order for Possession, Notice of Deposit, and Summary for Basis for Appraisal.
	Legal	Prepares the OP and related documents.
	District R/W Office	Files the OP and related documents with the Court.
11	District R/W Office	Submits Request for Transfer of Funds to District Planning and Management.
12	District R/W Office	Completes services to those who have possessory or equitable interests; completes proofs of service and submits to Legal. **Note:** If property is occupied, a 90-day Notice to Vacate must also be served. [See RAP Section 10.03.09.00 and 49 CFR 24.203 (c).]
	Legal	May sometimes serve by mail those who have possessory or equitable interests who were personally served Summons and Complaint and Lis Pendens. Checks all proofs for complete and accurate information.
13	Legal	Sends copies of Answer to District R/W Office. Requests Default and files Disclaimers, if necessary.
13a	Legal	Discovery on Special Issues in the "Answer" (such as: goodwill, delay, etc.).
14	Legal	Informs Court that case is ready for trial calendar.

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RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

Activity	Responsible Party	Summary of Responsibilities
15	Legal	Court sets date for Disposition (Evaluation) Conference and Trial. Legal serves and files Demand for Exchange of Valuation Data within 10 days after trial is set.
16	Legal	Prior to completion of the independent's report, Legal and District R/W shall hold a presubmission conference with the hired witness to review appraisal concepts, date of value, market data, compensable items, etc. Also checks the parcel areas and the proposed project with the independent appraiser.
17	District R/W Office	District reviews, comments, and completes Exhibit 7-EX-18; HQ R/W authorizes use if it is a high-value parcel.
	Legal	Reviews and comments on District's analysis.
18	District R/W Office	Acquisition Branch requests authorization to use the report for settlement or trial.
19	Legal	Exchanges and deposits with Court—Expert Witness list and Statement of Valuation Data—90 days before trial.
20	Legal	Takes depositions of appraisers and other designated experts.
21	District R/W Office	Determines and approves the Statutory Offer based on all available data and Legal's recommendation.
	Legal	Serves and files the final offer at least 20 days before trial.

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RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

Activity	Responsible Party	Summary of Responsibilities
22	Defendant's Attorney	Defendant's attorney files final demand at least 20 days before trial.
23	Legal or District R/W	Deposits Jury fees with the Court 30 days before trial.
24	District R/W Office	If a Settlement Conference is scheduled, the Acquisition Agent/Senior attends and is prepared with a settlement proposal.
	Legal	Represents and advises District.
24a	Legal	If settlement is reached by Stipulated Judgment, Legal prepares the documents and forwards to District R/W for the payment request to be initiated.
	District R/W Office	If settlement is by R/W Contract, agent prepares documents in same manner as for a regular transaction.
25	Legal	Parties present the Joint Issues Disposition Conference Report to the Judge.
26	Legal	Prepares for the trial. In some Districts, R/W Department assists.
27	Legal	Prepares the Judgment and sends draft to R/W so the payment request is initiated. Also prepares trial report for contested settlements and submits to District R/W for approval within 10 working days after conclusion of trial.
	District R/W Office	DDC-R/W approves the trial report. A copy is returned to Legal, one goes to Acquisition.

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RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

Activity	Responsible Party	Summary of Responsibilities
28	Legal	Prepares or defends against motion for new trial and/or Appeal.
29	District R/W Office	Prepares the necessary paperwork to enable payment processing by Division of Accounting.
30	District R/W Office	Delivers payment to defendant's attorney and obtains a receipt or, if applicable, deposits in Court. **Note:** For Legal Settlements, delivery of payment is to be made only after receipt and approval of Attorney's Legal Settlement Memo.
31	Legal	Prepares the FOC and release of deposit responsibilities.
	District R/W Office	Prepares MOS. For contested settlements, sends copy of the trial report to HQ R/W. Files and records the FOC with the Court. Obtains Title Insurance.
32	Legal	If necessary, prepares motion to tax litigation costs. Prepares points and authorities and declaration re: reasonableness of offer and demand.
	District R/W Office	Processes payment request through Division of Accounting.

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9.17.00.00 – DELEGATIONS

9.17.01.00 Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Condemnation 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**
CCP §1245.235	9.01.04.00	Notice of Intent to Adopt Resolution of Necessity	District	Senior RW Agent
CCP §1245.230	9.01.11.00	Request for Resolution of Necessity Approval (RW 9-8); or Alternately RON Generator (Electronic Format Approval)	District	RW Manager
CCP §1245.235	9.01.13.00	Provide District Notification of CTC's Adoption of Resolution of Necessity	HQ	Senior RW Agent
CCP §1255.010	9.08.01.00	Request for Transfer of Funds	District	Senior RW Agent
CCP §1245.230	9.08.09.00	Order for Possession – Emergency Situations – No Appraisal	District	Supervising RW Agent

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9-EX-6A	District Notice to Owner Regarding a Change in the Date or Location of the CTC Meeting
9-EX-7	HQ R/W Notice of CTC Appearance Schedule
9-EX-8	Resolution of Necessity (First and Second Level Reviews) Guidelines for Local Agencies Performing Work on the State Highway System
9-EX-9	Processing of Department Resolutions of Necessity (RON) Through the California Transportation Commission (CTC), County Board of Supervisors (Board) or City Councils (Council)

Exhibits are located online:

- External Exhibits site
- Internal Exhibits site (internal Caltrans link)

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Forms are located online:

- External Forms site
- Internal Forms site (internal Caltrans link)

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(REV 8/2018)

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10.00.00.00 - RELOCATION ASSISTANCE

10.01.00.00 - GENERAL

10.01.01.00 Relocation Assistance Program

This chapter covers procedures for implementing the Relocation Assistance Program (RAP) in accordance with applicable laws, regulations, and policies. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (as amended), Title 49 Code of Federal Regulations (CFR) Part 24, Government Code 7260 et seq., and California Code of Regulations 6000 et seq., serve as the basis for the policies and procedures of the California Department of Transportation (Department).

10.01.01.01 Purpose

The purpose of RAP is to ensure that persons displaced as a result of a state highway project are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and to ensure that the Department implements the Uniform Act and 49 CFR 24 in a manner that is efficient and cost effective.

All relocation services and benefits are administered without regard to race, color, national origin, persons with disabilities, religion, sex or age in compliance with Title VI of the Civil Rights Act (42 U.S.C. 2000d, et seq.), Title II of the Americans with Disabilities Act of 1990, Executive Order 12250, and the Age Discrimination Act of 1975.

10.01.02.00 Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970 (as amended)

Public Law 91-646, which is known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), became effective January 2, 1971. For the first time, the United States had adopted measures to be uniformly applied whenever the federal government acquired real property or when property acquisition involved the use of federal funds.

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The Uniform Act sets minimum standards of benefits and compensation for relocation advisory and financial benefits, and established basic standards and requirements for appraisal and acquisition to be followed in acquiring real property. The Uniform Act is not an entitlement program, but rather a reimbursement program to assist in relocating to a new site.

10.01.02.01 Title 49 Code of Federal Regulations Part 24 (49 CFR 24)

The CFRs provide the rules that must be followed in order to comply with the law. 49 CFR 24 ensures Uniform Act compliance. Its purpose is:

> *To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs.*

Compliance with the Uniform Act is required for all projects on the State Highway System (regardless of funding source), all federal-aid projects, and all Local, Streets and Roads (LS&R) projects (also referred to as "Local Grant," "Local Entity," "Local Assistance," or "Off-System" projects. See 17.01.01.04.).

The policies and procedures in this chapter will ensure that all persons impacted by a public project are treated fairly and equitably. Further, the uniform application of these policies and procedures will prevent fraud, waste, and abuse of the Department's resources. Periodic reviews of delegations, quality, and compliance are conducted to ensure full compliance [49 CFR 24.4(c)].

Note: Appendix A of 49 CFR 24 is an integral part of the regulations; and, while it does not impose mandatory requirements, it does provide additional guidance and information concerning the purpose and intent of a number of provisions in Part 24.

The Uniform Act was amended on July 6, 2012. Many of the changes are effective October 1, 2014. This Chapter includes all new requirements contained in the Uniform Act effective October 1, 2014.

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10.01.02.02 Compliance with other Laws and Regulations

The application of this chapter must be in compliance with other state and federal laws and regulations including, but not limited to, the following:

a) California Government Code
b) California Code of Regulations
c) California Code of Civil Procedures
d) California Health and Safety Code
e) California Streets and Highway Code
f) Civil Rights Act of 1866
g) Civil Rights Act of 1964
h) Civil Rights Act of 1968
i) The National Environmental Protection Act of 1969
j) The Rehabilitation Act of 1973
k) The Flood Disaster Protection Act of 1973
l) The Age Discrimination Act of 1975
m) Executive Order 11063, as amended by Executive Order 12892
n) Executive Order 11246
o) Executive Order 11625
p) Executive Order 11988 and 11990
q) Executive Order 12250
r) Executive Order 12630
s) Robert T. Stafford Disaster Relief and Emergency Assistance Act
t) Executive Order 12892

10.01.03.00 Displacements

Any person, household, business, farm, or nonprofit organization displaced by a public project may be entitled to relocation benefits if they are in occupancy of the property being acquired at the time of the Initiation of Negotiations (ION). Persons and entities displaced by a project and determined to be eligible for benefits are classified as a "displacee."

In some cases, the occupants of the property to be acquired may need to relocate prior to the ION. The Region/District may issue a Notice of Intent to Acquire (NIA) to the owner-occupants to preserve their relocation benefits (10.01.08.01).

The amount and type of benefits will vary depending upon the type and length of occupancy (Table 10.01-A).

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10.01.03.01 Displaced Person [49 CFR 24.2(a)(9)(i)]

The term "displaced person" (or displacee) means any person who moves from the real property or moves his or her personal property from the real property as the direct result of:

- A written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.
- A written notice of intent to acquire, or the acquisition, rehabilitation, or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under the Uniform Act applies only for purposes of obtaining relocation assistance advisory services under 49 CFR 24.205(c), and moving expenses under 49 CFR 24.301, 24.302 or 24.303, 24.304.

This includes persons who occupy the real property prior to its acquisition, but who do not meet the length of occupancy requirements of the Uniform Act (10.01.03.04).

Displaced persons must be fully informed of their rights and entitlements to relocation assistance and payments provided by the Uniform Act.

10.01.03.02 Persons Not Displaced [49 CFR 24.2(a)(9)(ii)]

Persons not considered "displaced" for purposes of obtaining relocation benefits are those who:

1) Move before the initiation of negotiations unless the Region/District issued a Notice of Intent to Acquire.
2) Initially entered into occupancy of the property after the date of its acquisition for the project.
3) Occupied the property for the sole purpose of obtaining benefits under the Uniform Act. (The burden of proof is on the Region/District RAP Senior).
4) Are not required to relocate permanently as a direct result of a project as determined by the Region/District DDC. This can be because it is a temporary easement or because the partial acquisition does not require they relocate from the remainder. However, if the remainder has been determined to be an Uneconomic Remnant [49 CFR 24.2(a)(27)], then the occupant on the property is considered a displacee.
5) After receiving a Notice of Eligibility, are notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Region/District agrees to reimburse

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the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility.

6) Retain the right of use and occupancy of the real property for life, or some other fixed term, following its acquisition by the Department.
7) Are not lawfully present in the United States and who have been determined to be ineligible for relocation benefits in accordance with 49 CFR 24.208. The term "citizen," for purposes of this part, includes both citizens of the United States and noncitizen nationals. The term "State" refers to any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of these jurisdictions.
8) Voluntarily sell or donate their property to the Department under the following conditions:
    i. The property is not a specific site that is required for the project.
    ii. The property is not part of an intended, planned, or designated project area where all of the property within the area is to be acquired within specific time limits.
    iii. The property will not be acquired if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
    iv. The owner will be provided in writing of what the Department believes to be the market value of the property.

Please note: The displacement of a tenant on real property that was acquired by the Department through a voluntary transaction is entitled to relocation benefits.

There are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered "displaced person" under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, a tenant-occupant of a property will not be displaced, but is required to relocate temporarily in connection with the project. The temporarily occupied housing must be decent, safe, and sanitary, and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation (10.10.05.00).

Any person that disagrees with the Department's determination that he or she is not a displaced person may file an appeal in accordance with 10.09.00.00.

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10.01.03.03 Tenured Occupants

Tenured occupants are those occupants that meet the minimum occupancy requirement for full benefits. They are:

- 90-Day Owner-Occupant - occupants of the household who have lived in AND owned the residence for at least 90 days immediately prior to the ION.
- 90-Day Occupant - members of the household who have lived in but not owned the residence for at least 90 days prior to the ION.

And

- Business, Farms, and Nonprofit Organizations that occupy the property on the day of the ION.

10.01.03.04 Non-Tenured Occupants

Non-Tenured occupants are occupants that do not meet the minimum occupancy requirement, but may still be entitled to some benefits.
Non-Tenured occupants include:

- Less than 90-day occupant - a tenant or an owner who has not lived in the residence for at least 90 days prior to the ION, but is in occupancy at the time of the ION.
- Subsequent occupant - a tenant or owner who moves into the residence after the ION, but before the Department obtains control of the property.

And

- Business, Farms and Nonprofit Organizations that occupy the property after the ION.

While displacees in residence for less than 90 days are eligible to receive payments upon vacating the displacement property at any time after the Initiation of Negotiations, Subsequent occupants must be in occupancy on the day the Department obtains control of the property (Close of Escrow, Effective Order of Possession, or Effective Right of Entry) in order to receive monetary benefits (e.g., moving for residential and nonresidential, replacement housing payments for residential).

Replacement Housing Payments (RHP) for non-tenured residential occupants (both less than 90 days and subsequent) are based on either their rent or their income [49 CFR 24.2(a)(6)(viii)(C)]. The RHP is paid under Last Resort Housing Provisions. Non-Tenured occupants are entitled to Advisory Assistance.

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Anyone who moves into the residence after the date the Department obtains control of the property is not entitled to benefits under the Uniform Act.

10.01.03.05 Unlawful Occupancy [49 CFR 24.2(a)(29)]

Unlawful occupants are **not** entitled to relocation benefits. Unlawful occupants are considered to be:

- Squatters - someone who occupies the property to be acquired but without the owner's permission.
- A person who occupies the property to be acquired that is owned by another, and has received an Eviction Notice or other court action to cause the property to be vacated.

Per 49 CFR 24.206, "Eviction for Cause" is any person who occupies the real property, and is determined to be in unlawful occupancy on the date of the ION, is ineligible to receive relocation payments and advisory assistance. A person is determined to be unlawful if:

a) The person received an eviction notice prior to the ION and, as a result of that notice is later evicted; or
b) The person is evicted after the ION for serious or repeated violation of material terms of the lease or occupancy agreement; and
c) The eviction was not initiated by the owner for the purpose of denying the occupant the right to receive relocation benefits.

10.01.03.06 Constructive Occupancy

To qualify an occupant for replacement housing payments, the dwelling must be the displacee's primary residence. (Payment of moving costs does not require occupancy.)

Where the cause of the displacee's absence is temporary, displacee shall be considered in occupancy. For example, the dwelling is maintained as principal residence, but displacee is:

1) temporarily employed in another location,
2) in the hospital,
3) on vacation,
4) on temporary military duty, or
5) not able to occupy because of a major disaster.

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Displacee can be considered to be in “constructive occupancy” provided that another party has not established eligibility during displacee’s absence.

Cases of constructive occupancy that differ substantially from examples listed above or cases where another party has occupied property and become eligible during the absence must be decided on an individual basis and be fully documented.

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Table 10.01-A - Explanation of Residential Benefits by Occupancy

Occupancy Type and Time	90-Day Owner-Occupant	90-Day Occupant	Non-Tenured (Less than 90-Day Occupant)	Subsequent Occupant (Post-Offer)
Conditions	Eligible to receive payments upon vacating displacement property at any time after ION	Eligible to receive payments upon vacating displacement property at any time after ION	Eligible to receive payments upon vacating displacement property at any time after ION	Must be in occupancy at COE or date of possession
Advisory Assistance	Yes	Yes	Yes	Yes
Moving Expenses	Yes	Yes	Yes	Yes

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Table 10.01-A - Explanation of Residential Benefits by Occupancy (Continued)

Replacement Housing Payments

A. Price Differential (PD), Mortgage Differential (MD), and Incidental Expenses (IE).	Yes	No	No	No
Limited to $31,000 before LRH rules apply.				
B. Rent Differential (RD)	Yes (in lieu of PD, MD, IE)	Yes	Yes	Yes
Requirement for an Income Certification.	No	Optional - at time of determination	Optional - at time of determination	Optional - at time of determination
Limitations	RD based on economic rent, but cannot exceed the calculated PD If PD is zero, RD is limited to $7,200.			
OR- C. Down Payment (DP) including eligible Incidental Expenses	N/A	Yes If RD is zero, DP is $7,200	Yes If RD is zero, DP is $7,200	Yes If RD is zero, DP is zero

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Cases of constructive occupancy that involve the right to occupy a property prior to initiation of negotiations must also be decided on an individual basis and be fully documented. Proof of the right to occupy property can include a written agreement such as a lease, canceled checks, testimony of witnesses, or partial occupancy such as the storage of property.

10.01.03.07 Consequential Displacement

Consequential displacement is displacement of a person, business, farm, or nonprofit organization from the unacquired remaining property as a direct result of acquisition for the proposed project.

Where only a portion of a property is acquired for public purposes, occupants are eligible for relocation payments only insofar as the Region/District DDC determines that their displacement is a direct result of the acquisition. Care must be taken to avoid creating relocation assistance obligations, expressed or implied, by premature or unnecessary delivery of RAP packages or information.

The benefits for which an approved consequential displacee is eligible are determined by the category of occupancy in which displacee falls.

Examples of possible consequential displacements are:

- Rearrangement of remainder property causes displacement of occupants; e.g., acquisition of a portion of a mobile home park or similar operation that causes displacement on remainder in order to restore functional utility by rearranging interior roads or buildings.
- Acquisition of a significant portion of parking area in a business development causes the business to suffer a substantial decrease in net income. Decrease in income must specifically result from reduced parking and not from other causes.
- A business operation (such as a lumberyard) moves from the part taken to the unacquired remainder. Payment for cost of reasonable and necessary rearrangement of personal property on remainder to accommodate the move is proper.
- Residential or business occupants on remainder are left without utility connections as a result of partial taking. Since the Department cannot force owners to reestablish utility connections, occupants can be considered displaced and eligible for applicable benefits.
- Acquisition of a business causes move from unacquired residence because the business and residence need to be in close proximity. In this case, the District must also find that replacement business location is not available within reasonable distance of acquired property. (Since the

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Department will relocate a person whose residence is acquired to a comparable location, a finding of consequential displacement of business to be near owner's residence may not be made.) Applicable benefits in this case are limited to reimbursement of moving expenses and relocation advisory assistance.

- A business that operates at two sites, one of which is acquired. If the operation at the acquired site cannot relocate within a reasonable proximity of the second site, the Agent must determine if the operation of the unacquired site is detrimentally impacted because the two sites were linked by either operation or reliance.

Whenever an appraisal or acquisition settlement indicates taking of access rights will result in substantial impairment of access to a property, the District will investigate to see if any consequential displacement would occur.

Frequently, the need to relocate a business may not be obvious until the relocation assistance stage. The relocation of a business may be necessary even though there are no damages to the real estate and the appraisal does not indicate a business displacement.

The request from the occupant to be considered as a displacee may come through the appraiser, acquisition agent, or RAP Agent. As soon as the request is made, the RAP Senior should discuss the matter thoroughly with the Appraisal and Acquisition Seniors and then submit the matter to the R/DDC for consideration. The request should include a recommendation from the Region/District Project Delivery Seniors. The displacee should be advised in writing of the R/DDC's determination.

If it is denied, the occupant's right to appeal should be explained fully. All appeals on a determination of consequential displacement must be heard by the Statewide Appeals Board (10.09.07.00).

When design changes result in revised settlement offers that cause consequential displacement, the date of the revised offer is used to determine eligibility. Explanations to potential displacees must be stated so they are aware that potential eligibility cannot be firmly determined until after settlement is reached. If settlement is ultimately based on a plan that will not cause displacement from remainder, the occupant must be immediately informed that there is no eligibility for RAP benefits.

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10.01.03.08 Persons Not Lawfully Present in the United States

The phrase "person not lawfully present in the United States" means someone who is not "lawfully present" in the United States as defined in 8 CFR 103.12 and includes:

1) A person present in the United States who has not been admitted or paroled in the United States pursuant to the Immigration and Nationality Act, and whose stay in the United States has not been authorized by the U.S. Attorney General, and
2) A person who is present in the United States after the expiration of the period of stay authorized by the U.S. Attorney General, or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the United States.

10.01.04.00 Promissory Estoppel

The Doctrine of Promissory Estoppel holds that a promisor is held to a promise if the following conditions are met:

- A promise is made, representing a material fact that something would happen, normally to the benefit of the promisee.
- The promisor could reasonably expect to induce a substantial action on the part of the promisee. In other words, the representation made was such that a person would reasonably believe it.
- The promisee actually takes a substantial action in reliance on the representation, and the promisee substantially changed their position in reliance on the representation.
- A monetary loss, one that is actually suffered or one that will be suffered by the promisee, can only be avoided by enforcement of the promise made.

10.01.05.00 Global Settlements

49 CFR 24 separates the acquisition and relocation activities. The intent is to preclude 'global settlements,' which is the packaging of relocation entitlements with the fair market value to reach an administrative settlement in the acquisition. In addition, 49 CFR 24.207(f) prohibits agencies from requesting that displaced person waive relocation benefits.

Global settlements are not consistent with the requirements of the Uniform Act or 49 CFR 24 in that relocation benefits must be determined in accordance

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with specific fact based criteria. Relocation benefits are a reimbursement of eligible expenses which requires certain actions on the displacee's part prior to receiving a payment. Any settlement of relocation benefits is considered to be in noncompliance with statutory and regulatory requirements.

See 10.03.13.03.

10.01.06.00 Certificates of Occupancy

All persons occupying property to be acquired for a public project must certify to the Department that the displacement property is their primary residence. The Certification requires they list the number of occupants, the length of time the persons have occupied the residence, their status as owner or tenant, and their U.S. Residency status. This is accomplished by completing the Certificate of Occupancy and Receipt of Relocation Benefits (RW 10-25) for owners, the Owner's Certificate of Tenants (RW 10-1), and/or the U.S. Residency Certification (RW 10-44). The information on these forms will determine the occupants' eligibility and status as tenured or non-tenured.

Each form must be acknowledged by the Agent that interviewed the occupants who completed the form.

If an owner cannot provide or refuses to provide necessary information on tenant and lessee occupancies, the RAP Agent shall canvass the property and secure the information directly from the occupants. (Other reasonable methods such as regular or certified mail may also be used.) In such cases, length of prior occupancy may be documented from sources such as rental receipts, canceled checks, and utility bills.

Generally, the same relocation census data (occupancy dates, number of occupants, etc.) required of owners is required for tenants and lessees. At the first personal contact with tenants and lessees, the RAP Agent will confirm any census data (plus rent payments and utility costs) provided by the owner and obtain any missing information. Variations shall be resolved and explained in the RAP Diary.

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10.01.07.00 Moves Prior to Initiation of Negotiation

The Agent shall advise initial owner-occupants and initial tenant-occupants that relocation payments cannot be made until the State has initiated negotiations to acquire the property, except as otherwise provided for in connection with a Notice of Intent to Acquire. Occupants must be made aware that they may lose RAP eligibility if they move before initiation of negotiations.

10.01.08.00 Initiation of Negotiations

The term "initiation of negotiations" is the day the Acquisition Agent presents, in writing, the amount of just compensation (determined to be fair market value) to acquire the property for a public project, defined as the First Written Offer (FWO).

However, if the Department has issued a Notice of Intent to Acquire (NIA), then the date of the letter becomes the date of the ION.

10.01.08.01 Notice of Intent to Acquire

In rare cases, an owner-occupant may need to relocate prior to the anticipated ION. That person should contact the Region/District RAP Senior to determine the time frame for the ION and if the occupants should be issued a Notice of Intent to Acquire (NIA) to preserve their relocation benefits.

Issuing an NIA informs the owner-occupants that the Department will be acquiring their property for a public project, and that they can relocate prior to the First Written Offer without jeopardizing their relocation benefits.

A Notice of Intent to Acquire to preserve relocation benefits is available to tenants or lessees under certain circumstances. See Section 10.03.04.00 for more information.

10.01.08.02 Move Prior to Control of the Property

Any tenured occupant may move from the property to be acquired after the ION and receive full benefits. However, to prevent a non-tenured occupant from moving in and possibly receiving benefits, the Region/District should consider an agreement to rent the property back from the owner and immediately initiate proceedings to complete the acquisition (including condemnation action).

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Non-tenured occupants must be in the property at the time the State obtains control in order to receive any relocation benefits (Table 10.01-A).

10.01.09.00 Relocation Benefits

Eligible displacees may be entitled to Advisory Assistance, Moving Costs, and Replacement Housing Payments.

- Advisory Assistance is available to anyone who occupied the real property when acquired by the Department.
- Moving Costs will be reimbursed for actual, reasonable and necessary expenses and are available to anyone who must move personal property from the real property acquired by the Department.
- Replacement Housing Payments are available for residential occupants based on type and length of occupancy at the time the Department initiates negotiations to acquire the real property.

10.01.09.01 Advisory Assistance [49 CFR 24.205(c)]

The Uniform Act requires that the Department establish a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offers the services described below (see 10.01.09.02).

The specific goal of Advisory Assistance is to minimize the hardships people might experience in adjusting to their relocation. On projects requiring a significant number of displacements, the establishment of a relocation office in a convenient location for the displaced persons is encouraged if the district office is not easily accessible to those displaced.

10.01.09.02 Specific Advisory Services

Relocation assistance advisory services are provided primarily to assist:

- Persons in relocating to "decent, safe, and sanitary" (DS&S) housing that meets their needs and is within their financial means.

- Businesses, nonprofits, and farm operators in obtaining and becoming established in a suitable replacement location.

In addition, Advisory Assistance is intended to emphasize that if the comparable replacement properties are located in areas of minority

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concentration, minority persons shall be given reasonable opportunities to relocate to replacement properties not located in such areas.

A personal interview shall be conducted with each occupant to determine the relocation needs and preferences of each person being displaced. An explanation of available relocation benefits should also be provided at this time. If personal contact cannot be made, the Agent shall document the file to show that conscientious efforts were made and explain why such efforts were unsuccessful.

The RAP Agent is responsible for providing current and continuing information throughout the relocation process, including:

- an explanation of eligibility requirements for relocation payments and the appeal process.
- translation services to adequately explain the RAP Program to persons with limited English proficiency.
- information on the availability, purchase prices, rental costs, and financing terms of comparable replacement dwellings and/or nonresidential sites.
- assurance that no one will be required to move unless at least one comparable replacement dwelling is made available.
- an explanation about the eviction policies to be pursued in carrying out the project.
- an address, in writing, of the specific comparable replacement dwelling used to establish the maximum replacement housing payment.
- inspection of the replacement property to ensure it meets DS&S standards.
- offer of transportation for all persons to inspect housing to which they are referred.
- assistance in locating and obtaining a replacement property, including assistance in completing required applications and other forms.
- assistance in completing the Department's claim forms, and if necessary, a request for a Relocation Assistance Appeal.
- counseling advice as to other sources of benefits that may be available, such as information on Federal and State housing programs, disaster loans, and other programs (e.g., SBA, FHA, HUD).
- Other advisory assistance, as needed, to minimize hardship.

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10.01.09.03 Eligibility for Advisory Assistance

Services shall be offered to all persons occupying property:

- acquired or to be acquired
- immediately adjacent to the acquired real property if the Department believes they may have difficulty adjusting to changes resulting from the acquisition
- that was acquired, and choose to relocate their adjacent residence, business, or farm operation
- after it was acquired by the Department, when displacement causes a hardship for that person because of a critical housing shortage, age, handicap, infirmity, lack of financial means, or other circumstances

No services shall be offered to persons or businesses not certified as lawfully present in the United States.

10.01.09.04 Moving Costs

Any occupant who qualifies as a "displacee" is entitled to payment for the actual moving and related expenses of personal property on the displacement property to the replacement property for up to 50 miles. The cost of relocating real property retained by the owner is the responsibility of the owner.

The payment varies between residential and nonresidential occupants. See Section 10.04.02.00 for residential and 10.05.04.00 for nonresidential.

10.01.09.05 Replacement Housing Payments (RHP)

A residential displacee is eligible for an RHP that may assist them in relocating to a replacement property. The type and amount of the payment vary between tenured and non-tenured occupants, and between owners and tenants.

- 90-Day Owner-Occupants may be entitled to an RHP which is comprised of a Purchase Differential, Incidental Expenses, and a Mortgage Interest Differential.
- 90-Day Occupants and Non-Tenured Occupants (owner or tenant) may be entitled to a Rental Differential <u>or</u> a DP.

The amount of the Purchase Differential and the Rental Differential is determined by preparing a Replacement Housing Valuation (RHV) that ensures there is a replacement property available on the market that is

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comparable to the property being acquired by the Department, and meets the DS&S standards established in the Uniform Act.

Additionally, the residential occupants must meet the following requirements in order to receive the full amount of their calculated RHP:

- Occupy a DS&S residential dwelling, within one (1) year of the eligibility date.
- Spend at least the amount of the comparable replacement property (as determined by an approved RHV) on the actual replacement property.
- Submit a claim for their eligible RHPs within 18 months of the eligibility date.

10.01.09.06 Relocation Payments

RHPs are not payable after death of the displacee, unless there has been some reliance on the part of the displacee's family or business operation [49 CFR 24.403(f)]. Items of personal property needing to be moved may be reimbursed to the displacee's family or estate.

Relocation Housing Payments are limited to $31,000 for 90-day owner-occupants and $7,200 for 90-day/less than 90-day occupants before consideration must be given to Last Resort Housing (LRH).

Moving Costs and RHPs are not subject to income tax, nor should they impact a displacee's eligibility for Social Security.

49 CFR 24.209 specifically states that relocation payments shall not be considered as income for the purpose of the Internal Revenue Code, nor shall the payments be considered in determining the eligibility of any person for benefits under any provision of federal law (e.g., Social Security benefits), except a federal law providing low-income housing assistance.

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10.01.10.00 Relocation Assistance Program Package

The RAP package is a collection of informational material given to eligible displacees to explain RAP. Although content will vary among residential and nonresidential occupants and between tenured and non-tenured, the material must include:

- **Standard Relocation Brochure** - residential, mobile home or nonresidential, as appropriate.

- **Title VI Brochure** (if not received from a prior contact)

- **Notice of Eligibility** - stating kinds of benefits the specific displacee may be eligible to receive. (This will be followed by a Conditional Entitlement Letter outlining the specific amounts of benefits the displacee may be eligible to receive.)

- **U.S. Residency Certification Form** (signed in accordance with 10.01.11.00).

- **Certificate of Occupancy -** appropriate form or forms.

  OPTIONAL INFORMATION:

- **Other Information** - pertinent to the specific type of eligibility involved; e.g., "Fair Housing" pamphlets and Small Business Administration loan information.

The Acquisition Agent delivers the RAP Package at the time of the ION to the owners (or by a RAP Agent who accompanies the Acquisition Agent). The RAP Agent delivers the RAP Package to tenants within 14 days of the ION to the owner.

IMPORTANT: The RAP package must be delivered and an offer of relocation benefits made to initial tenants and lessees within 14 days of the ION, either in person or by certified mail. If delivery is by certified mail, the Agent must make a personal call to review the program and answer questions within 30 days following the ION.

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10.01.11.00 Certification of U.S. Residency Requirement [49 CFR 24.208(a) and (b)]

Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

1) In the case of an individual, that he or she is either a citizen or national of the U.S., or a person who is lawfully present in the U.S.
2) In the case of a family, that each family member is either a citizen or national of the U.S., or a person who is lawfully present in the U.S. The certification may be made by the head of the household on behalf of other family members.
3) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the U.S., or a person who is lawfully present in the U.S. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons who have an ownership interest.
4) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the U.S.

The certification shall indicate whether such person is either a citizen or national of the U.S., or a person who is lawfully present in the U.S.

Certification will be made on RW 10-44 and must be in the RAP File prior to giving relocation advisory assistance and prior to approval of any claims. It should be obtained at the time the owner or tenant signs the Certificate of Occupancy or receives the Notice of Eligibility, whichever is earlier.

10.01.11.01 Benefit Computation [49 CFR 24.208(c)]

In computing relocation payments under the Uniform Act, if any member of a household or owner of an unincorporated business, farm, or nonprofit organization is determined to be ineligible because of a failure to be legally present in the U.S., no relocation payments may be made to him or her. Any payment for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

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10.01.11.02 Validity of Certification for U.S. Residency [49 CFR 24.208(d)]

The RAP Agent shall consider the certification that is signed under penalty of perjury by the displacee to be valid. Documentation will not be requested from the displacee.

If the person signing the Certification for U.S. Residency is unsure if their status qualifies for purposes of relocation benefits, the RAP Agent must refer them to the Bureau of Citizenship and Immigration Service (BCIS) for clarification. The RAP Agent must retain the Certification until BCIS has verified the person and status, then the person can request the RAP Agent return the form for execution. As a matter of practice, the RAP Agent should advise the person in writing, that receipt of the Certification would be required before relocation benefits can be discussed. If no information is received from the person, the RAP Senior should investigate and follow up with a letter advising the person that a nonresponse or an unexecuted Certification within 60 days will be considered as the person's admission that they are not present in the U.S. legally, and thus they will be denied relocation benefits.

10.01.11.03 Documentation [49 CFR 24.208(e)]

Since the certification is signed under penalty of perjury, it will not be necessary to verify the validity of the information provided by the displacees. However, should the displacee request assistance in determining if all occupants are legal residents, the agent can provide information on what documentation is considered proof of legal status. The displacee can provide any documentation they have on hand and ask the Agent to determine if it meets the requirements established by BCIS (see Exhibit C on the R/W RAP Intranet). If the displacee has documentation that is not on the list, they can pursue the matter directly with BCIS to determine their legal status, and, once their legal status is verified by BCIS, the displacee can sign the Certification. Documentation will not be requested from the displacee unless the displacee has volunteered the information to ensure they meet the requirements. The certification will be kept in the RAP file, and the RAP diary will note that the Agent obtained a signed document. The diary should also note if the number of legal occupants is less than noted in previous documents (e.g., Occupancy Data Sheet, Certification of Occupancy).

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10.01.11.04 Denial of Benefits [49 CFR 24.208(g)]

No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the U.S., unless such person can demonstrate to the displacing agency's satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the U.S., or is a person lawfully admitted for permanent residence in the U.S.

Persons not lawfully present in the U.S. are not eligible for relocation benefits or advisory assistance.

10.01.11.05 Return of Payment

The claim form for relocation benefits signed by the displacee shall state that only lawful U.S. residents are entitled to relocation benefits.

If within 18 months after the following dates the Department determines that the displacee's certification was invalid, the displacee will be contacted and advised that all relocation payments must be returned.

1) For tenants, the date of displacement.
2) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

See 10.08.13.00 for information on how to process a request for the return of the payment.

10.01.11.06 Hardship Situations

In extremely rare circumstances, the denial of benefits to an uncertified occupant may create a severe hardship on the remaining certified occupants. The eligible occupants may submit a claim for benefits for the uncertified occupant and request that the denial of the benefits be reconsidered because of their particular situation. In order to claim benefits, the certified occupant must demonstrate to the Department's satisfaction that denial of the additional benefits to the uncertified occupant will result in an extreme hardship to the remaining occupants, particularly the spouse, parent, or child who is a legal resident. The Region/District DC R/W or designee will determine if the displacee's situation is a hardship. Hardship is defined as:

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1) Significant and demonstrable adverse impact on the health or safety of the spouse, parent, or child; or
2) Significant and demonstrable adverse impact on the continued existence of the family unit of which the spouse, parent, or child is a member.

Note: Income alone will never be considered as the sole criteria in determining hardship.

10.01.12.00 Coordination of Right of Way Activities

As mandated by the 49 CFR 24, all relocation activities must be coordinated with project work and other displacement causing activities (e.g., appraisals, acquisition, and property management).

To ensure that persons displaced receive consistent treatment, and the duplication of functions is minimized, the following sections explain the various roles and responsibilities of FHWA, HQ R/W, and the Region/District functional Senior for Appraisals, Acquisition, Property Management, and RAP.

10.01.12.01 Responsibilities of Headquarters Right of Way

Right of Way (HQ R/W) Project Delivery Office Chief, through the Senior Right of Way Agent for Relocation Assistance:

- Develops policy.
- Establishes procedures.
- Conducts Quality Enhancement Joint Reviews (QEJR).
- Evaluates Region/District performance.
- Provides statewide continuity and leadership, technical assistance for solving unusual problems, and training programs.
- Acts as liaison with the Federal Government, other states, and other State agencies.

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10.01.12.02 Responsibilities of Region/District

The Region/District Division Chief, through the Senior Right of Way Agent responsible for the Relocation Assistance Program:

- Plans and provides all relocation services and payments.
- Provides staff.
- Provides funds.
- Sets project priorities.
- Trains staff.
- Manages resources.

(See 10.01.13.00 for specific activities related to managing the RAP Branch.)

10.01.12.03 Region/District Functional Responsibilities

All R/W Agents who have public contact should have sufficient knowledge of RAP to explain the benefits and how to obtain them. At the very least, they should know whom displacees should contact to obtain this information.

Anyone who contacts occupants of property that might be acquired by the Department should ensure the following message is conveyed (preferably in writing):

> *"You may be eligible for possible relocation payments if you are in occupancy of the property at the time the Department initiates negotiations. You should contact the Right of Way Office immediately if you plan to move before receiving a written offer to acquire your property."*

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10.01.12.04 Responsibility of the Region/District Appraisal Branch

- Give accurate basic relocation information to all potential displacees encountered during the appraisal process.
- Complete the Parcel Occupancy Data Sheet (RW 7-2) at the first meeting or contact with the owner when a primary or alternate appraisal indicates a displacement of people, business, or personal property. Provide the form to the RAP Senior within 24 hours of the initial inspection of the property.
- Inform the RAP Unit of any special relocation problems involving either people or personal property.
- In situations involving appraisal of commercial, industrial, or other properties that include valuation of machinery, equipment, fixtures, and miscellaneous items of realty, provide information on these items as part of the appraisal report in accordance with instructions in the Appraisal Chapter.
- Require that goodwill appraisers indicate in the goodwill appraisal the items and amounts that are or might be a part of a reestablishment or an in-lieu relocation benefits payment.
- Complete a Machinery and Equipment appraisal of trade fixtures and other personalty that will be acquired by the Department. All personalty not acquired must be relocated, so it is imperative the Appraiser works closely with the RAP Senior to determine the appropriate classification of all personalty.
- Notify the RAP Unit of any alternate appraisal or damage element that could result in displacement of people or businesses not contemplated by primary appraisal or readily identified by reference to partial acquisition requirements.
- Show economic and/or actual rental rates for all improved properties in fair market value appraisal (see Appraisal Chapter). Show an unsupported estimate of fair rental rate (economic rent) in market value appraisal for all owner-occupied dwelling units.
- If the District has a policy of initially notifying displacees of monetary benefits under all replacement options, it may also require that supported economic rent for owner-occupied dwelling units be shown in market value appraisal. In these cases, the requirement for support of economic rent determination is the same as for tenant-occupied units.
- Make a determination of real property versus personal property (49 CFR 24.303). This is critical because all payments for moving and related expenses for displaced businesses relate to the moving of personal property. Neither the Uniform Act nor the implementing regulations provide payment for moving real property. The Uniform Act places the

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determination of real property under State law, and requires that all real property be appraised and acquired as part of the real estate being acquired.

The RAP Agent will interview all business displacees immediately after receiving the Parcel Occupancy Data Sheet. To increase the effectiveness of the interview, the RAP Agent may accompany the appraiser during the initial and/or subsequent inspections. (See 10.05.02.00 for additional information.)

10.01.12.05 Responsibilities of the Region/District Acquisition Branch

- At time of initiation of negotiations for the property, personally deliver a RAP Package (10.01.10.00) to each owner-occupant with whom negotiations are conducted and secure a receipt for each Package delivered.
- Explain RAP procedures and benefits to potential displacees using the RAP Package as a guide.
- Obtain a Certificate of Occupancy (RW 10-25) and the U.S. Residency Certificate (RW 10-44) from the owner-occupants.
- Secure a completed Owner's Certification of Tenants (RW 10-1) from owner of the property immediately when negotiations are initiated.
- Contact the RAP Branch prior to completing a goodwill settlement.

  Note: None of the Certificates regarding occupancy need to be signed if it can definitely be established that no personal property will be moved and no relocation benefits payments will be paid. However, because RAP valuations are dependent on proper information, verification of size and composition of family is mandatory.

- Coordinate service of 90-Day, 60-Day, and 30-Day Notices to occupants of properties with the service of the Order of Possession when the Department has initiated condemnation action.
- Ensure a Relocation Impact Document (probably a RIM) is requested when a request for early acquisition due to a hardship is received. Approval of the hardship is contingent upon review and approval of the RID by the Environmental Branch.

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Provide the RAP Senior with the following information and documentation within two working days of receipt:

1. Certificate of Occupancy (RW 10-25).

2. United States Residency Certificate (RW 10-44).

3. Owner's Certification of Tenants (RW 10-1). If the owner or owner's agent refuses to provide the Owner's Certification of Tenants, contact the RAP Unit immediately.

4. Date the Department has control of the property (e.g., Close of escrow, effective Order of Possession, executed Order of Condemnation).

5. The final price paid to the owner (e.g., R/W Contract, Administrative Settlement, Stipulated Judgment).

6. List of all items purchased and/or paid to relocate in lieu of purchase, and any property included in the appraisal but retained by the owner.

The Acquisition Agent must work with the RAP Senior with the status of the negotiations on all properties, especially complex properties that will entail relocation of personal property. The intent is to afford the RAP Unit an opportunity to become familiar with potential large scale business relocations prior to completion of acquisition and possible commencement of a move. An appropriate notation on Certificate of Occupancy or separate notice may accomplish this. The RAP Agent should be afforded an opportunity to accompany the Acquisition Agent to acquire property or otherwise be allowed to inspect property for the purpose of determining scope of potential relocation problem.

The Relocation Assistance Branch must work closely with the Legal Office handling any eminent domain actions in order to prevent global settlements that include relocation benefits payments. In the rare cases when the global settlement includes relocation benefits payments, FHWA will participate if the settlement states the amount of funds that would have been paid out in relocation benefits payments by category, and the RAP file clearly demonstrates that the displacee was advised that any deposit made in excess of the acquisition settlement (including goodwill, inventory, machinery and equipment) will be credited toward relocation benefits payments. Care must be taken to code the portion of relocation benefits payments appropriately because acquisition payment is subject to taxation and capital gains.

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10.01.12.06 Responsibilities of the Region/District Property Management Branch

- Inform the RAP Senior, in writing within 24 hours of first knowledge, of vacation of State-owned property by any RAP eligible.
- Coordinate requests for 30-Day, 60-Day, and 90-Day Notices with eviction proceedings (e.g., 30-Day Notice to Vacate, 3-Day Notice to Quit) sufficiently in advance to ensure orderly relocation of all occupants.
- Inform all noneligible tenants occupying premises leased under Master Tenancy that they are not eligible for relocation benefits payments.
- Provide Title VI Survey Form RW 10-1, and Title VI Brochure to tenants of state-owned property.
- Coordinate sale of excess land or building improvements with RAP Senior to ensure that occupants receive required notices and any relocation payments due.
- Coordinate increase of rental rates with RAP Branch to ensure that increases for RAP-eligible occupants are in accordance with rental policy for residential rental rates. Increases in rental rates for 90-Day Occupants may drastically affect their RHP entitlements.
- Inspections of the real property just prior to or at the close of escrow to determine if the acquired items of realty are still on-site, and explain to displacees who will remain in occupancy that they are responsible for maintenance of the property until they vacate.
- Describe Grace Period, if any, for businesses renting from the State, in the rental agreement.

10.01.13.00 Single Agent ($10,000 and Under)

The Single Agent ($10,000 and Under) allows one agent to appraise and acquire parcels, usually partial acquisitions valued at less than $10,000.

Occasionally, the Single Agent will encounter the need to relocate personal property from the part-take to the remainder, which requires a payment under the relocation assistance program. This may be a permanent relocation; or in the case of a temporary construction easement, a temporary relocation requiring a second move back to the original location after construction work is complete.

The move of the personalty is paid with the "Self-Move Agreement and Claim Form for Under $10,000 Acquisition" (SMA $10K), Form RW 10-47.

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The document only needs to be completed when personal property such as a swing set, a cord of wood, the contents of a shed, or other personalty needs to be moved away from the property needed for the project. If the need for the property is temporary in nature, e.g., a temporary construction easement for a soundwall, the displacee should be paid to move the personal property back upon notification by the agent.

To expedite the relocation process in conjunction with the appraisal and acquisition process, this minimal relocation payment can be paid in advance of the move, but must be paid separate from the acquisition payment (which may be paid directly out of escrow). It is important to note the ownership of the personal property, since some residential and nonresidential sites are occupied by a tenant or lessee. However, the SMA $10K process and form can still be used by the Single Agent who would then ensure payment for the realty is paid to the owner (nonoccupant) and payment for the relocation is paid to the occupant.

The SMA $10K Form includes required clauses governing when the relocation must occur, the mandatory 90-Day notice, and liability clauses. Once the document is signed by the displacee (claimant) and the Single Agent (Right of Way Agent), it can be processed for payment.

The need to incorporate this form into the existing acquisition process is based on FHWA's requirement that acquisition and relocation activities be kept separate, and that no payment for relocation be included in an acquisition payment.

10.01.14.00 Region/District RAP Branch

The Region/District RAP Senior should ensure sufficient staff are assigned to the branch and that there is adequate time to spend with each displacee to ensure the appropriate level of advisory assistance is provided and that claims are processed timely.

RAP Seniors may also be responsible for the preparation of the Relocation Impact Documents (RID) and the R/W Planning Documents (10.02.00.00), and Replacement Housing Valuations (RHV) (10.06.00.00).

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10.01.14.01 Training

Agents assigned to the Relocation Branch should receive adequate training before they have the responsibility to relocate any residential or noncomplex business displacee. Agents assigned to the more complex relocations (e.g., major commercial establishment) or ancillary activities (RHVs, RIDs, or public hearing presentations) should be at the Associate level, have several years of RAP experience, and have received the appropriate advanced training sessions.

The RAP Senior should ensure all staff have adequate training and experience to accomplish assigned tasks in a professional manner.

10.01.14.02 Right of Way Certifications

The RAP Senior must provide information to the Region/District functional unit responsible for finalizing the Right of Way Certification for state highway projects. The RAP Senior must verify that all displacees have vacated and that they were relocated in accordance with applicable Federal and State laws and procedural requirements. See Certification Chapter for a full discussion.

10.01.14.03 Policy and Procedural Manuals

The RAP Senior should ensure each RAP Agent has the current Relocation Assistance procedures outlined in the Relocation Chapter with Exhibits and Forms (with the capability to download the current form onto their computer system), along with any other written guidance and instructions.

The RAP Senior should also keep a stock of current Relocation Assistance Brochures (Residential, Business, and Mobile Home) for use at public hearings, public meetings, and the first RAP call.

Another important tool is the Right of Way Intranet Web site which has a RAP Web site with the newest information on policies, procedures, and interpretations. Agents should be encouraged to utilize the Internet throughout their relocation career. Additional information on 49 CFR Part 24 is available from FHWA.

Most importantly, the Senior Agent is responsible for reviewing the RAP Agent's work products and the parcel files to ensure they comply with all applicable laws and policies, and that the work is being done on time and in accordance with the project schedule.

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10.01.14.04 RAP File

The RAP Branch must maintain a separate file for each parcel and for each entity (e.g., apartment, multiple households, sublessee) that is considered a displacee. A file should also be kept for each person that has been determined not a displacee because of their U.S. residency status, length of time in occupancy, unlawful status, or other reason. RAP Files are numbered with the parcel number and a subnumber to indicate the number of displaced units on the parcel. Review 6.02.03.00 on parcel numbering.

RAP File Parcel Numbering Example:

Owner who has personal property on the site: 123456-01
Tenant who occupies the property: 123456-02
Second and separate household as determined by the agent: 123456-03

The Parcel Occupancy Data Sheet initiates the RAP file; however, any previous correspondence to or from the displacee regarding RAP or their possible status should be included in the file as soon as it is created.

The RAP file shall contain the following information:

- RAP Diary - see below for further details.
- Certificates - of occupancy, of income, and of residency status.
- Correspondence - to and from the displacee or pertaining to the displacement, including Notices of Eligibility, Conditional Entitlements, and Notices to Vacate.
- Replacement Housing Valuation report for all residential units, or the Certified Inventory and photos for a nonresidential unit.
- Claims - copy of claim form and supporting documents.

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10.01.14.05 RAP Diary

Standard Relocation Diary Form RW 10-3 shall be used to maintain a complete and legible diary that can be clearly reproduced. Each diary entry must be entered in pen or typed. Preprinted diaries or diaries maintained in a word processing program are acceptable documents. The use of lead pencils and felt pens should be avoided. Each diary entry must be dated and signed, not initialed.

The following are mandatory entries that will ensure a complete chronological account of the relocation activity:

- Date case was assigned to RAP Agent.
- Date, status, and pending required action when transferred from Agent to Agent.
- Date and place of each personal contact, list of persons present, and particulars of the discussion.
- Date and particulars of all significant phone calls.
- Date of first RAP Call, including delivery of the RAP Package, and a statement that the relocation program was explained and assistance was offered.
- Amounts of relocation payments offered. Copies of benefit letters delivered or mailed are included in the file.
- Claimant's response to offer of assistance (accepted or refused) and relocation intentions, if known.
- Date claim forms were delivered and kinds and amounts of payments involved.
- Date payment amounts are reviewed. If revised, the date claimant was advised of change in entitlement and amounts involved.
- An entry to the effect that replacement housing or rental replacement housing valuation was current as of date displacees moved out. Case file will contain written backup that valuation is current.
- Addresses and prices of replacement properties offered to displacee and methods used to transmit information.
- Dates correspondence or documents were received or transmitted.
- Delivery dates of official notices, such as 90-Day Notice.
- Diary entry when a moving claim is processed indicating circumstances of vacation; e.g., voluntary self-relocation, eviction, subject to 90- or 30-Day Notice, advisory assistance used.
- Relocation Assistance Program Senior sign-off for closed files (10.01.14.08).

Relocation diaries are confidential and should not be provided to the displacee or any other parties. However, during eminent domain actions or a

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relocation assistance appeal, diaries in whole or in part can be requested by the displacee, an attorney, or an interested party. Prior to providing copies of any diaries, the agent should obtain approval from the local Legal Office. (See 10.01.14.09.)

10.01.14.06 Records

All Relocation Parcel Files must be maintained in sufficient detail to demonstrate compliance with 49 CFR 24.9(a). The files must be retained in the region/district office for at least three (3) years after the latter:

- When each displacee receives the final relocation payment to which they are entitled, or
- The final voucher for construction is submitted.

10.01.14.07 Tickler Files

The RAP Senior must maintain a database or tickler system to assure, among other things, that all potential displacees are notified prior to the expiration date of any period in which they must:

- Occupy DS&S housing.
- File a claim.
- File an appeal.

All notices should provide ample time for displacee to act. The tickler file will also provide a reminder to make a mandatory six (6)-month follow-up call.

It is strongly suggested that the Agent send the displacee a letter detailing time periods and criteria to receive their full entitlements at the time they vacate the state-acquired property.

Time constraints for purchasing and occupying replacement dwelling vary for owners and tenants. See Section 10.08.02.00 for a detailed explanation of the various time constraints for purchasing or occupying replacement properties and/or filing a claim.

The District may approve time extensions for residential owners and tenant-occupants for good cause.

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10.01.14.08 RAP File Closeout

The Senior Right of Way Agent in charge of the RAP Unit shall review every closed relocation case file in a timely manner to determine that:

- All benefits were fully paid.
- Certified Escrow Closing Statement was reconciled with amounts the Department placed into escrow.
- Supporting payment documentation was placed in the file or adequate diary entries were made to support nonpayments.
- Payments were made in a timely manner.
- Relocation assistance advisory service was offered and given, if requested.

The RAP Senior completes the file closeout by signing the front page of the diary, certifying to its adequacy. The Senior should note and correct any inadequacies and give appropriate instructions to ensure future compliance. Relocation File Closeout Checklists are available to assist the Relocation Senior (see Exhibit 10-EX-1).

The reviewing RAP Senior must not certify the adequacy of any case file in which they have personal knowledge or relationship with the displacees, or if they were the RAP Agent for any significant period of time. In these instances, another Senior or Supervising Right of Way Agent must review the file.

10.01.14.09 Confidentiality of Records [49 CFR 24.9(b)]

Records maintained by the Department are confidential regarding their use as public information, unless applicable law provides otherwise.

The Public Records Act favors disclosure of public records unless there is a specific exemption against disclosure. Since the Act requires the Department to respond to a request for information within 10 days, even if the request falls within one of the exemptions, it is important not to ignore such a request. See "Public Access to Department Records and Personal Information" for additional information on Public Records Act requests.

Care must be taken to ensure that confidential information such as tax records, Social Security information, and Title VI surveys are not retained in the parcel file.

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10.01.14.10 Reports [49 CFR 24.9(c)]

The Department submits an annual report to FHWA on its real property acquisition and displacement activities.

The HQ R/W Planning and Management Office prepares the Statistical Report Form for the 12-month period of each calendar year. The data is gathered from various tracking systems (e.g., ROWMIS, Advantage, PMCS) and verified with the region/district RAP Senior prior to its submission to FHWA.

To ensure accurate reporting, the RAP Senior must maintain the ROWMIS database that tracks the number of residential and nonresidential displacees, the total of their relocation payments, the date of their move, and any funds paid that are classified as Last Resort Housing (LRH) (above the regulatory limits).

10.01.14.11 Accounting Information

The RAP Senior is responsible for forwarding accurate RAP payment cost information to Accounting through Planning and Management (P&M).

To ensure all RAP payments are properly coded, the RAP Agent completes a separate Form RW 10-5, Relocation Cost Summary, for each claim scheduled for payment; e.g., moving expense claim and subsequent rent supplement payment.

Instructions for completing the form are printed on page 2 of the form. The need to provide the proper Review Indicator(s) on the form is of particular concern since this box is used to highlight certain payments where coding errors can occur.

10.01.15.00 Employee Relocation Assistance Program (ERAP)

A Department employee may receive his or her actual and necessary moving and relocation expenses, in accordance with Department of Personnel Administration (DPA) rules and limitations, whenever such employee is required to change their place of residence because of a change in assignment, promotion, or other reason related to duties with the Department.

Limited benefits may be extended to new hires as a recruitment incentive for individuals accepting employment from out of State.

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Division of Accounting is the primary administrator of the ERAP. Accounting provides employees with relocation rules and specific authorization forms upon notification of employee relocation from the hiring manager (Form ASC-3001). Accounting also provides assistance to employees on interpretation of DPA rules and IRS fringe benefits taxability in regard to moving related expenses such as temporary living expenses and reimbursement costs for the sale of old residences. All claims for payment are submitted to Accounting for payment.

Right of Way is responsible for those relocation services that are real estate related. These include:

1. Counseling services to assist in the sale of the present home and/or purchase of a new home.
2. Providing assistance in locating a home or apartment in the new location.
3. Furnishing an estimate of value for use in selling the present home and/or purchase of a replacement home.
4. Providing available information regarding the new community.
5. Counseling and assisting in the moving of one's personal property.

Each Region/District Right of Way office must appoint an ERAP Coordinator - usually a RAP agent.

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10.02.00.00 - RELOCATION IMPACT DOCUMENTS

10.02.01.00 Relocation Planning

49 CFR 24.205 requires each State Highway Department plan projects in a manner that ensures the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed prior to initiating any right of way activities, and the project reports (PR, PSR, PID, ED, etc.) shall address the complexity and nature of the anticipated displacements.

The RAP Branch is responsible for the preparation of the Relocation Impact Document (RID) that addresses these potential impacts.

10.02.02.00 Purpose

The purpose of the RID is to evaluate the project's impact on residences, businesses, farms, and nonprofit organizations. The RID will include data on the following:

1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.
2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.
3) An estimate of the number, type, and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.
4) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes, or small businesses with limited financial resources and/or

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few alternative relocation sites should include an analysis of business moving problems.

5) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

The RID studies the direct impacts of the project and provides the:

- Project Manager with information on relocation issues that will impact the project delivery schedule.
- Environmental Planner with data to analyze the project's impact on socio-economic issues.
- Right of Way Manager with an estimate of the resources needed (schedule, PYs, capital dollars) to deliver the Right of Way Certification.

10.02.03.00 Environmental Document

The Environmental Planner is responsible for analyzing the project's impacts on:

- Land use - development trends, community growth.
- Farmland - types of agricultural land in accordance with the Williamson Act.
- Social issues - changes to the community patterns.
- Economic issues - impacts to a community's tax revenues, employment, or accessibility.
- Relocation issues - types of occupants and projected needs.

(See 10-EX-8.)

It is the latter issue that will generate a request from the Project Manager or the Environmental Planner for the RAP Senior to prepare the RID.

Caltrans Environmental Handbook Volume 4, "Community Impact Assessment," delineates the respective roles and responsibilities of the Division of Environmental Analysis (Environmental), including the specific collection of data. The Environmental Planner is responsible for information on population, tax revenues, growth rates, ethnicity, income levels, etc.

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The requirements for the RID are explained in detail in Table 10.02-A, but as a minimum must always include:

- The number of occupants displaced,
- The typical vacancy rate for each type of displacement (e.g., 5% vacancy rate for multi-residential units),
- Identification of any special needs such as elderly or handicapped displacees, and
- A statement that the Right of Way office has sufficient resources (experienced staff and capital dollars) to complete the relocations in accordance with policies and procedures.

The data provided in the RID will enable the Environmental Planner to address pertinent issues and develop a mitigation plan as needed.

On occasion, Environmental may request additional data from Right of Way to be used in the analysis of the project. This may include:

- Real estate market trends (e.g., increase or decrease in affordable housing).
- Types of residential units available in the displacement area and potential replacement areas.
- Demographics for the displacement and replacement areas [e.g., low income (below poverty), minority, elderly, handicapped].

Right of Way should provide whatever information is available, but the data should not be included in the RID unless it is significant to the availability of replacement housing (e.g., low income per surveys or census data may indicate the need for Section 8 housing or excessively high Rent Differentials). Clarify in the report whether low income is 30% of rent, or below poverty level for the report.

Note: Environmental will study the impacts on low-income housing stock.

10.02.04.00 Relocation Impact Documents

The Relocation Impact Document is prepared in support of the Environmental Document and will be completed at the draft (DRID) and final (FRID) stages of the project.

The RID format is dependent upon the complexity of the project as determined by the number of displacements and the availability of replacement property.

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A Relocation Impact Memorandum (RIM) is prepared if there are fewer than ten displacements and there is ample replacement property. The standard format for the RIM is a memorandum (10-EX-3).

A Relocation Impact Statement (RIS) is prepared if there are ten or more displacements and ample replacement property is available. The standard format is 10-EX-3A, but can be a narrative report if needed.

The Relocation Impact Report (RIR) is prepared if there are complex relocations because of available replacement property, displacee special considerations, or major impacts to minorities, the elderly, large families, and/or persons with disabilities when applicable [49 CFR 24.205(a)(1)]. The standard format is 10-EX-4, but this should be used as a checklist when reviewing the issues with Environmental to determine what information is needed and how the data will be collected. The actual report may be in the form of a checklist or a full narrative report. See Table 10.02-A for minimum requirements for each type of document.

Generally, a draft RID (DRID) that is prepared for the draft Environmental Document (ED) will require a final RID (FRID) when the project alternative has been selected and the final environmental report is prepared. The same applies for a draft and final RIR. However, it is possible that a draft RIR that considers several alternatives that cause many different types of displacements, may only need a final RIS when the project alternative is selected, which impacts only a few occupants.

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Table 10.02-A

Minimum Requirements for all Relocation Impact Documents (Draft/Final) (Statement/Report – Checklist or Narrative)

Section	Attachments
Project Description	• Project Location Map • Project Limits Map • Project Alignment Map • Project Summary Sheet
Displacements: A full discussion of the type of displacements, replacement property, plans to mitigate relocation problems or address special needs.	• FRIR Data Sheet and Recommendation Summary that includes, as appropriate, a "No Re-rent Statement," "Field Office Statement," or "Appraisal/Acquisition or Relocation Priorities" • Number of Displacement Units • Type of Residential Units Displaced (Multi-Res, SFR, Apt, MH, etc.) and estimated value/rental rate • Type of Nonresidential Units Displaced (Commercial, Agricultural, Nonprofit) and estimated size of the operation (e.g., Mom-and-Pop retail store, small business) • Survey of Displacees (Data Analysis) if interviews conducted • Chart arraying the residential units by type and price in the displacement area against the replacement area, including subsidized housing
Project Relocation Resources	• Identification of Special Problems • Proposed Solutions for Noted Problems

10.02.05.00 Minimum Requirements

The minimum requirements for each RID are explained below:

1) Identification of the project [Co., Rte., PM, and description] including a general location map.
2) Identification of the displacement area and the potential replacement area, by alignment.
3) Number and type of occupants that may be displaced by each alignment.
4) Availability of replacement property by type and a statement of its affordability.
5) List of all sources of information, including interviews with potential displacees (usually conducted for final documents only).

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6) Statement of how relocation will occur in a manner that minimizes the hardships on the displacees.
7) Project map showing the alignment.

10.02.05.01 Project Identification

The project location and a description of the project must be included in the RID. Examples:

6-FRE-180-39.58/43.93 (EA 420500) Widening of a conventional highway.

10-ST-219-.2/7.8 (EA 0A8700) Widening of a two lane conventional highway to a four lane conventional highway. Alternative 3B (maintain the existing centerline), Alternative 3C (shift the centerline north). Alternative 4 (no build).

This information is readily available from the Project Manager and should be copied verbatim from the PID.

A map of the general area showing the proposed project alignment must be attached.

10.02.05.02 Displacement and Replacement Areas

The impact of the project cannot be determined until the displacement area has been defined. This should be a joint effort by Right of Way, Environmental, and the Project Manager.

Right of Way determines the potential replacement area (i.e., local housing market). Adjacent project neighborhoods should be considered first; larger areas may be used if an explanation is included. The most important criterion for defining the replacement area is homogeneity of type (single family and/or multifamily) and price range of the housing. Other important information to consider are the characteristics of the resident population of an area including tenure, location, income level, age of structure, employment type, and availability of transportation.

A typical method of identifying the replacement area is by city, a grouping of census tracts, part of a city (neighborhood), or other recognizable area.

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10.02.05.03 Number and Type of Occupants Impacted

The total number of households, businesses, farms, and nonprofits must be included in the document. Residential households must be classified as single-family, multi-residential, or mobile home; and by the number of owner or tenant occupied. Businesses must be classified by type (e.g., commercial, retail, industrial).

Draft reports do not need an exact count of the number of persons being displaced. Census information for the displacement area can provide the average number of persons per household (e.g., 2.6).

Existing and potential rental rates, fair market values should be discussed in its relationship to the replacement area (e.g., the average rental rate for the apartment complex impacted is within an acceptable range of the rental rates available in the replacement area). The data can also be presented in a table or spreadsheet.

Refer to Volume 4, 4-7.3 through 4-7.5, regarding Environmental's issues and responsibilities as to affordable housing, demographic characteristics, and senior citizens/disabled persons.

If at any time during the preparation of the draft, Right of Way and Environmental determine that a significant number of the displacees have special needs as to finding suitable replacement property, personal interviews must be conducted when completing a survey developed from 10-EX-5. Surveys cannot be mailed. These special needs of the displacees must be discussed in the document. If the displacement area negatively impacts a significant number of handicapped, elderly, or low-income (below poverty) residents, or residents in low-income housing, then the RIS cannot be used. A full narrative discussion on how these special needs will be addressed in the relocation activities must be included in the RIR. Interviews must be conducted with all potential displacees who have special needs to ensure that issues are fully identified and a plan for assistance is prepared.

If the proposed project is considering more than one alternative, the document must identify the number and type of occupants by each alternative. A table or checklist can be used to simplify the data.

Charts listing the properties by Assessor's Parcel Number (APN), address, owner's name, or impacts should be retained in the working file and not included in the RID.

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10.02.05.04 Availability of Replacement Property

Information on available replacement property by type (residential, commercial, and agricultural) must be included in the report. If a statement is being prepared because there are few displacements, then the document can state "there are ample single family residential replacement properties on the market similar to the displacement properties, or similar wording for commercial properties."

If there are limited replacement properties available by type or cost, then an RIR must be done which will include a plan on how the relocation activities will address this issue. Relocation payments over the last resort housing limits may mitigate affordability issues. Scheduling the relocations over a longer period of time can mitigate low vacancy rates.

10.02.05.05 Contact with Data Sources, Property Owners, and Displacees

Good public relations are critical to a project's success. The Project Manager and/or Environmental Planner will keep the local agencies and the community aware of the project. Public meetings and public hearings are conducted throughout the process. Right of Way staff may be asked to participate to explain the Relocation Assistance Program.

Contacts with local agencies, community, and other impacted groups for information to be included in the RID should first be coordinated with the Project Manager and/or Environmental Planner.

There are two types of data sources, primary and secondary, to consider when analyzing displacement impacts. A "primary" data source is information obtained directly from the potential displacee whether it is through surveys or public meetings and hearings. A "secondary" data source is information obtained from civic or community organizations, governmental agencies (e.g., housing authority, health department), schools, churches, nursing care programs, as well as census tract data, real estate statistics, periodicals, GIS (Geographic Information Systems), and the Internet's World Wide Web. "Secondary" data sources are the preferred method for analyzing displacement impacts during the relocation impact document phase.

Contact with owners or tenants should be minimal because of the relocation impact document's general nature. Census data and other sources of gross data, including windshield surveys, can be used. Only in distinct problem

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areas when it is necessary to obtain essential data not available from any other source should the Region/District contact owners or tenants. When problems are identified in the RIR, the Region/District should consider the possibility of establishing a field office (10.02.13.00) as one of the methods for providing advisory assistance during the right of way phase.

If relocation problems are identified early in the process, personal surveys and interviews with the potential displacees may be conducted for the draft Relocation Impact Report, and must be conducted for the final Relocation Impact Report (10.02.05.07.). Surveys cannot be mailed during the draft process. Additionally, Relocation Assistance brochures and "Your Property, Your Transportation Project" cannot be provided during the environmental phase.

Census data may be used for gross information (e.g., average persons per household). Other information (average vacancy rate in the displacement area) can be obtained from newspaper advertisements, telephone and postal surveys, multiple listing services, and real estate and rental offices. Information published by governmental offices (e.g., HUD, HCD, FHA, and Section 8) may be used to supplement other replacement housing data.

One of the more likely sources of data is through a field review of the displacement and replacement neighborhoods.

At a minimum, the document will list all external sources, including personal interviews, used to obtain the data (rental rates, vacancy rates, average number of persons per household) that is included in the document.

10.02.05.06 Relocation in Compliance with Uniform Act

Each document will state the manner in which relocation will occur that minimizes the hardships the displacees may incur. This includes the level of advisory assistance, the possibility of a temporary field office during relocations, requesting assistance from HUD in finding affordable housing, and more lead time to complete the relocations.

At a minimum, each document will include the following statement:

> "All activities will be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Relocation resources shall be available to all displacees without discrimination."

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The Federal Highway Administration (FHWA) Uniform Relocation Act Benefits description is included in every ED as Appendix A. It does not need to be included in the RID. However, the RAP Senior is responsible for providing Environmental with the most current Exhibit. Headquarters Right of Way will ensure the Exhibit in this Chapter is current and provide copies to HQ Environmental.

10.02.05.07 Survey Methods

The survey format should be reviewed with the Environmental Planner to ensure additional questions are added that will provide the Environmental Planner with data needed to analyze the impact of the project. The survey for the RIR should not include questions about the potential displacees' desire or lack of desire to relocate, nor anything about their preferences for location, type of property, or preferred amenities.

The format of the questionnaire should be carefully considered. The sequencing and phrasing of questions can be critical not only to the type of response, but to the quality of response as well. This is particularly true of cross-cultural surveys and mail outs.

If possible, liaison with owners by personal or telephone contact (not by letter) through reverse listing sources should be made prior to tenant contact to explain the survey's purpose and obtain owner permission for tenant interviews. Absentee owners are never asked to complete the survey. Owners' refusal to allow contact with their tenants must be documented in the study.

If surveys are mailed to potential residential displacees during the final phase for the Relocation Impact Report, a cover letter (10-EX-6 NEW) must be attached explaining the purpose of the questionnaire. Follow-up on nonrespondents may be by phone or personal contact, within a reasonable time (between 7 and 14 days).

If personal contact is made, personnel making the contact must be fully briefed to answer questions and explain the survey's purpose. Regardless of the technique used, the purpose of the survey must be clearly stated to ensure maximum understanding by the public.

Bilingual specialists may be necessary to assist with translations of questionnaires and conducting the interviews.

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Information obtained from the potential displacees is confidential. Displacees should be so assured that any personal information will be controlled in accordance with the California Information Practices Act and used only as an unidentifiable portion of summarized data.

The following actions are recommended if interviews are conducted:

- Document attempts to contact displacees. Normally, four attempts at various times of the day/evening and week are sufficient.
- Deliver a copy of appropriate RAP brochure. Note: Non-English translations can be ordered through HQ Right of Way. A minimum of 90 days is needed to obtain the translations.
- Discuss general questions about the project and relocation. Avoid questions about appraisal and acquisition; refer them to the appropriate function.
- Fill out displacee questionnaire.

The following points must be explained in each field interview:

- To qualify for relocation payments, the person must occupy their dwelling at the initiation of negotiations for the parcel.
- Only occupants who are considered U.S. residents are eligible for relocation benefits.
- The purpose of contact is to determine replacement-housing needs based on current project requirements.
- Potential displacees should not take any actions concerning their potential displacement that would create personal or financial loss or hardship if the property they now occupy is not acquired.

10.02.06.00 Complex Projects

The full narrative report (RIR) must be completed for projects that impact more than ten occupied units (residential or nonresidential) and should cover the relocations that could be complicated (e.g., an alcohol rehabilitation center, an assisted living complex).

All RIRs should be arranged as shown in Table 10.02-A. A summary of effects and alternative mitigation actions must be included in the FRID. Each issue must be fully addressed in the report.

The checklist (10-EX-4) can be used as a basis for the full narrative report.

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10.02.07.00 Accountability

Relocation impact documents will be completed at the Region/District level, under the supervision of the RAP Senior, or contracted out to qualified consultants. All documents must conform to this chapter.

The Region/District-prepared RIDs are written and completed by a Right of Way Agent who:

- Is at least Associate level.
- Is fully trained.
- Has background or experience in relocation assistance and market studies.
- Has good writing skills.

The Region/District RAP Branch is responsible for:

- Preparing Draft Statements/Reports and Final Statements/Reports.
- Preparing updates as required.

Any legal opinion shall be requested early. Although the legal opinion is not part of the RID, it is kept as backup documentation.

One of the criteria for establishing a R/W Capital Phase is approval of the FRID. The Region/District may request an exception if the FRID is incomplete when the Capital Phase is submitted for approval.

The circumstances causing the lack of the completed report and the reasons for establishing the Phase should be discussed.

10.02.08.00 Annual Reviews and Updates

The RAP Senior will annually review all FRIDs for current STIP projects. As projects enter the STIP, the completed FRIS or FRIR are subject to changes in alignment, R/W limits, real estate market, and Federal, State, or local policy.

Environmental or Project Development may request annual review of draft documents, even though it is not required. The RAP Senior should maintain a tickler system to track the time frame when the draft is due for a final report.

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10.02.09.00 Record Retention

The Region/District must maintain the RID and all supporting documentation until the project has been constructed.

These records must be retained for an additional seven years after completion of construction on the project if legal action or injunctions were part of the project process.

10.02.10.00 Right of Way Planning Document

Final Relocation Impact Documents provide Right of Way with the scope of relocation requirements in a single project or a number of alternative projects. The information in the RID should be used to prepare Right of Way's Planning Document.

The Right of Way Planning Document (10-EX-4A) facilitates the orderly relocation of everyone in the right of way and gives advance warning of special problems that may necessitate more lead time than normal. The Document will address, in detail, special relocation problems, timing considerations, relocation phasing, and general relocation alternatives.

Table 10.02-B will ensure that the Region/District Right of Way management (e.g., RAP Senior, Estimator, Planning and Management) can plan the appropriate resources to complete the relocations. The document provides Right of Way with information on the number of displacements, type, availability or lack of affordable housing, the likelihood of last resort housing payments, and identification of special needs that will have to be addressed before the initiation of negotiations begin.

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Table 10.02-B
Right of Way Planning Document – Internal Document (10-EX-4A)

Basic Assumptions	State basic assumptions that could invalidate all or part of the study if changed, including: • Certification dates for the project. • The reservation that the design will remain essentially unchanged. • That critical recommendations in the Relocation Plan are implemented. • All approvals are obtained as scheduled.
Number of Housing Units Needed vs. Number Available *	Complete a table or spreadsheet that: • Compares by price range, number of bedrooms, and occupancy status. • Summarizes the total available dwellings by price range, number of bedrooms, and occupancy status. • Outlines (one for each year of right of way acquisition for the project) the basis for relating the various kinds of housing needs and the housing available to fulfill them.
Mobile Home Relocations	If it is necessary to relocate people in mobile homes, provide a complete separate analysis, the results of which are correlated into the project Relocation Plan.
No Special Effort Required	Describe those classes of housing where no special effort will be necessary, including the areas where RAP payments will easily accomplish relocation. Provide an analysis showing that displacees will be able to pay for their housing in the new area.
DS&S Problems	Discuss problems where the normal market may not have enough DS&S housing to absorb the demand within the time span allowed for relocation.
Time Schedule	If the time scheduled for acquisition and relocation is insufficient to allow orderly relocation based on what the market can absorb, state the best estimate of the time required and recommend changes that would allow for this additional time.
Scarcity in Some Housing Classes	If there is scarcity in some classes of housing and the District has other similar projects, follow-up studies on actual RAP displacees may enable the report to generalize on the percentages of people by housing class who tend to leave the area completely. A reasonable estimate of people expected to leave the area, based on solid facts, may show that no availability problem exists where there appeared to be one.

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Table 10.02-B

Right of Way Planning Document – Internal Document (10-EX-4A) (Continued)

Large Number of Ineligibles	If the survey indicates a housing area where there are or may be a large number of ineligible occupants in the right of way, discuss this along with any foreseeable problems connected with them. Examples are student housing and motel/hotel occupants.
Sequencing	State which parcels should be appraised and acquired first and what special recommendations for handling them are most appropriate.
Special Problems - Extra Time Required	Identify those parcels where extra time will solve special problems. If there is low availability of one type of unit, such as very large houses, more time may well solve the relocation problem. Other such problems may include rest homes, old hotels with permanent residents, housing for elderly, and mobile home parks.
Business Relocation Problems	If research indicates a lack of available business relocation sites or significant relocation problems, bring these issues to the attention of the District Appraisal and Acquisition Branch in writing. Include a discussion of possible solutions to the identified problems.
Special Project Reports or Community Data	The District may be asked to provide special project reports or community data (affordable housing cost calculations) to various District functions. Complete these activities only after there is full understanding between R/W and the requesting party as to the scope of the particular project and its priority relationship with ongoing R/W activities.

* Include in RIS and RIM

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10.02.11.00 Lead Time

The Right of Way Planning Document must estimate the lead time required to adequately carry out a timely, orderly, and humane relocation program. Factors to consider are:

- Concurrent projects that create displacements.
- Availability and experience level of RAP staff.
- Total number of displacees.
- Relocation problems indicated in study.
- District work norms.
- Available budgeted money.
- Replacement housing availability.
- Vacant land availability.
- Re-rent policy.
- Project certification date.

Note: A short statement about the estimated lead time should also be included in the FRID, especially if additional time is required to conduct the relocation activities.

10.02.12.00 Re-Rent Policy

A no re-rent policy should be recommended in the R/W Planning Document when it appears there may be:

- Shortage of replacement housing.
- Project construction immediately following relocation.
- Shortage of nonresidential replacement sites.

The recommendation shall justify the policy, fully discussing advantages and disadvantages, the social and economic impact of eliminating a percentage of the housing market, and the effect of boarded up units on neighborhood security.

A no re-rent policy must be established on projects where such provisions were included in the freeway agreement or requested by a local agency.

Note: A short statement about the estimated lead time should also be included in the FRIR, especially if there is an anticipated shortage of affordable replacement properties.

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10.02.13.00 Field Offices

The Region/District's decision to establish a field relocation office should be based on:

- Number and type of displacees.
- Distance of the project from the District office.
- Mobility of displacees.

The decision should be made on an individual project basis and included in the R/W Planning Document. Establishing a field office is advisable on large projects.

The office must be convenient to public transportation or within walking distance of the project.

Field offices must be staffed with knowledgeable R/W Agents. A bilingual or ethnic aide may also need to be available in any area with a high percentage of non-English speaking displacees. The field office shall be open during hours convenient to displacees, including evenings and weekends, if necessary.

10.02.14.00 Advanced Acquisition

Acquisitions approved in advance of the Environmental Document require an analysis of the proposed project's impact on the occupants. A RID must be included in the request for advance acquisitions to begin.

Advance acquisitions require a brief analysis of:

- Availability of relocation resources.
- Existence of special problems; e.g., disabled, elderly, and overcrowding.
- Recommended solutions to discovered or presumed difficulties.
- Adequacy of the RAP program to relocate displaced households effectively.

(Refer to Sections in the Corridor Preservation, Acquisition, and RAP Chapters regarding Hardship Acquisitions.)

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10.03.00.00 - RELOCATION NOTICES and OCCUPANCY CERTIFICATIONS

10.03.01.00 Notices

The Uniform Act and 49 CFR 24 prescribe general requirements governing the provision of relocation payments and other relocation assistance. The requirements mandate that potential displacees receive appropriate and timely notices that explain the relocation program and their entitlements.

As such, the Region/District must provide all potential displacees with the appropriate notice described in this section, in writing and within the time frame prescribed.

If the person is unable to read and understand the notice, the RAP Agent must provide the person with appropriate translation and counseling.

Each notice will include the name and telephone number of the RAP Agent to be contacted for answers to questions or other needed help.

All notices should be personally served. If personal service is impossible (occupants are in the armed forces, impacted property is for storage only), the notice may be sent by certified or registered first-class mail (return receipt requested and received), with another copy of the notice sent simultaneously by regular first-class mail. The date of service shall be 5 days for California residents, 10 days for U.S. residents, and 20 days for all others.

10.03.02.00 General Information Notice [49 CFR 24.203(a)]

The first notice provided to the potential displacees is the General Information Notice (GIN) (RW 10-7). The mandatory format should not be changed except to add the potential displacee's name and the project identification [Dist-Co-Rte-PM-Parcel] and the date the Notice is sent.

The GIN is mailed to the potential displacee as early as practical after the completion of the Parcel Occupancy Data form (RW 7-2) obtained by the Appraiser. If the GIN is not mailed within three (3) working days of the date the RAP Branch receives the RW 7-2, then a diary entry shall explain the reason why it was not practical to send sooner.

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The GIN should be mailed with a copy of the appropriate Relocation Brochure and the assigned RAP Agent's contact information.

Since Title VI information is provided to the owners by either the Appraiser or the Acquisition Agent, the RAP Branch need only send the Title VI information (see 2.04.01.02) to tenants or lessees.

The purpose of the GIN is to briefly describe the relocation program and to inform the potential displacees that they will be:

1) displaced by a public project,
2) given relocation advisory services, including referrals of replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate,
3) given 90 days' advance written notice before they are required to move,
4) given the address of at least one comparable replacement residential property before they are required to move,
5) and they have the right to appeal if they question the Department's determination of eligibility or benefits.

The RAP Agent must send the GIN to all owner and tenant/lessee occupied properties. The owner cannot prevent the District from notifying tenants of the benefits they may be eligible to receive under the Uniform Act. The RAP Agent should advise the owner that it is necessary that the tenants receive a full explanation of the relocation program which includes advising them that there is no immediate urgency for them to relocate. If the owner is concerned the tenants will move and there will be a loss of rental income, the Region/District may offer to make a payment to replace lost rent for vacancies occurring due to relocation for a reasonable period of time.

10.03.03.00 Legal Residency Requirement to Obtain Benefits

All relocation notices must inform the persons that anyone not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child.

Notice to potential displaced persons of legal U.S. residency requirements to obtain benefits will be made at the earliest possible time, but no later than the provision of the GIN (RW 10-7). Information on residency requirements will be included in the RAP package made available to owners and tenants.

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Requirements for Certification Concerning Legal Residency in the United States will be included in the General Information Notice, the Relocation Brochure, and all Notices of Eligibility and Conditional Entitlement Letters.

10.03.04.00 Notice of Intent to Acquire (NIA)

Normally, the first notice the owner of the property receives is a Notice of Intent to Appraise or a Notice of Intent to Inspect ($10,000 and under approach) from the Appraisal Branch. However, the owner could have contacted the Region/District earlier because of a need to relocate prior to the Appraiser's inspection. If the Region/District determines that there is a need to protect the owner's relocation benefits, then the Acquisition Branch (see 5.03.00.00) will send an NIA (RW 10-8) to the owner-occupants to:

- Protect the eligibility of prospective displacees who need to move prior to the first written offer on the parcel.
- Prevent dual eligibility.
- Assure that all persons are fully aware of relocation assistance benefits and requirements.

The Region/District DDC should use the following to determine if an NIA is appropriate:

- Tenants/lessees (residential/nonresidential) only qualify provided the owner agrees to rent the property to the Department (10.03.04.01).
- The owner-occupant must meet the same criteria for a hardship outlined in Section 5.03.04.01.
- The owner-occupant must agree to rent the property back to the Department for economic rent.
- The appraisal must be complete and a first written offer made within 60 days. In some instances, the appraiser may have already issued the Notice of Decision to Appraise and/or inspected the property, but the determination of fair market value (and the subsequent FWO) will be delayed beyond a reasonable period of time, and the owner-occupant must relocate immediately.
- If the owner-occupant does not accept the offer within the prescribed time (60-90 days), condemnation proceedings must be initiated, or the acquisition offer withdrawn (see 5.03.04.06).
- The NIA limitations have been met (see table below).

The Agent issuing the NIA to the owner must provide the RAP package. The Conditional Entitlement Letter with the specific amount of the RHP cannot be

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provided to a residential owner-occupant until the appraisal is complete and the first written offer made by the Acquisition Agent. It is strongly suggested that the RAP Agent accompany the Acquisition Agent on the FWO as eligibility for relocation benefits and initial information was already provided.

NIA LIMITATIONS

Project Type	Issuance
Regularly funded	Do not issue the NIA until the initiation of negotiations for the project has been authorized.
Federally funded	In addition to the above, do not issue the NIA prior to FHWA authorizing acquisition on the project.
Not regularly funded	Appropriate formal approval of a Hardship Acquisition is required, along with the owner-occupant's statement that they must relocate prior to the FWO.

In some cases, the owner-occupant may not be available for a personal call to deliver the NIA, ION/FWO, or RAP Package because they have relocated out of the area. In that case, all documents must be mailed certified to the owner.

The NIA shall be dated the day that it is served. It shall contain the anticipated date of the offer and specify how additional information pertaining to relocation benefits can be obtained.

Be aware that if a Notice of Intent to Acquire (RW 10-8) is furnished to an owner, all tenants become immediately eligible for relocation assistance benefits. Tenants must be furnished a notice (RW 10-10) as soon as possible in this event.

10.03.04.01 Notice of Intent to Acquire - Tenants

A Notice of Intent to Acquire - Tenant (RW 10-10) may also be furnished to a tenant or lessee provided the owner has agreed to rent the property to the Department. An Informational Letter to Nonoccupant Owner Re: Notice of Intent to Acquire (RW 10-9) shall be furnished to the owner along with a copy of the Rental Agreement (8-EX-4). In this instance, it is important that the owner of the displacement unit is not served a Notice of Intent to Acquire at this time. To do so will make all occupants of the displacement unit eligible for relocation assistance payments, which may not be the intent of the Region/District.

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Providing RW 10-10 enables business tenants to be eligible for reimbursement of search costs, move coordinator fees and other move-related items that may be necessary early on to relocate their business in a timely fashion. In certain circumstances, renting vacant residential or nonresidential units may expedite project delivery and minimize relocation assistance costs. See 8.01.31.00, State Rental of Residential or Commercial Units Prior to Acquisition.

10.03.05.00 Certificates of Occupancy

To be eligible for relocation benefits, status of the occupants must be obtained via a certification of occupancy.

The Appraiser provides the Parcel Occupancy Data Sheet to the RAP Senior stating the type of occupants on the property (residential or business, owner or tenant/lessee) and the approximate time period they have occupied the property.

The Acquisition Agent obtains a signed Certificate of Occupancy and Receipt of Relocation Benefits at the time of the FWO (and first RAP Call) for all owner occupied properties. This will determine the number of occupants that are eligible for DS&S housing and their tenure.

The Acquisition Agent obtains a signed Owner's Certificate of Tenants from the owner at the time of the FWO. The RAP Agent will make the first RAP Call on the tenants and verify the information on the Certificate.

All occupants must certify their residency status at the time of the first RAP Call.

10.03.06.00 U.S. Residency Certification

Certification should be done by completing RW 10-44 at the time the owner or tenant signs the Certificate of Occupancy or receives the Notice of Eligibility, whichever is earlier.

For residential occupants, the head of household will certify himself/herself and may also certify other family members.

A sole proprietor will certify himself/herself.

For partnerships and corporations, the certification may be signed by a person authorized to sign on the entity's behalf.

The Department must receive certification before any claim can be paid.

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10.03.06.01 Securing the U.S. Residency Certification Prior to Issuing a Notice of Eligibility

It is necessary that each person in the household or the nonresidential unit certify as to their residency status in the United States prior to receiving a Notice of Eligibility, which states "you are entitled to certain benefits under the Department's Relocation Assistance Program (RAP)." This will ensure that persons ineligible for relocation benefits are not led to believe they will receive advisory assistance, moving expenses, and for residential persons, a possible replacement housing payment. (See 10.01.03.08.)

All owners (90-day, Nonresidential) must receive the appropriate Notice of Eligibility immediately after the First Written Offer (FWO) is made. Depending on the Region/District functional assignments, this notice may be delivered by the Acquisition Agent, the Acquisition/Relocation Agent (Caseworker), or the Relocation Agent who accompanied the Acquisition Agent at the time the FWO was made. All tenants must receive the appropriate Notice of Eligibility within 14 days of the FWO from the Relocation Agent.

Before providing the Notice of Eligibility, the agent will first request that the person(s) complete and sign the Certification Concerning Legal Residency in the United States (RW 10-44). If the person(s) do not want to complete the Certification at the first RAP Call, then the agent must state that an explanation of relocation benefits cannot be provided at that time. The agent should further explain that until the Certification is complete and verified as to its accuracy, the person(s) are not considered eligible for relocation benefits.

The agent may leave the form with the person(s) and follow up with personal and telephone calls as to the status. After 30 days have passed, and a Certification has not been received, the RAP Senior must advise the person(s) that if the completed Certification is not returned within 15 days, they (including all other persons in the household or nonresidential unit) will be considered permanently ineligible for relocation benefits. Again, if no form is received as a result of the letter and follow-up calls, the person(s) are to be treated as nondisplacees even if a Certification is provided later on in the process. A letter denying benefits to the persons not certified as U.S. residents must be sent by Certified Mail to each occupant.

These persons will have the right to appeal the decision of ineligibility, but only on the basis that they did not understand that completion of the Certification was mandatory in order to receive relocation benefits; and had they

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understood that aspect, they would have completed the form. They will not be able to appeal the issue of their U.S. Residency status. It is critical the agent maintain explicit diary entries regarding their explanation of the need for a Certification and all attempts to obtain it from the displacee.

10.03.07.00 Notices of Eligibility [49 CFR 24.203(b)]

Eligibility for relocation assistance shall begin on the date of initiation of negotiations (generally the FWO, but possibly the date of the NIA) for the occupied property. When this occurs, the Region/District must promptly provide the occupants with a notice, in writing, of their eligibility for applicable relocation assistance via a Notice of Eligibility.

This makes the Notice of Eligibility the most important RAP document that is provided to the displacee because it informs them that they have been determined to be eligible for relocation benefits. There is a different Notice of Eligibility for each type of occupancy, so care must be exercised to ensure that the appropriate Notice of Eligibility is provided in a timely manner.

The Notice of Eligibility for owners (residential and nonresidential) MUST be provided to the owner on the day of the FWO and to tenants or lessees (residential and nonresidential) within 14 days of the initiation of negotiations.

Notices of Eligibility are delivered with the RAP Package:

a) to the owners by the Acquisition or RAP Agent during the FWO.
b) to tenants by the RAP Agent within 14 days of the FWO (exception: 10-EX-46 and 10-EX-50).

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10.03.08.00 Conditional Entitlement Letter

The Conditional Entitlement Letter is prepared for persons being displaced from their residential homes after the Replacement Housing Valuation (RHV) has been completed. This document provides the occupant: 1) with at least one available comparable replacement dwelling, 2) with the amount of the maximum entitlement they are eligible to receive for replacement housing and moving expenses, 3) with the requirements that need to be met to receive part or all of the entitlement, and 4) with a reminder of the right to appeal. The displacee should be presented with the entitlement letter as soon as reasonable after the completion of the RHV.

If an updated RHV indicates a change in entitlement amount, the RAP Agent must provide a revised entitlement letter to displacee.

The timing and format for each type of Notice of Eligibility and Conditional Entitlement Letter is described in Table 10.03-A. Refer back to Table 10.01-A if there is a question about type of occupancy. See 10.04.00.00 (residential) and 10.05.00.00 (nonresidential) for specific details about the type of relocation benefits.

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Table 10.03-A
DELIVERY OF NOTICES OF ELIGIBILITY and CONDITIONAL ENTITLEMENT LETTERS

Notice	Timing	Exhibit
90-Day Homeowner Occupants	Notice of Eligibility: As part of the RAP Package, at the time of the FWO by the Acquisition or RAP Agent.	10-EX-49
	Conditional Entitlement Letter with specific amounts for the Fixed Move Schedule and the PD, within 30 days of FWO.	10-EX-45
90-Day Occupants and Non-Tenured Occupants	Notice of Eligibility: As part of the RAP Package, at FWO of a 90-day owner. For a 90-day tenant, or a non-tenured tenant (less than 90 days), within 14 days of FWO by the RAP Agent.	10-EX-39
	Conditional Entitlement Letter: When displacees indicate they are actively looking for a replacement dwelling, or when the Department has control of the property (e.g., COE, Effective OP, Executed R/E or APU, FOC) - whichever occurs first.	10-EX-40
Subsequent Occupants	Notice of Eligibility: For occupants who move in after the FWO, within 14 days of notification that they are in occupancy.	10-EX-41
	Conditional Entitlement Letter: When displacees indicate they are actively looking for a replacement dwelling, but not before the Department has control of the property (e.g., COE, Effective OP, Executed R/E or APU, FOC).	10-EX-42
Business, Farm, or Nonprofit Organization	Notice of Eligibility: Owner-Occupants - at the time of the FWO by Acquisition or RAP Agent. Lessee/Tenant Occupants - within 14 days of FWO.	10-EX-43
Personal Property Only	Notice of Eligibility: Owner - at FWO. Tenant - 14 days.	10-EX-46
Nonoccupant Owner Leasing Space to Others	Notice of Eligibility: Owner - at FWO.	10-EX-50

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10.03.09.00 Reminder Notice

The RAP Agent shall send timely written notification of the possible loss of rights and expiration dates to persons who:

- Are eligible for monetary benefits, and
- Have moved from the acquired property, but
- Have not filed a claim.

Notification shall be sent periodically throughout the qualification period. If no response to the written notification is received, the RAP Agent should make telephone contact within the appropriate time limit and document the contact in the parcel diary.

10.03.10.00 90-Day Notices [49 CFR 24.203(c)]

No eligible displacee shall be required to move unless he or she has received at least 90 days' advance written notice of the earliest date by which he or she may be required to move. The preferred method is to provide a 90-Day Information Notice (RW 10-18, RW 10-19) followed by an appropriate Notice to Vacate (RW 10-22, RW 10-23, RW 10-24) with date certain. Where project needs dictate, a 90-Day Notice to Vacate may be issued indicating a date certain (RW 10-20, RW 10-21).

10.03.10.01 Timing

Timing for service of notices is based on project certification dates. Notices should be delivered with adequate lead time to carry out a timely, orderly, and humane relocation program. Displacees may be given a 90-Day Information Notice as early as the date the Department provides the Conditional Entitlement Letter (residential) or 30 days after the Notice of Eligibility is provided (nonresidential). When at least 60 days have passed, the appropriate Notice to Vacate must be delivered IF the effective date is after the state obtains control of the property.

Notices to Vacate cannot be given if control of the property has not been initiated via a Right of Way Contract, an Agreement for Possession and Use (APU), or initiation of condemnation, and the Region/District is sure that the Department will have control of the property prior to the "date certain" provided in the notice. Right of Entries (R/Es) should not be used when there are relocation issues on a parcel.

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Residential displacees must be informed of the maximum relocation housing payment (RHP) amount prior to receiving a 90-day notice (with the appropriate Conditional Entitlement Letter), along with at least one address of a comparable replacement property that is available and within the range of the RHP.

Absentee owners of personal property are considered to be occupants of real property to be acquired and ARE entitled to 90-day information notices and notices to vacate. Any person who exercises physical control over the land, including the right to store personal property on the land, is a lawful occupant and is entitled to 90-day information notices and notices to vacate.

See Table 10.03-A for timing of the delivery of Notices of Eligibility. See Tables 10.03-B and 10.03-C for time frames related to service of notices for acquisition by right of way contract and by eminent domain (order for possession).

10.03.10.02 Content

The 90-day information notices state that the displacement property will be acquired for a highway project. The Information Notice states a Notice to Vacate will follow; providing at least 30 days' notice before they will be required to move (60 days for some residential situations). For residential occupants, it provides the addresses of comparable replacement properties.

10.03.10.03 90-Day Information Notice

The 90-Day Information Notice is not a notice to vacate. The RAP Agent serves the 90-Day Information Notice in person on eligible and ineligible lawful occupants who:

- Are required to vacate because of the proposed construction or other State use, and
- Have personal property located on the acquired property.

Since replacement housing must be available and offered to eligible displacees before a Notice to Vacate can be issued, Region/District Right of Way must coordinate acquisition, property management, and RAP functions to ensure appropriate notices are issued in a timely manner to vacate the property and for R/W Certification.

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10.03.10.04 Notice to Vacate with R/W Contract

For residential owner-occupants, a 30-Day Notice to Vacate may be issued after 60 days have passed since the 90-Day Information Notice was issued if control of the property is expected within 30 days. If control of the property is by either close of escrow or a right of way contract with a possession date clause in it, then the 30-Day Notice to Vacate shall be served 30 days prior to that date. Owner-occupants do not become state tenants. They are provided a 15-day grace period in the right of way contract. Property Management will move forward with eviction after the grace period has ended. Revisions can be issued if the anticipated date of control is delayed. Extending the 30-Day Notice to Vacate may affect the validity of any notices issued by property management preceding an unlawful detainer action. Close coordination with Property Management is essential.

For residential tenants, the possession date clause in the right of way contract or the close of escrow date governs service of a 60-Day Notice to Vacate. The 60-Day Notice to Vacate is provided instead of a 30-Day Notice to Vacate to provide adequate time as addressed in both federal and state statutes.

For residential Personal Property Only situations, issue the 30-Day Notice to Vacate and state "Not applicable – Personal Property Only move" where the residential replacement comparables would be inserted.

Since no eligible residential displacee shall be served a 90-day information notice unless appropriate housing is available, the address of at least one available comparable property replacement, but preferably three, must be offered to displacee simultaneously with each notice. The property must be available and must not exceed the "probable replacement value or rent" provided to the displacee in the latest Conditional Entitlement Letter.

For nonresidential owner-occupants, a 30-Day Notice to Vacate may be issued after 60 days have passed since the 90-Day Information Notice was issued if control of the property is expected within 30 days. If control of the property is by either close of escrow or a right of way contract with a possession date clause in it, then the 30-Day Notice to Vacate shall be served 30 days prior to that date. Owner-occupants do not become state tenants. Grace periods for business displacees to remain in state-acquired property are a delegated authority. See 10.05.26.00 for more information. Coordinate closely with both the acquisition agent and the property manager.

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Nonresidential tenants usually sign a quitclaim deed giving the Department possession of the property. Once the Department has possession (either by quitclaim deed, possession date clause in Right of Way contract or close of escrow), the RAP Agent shall serve the 30-Day Notice to Vacate. In these instances, Property Management will write a lease with the tenant. Coordinate closely with the acquisition agent and the property manager.

Control of the property is obtained on the date escrow is closed, the Final Order in Condemnation is recorded, the date of possession in the Right of Way Contract (RWC), or Agreement for Possession and Use (APU), or the effective date of the Order for Possession (OP) - usually 30 days after the court has executed the document before the Department can have physical possession. The owner of the property must have the acquisition funds available to purchase replacement property before the effective date of the Notice to Vacate. While an approved Right of Entry (R/E) is considered as giving the Department control of the property, it is not appropriate to use R/Es when there are displacements associated with the property.

Either a RAP Agent or Acquisition Agent must serve the 90-Day Information Notice and the Notice to Vacate in person. If the Agent makes repeated attempts to deliver the notice in person and is unable to meet with the displacee, they must post the notice at the displacement property and mail a copy to the displacee. The diary must show their good faith effort to comply with this section.

If the address of the most comparable residential replacement property is no longer available, the Region/District must ensure some comparable replacement property is available, within the displacee's financial means, but it is NOT necessary to reissue a 90-Day Information Notice. The original 90-day period can continue to run.

10.03.10.05 Notice to Vacate with OP

For residential owner-occupants, the RAP Unit issues a 90-Day Information Notice as early as the date the Conditional Entitlement Letter is provided and before the court issues the OP and then issues a 30-Day Notice to Vacate with a date certain after the court issues the OP. The person making service must calculate the effective date. In this case, displacee must receive a full offer of their entitlements and must be furnished the address of at least one comparable replacement dwelling with the notice to vacate. The effective date of the 30-Day Notice to Vacate cannot be earlier than 30 days from the date the last record owner of the property and last occupant was served the OP.

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For residential tenants, the RAP Unit issues a 90-Day Information Notice as early as the date the Conditional Entitlement Letter is provided and before the court issues the OP. After the court issues the OP, a 60-Day Notice to Vacate with a date certain is served. A courtesy copy of the OP is served with the notice to vacate. The person making service must calculate the effective date. In this case, displacee must receive a full offer of their entitlements and must be furnished the address of at least one comparable replacement dwelling with the notice to vacate. The effective date of the 60-Day Notice to Vacate cannot be earlier than 60 days from the date the last record owner of the property and last occupant was served the OP.

For nonresidential owner-occupants, the RAP Unit issues a 90-Day Information Notice as early as 30 days after the Notice of Eligibility is provided and before the court issues the OP. The RAP Unit then issues a 30-day Notice to Vacate with a date certain after the court issues the OP. The person making service must calculate the effective date, which cannot be earlier than 30 days from the date the last record owner of the property and last occupant was served the OP.

For nonresidential tenants, the RAP Unit issues a 90-Day Information Notice as early as 30 days after the Notice of Eligibility is provided and before the court issues the OP. The RAP Unit then issues a 30-day Notice to Vacate with date certain after the court issues the OP. For nonresidential tenants NOT named in the suit, the RAP Unit provides a courtesy copy of the Summons and Complaint and the Notice to Motion.

10.03.11.00 90-Day Notice to Vacate

Under rare circumstances, such as when condemnation proceedings have begun and the displacee then decides to settle by R/W contract, it may be appropriate to issue a 90-Day Notice to Vacate. This should only occur when a 90-Day Information Notice has not been issued, the date certain has been determined, and at least 90 days are available before the Department obtains control of the property. Use Form RW 10-23 for residential displacees and Form RW 10-24 for nonresidential displacees.

10.03.12.00 Notices to State-inherited Tenants

Eligible displacees who are either delinquent in their rental payments to the Department, or in violation of their rental agreement with the Department, are considered unlawful occupants for property management purposes. They are still entitled to their RAP benefits as stated in their Notice of Eligibility and Conditional Entitlement Letter. Property Management will serve either a

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3-Day Notice to Pay Rent or Quit or a 30-Day or 60-Day Notice of Termination of Tenancy and Notice to Quit. Property Management is responsible for advising the Region/District RAP Agent that Property Management will begin eviction proceedings.

The RAP Agent must ensure service of the 90-Day Information Notice and appropriate Notice to Vacate prior to the Department's control of the property. Property Management and RAP need to coordinate appropriate action in the event a displacee does not vacate the property in a timely fashion. Copies of the RAP notices should be sent to Property Management to be retained in their file.

Once Property Management decides to evict an unlawful eligible tenant, the eviction process should be carried to conclusion.

Eligible tenants who are evicted by the Department because of unlawful occupancy must be advised that they retain eligibility for relocation advisory assistance and payments.

Property Management will proceed with unlawful detainer (UD) action when displaced tenants do not move from the property after control has been obtained from the owner. The RAP Unit must work closely with Legal, Property Management, and Acquisition to ensure this process proceeds smoothly. At a minimum, the RAP Unit will oversee the move of personal property into storage. The RAP Agent is therefore usually present when the UD is served by the Sheriff.

Ineligible displacees (e.g., non-U.S. residents, occupants after Department's control, unlawful occupants as determined by 10.01.03.05) will not receive relocation benefits. Generally, these occupants are State tenants who rent the property after acquisition by the State. There are no requirements to provide ineligible displacees with the RAP 90-Day or 30-Day Notices.

Although the Department is under no obligation to the ineligible displacee, Region/District staff are encouraged to provide advisory services to help them find replacement property. There is no requirement to provide advisory assistance to state tenants.

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10.03.13.00 Urgent Need

In extremely rare circumstances, an eligible displacee may be required to vacate the property on less than 90 days' advance written notice. The Department must determine that delivery of the 90-day notice is impracticable in order for this to occur (i.e., the person's continued occupancy of the property would constitute a substantial danger to health or safety to those occupants or others). The RAP diary should fully document the circumstances that required someone to move prior to issuing 90-day notices.

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Table 10.03-B

TIME FRAMES WHEN R/W CONTRACT WITH POSSESSION DATE CLAUSE

Day 1 →	Day 30 →	Day XX ←	Day of Control	Day of Control + 1
First Written Offer (FWO) First RAP Call Owner = Same Day Tenant = Within 14 days **NOTICE OF ELIGIBILITY**	**RESIDENTIAL** Conditional Entitlement Letter (RHP and Room Count Costs) **NONRESIDENTIAL** Completed Inventories, Estimates and Bids, Advisory Assistance First opportunity to serve 90-Day Information Notice	R/W Contract signed Open escrow	**NOTICE TO VACATE** **OWNERS** Residential & Nonresidential Serve 30-Day Notice to Vacate 30 days prior to date of possession in R/W contract or COE (if earlier) **TENANTS** Residential Serve 60-Day Notice to Vacate 60 days prior to date of possession in R/W contract or COE (if earlier) Nonresidential Serve 30-Day Notice to Vacate with Quitclaim Deed 30 days prior to date of possession in R/W contract or COE (if earlier)	Property Management = Rental Agreement @ Economic Rent for tenants If not, notice to increase rent within 60 days Unlawful Detainer for breach – Coordinate with P. M. **STATE HAS CONTROL** COE/APU Possession date clause in R/W contract RAP has served all its notices Property Management now in charge RAP will continue to find replacement property

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Table 10.03-C

TIME FRAMES WHEN ORDER FOR POSSESSION (OP)

Day 1 →	Day 30 →		← Day of Control	Day of Control + 1
First Written Offer (FWO) First RAP Call Owner = Same Day Tenant = Within 14 days **NOTICE OF ELIGIBILITY**	**RESIDENTIAL** Conditional Entitlement Letter (RHP and Room Count Costs) **NONRESIDENTIAL** Completed Inventories, Estimates and Bids, Advisory Assistance First opportunity to serve 90-Day Information Notice	**Day XX** Commence to Eminent Domain Obtain RON Suit filed	**NOTICE TO VACATE** **OWNERS** Named in suit Residential & Nonresidential Serve 30-Day Notice to Vacate concurrent with completion of service of OP on all occupants **TENANTS** Residential Serve 60-Day Notice to Vacate & Nonresidential Serve 30-Day Notice to Vacate concurrent with completion of service of OP on all occupants	Property Management = Rental Agreement @ Economic Rent for tenants If not, notice to increase rent within 60 days Unlawful Detainer for breach – Coordinate with P. M. **STATE HAS CONTROL** FOC Effective OP and Possession RAP has served all its notices Property Management now in charge RAP will continue to find replacement property

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10.03.14.00 Notice to Withdraw or Modify Relocation Benefits

There are situations when it is appropriate to withdraw or modify the relocation benefits that have been provided in a Notice of Eligibility or a Conditional Entitlement Letter. Any time there is a change in the benefits that will be provided to a displacee, the Agent must immediately provide a Notice to Withdraw or Modify Relocation Benefits. The Notice must be personally delivered if possible, but at the very least sent by certified registered mail. However, if the displacee has relied on the promise of relocation benefits and has committed themselves financially or via a contract, the Department may be obligated to pay those relocation benefits in question. Refer to 10.01.04.00 for discussion of Promissory Estoppel and 10.09.07.00 for discussion on appeals due to Promissory Estoppel.

There is no standard form for a Notice to Withdraw or Modify Relocation Benefits. The Agent should prepare a letter that addresses the particular benefit(s) that is impacted (previous amounts, new amounts, reason for the change, etc.) and the right for the person to appeal the determination. A copy of the Appeal Form (RW 10-6) should be provided upon request.

A person who receives a Notice of Withdrawal or Modification of Benefits that decreases a monetary benefit is entitled to appeal the determination.

10.03.14.01 Withdrawal of Benefits

If the Department determines that a person or persons who has received a Notice of Eligibility is no longer eligible for any of the relocation benefits discussed in the letter, then withdrawal of all relocation benefits must be provided. Note: "All relocation benefits" include Advisory Assistance.

The following situations require an immediate notification to the displacee that their benefits are being withdrawn:

1. A long-term postponement of the project creates a situation wherein only irrevocable commitments are allowed under Departmental policy. (See Section 10.17.00.00.)
2. A design modification reduces the requirement for some or all of the property, and the person is no longer required to relocate.
3. The occupant's status as a tenured resident or a valid business is in question, and the Agent has determined they no longer qualify for relocation benefits.

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- A resident purporting to be in occupancy for 90 days is only a seasonal resident and has a primary residence elsewhere.
- A business claims to operate on the property, but in fact only stores personal property at the site and the business license (and other documentation) shows the primary place of business is at another site.

4. The Department and the occupant are no longer pursuing advanced acquisition, and tenants who have already made efforts to relocate but continue to occupy the property.

A person who receives a Notice of Withdrawal or Modification of Benefits is entitled to appeal the determination. If the person claims Promissory Estoppel, the Statewide Appeals Board must hear the appeal. (See 10.09.07.00.)

There may be other situations that require an immediate withdrawal of benefits. Contact HQ R/W if there are questions about whether a notice should be issued.

10.03.14.02 Modification of Benefits

A modification of benefits includes increases and decreases of a monetary benefit, but the person is still entitled to some of the relocation benefits discussed in the Notice of Eligibility.

1. A change in the real estate market indicates the cost of a comparable replacement property is lower than the previous entitlement.
    - A 90-day owner-occupant's price differential is rarely reduced, and only when the Department can document that the person has made no effort to find replacement property based on the amount in the Conditional Entitlement Letter.
2. The 90-day owner-occupant wants to rent.
3. The residential occupant has requested, and received, approval to occupy non-DS&S housing as to size and number of bedrooms.
4. The residential occupant has vacated the displacement property, but has not found replacement property within the one-year time period. (See 10.08.02.00.)
5. A change in the acquisition offer (revised appraisal, administrative settlement) requires a change in Replacement Housing Valuation adjustment (major exterior attribute) or carve-out value (typical residential lot), which modifies the RHP.
6. A further review of the nonresidential operation's documents indicates a change in the previously discussed in-lieu payment, reestablishment payment, or other moving payment.

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7. A member of a residential household dies prior to relocation, and the need for a larger replacement property, or a property that is barrier free, no longer exists.
    - The Modification of Benefits can only be mailed after a new RHV is prepared, and only if the occupants have not made a commitment to rent or purchase replacement property.

There may be other situations that require an immediate modification of benefits. Contact HQ R/W if there are questions about whether a notice should be issued.

10.03.14.03 Waiver of Relocation Benefits

49 CFR 24.207(f) specifically prohibits agencies from proposing or requesting a displacee waive relocation benefits. Since the Uniform Act imposes requirements on displacing agencies to provide relocation benefits, the displacee cannot relieve an agency from the Uniform Act's requirements by agreeing to waive relocation benefits. 49 CFR 24.207(f), Appendix A, states that a displacee may, after having been fully advised of all relocation benefits to which they are entitled, provide a written statement stating they choose not to accept some or all of such benefits. In the unlikely event that a displacee refuses to accept some or all of the benefits, and refuses to provide a written statement to that effect, the Department will document such refusal in writing.

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10.04.00.00 - RESIDENTIAL DISPLACEMENTS

10.04.01.00 Residential Relocation Benefits

Residential displacees are entitled to advisory assistance (10.01.09.01), moving expenses, and RHPs. Eligibility is based on their status as an owner or a tenant, and based on the length of occupancy in the residence at the time of the Initiation of Negotiations (ION), and their status as a U.S. resident (10.01.11.00). The ION begins with either a Notice of Intent to Acquire (NIA) or a First Written Offer (FWO).

To receive the full amount of the calculated RHP, the displacees must occupy a DS&S (10.06.05.00) property within the prescribed time period (10.08.02.00) and file a claim (10.08.03.00). The Uniform Act is a reimbursement program designed to assist displacees in relocating to a new site. Displacees must spend at least the amount calculated by the Department on a replacement property in order to receive the full amount of the RHP.

Except for Subsequent occupants, the displacees may receive relocation benefits prior to the close of escrow (or any other date the State takes possession) as long as other criteria have been met (e.g., occupied the property on the date negotiations were initiated). (See 10.01.03.04.)

10.04.01.01 U.S. Residency Requirement for Moving Expenses

Residential moving expenses will be paid, provided the person has certified the household's legal status and signed the claim form.

When no member of the household is lawfully present in the United States, no moving expenses will be paid.

If some of the occupants are not lawfully present, their personalty must be relocated at their own expense. The RAP Agent must prorate the moving expenses so that only those who can certify as to their status receive a moving expense allowance or reimbursement.

The MSA should not be used when some members of the household are not eligible for moving expenses.

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EXAMPLE:

Two of the five occupants cannot or will not certify they are legal U.S. residents. The head of the household has certified that he/she and the other two occupants are present in the U.S. legally. The moving expenses must be prorated 3/5ths as follows:

A. Fixed Moving Schedule (FMS): Normally, the eight (8)-room house would receive $2,365; but because only three (3) of the five (5) occupants are U.S. residents, the fixed moving schedule is $1,419, payable when all the personalty has been moved from the property.
B. Actual Move: The moving company with the lowest bid must be advised that the displacees will be responsible for paying the ineligible 2/5ths of the entire cost. If the non-U.S. residents remove 2/5ths of the entire household's personalty prior to the moving companies preparing their bids, then an adjustment is not necessary.

10.04.02.00 Moving and Related Expenses - Residential Entitlement [49 CFR 24.301(b)]

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person [defined at 24.2(a)(9)] is entitled to payment of his or her actual moving and related expenses determined to be reasonable and necessary, including expenses for:

a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Region/District determines that relocation beyond 50 miles is justified (10.04.02.01).
b) Packing, crating, unpacking, and uncrating of the personal property.
c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.
d) Storage of the personal property for a period not to exceed 12 months, unless the Region/District determines that a longer period is necessary.
e) Insurance for the replacement value of the property in connection with the move and necessary storage (10.05.02.08).
f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
g) Other moving related expenses that are not listed as ineligible under 49 CFR 24.301(h) as the Region/District determines to be reasonable and necessary.

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10.04.02.01 Transportation

Displacee's cost of one-way transportation to the new location is allowable. Displacee may be paid on a mileage basis not to exceed the current rate established by the State Board of Control or fares charged by commercial transport (e.g., taxis). Special conveyance, such as the cost of an ambulance, may be paid. Actual, reasonable costs for meals and lodging are eligible when the Department finds such costs are necessary.

Moving payments for more than one move are not made, except where found to be in the public's best interest.

Generally, the displacee is responsible for costs beyond 50 miles, based on the most commonly used routes between move points. If it is determined that the move cannot be accomplished within 50 miles, the additional expenses for the longer distance may be allowed, but shall be limited to the nearest available site beyond 50 road miles.

49 CFR 24.205(c)(ii)(E) states that the Department shall offer all persons transportation to inspect housing to which they are referred. It is the responsibility of the RAP Agent to decide how the displacees will be transported to inspect replacement properties. If access, safety or liabilities are a concern, then the RAP Agent will offer reimbursement for other transportation such as a taxicab or rental car. Care should be exercised to ensure the expenses are actual, reasonable and necessary.

RAP Agents must preapprove the use of alternate transportation by the displacee, including a limitation of the number of trips (reasonable), the distance (within 50 miles), the locations to be viewed (addresses of properties that are comparable), and the method of transportation (excluding transportation by real estate brokers). Expenses are paid on a standard claim form as "other" moving expenses.

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10.04.02.02 Types of Moving Payments

Residential displacees have the choice of either a Fixed Moving Schedule (based on a room-count schedule), or the actual cost to move the personalty (based on two methods—MSA or Actual):

1) Moving Service Authorization (MSA): selecting any moving company on Department of General Services' list of Moving Companies for the State entitled "State List of Eligible Household Goods Carriers." Payment is made directly to the moving company after completion of move.

2) Actual: Lowest of two bids from moving companies, and, after the move is complete, the displacee may:
    - pay carrier directly and seek reimbursement, or
    - assign payment to carrier, and the RAP Agent pays carrier directly.

Except for the fixed payment, the displacee is eligible for all other necessary and actual moving expenses listed under 10.04.02.00.

10.04.02.03 Fixed Moving Schedule [49 CFR 24.302]

Any person displaced from a dwelling or a seasonal residence is entitled to receive a fixed payment for moving expenses and dislocation allowance as an alternative to a payment for actual moving and related expenses. FHWA has approved the following schedule for California for displacee moves including dislocation allowance for utility service connections. The fixed moving schedule is available online at FHWA's website. In the event the FHWA Web site contains more recent data, use the FHWA guidelines to determine the Fixed Moving Schedule payment.

The schedule includes a provision of $100 for the expense and dislocation allowance to:

- a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons, or
- a person whose residential move is performed by the Region/District at no cost to the person (an extremely rare situation).

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10.04.02.04 Fixed Moving Schedule (Chart) [Effective August 24, 2015 (Updated Approximately Every Three Years)]

SCHEDULE A

(OCCUPANT OWNS FURNITURE)

Number of Rooms	Payments
1	$725
2	$930
3	$1,165
4	$1,375
5	$1,665
6	$1,925
7	$2,215
8	$2,505
Each additional room	$265

SCHEDULE B

(FURNITURE PROVIDED BY LANDLORD)

Rooms	Payments
One room	$475
Each additional room	$90
Dormitory Style rooms (Includes hotel/motel rooms, caretaker facilities, assisted living rooms, and "rooms for rent.")	$100

"Room" for the Fixed Moving Schedule means space in a unit containing the usual quantity of personal property. Normal division includes living room, dining room, bedroom, kitchen, recreation room, library, study, laundry room, basement, garage, workshop, and patio. Other rooms, garages, or storage areas having personal property equivalent to one or more normal rooms may be counted as additional rooms. Most bathrooms do not count as a room.

Counting rooms requires judgment. A large room may have so much furniture that it can be considered two rooms. An alcove or dining area may be a separate room if it has dining room furniture. The RAP Agent must record all room equivalents and briefly explain any judgments. Generally, 1,000 pounds

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and/or 142 cubic feet of personal property and furniture is equivalent to a "room." Examples: 100 pounds would represent four floor-to-ceiling 3' wide bookshelves filled with books, or a well-stocked, walk-in pantry. Additionally, two small rooms with minimal items of personal property might be counted as one room.

Schedules A and B also apply to eligible moves from mobile homes.

Unusual items such as piles of junk, classic cars, or welding equipment should not be counted as an additional room. The RAP Agent should advise the displacee to utilize the Actual Move option for these items.

10.04.02.05 Fixed Payment Limitations and Variations

No temporary storage, utility hookups, lodging, or transportation expenses shall be paid to displacees receiving a fixed payment for moving expenses.

A multi-use property owner-occupant who elects to use Schedule A for the residential portion is still eligible for a business move from the other portion of the property.

Where the landlord partially furnishes the rental units, tenants may choose Schedule A to the nearest full room and Schedule B for the remaining rooms. The landlord may be paid for relocation of personal property only as a business move (see 10.05.10.00 MCF or 10.05.09.01 Actual Move).

Scheduling payment based on either Schedule A or B requires only a "Claim for Relocation Assistance - Residential" (RW 10-2).

The displacee cannot receive the payment based on the Fixed Moving Schedule until the RAP Agent verifies that all personal property has been removed from the displacement site. Also, the Fixed Moving Schedule payment cannot be advanced, nor can it be retained by the Region/District Property Management section to pay for delinquent rent.

10.04.02.06 Moving Service Authorization (MSA)

The use of MSA (RW 10-29) permits direct payment to the carrier and is the preferred method of paying commercial movers. This method of relocating displacees is primarily for residential household goods, but can be used for small business moves.

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10.04.02.07 Payment for Other Services - MSA

If authorized, charges for storage may be included in the carrier's itemized bills.

The MSA should include an appropriate amount for insurance of the personalty. Review Section 10.04.02.08 for additional guidelines.

Payments for other entitlements (e.g., utility hookups), other services (such as ambulance service to move a nonambulatory person), or temporary lodging may be made to displacee in the same manner as provided for actual cost moves by commercial movers.

10.04.02.08 Requirements for Scheduling Payments - MSA Method

Generally, there are no out-of-pocket expenses for the displacee if the move is within 50 miles. The moving company submits the bill to Department of General Services (DGS); and once approved by the Traffic Manager, the invoice is submitted to the Region/District for payment. A copy of the fully executed MSA form and the carrier's itemized bill showing the DGS Traffic Manager's stamp are needed to support the claim schedule. No other claim form from the displacee is required.

(See Processing MSA - Exhibit 10-EX-27.)

10.04.02.09 Actual Reasonable Cost of Move by For-Hire Carriers

A displaced individual or family may be paid actual reasonable cost of a move accomplished by a qualified carrier. Displacee shall secure at least two firm bids based on a list of the personal items to be moved and submit to the RAP Unit for approval prior to the move. If displacee will not make direct payment, they must inform carriers that the Department will pay for the move. Bids must be on company letterhead signed by a person authorized to bind the firm and must contain the following statement:

> "As this move is the result of displacement from real property acquired for public purposes and cost is to be borne by the State of California, the costs and charges for this move are exempt from regulations by the Public Utilities Commission. The cost of performing the work in connection with this move will not exceed cost quoted herein. All work

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performed under this bid shall be accomplished in a good and workmanlike manner and in accordance with standards normally applied by the industry. The company shall be responsible for the actual replacement cost of all loss or damage incurred in the performance of the work."

Either the displacee or the RAP Agent can request estimates from the moving companies. The RAP Agent must review the estimates to determine appropriateness of charges and then advise the displacee of the lowest bid. The displacee may choose any moving company to perform the move; however, the payment will be limited to lesser of the actual amount or the amount of the lowest bid. The displacee may request the payment be assigned directly to the moving company.

Often, reasonable moving expenses cannot be completely determined until after the move has been completed. Appropriate adjustments to the final bill should be made if the bid or estimate could not reasonably have been expected to include the additional charges.

10.04.02.10 Dislocation Allowance

Displacees who elect an actual move (MSA or Actual Move) are also entitled to reimbursement for the dislocation and hookups of household appliances and other personal property that are moved from the displacement property to the replacement property. Reimbursement is limited to those amounts that are actual, reasonable, and necessary as supported by documentation from the displacee. Typical charges are:

- Cable and telephone installation hookup fees (exclusive of any deposits for equipment or services).
- Retuning a piano or resetting a grandfather clock.
- Connection for an icemaker, a water softener, or a gas/electric dryer (not to include changes to the replacement property to accommodate the appliances).

If the Department moves the personal property from a dormitory style room that is shared by two or more persons, the dislocation allowance is limited to $100.

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10.04.02.11 Paying the Moving Company

The RAP Agent may pay a moving company after all personal property has been removed from the displacement site, by either:

- Written Arrangement - signed by displacee, Department, and mover. Displacee pays the moving company, and presents itemized bills and a proper claim to the Region/District Department after the move is completed. The RAP Agent reviews the bills and deletes any ineligible costs, processing the claim for payment to the displacee. Displacee is responsible for any ineligible costs.

- Assignment of Payment - Displacee assigns the moving payment directly to the moving company, who agrees to accept payment after the invoices have been reviewed and the claim is processed. The Assignment of Payment is executed by displacee and carrier. Before assignment is accepted, the RAP Agent shall examine all documentation supporting the carrier's cost. Ineligible costs shall be deleted; only an assignment in the proper amount shall be accepted. Displacee is responsible for paying the moving company for all ineligible costs.

When scheduling payments directly to the moving companies, a copy of the written arrangement or assignment shall be attached to the Claim (RW 10-2).

10.04.02.12 Storage

A residential displacee MAY be entitled to storage of their personal property if the Region/District RAP Senior determines that it is absolutely necessary in order to vacate the displacee for the project.

Storage of personalty is not an automatic benefit and should only be authorized when it is in the best interest of the public and the project. The determination should be based on the needs of the Region/District, the nature of the displacee's operation, the plans for permanent relocation, the amount of time available for the relocation process, and whether storage would facilitate relocation. It is the RAP Senior's responsibility to establish the terms (e.g., monthly rate, term, comparable unit, storage accessibility). Examples of justifiable storage are:

- Displacee has diligently looked for replacement property, but has not been able to locate something because of the Department's DS&S requirements.

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- Construction of the replacement property has been delayed by some unforeseen circumstance, again not the result of the displacee's actions.
- The project's time schedule supports relocating the displacee's personalty immediately.

The displacee's storage must be preapproved by the RAP Senior based on the maximum period of time the displacee will need before permanent occupancy of the replacement property can take place, up to 12 months. Displacees are not automatically entitled to a full 12 months of storage.

Region/District may authorize a flat storage rate for the displacee's storage based on a market analysis of storage rates for comparable units. The displacee can be reimbursed at the end of the agreed upon time period after submitting a claim, including invoices and paid receipts. An optional method of payment is for the displacee to execute an Assignment of Funds wherein the Region/District may advance the first and last month's storage rent to the Storage Facility, and make periodic payments (e.g., quarterly) for the agreed upon time period.

All arrangements for storage should be documented in writing between the Region/District and the displacee, and if applicable, the storage facility.

Displacees are also entitled to the actual, reasonable, and necessary costs to move their personalty into and out of storage, up to 50 miles for each move (including necessary unloading and stacking). The Region/District is only responsible to move the same amount (or less) of personal property out of storage to the replacement site. The displacee must be advised that they cannot move other personal property items into the storage unit during the period of storage.

Extensions beyond 12 months should be rare and only when the displacee's circumstances are so unusual that an additional month or two of storage is warranted.

Note: Displacees are entitled to insurance for the replacement value of the personal property in connection with the authorized storage.

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10.04.03.00 Replacement Housing Payments (RHPs)

49 CFR 24.2(a)(6)(viii) requires the replacement property to be within the financial means of the displaced person as determined by the following:

i. A replacement dwelling purchased by an eligible 90-day owner-occupant is considered to be within the displacee's "financial means" if the homeowner will receive the maximum calculated Price Differential (PD) (10.04.09.00), the full Mortgage Differential (MD) (10.04.12.00), and the reimbursement for all eligible Incidental Expenses (IE) (10.04.13.00).

ii. A replacement dwelling occupied by an eligible 90-day occupant is considered to be within the displacee's financial means if, after receiving the maximum calculated Rent Differential (RD) (10.04.15.01), the displacee's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling.

iii. Non-tenured (less than 90-day) occupants are eligible to receive an RHP based on last resort housing provisions. Comparable replacement rental housing is considered to be within the person's financial means if the Region/District pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of the displacee's average monthly gross household income, provided the average gross monthly income falls within the parameters of the Housing and Urban Development (HUD) low income chart. If the displacees do not fall under HUD income guidelines, the RD will be calculated on a rent-to-rent basis.

iv. Subsequent (post offer) occupants who occupy the property after the initiation of negotiations but before the Department has control of the property are eligible to receive an RHP based on last resort housing provisions. Subsequent occupants must occupy the displacement dwelling at the time the Department receives control of the property in order to be eligible for relocation benefits. The calculations follow those for Non-tenured occupants.

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10.04.03.01 Maximum RHP

To receive the maximum RHP (PD or RD), the displacee must purchase or rent, and occupy a DS&S residential property within the time frame prescribed in 10.08.02.00. The actual replacement property does not have to be comparable to the displacement property nor the probable replacement property from the Replacement Housing Valuation (RHV). However, the actual price or rent paid for the property must be equal to or greater than the amount of the probable replacement property ("spend-to-get").

In rare cases, a 90-day Owner-Occupant may not be entitled to a PD (calculation is zero, or does not "spend-to-get"); however, an MD and/or IE may still be paid if the displacee meets the same time frames to occupy a DS&S property.

10.04.04.00 Inspections of Replacement Dwelling [49 CFR 24.403(b)]

Before making an RHP or depositing a payment into escrow, the RAP Agent shall inspect the replacement dwelling and determine whether it meets DS&S standards.

The inspection must be complete prior to the displacee committing to the purchase/rental of the property.

The RAP Agent shall complete a DS&S Inspection Report (RW 10-40) as a prerequisite to any replacement housing or rental RHP. The form is completed, signed and dated in ink, and filed in the District RAP file. A copy of the form is not included in the claim package.

For a displaced person with a disability, the replacement dwelling shall be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person (49 CFR 24.2(8)(vii). Features that exist at the displacement property must be available at the replacement dwelling, either as existing or as being added via last resort housing. If medical substantiation is provided, additional features may be added to the criteria for decent, safe and sanitary. (See 10.06.06.00 for replacement housing valuation criteria.)

All specifications relating to the replacement must be answered "yes" to qualify it as a DS&S replacement dwelling.

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The three data sections at the top of the Inspection Report provide a means of comparing the area and room requirements of the people who will occupy the replacement dwelling with its habitable area and room count. The replacement dwelling area and room count must equal or exceed comparability requirements before payment can be made. Estimated dimensions may be used when computing areas for the various rooms.

10.04.04.01 DS&S Inspections for Others

Region/District staff may be contacted to provide DS&S inspections for other states. The RAP Senior should respond promptly to the request and ensure that any relevant issues related to the inspection are obtained in advance of the actual inspection, with appropriate remarks returned to the requesting agency.

There may also be situations that require the RAP Senior to request another agency to perform the DS&S inspection for a displacee that has relocated out of California or the United States. These requests should be made through that area's regional FHWA office, the State Highway Department, or the main governmental body.

10.04.05.00 Inability to Meet Occupancy Requirements [49 CFR 24.403(d)]

No person shall be denied eligibility for an RHP solely because the person is unable to occupy the replacement property within the time frames set forth in 10.08.02.00 for a reason beyond his or her control, including:

1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the displacing agency; or
2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Region/District.

A displacee may enter into a construction contract for rehabilitation of a replacement dwelling or into a legally binding contract for purchase of a replacement dwelling, but cannot secure title and/or occupy the dwelling within the required period for reasons beyond reasonable control. In these situations, the RAP Unit shall consider displacee as having purchased and occupied the dwelling as of the date of the construction or purchase contract. Displacee must have entered into the contract, however, before the normal one-year replacement period expired.

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The RAP Agent shall secure a statement signed by displacee summarizing the reasons beyond their reasonable control and retain it in the case file.

The RHPs under the above situations shall be deferred until the person actually occupies the replacement dwelling. When replacement housing is being built or rehabilitated, partial payments may be made from escrow.

10.04.06.00 U.S. Residency Requirement for RHPs

Displacees who are not present in the U.S. legally cannot receive an RHP. If the household has some occupants that cannot certify they are legal U.S. residents, the RHP for the remaining U.S. residents must be adjusted [49 CFR 24.208(c)]. The unlawful occupants are not counted as part of the family and its size is reduced accordingly. Thus, a family of five, one of whom is a person not lawfully present in the country, would be counted as a family of four.

For owners, the number of bedrooms to satisfy DS&S requirements will be based on the number of occupants having legal status, but will not be less than the number of bedrooms at the displacement property. For tenants, the number of bedrooms to satisfy DS&S requirements will be based on the number of occupants having legal status. For example, a household of seven (including one displacee not present legally, individually occupying one bedroom) would receive an RHP based on a comparable with three bedrooms, even if the displacement dwelling contains four bedrooms. In determining whether or not the "thirty percent of income" rule should be used in calculating the RD, the income of a family member who is not certified must still be considered in determining household income, or the entire household's income cannot be considered for the "thirty percent rule."

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10.04.07.00 RHPs - 90-Day Owner-Occupant's Eligibility [49 CFR 24.401(a)]

A displaced person is eligible for the RHP for a 90-day homeowner-occupant if the person:

1) Has actually owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations (FWO or NIA); and
2) Purchases and occupies a DS&S replacement dwelling within one year after the later of the following dates (except that the Region/District may extend such one-year period for good cause);
    i. The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or
    ii. The date the displacee is advised, in writing, of the address of a comparable replacement property, within their financial means.

10.04.07.01 90-Day Owner-Occupant RHP [49 CFR 24.401(b)]

The RHP for an eligible 90-day homeowner-occupant is limited to the amount necessary to relocate to a comparable replacement dwelling. The payment shall be the sum of:

1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling (PD); and
2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling (MD); and
3) The reasonable expenses incidental to the purchase of the replacement dwelling (IE).

If the sum of these three payments exceeds $31,000, then LRH provisions apply.

A 90-day owner-occupant may receive an RD in lieu of the entire RHP (10.04.14.00).

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10.04.07.02 Purchase of Replacement Dwelling [49 CFR 24.403(c)]

A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

1) Purchases a dwelling; or
2) Purchases and rehabilitates a substandard dwelling; or
3) Relocates a dwelling which he or she owns or purchases; or
4) Constructs a dwelling on a site he or she owns or purchases; or
5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or
6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

10.04.07.03 Rehabilitation of Replacement Dwelling

Rehabilitation and/or home improvement costs must be incurred or committed at the time of purchase and occupancy of a DS&S replacement dwelling. If the displacee was provided the address of a comparable replacement property at the time of displacement, there is no provision for any additional payments for cost incurred by the displacee undertaking home improvements if occupancy of a DS&S dwelling is delayed. Costs to add luxury items, ornamentation, or unusual or atypical features are also not eligible for reimbursement as a replacement housing payment claim. This is a separate issue from rehabilitating a previously owned dwelling (10.04.11.00).

The displacee is required to include any rehabilitation of home improvement work as part of the sales agreement, and/or in the mortgage financing for the purchase and improvement of the replacement dwelling. The rehabilitation or home improvement financing should be adequately structured with other requirements such as adequate building plans and specifications for the work prepared conforming to local building codes and lender requirements, enforceable contractor guarantees, fire and hazard insurance requirements, and bonding to assure satisfactory work and scheduled completion.

There are significant sources of home improvement mortgage financing via the HUD/FHWA loans that may be available for displacees who choose to improve their replacement properties.

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10.04.08.00 Payment Procedures

- Payment into Escrow: All or a portion of the estimated RHP can be placed into escrow to assist the displacee with the financial aspects of the purchase based on estimated closing and loan documents. The Region/District's escrow instructions for the displacee's actual replacement property require the final closing statement state the total price of replacement dwelling.

- Payment After Escrow Has Closed: Displacee may choose to complete the purchase of the replacement property without any of the RHP deposited into escrow in advance. After close of escrow, displacee must submit certified copies of the closing statement and the Truth-In-Lending statements, along with a claim form for reimbursement. The RAP Agent will review all documentation and pay the eligible expenses.

10.04.09.00 Price Differential Calculation

The PD is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

i. The reasonable cost of a comparable replacement dwelling as determined in accordance with 10.06.00.00.
ii. The purchase price of the DS&S replacement dwelling actually purchased and occupied by the displaced person.

Procedures for computing PD are shown on Table 10.04-A.

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10.04.10.00 Owner Retention of Displacement Dwelling [49 CFR 24.401(c)(2)]

If the owner retains ownership of the displacement dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

1) Cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and
2) The cost of making the unit a DS&S replacement dwelling; and
3) The current fair market value (vs. historical cost) for residential use of the replacement unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site.
4) The retention value of the dwelling, if such retention value is reflected in the 'acquisition cost' used when completing the RHP.

The combined costs of relocation, rehabilitation, and improvement to DS&S standards are eligible for reimbursement to the extent they do not exceed the maximum PD entitlement based on comparable replacement properties. This may include construction of features such as garages if they cannot be moved. Interim or construction financing costs can be considered in the total construction costs to meet the "spend-to-get" requirements for the maximum PD.

The Region/District is not required to prepare an expensive or sophisticated valuation report to determine the value of the property. The Region/District should ensure that its valuation is reasonable and supportable as its determination could be appealed.

Refer to 8.06.08.00 and 8.06.09.00 for additional information on owner retention or relocation of improvements. Under Section 8.06.08.00, Acquisition does not participate in the cost to move the dwelling but pays the "in-place" value of improvements, minus salvage value. Under Section 8.06.09.00, Acquisition pays the cost to move the dwelling to the remainder and reconnect all utilities. In both cases, RAP can pay the PD based on the RHV for a DS&S comparable replacement property based on the fair market value of the DS&S dwelling reestablished on the remainder.

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10.04.11.00 Previously Owned Replacement Dwellings [49 CFR 24.403(c)(6)]

A displacee who moves into a previously owned replacement residential property is still entitled to the RHP (PD, MD, IE) regardless of how long the property has been previously owned, or how it was acquired (inherited, gifted, purchased, built).

To receive the maximum PD, the previously owned replacement property must have a current fair market value equal to or greater than the price of the comparable replacement property (RHV).

The displacee may also be entitled to an MD based on the existing loan that was obtained sometime prior to vacating the displacement property, or a new MD and related expenses (IE) if the displacee chooses to refinance the existing loan on the previously owned replacement property. To be eligible for an MD, the new loan rate on the previously owned replacement property must be less than the existing loan, but more than the loan rate on the displacement property.

If the owner buys back the dwelling at the Department's auction, the reestablished dwelling on the new site or even the remainder qualifies as a previously owned replacement dwelling.

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BASIC COMPUTATION - PD

Type of Replacement	Computation
Purchase of Existing DS&S Replacement Dwelling	The PD is the difference between the acquisition cost of the displacement dwelling and the lesser of the following two amounts: • The price displacee actually paid for a replacement dwelling. • The price of a comparable dwelling as determined by the Department.
Rehabilitation of an Existing Non-DS&S Dwelling	Generally, the purchase price for "spend-to-get" requirements is the amount established in an escrow or written contract as the agreed selling price. The State will consider as part of the purchase price certain work required on the replacement dwelling, provided all such work is completed or contracted for within one year following the close of escrow for the replacement property. If displacee purchases a non-DS&S dwelling on the remainder or other land, the following costs are eligible for reimbursement: • Work necessary to meet DS&S standards. • Major exterior attributes found in both the displacement property and replacement property used to determine maximum payment.
Construction of a New Dwelling	With prior notification, displacee may build a replacement. PD is the difference between the acquisition cost of displacement dwelling and the least of the following two amounts: • Cost of an existing comparable replacement dwelling. • Current fair market value of a comparable newly constructed dwelling.
Ownership of Replacement Dwelling Prior to Displacement	A replacement dwelling owned by displacee prior to State's first offer may be used as a replacement dwelling in the computation of a PD payment. Regardless of the date or the manner in which the residence was acquired, the current fair market value of the residence is used to determine the amount spent by the claimant.

Table 10.04-A

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10.04.12.00 Mortgage Differential (MD) [49 CFR 24.401(d)]

The payment for increased mortgage interest cost shall be the amount, which will reduce the mortgage balance on a new mortgage to an amount, which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs (e.g., points and loan origination fees). The payment shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations, and is contingent upon a mortgage being placed on the replacement dwelling.

The MD calculation will result in an amount that is needed to reduce the mortgage balance on the actual replacement property to an amount that would result in the same monthly payment at the displacement property, if there was no change in the term or the mortgage balance.

Payment for increased mortgage cost is contingent upon displacee purchasing, occupying, and obtaining a mortgage on a DS&S replacement dwelling.

EXAMPLE:

The displacee had a $50,000 mortgage at the displacement property with a remaining term of 240 months at 7% = $387 PI

If the new mortgage at the actual replacement property were $50,000 at 10%, the payment for 240 months would be $482 PI. (Remember: assuming no change in term or balance between the displacement and replacement loans.)

How much money is needed to reduce the mortgage at the replacement property to an amount that would result in the $387 PI?

MD calculator will determine the Present Value of a 10% loan for 240 months with a $387 payment.
Present Value: $40,100

The MD payment to the displacee is the difference between the $50,000 and the $40,100, which should be used by the displacee to buy down the loan and reduce the payments (not mandatory).
MD Payment: $9,900

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10.04.12.01 MD Factors

The following factors shall be considered when computing the MD:

1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling.

   Note 1: In the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buy-down determination, the payment will be prorated and reduced accordingly.

   Note 2: To compute the buy-down if the term of the new mortgage is shorter than the remaining term of the displacement mortgage, a hypothetical monthly payment that assumes the displacement mortgage had the same shorter term must be used.

2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

   - They are not paid as IE;
   - They do not exceed rates normal to similar real estate transactions in the area;
   - The RAP Agent determines them to be normal expenses and necessary for the replacement area, and
   - The computation of such points and fees shall be based on the lesser of the unpaid mortgage balance on the displacement or replacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known (see Exhibits 10-EX-13 and 10-EX-14); and the

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payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

See 10-EX-15 for example calculations, and the MD Calculator on the Right of Way Intranet.

10.04.12.02 Items Not Eligible for Mortgage Differential

The following items are not eligible for MD:

- Interim financing or construction loans.
- Mortgages on all types of personal property.
- Mortgages that were materially changed less than 180 days before initiation of negotiations. This includes any change in rate, term, or monthly payment, excluding variable rate mortgages. A new trustee or beneficiary is not a material change.

Exceptions: Adjustable Rate Mortgages (10.04.12.13) and Home Equity Loans (10.04.12.08).

10.04.12.03 Determination of Rates, Points, and Fees

The RAP Agent must document interest rates, purchaser's loan points, and origination or assumption fees and retain all support documentation in District RAP files.

The RAP Agent shall contact three lending institutions in the replacement area, if available, to determine the prevailing interest rate. Additional lenders may be contacted at the Region/District's option. Information shall be updated quarterly or more often if necessary.

10.04.12.04 Mortgage Interest Rates

The MD calculation is made on rates available as of the date of move from the displacement property, not when the displacee enters into a contract to purchase a replacement property (within the one year time period).

The prevailing interest rate shall be the highest interest rate generally charged. In unusual circumstances, the RAP Senior may authorize using an interest rate that exceeds the prevailing fixed interest rate, in which case full documentation must be included in the file. Justification may be the

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unavailability of the current prevailing rate due to the amount of the new mortgage or other similar reasons.
Additionally, if the displacee is required to pay an interest rate that is higher than the prevailing rate due to his or her unique circumstances (e.g., poor credit risk), the higher interest may be used in calculating the MD if the R/W HQ RAP Senior determines that the additional cost could prevent the displaced person from obtaining comparable housing. The diary must be documented to show justification for the rate used.

10.04.12.05 Points and Origination or Service Fees

These fees shall be the highest generally charged by lenders in the replacement area. The same sampling and updating requirements apply as with interest rates. See the above section for information on using higher than prevailing rates.

These fees may be paid as an IE if an actual increased interest rate is not incurred on the replacement dwelling. Where a loan did not exist on the displacement dwelling of a long-term owner, fees related to a loan on the replacement dwelling will not be reimbursed.

The purchaser's (displacee's) points and loan or assumption fees on a down payment should be considered IE. The RAP Unit shall determine rates and document data sources. If interest rates vary, the RAP Unit shall use the mortgage rate closest to the actual mortgage being replaced.

10.04.12.06 Mortgage Differential Calculation

The MD can be calculated by hand, by downloading the "MD Calculator" from the Right of Way Intranet, or by utilizing the MIDP Calculator on the FHWA website.

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Use the following definitions in determining which data and which format must be used.

TERM	DEFINITION
Buy-Down	Increased mortgage interest costs are commonly known as the buy-down. The buy-down is the payment required to reduce the balance on a new mortgage to an amount that can be amortized with the same monthly payment for principal and interest as for the mortgage(s) on the displacement dwelling. The payment includes purchaser's points and loan origination or assumption fees if not paid as incidental costs.
Old Mortgage	Existing mortgage balance on the displacement property.
New Mortgage	Mortgage on the replacement property.
Computed Amount for a New Mortgage	Amount to be financed to maintain the monthly payment (principal and interest) of the old mortgage (the present worth of the current payment of principal and interest on the displacement property).
Standard Buy-Down	New mortgage dollar amount is the same or larger than the computed amount for a new mortgage, and the term is the same or longer than that of the old mortgages.
Reduced New Mortgage Buy-Down	The new mortgage dollar amount is less than the computed amount for a new mortgage.
Reduced New Mortgage Term Buy-Down	The term of the new mortgage is less than that of the old mortgage.
Reduced New Mortgage and Term Buy-Down	The new mortgage dollar amount and term are less than these factors for the old.

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10.04.12.07 Multi-Use Properties - Segregation of MD Payments

The value of the owner's unit is the base for determining payment where displacement or replacement property is more than a single-family dwelling (10-EX-19). The percentage that the owner's unit contributes to the total value of property is used to compute payment. When rental rates are used, the economic rent of the owner's unit is used.

10.04.12.08 Home Equity Loans [49 CFR 24.401(d)]

To compute an MD when the displacee has a home equity loan on the displacement property, the loan balance is the lesser of the present unpaid mortgage balance, or the unpaid balance that existed 180 days prior to the initiation of negotiations. This is important because a home equity loan mortgage instrument could allow the borrower to increase the mortgage balance at will. The interest rate is the prevailing interest rate for the same kind of home equity mortgage instrument. If the home equity mortgage encumbering the acquired property has no set amortization of principal, use the prevailing amortization period of the current market.

10.04.12.09 Government Subsidized Loans

When the displacee has a loan with a government subsidized interest rate that produces a reduced payment on the displacement dwelling, the terms of the loan usually require that the interest subsidy (the cumulative difference between what the displacee paid with the subsidized rate and would have paid without it) be paid upon the sale or other conveyance of the property. Thus, while the subsidy creates an accumulating debt for the mortgagor (displacee), the mortgagor is not required to make monthly or other periodic payments against that debt prior to conveyance. The interest subsidy, therefore, is not a "mortgage" within the meaning of the Uniform Act and, as such, should not be part of an MD. The interest subsidy is a liability to the owner and paying it out of the proceeds of the sale of the displacement property is no different from paying back a mechanic's lien or other similar liability. To compute an MD when a subsidized loan is present, the loan balance is the balance without the subsidy, the term is the remaining term on the loan without additional time for repaying the subsidy, and the interest rate is the subsidized interest rate.

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10.04.12.10 Balloon Payments

On a mortgage with a balloon payment, use the mortgage balance, interest rate, and monthly payment amount that are in effect on the date of acquisition. The monthly payment is normally predicated on a term longer than the actual term of the mortgage, so the computed remaining term is greater than the actual remaining term of the mortgage. Use of the computed remaining term provides the appropriate MD payment.

10.04.12.11 Multiple Mortgages

If there is more than one mortgage, compute the buy-down by completing the computations for each mortgage using the terms of that mortgage. If there is an old second mortgage that has a higher interest rate than any available rate, the buy-down amount will be zero, but you then add points to arrive at an MD. The points are still eligible even though the new mortgage is at a rate that does not exceed the old mortgage.

The RAP Agent must compare the total loan balances when there are multiple mortgages at the displacement and/or replacement properties to ensure that the "lesser of" is used in calculating the MD.

10.04.12.12 Reverse Mortgages

The purpose of the Mortgage Differential (49 CFR 24.401) is to reduce the mortgage balance on a new mortgage to an amount, which could be amortized with the same monthly payment for principal and interest as that for the mortgage on the displacement dwelling. A reverse mortgage, such as a Federal Housing Administration (FHA) home equity conversion mortgage (HECM), is a first mortgage lien. A property owner who has an HECM is entitled to be placed in similar circumstances. Therefore, payments to enable an in-kind replacement, including costs to create another HECM, are eligible expenses. To date, very few reverse mortgages have been written. If the RAP Agent encounters a reverse mortgage, the RAP Senior should contact the HQ RAP Senior.

10.04.12.13 Adjustable Rate Mortgages (ARM)

If the displacement mortgage is an Adjustable Rate Mortgage (ARM), use the mortgage balance, interest rate, and monthly payment amount that were in effect on the date escrow closed or the State had control and possession.

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It is expected that replacement ARM mortgages are the more cost-effective replacement mortgage financing for a predisplacement ARM that has not yet adjusted or has interest adjustment specifications that remain more favorable than currently available fixed rate mortgage financing. If a replacement ARM with equivalent rate adjustment specifications and terms at the displacement ARM is available that would result in a lower MD than the fixed rate mortgage, the available ARM should be used to compute the amount of the MD.

10.04.13.00 Incidental Expenses (IE) [49 CFR 24.401(e)]

The displacee may be eligible for reimbursement for those necessary and reasonable costs actually incurred by the displaced person incidental to the purchase of a replacement dwelling, and customarily paid by the buyer including:

1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
2) Lender, FHA, or VA application and appraisal fees.
3) Loan origination or assumption fees that do not represent prepaid interest (limited to the amount of the displacement mortgage). Only points not paid as part of the MD are eligible.
4) Certification of structural soundness (e.g., home inspection) and termite inspection when required. Other inspections normally required by the buyer that are in the interest of protecting the health and safety of displacees are also an allowable expense:
    - Roof inspection
    - Lead based paint
    - Asbestos
    - Water Heater strapping
5) Credit report.
6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.
7) Escrow agent's fee (limited only by what is actual and reasonable for the selected Escrow Company).
8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

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9) Such other costs as the RAP Senior determines to be incidental to the purchase, and a standard expense for purchases in the actual replacement area. Examples:
    - Tax report service fees.
    - Sales or use tax on mobile homes.
    - Mortgage Insurance Premium (MIP) or Private Mortgage Insurance (PMI) payments that have been paid in escrow (limited to the amount of the displacement mortgage), and not part of the monthly payment.
    - Association fees that are required on a one-of-a-kind basis as part of displacee's equity position in the replacement property.

Fees associated with a new loan (e.g., appraisal report, credit report, lenders processing or packaging costs) can only be paid if the displacement property had a bona fide mortgage at the time of acquisition.

10.04.13.01 Incidental Expense Limitations (IE)

The following expenses are not reimbursable:

- Expenses incurred by the State's grantor in the acquisition of grantor's property.
- Points that are paid as part of the MD payment.
- Costs paid in advance by the seller of the replacement property and prorated in escrow, such as taxes, insurance, and condominium fees.
- Mobile home sales or use tax on the difference if the actual cost exceeds the calculated replacement cost.
- Motor vehicle registration fees on mobile homes.
- MIP that has been added to the loan amount.
- Warranty insurance.
- Additional costs incurred in securing a larger mortgage on the replacement dwelling than existed on the displacement dwelling.

10.04.13.02 Proof of Payment

Proof of payment of actual expenses is documented by showing separate items on the certified copy of the closing escrow statement, receipts or statements, and canceled checks.

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10.04.13.03 Incidental Expense and Mortgage Financing [49 CFR 24.401(b)(3) and 24.401(e)]

Where there is no mortgage on the displacement property, the costs incurred in connection with securing mortgage financing on the replacement property should not be considered as an eligible IE. These costs are not considered necessary to enable the displacee to relocate to a comparable property.

10.04.13.04 Mortgage Insurance Premiums (MIP)

The Department of Housing and Urban Development (HUD) has established a process for collecting MIP for certain mortgages that HUD insures. Information about MIPs for HUD should be obtained from the local HUD Office or displacee's lender.

Under the new system, the borrower can:

1. Pay a single premium on the mortgage as an up-front cost paid into escrow. This payment represents the total premium obligation for the insured loan; or
2. Finance 100% of the MIP by adding the premium obligation to the loan amount. In effect, this option allows the borrower to finance the MIP over the term of the mortgage loan at the same interest rate.

Mortgage Insurance Premium is reimbursable as an eligible IE if the total premium is paid through escrow for the replacement property (Item #1). It may also be reimbursed as part of the MD expense if the premium is financed as part of the mortgage (Item #2). Reimbursement is limited to the actual amount of MIP that would be required on the unpaid balance of the old loan or the amount of MIP required on the new loan for a comparable replacement dwelling, whichever is less.

The RAP Agent should inform all displacees eligible for MIP reimbursement of both options and advise them that they can maximize their entitlement dollars by selecting the single-premium option.

The amount of MIP varies depending on the term of the loan, credit status of the borrower, and whether the premium is paid up front or financed.

A factor developed by HUD is multiplied by the amount of the mortgage to determine the amount of MIP. Exhibit 10-EX-16 shows the MIP factors and procedures for the two options.

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10.04.13.05 Private Mortgage Insurance (PMI)

In certain instances, conventional lenders require borrowers to pay PMI to obtain a loan. Since the rates charged by firms providing PMI are competitive in nature, no set formula can be used to establish a payment reimbursement procedure.

Generally speaking, a borrower is required to pay the first year's premium up front in escrow. The premium for the remaining term is added to the monthly mortgage payment and collected accordingly. The amount of PMI paid up front in escrow is eligible for reimbursement as an incidental expense.

Payment is based on the proportional share of PMI applied to the remaining balance of the loan on the displacement dwelling or the loan on a comparable replacement dwelling, whichever is less.

10.04.14.00 Converting the Price Differential (PD) to a Rent Differential (RD) [49 CFR 24.401(f)]

A 90-day owner-occupant may elect to rent, instead of purchase, a DS&S replacement dwelling. If so, the 90-day owner-occupant should be advised that they can receive an RD in lieu of the entire RHP (PD, MD, and/or IE) for purchasing a replacement dwelling. Inform the displacee a new RHV will be prepared and Conditional Entitlement Letter provided. A new 90-day occupant Conditional Entitlement Letter will be accompanied by a cover letter stating that the new comparable rental address and computation are being provided per their request.

The maximum RD is calculated in the same manner as with 90-day occupants, except that the rent at the displacement property is based on economic rent, and the RD cannot exceed the calculated Price Differential. If the PD is zero, then the RD is zero. No new RHV is necessary.

Any advanced monies from the RHPs (e.g., credit report and appraisal fees paid into escrow for a potential purchase) that have already been paid should be deducted from the RD to avoid duplicate payments.

The 90-day/30-day Notices required under 49 CFR 24.203(c) that are sent to a 90-day owner-occupant who chooses to rent will provide the addresses of comparable replacement properties that are available for rent, not sale.

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EXAMPLE - 90-day Owner-Occupant who rents:

Comparable Replacement Property lists for:	$180,000
Fair Market Value of Displacement property:	$170,000
Maximum Price Differential:	$ 10,000

Actual fair market rental of the replacement property: $1,800 per month
Fair market rental of the displacement property: $1,600 per month
Difference of $200 per month x 42 months = $8,400 Rent Differential

Owners can receive a $8,400 Rent Differential since it is less than the maximum Price Differential ($10,000). They also have one year from the date they occupied the replacement property rental to convert back to an owner and receive the balance of the Price Differential ($10,000 - $8,400 = $1,600), plus any entitlement they may qualify for as a Mortgage Differential and Incidental Expense. However, they would not be entitled to an additional moving payment for the second move.

10.04.15.00 Last Resort Housing (LRH) Guidelines

The usual method for providing Last Resort Housing (LRH) is by making payments exceeding the statutory limits. When an LRH Super RAP payment (>$31,000) will be made to a 90-day owner-occupant, every effort should be made to deposit all the funds into escrow. However, should the displacee file a claim after the close of escrow on the replacement property, the displacee can be paid any RHP due directly.

Other methods of providing Last Resort Housing include those outlined in Table 10.04-A.

For additional Last Resort Housing Guidelines, see Exhibit 10-EX-44.

10.04.15.01 Last Resort Housing for 90-Day Owner-Occupants

If possible, all funds must be deposited into escrow. However, should the displacee file a claim after the close of escrow on the replacement property, the displacee can be paid the full RHP directly.

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10.04.16.00 Replacement Housing Payment For 90-Day Occupants Eligibility [49 CFR 24.402(a)]

A tenant occupant displaced from a dwelling, who has occupied the property for at least 90 days prior to the ION, may be entitled to an RHP in the form of an RD or a Down Payment (DP) if the displacee rents, or purchases, and occupies a DS&S replacement dwelling within one (1) year after the date he or she moves from the displacement dwelling.

Only one replacement housing or rental payment shall be made for each dwelling unit, except in the case of multifamily occupancy of one dwelling unit (10.04.17.00).

10.04.16.01 Rent Differential (RD) Offer

The RD is the amount offered to the displacee, in writing, which provides displacees with an estimate of monthly payments they can rely on as they seek replacement dwellings. If the RD offer is not acted on within 180 days, it shall be automatically withdrawn and a new RD will be calculated based on the new monthly rent at the displacement dwelling.

The displacee must be advised in advance that the time period to act on the original RD offer will be withdrawn if a replacement property is not located soon and that the new RD may be more or less than the original RD offer, depending on the market and the monthly rent the displacee has been paying.

10.04.16.02 Amount of Payment [49 CFR 24.402(b)(1)]

An eligible displaced person that rents a replacement dwelling is entitled to a payment not to exceed $7,200 for rental assistance, prior to LRH provisions. Such payment shall be 42 times the amount obtained by subtracting the base monthly rental (10.04.16.00) for the displacement dwelling from the lesser of:

i. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or
ii. The monthly rent and estimated average monthly cost of utilities (10.04.16.01) for the DS&S replacement dwelling actually occupied by the displaced person.

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10.04.17.00 Base Monthly Rent [49 CFR 24.402(b)(2)]

The base monthly rent for the displacement dwelling is the lesser of:

i. The average monthly cost for rent and utilities at the displacement dwelling for the three (3) months prior to the ION.
   - For an owner-occupant, use the economic rent for the displacement dwelling.
     - if owner rents the property back from the Region/District after escrow closes, use the actual rent paid (including estimated utilities) after a three (3)-month period has passed.
   - For a tenant who paid little or no rent (10.04.16.02) for the displacement dwelling, use economic rent,
     - unless its use would result in a hardship because of the person's income or other circumstances; or

ii. Thirty (30) percent of the person's average monthly gross household income (10.04.18.00) if the annual amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Low Income Limits (see HUD's Low Income Chart, or

iii. The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities. The portion of the welfare assistance designated for food (e.g., food stamps) is specifically excluded from being considered as income [7 USC Section 2017(b)].

10.04.17.01 Utilities

Utilities are defined as expenses for electricity, gas (and other heating and cooking fuels), water, and sewer/septic. Other utilities normally included in a local utility agency bill such as street cleaning, neighborhood cleanup, storm drains, etc., must not be included in the Rent Differential.

The term "average monthly cost of utilities" means the average monthly cost of the displacee's utility costs for the last 12 months.

The term "estimated average monthly utility cost" means the District's estimate of utility expenses for the comparable replacement property considering its size and location.

The cost for heat is usually included in a natural gas or electric bill. It is appropriate to consider the cost of wood or coal if they are typically used for heat in the area. Liquefied gas is also an appropriate utility expense.

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The District is responsible for developing estimated average utility costs related to the replacement comparables. Each district, and often each neighborhood, will have different data sources. The utility companies often have the most reliable information; HUD or local housing agencies may also have useful information. If there are no reliable data sources, then area survey methods are used. Unless absolutely necessary, an area wide survey is not needed. Contacts with local utility companies are usually sufficient.

10.04.17.02 Calculating Utilities

The RAP Agent will obtain a list of utilities included in the rental rate from the landlord unless the information was obtained during the FWO and noted on the Owner's Certificate of Tenants. The tenants will be instructed during their First RAP Call to obtain actual costs from their utility providers. Ideally, the utility providers should respond to the tenant's request by sending a formal letter stating that:

> "monthly average of your actual utility bill for *(type of utility)* for the last 12 months of service at the *(displacement address)* was $*(average monthly payment)*."

The RHV report must show the utilities included in the displacement rent and the comparable replacement rents. The RD calculation is based on the displacement rent plus the actual average monthly utilities that are the responsibility of the displacee, and the most comparable replacement rent plus the estimated average monthly utilities that would be the responsibility of the displacee.

10.04.17.03 Little or No Rent [49 CFR 24.402(b)(2)(i)]

Little or no rent is defined as a rental rate that is unreasonably below the market rental rate for a comparable dwelling in the area. The term "little rent" is defined as 25% below the market rent established in the appraisal.

The provision of little or no rent addresses payment computation for occupants who pay no rent or unreasonably low rent and for whom a payment based on such rent would result in a windfall. If the occupant's actual rent is below market rent, the RAP Senior must document in the RAP file that no kinship, friendship, or contrivance exists and that the actual rent will be used in the payment computation.

If the RAP Senior determines that a situation exists, such as tenant is providing a service in lieu of all or a portion of rent, or the tenant's relationship to

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landlord (e.g., kinship or friendship) may not result in an arm's length transaction, then economic rent (without including the actual average utilities) must be used to calculate the RD.

However, if the use of economic rent will create a hardship for the displacee, the RAP Agent must use the actual rent and document the RAP file justifying the use of actual rent vs. economic rent.

In the event a displacee enters into a kinship friendship situation at the replacement dwelling for an amount known to be much higher than market rent for the area (but which would maximize their RHP), claims should be supported by such documentation as may be reasonably required to support expenses incurred [49 CFR 24.207(a)]. The Relocation Agent may verify claims by asking for supporting documentation.

These procedures do not apply to Department-owned properties where actual rent is less than fair market rent due to the Department's affordable rental rate policy.

If displacee's rental rate is lower than market rent because of a public subsidy and the subsidy of a similar private or public subsidy program is available to displacee and will be continued after displacement, the market rent of displacement dwelling is used in the computation. If the subsidy will be discontinued after the tenant vacates, actual rent is used. It must be documented that public housing is not available.

10.04.18.00 Subsidized Housing

Rent Differentials for tenants who occupy publicly subsidized rental housing and relocate to private housing or publicly subsidized housing are calculated so a tenant will not receive duplicate payment for a rental subsidy through both the Relocation Assistance provisions and a Federal Rental Subsidy Program. Publicly subsidized housing is defined as:

> "Low rent public housing, FHA Sections 221(d)(3), 236 and other existing projects where rates are set on the basis of the tenant's income."

Subsidized housing can also be any rental assistance from a federal, local or other quasi-governmental authority (including stipends from BIA or other tribal entities). The person's RD will be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.

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Occupants of publicly subsidized rental housing must be identified, and all replacement housing valuations and procedures must comply with the following:

- Tenant moves from publicly subsidized housing to publicly subsidized housing - the displacement rent and actual replacement rent are the amounts actually paid by the tenant.
- Tenant moves from privately financed housing to publicly subsidized housing - the existing rent is calculated in accordance with the provisions of Section 10.04.20.00. The replacement rent is the amount the tenant pays for the subsidized housing.
- Tenant moves from publicly subsidized housing to privately financed housing - the existing rent is the amount the tenant pays for the publicly subsidized displacement housing, not including the supplemental rent furnished by the public agency.

The third option is to be used only when it can be documented that DS&S publicly subsidized housing is not available to displacee.

However, if the tenant qualifies for comparable DS&S subsidized housing that is available in the replacement area, but the tenant chooses to rent nonsubsidized housing, the RD is based on what the tenant would have received if relocating to subsidized housing.

The RAP Agent should explain to the displacee that if they go off the government housing subsidy program, then the relocation housing payment is considered as income for the purposes of determining if they are eligible to return to a subsidized housing program in the future. Additionally, there is no guarantee they would be able to do so, and if so, when.

10.04.18.01 Section 8 Comparable Replacement Housing

49 CFR 24.2(a)(6)(ix) states that comparable replacement housing for a person receiving government housing assistance before displacement may reflect similar government housing assistance. In such cases, any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit. A privately owned dwelling with a housing program subsidy tied to the unit may qualify as comparable replacement dwelling only for a person displaced from a

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similarly subsidized unit or public housing. A housing program subsidy that is paid to a person (not tied to the building) such as a HUD Section 8 Housing Voucher Program may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately owned subsidized unit or public housing unit before displacement.

10.04.19.00 Monthly Gross Income

Thirty percent (30%) of a household's gross income can be used to determine the RD, but only if the annual income is classified as low income under the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits (usually updated February of each year). RAP Agents can find the list at the RAP website, and at FHWA's website.

The RD is based on the lesser of the base monthly rent and utilities at the displacement dwelling OR 30% of the household's average monthly gross household income if the total amount is classified as low income for the displacement area [U.S. Department of Housing and Urban Development (HUD)].

To determine if the 30% rule applies, the RAP Agent shall advise the displacee of this method of computing the RD and ask if the actual monthly rent (plus estimated average monthly utilities) of the displacement dwelling exceeds 30% of monthly gross income. If the answer is "no," the Agent annotates the parcel diary. If the answer is "yes," the Agent:

- Secures an Income Certification (RW 10-39) from the displacee using 10-EX-39 as a guide on appropriate sources of income.
- Compares the annual gross income on the Certification to the amount identified as low income for the displacement area on HUD's survey (see Web site above). If the income is higher, the displacee's income cannot be used in the RD calculation. The RAP Agent must use the annual income for the entire household and compare it to the total number of persons living in the displacement area regardless of age or residency status.
- Computes the rental RHP per Section 10.04.15.00.

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EXAMPLE:

1. Husband and wife live alone in a residence, but the Income Certification shows that all income is from only one person. Follow HUD's list for '2 persons.'
2. Husband and wife live in a residence with two minor children. Follow HUD's list for '4 persons.'
3. Husband and wife live in a residence with two minor children, and a relative who is not a legal U.S. resident. Follow HUD's list for '5 persons.'

Monthly gross income is based on all income from all persons over 18 years old for the 12-month period preceding the date of determination of income. Do not include the income of a full-time student over the age of 18 UNLESS that person is the head of the household or the person's spouse.
HUD's survey is usually updated in February of each year and lists all the counties in California.

10.04.20.00 Income Verification

When displacees claim that income should be the basis for calculating the RD, all household members with an income must complete the Income Certification (RW 10-39). Relocation benefits vest at the time of the Initiation of Negotiations (ION). Therefore, the date of determination is either the date of the Notice of Intent to Acquire (NIA) or the First Written Offer (FWO).

The income stream in existence at the time of the ION should not be adjusted if the displacee's income changes at a later time. The income is verified once and is not adjusted for subsequent events. There is no statutory provision for adjusting relocation claims or payments based on changes in income after the eligibility determination has been made.

The RAP Agent must verify all income-based computations by reviewing displacee's income records. [A copy of an income tax return for the tax year preceding the determination should not be the only source for verifying income for the last 12 months. However, it can be used as an indicator of low income if no other documentation is available. The displacee may have to request a copy of their most recent tax return from the State Franchise Tax Board. (Note: Advise the displacee that they may have to pay for the copies.)] Both the Agent and the displacee should review "Gross Income When Calculating Rental Differential" (10-EX-26) prior to completing and reviewing the Income Certification to ensure the appropriate type of income is considered.

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The RAP Agent must document the type of documentation used to verify the household's gross income for the last 12 months, such as employers or credit reporting sources, pay stubs, benefit statements, bank deposits, and other periodic receipts of payment.

A diary entry is made indicating the method and result of the income verification. When income has been verified and documented in the District's file, return any documents that were used to verify the Income Certification to the displacee. After the RAP Agent has verified all the information on the Income Certification, a decision must be made as to its validity. Because of the nature of the payments based on income, the burden of proof rests on the displacee. If the RAP Agent has reason to believe the information is incomplete or incorrect because the rent and utilities to gross income ratio is too high (60% to 85%), the file should be documented and the displacee advised that the Rent Differential will be based on the actual rent or the economic rent, with utilities.

Use the following guidance when determining the displacee's ability to pay for monthly living expenses:

The RAP Agent should deduct the actual monthly rent and utilities from the monthly income as stated on the income certification to determine if it is feasible that the displacee has enough remaining funds to pay for daily living expenses.

Food	14%	If the household receives food stamps, use 0%.
Transportation	19%	If no one is working outside the home, use 10%.
Medical Costs	2%	If the household receives MediCal or Medicaid, use 0%.
Other	5%	Clothing, nonperishables, ineligible utilities.
Minimum %	40%	15% if the household receives food stamps, MediCal and no one works outside the home.

The RAP Agent can make slight adjustments to the percentage if the displacee's situation warrants same, such as a student living in a dorm or boarding situation, the household is excessively large, the members of the household raise or grow their own food, or several families are engaged in bartering services for food and clothing. However, if the household receives a benefit or service on a regular basis in lieu of all or part of their income (e.g., waiter receives meals at a restaurant, or a bus driver gets to take the

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vehicle home each night), then the value of that service or benefit must be included in the total household income.

Exclusions to income are listed on 10-EX-26. Household income for purposes of this regulation does not include program benefits that are not considered income by federal law. An additional list of income exclusions can be found at FHWA's website which is continually updated. If there is a question on whether or not to include income from a specific program, contact HQ.
If the documentation provided is determined to be accurate and reasonable, the file must be documented outlining how the 30% was verified and calculated.

Non-tenured occupants MUST provide an Income Certification prior to determining if they are eligible to receive any RHPs.

If any member of the household will not complete their portion of the Income Certification or provide evidence of income, the entire household's income will not be considered in computing the RD.

10.04.21.00 Computing the Rent Differential Payment

The RD is calculated by comparing base rent plus average monthly cost of utilities on the displacement dwelling to base rent plus estimated average monthly cost of utilities on the actual replacement dwelling. If the computed rental assistance payment exceeds $7,200, see 10.04.23.01.

The utility cost used to verify "spend-to-get" in the actual replacement property is the amount of the estimated average utility costs used in the calculation of the RD. It is not necessary to determine the estimated average utility costs in the actual replacement area.

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EXAMPLE

Displacement Rent	$400 month
Average Cost of Utilities	$150 month
Base Monthly Rent	$550 month
Most Probable Comparable Rent	$500 month
Estimated Average Cost of Utilities	$175 month
Comparable	$675 month

Scenario 1:

Actual Replacement Rent	$475 month
Estimated Average Cost of Utilities	$175 month*
Actual Replacement Rent	$650 month

Must pick the lesser of Actual Replacement Rent or the Comparable to calculate the RD =

$650 - $550 x 42 months = $4,200

Scenario 2:

Actual Replacement Rent	$550 month
Estimated Average Cost of Utilities	$175 month
Actual Replacement Rent	$725 month

Must pick the lesser of Actual Replacement Rent or the Comparable to calculate the RD =

$675 - $550 x 42 months = $5,250

* Always use the Estimated Average Cost of Utilities from the RHV when determining "spend-to-get" at the actual replacement.

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CALCULATING RENTAL ASSISTANCE PAYMENTS

Situation	Method
Average or estimated average rent and average monthly utility costs of the displacement dwelling do not exceed 30% of monthly gross income.	Step 1 - Find the lower of estimated monthly replacement rent or actual rent paid on replacement property, including average monthly utility costs. Step 2 - Determine the average monthly rent and average monthly utility costs of displacement property. Step 3 - If Step 2 result is larger than or equal to Step 1, the answer is zero (0). Step 4 - If Step 2 result is smaller than Step 1, subtract Step 2 amount from Step 1 and multiply the result by 42 (months).
Average monthly rent on the displacement property, including average monthly utilities, exceeds 30% of monthly gross income, and displacee qualifies as "low income," per HUD chart.	Step 1 - Find the lower of estimated monthly replacement rent or actual rent paid on replacement property, including average monthly utility costs. Step 2 - Consult HUD chart to determine if displacee qualifies as low income. If so, continue to Step 3. Step 3 - Determine 30% of monthly gross income of the displacee. Step 4 - If Step 2 result is larger than or equal to Step 1, the answer is zero (0). Step 5 - If Step 2 result is smaller than Step 1, subtract Step 2 amount from Step 1 and multiply the result by 42 (months). NOTE: When rental assistance payments by other public agencies are involved, the average monthly rent is the amount actually paid by displacee excluding any rent subsidy. Calculate the payment as above.

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10.04.22.00 Conversion of Payment [49 CFR 24.403(e)]

A displacee who initially rents a replacement dwelling and receives an RD may be able to convert their status to homeowner if a DS&S replacement property is acquired within the one-year prescribed period (see Section 10.08.02.00).
An eligible 90-day owner-occupant that initially rents a replacement property (see 10.04.14.00) may still be eligible for the full RHP if a DS&S replacement property is acquired within one year of the prescribed period. The "spend-to-get" requirement for the purchase of the replacement property is based on the last RHV. The amount of the RD paid when the initial replacement property was rented must be deducted from PD, MD, and/or IE that the displacee may be eligible to receive.

An eligible 90-day occupant that initially rents a replacement property may still be eligible for a DP if a DS&S replacement property is acquired within one year of the prescribed one-year period (see Section 10.08.02.00). The amount of the RD paid when the initial replacement property was rented must be deducted from the total RD based on the last RHV. The remaining amount can be used as the down payment and incidental expenses.

However, an eligible displacee who occupies a replacement dwelling that costs less than the comparable property used in the RHV, and would otherwise qualify for the full RHP, cannot relocate into a higher-cost DS&S dwelling at a later time and claim the remaining RHP. Once the replacement property has been inspected and any or all of the RHP paid, the displacee is vested and the maximum amount of the RHP is established.

10.04.23.00 Manner of Disbursement [49 CFR 24.402(b)(3)]

An RD may be disbursed in either a lump sum or in installments. However, the full amount of the RD vests immediately when the displacee occupies a DS&S replacement dwelling and "spends-to-get," even if there is a later change in the person's income or rent, or in the condition or location of the person's housing.

Although rental assistance payments of $7,200 or less are usually made in one lump sum payment, displacee may request annual installment payments that are not to extend more than 42 months beyond the move-out date.

Disbursement of rental assistance payments in excess of $7,200 is made in accordance with the last resort housing guidelines.

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10.04.24.00 Rent Differential Payment Procedures - Last Resort Housing (LRH)

Rent Differential payments in excess of $7,200 must be paid in accordance with Last Resort Housing provisions. Such payments that do not exceed $10,000 are usually paid in a single lump sum payment. Payments in excess of $10,000 are paid in a maximum of four payments (see RW 10-41).

A displacee may request that installment payments are made even if the Rent Differential is less than $10,000. The RAP Agent must fully document that displacee requested the installment payment option and any subsequent changes in the manner of payment.

Regardless of the amount, displacee's Rent Differential is fully "vested" immediately when they occupy DS&S housing and meet the "spend-to-get" requirement, even if there is a later change in the person's income, occupancy, family characteristics, rental rate, or in the condition or location of the actual replacement property. Recertification of DS&S housing is not required after the initial qualifying inspection.

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10.04.24.01 Installment Payments

Last resort housing rental assistance payments in excess of $10,000 are to be disbursed in four payments as follows:

Rent Differential Payment Schedule

Advanced Payment:	Prior to Occupancy	June 15th	First month's rent, last month's rent, and security deposit.
1st installment:	Date of Occupancy	July 1st	6 months of the Rent Differential divided by 42, OR the balance if the total amount remaining after the 1st installment would be less than $10,000.
2nd installment:	Six months later	January 1st	6 months of the Rent Differential divided by 42, OR the balance if the total amount remaining after the 2nd installment is less than $10,000.
Final Payment:	Six months later	July 1st	Balance of the Rent Differential

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EXAMPLE:

Comparable Rent including $75 utilities $1,500
Displacement Rent including $25 utilities $ 500
= $1,000 x 42 months = $42,000 Rent Differential

Actual Replacement Rent of $1,550 plus the $75 utilities used to calculate the Rent Differential = $1,625

Installments:
Advance Payment to Landlord for the security deposit of $1,000, first month's rent of $1,550, and last month's rent of $1,550 (if requested by the displacee) = Total $4,100.

Balance of Rent Differential ($37,900) paid in three installments. First and second installments of $6,000 ($1,000 x 6 months). The first installment is due within 15 days of displacee's occupancy of the actual replacement property.

One year from the date of occupancy, the balance of $25,900 is paid to the displacee.

There may be times when it is in the Department's best interest to make periodic payments directly to the landlord. (See Exhibits 10-EX-17, Department/Displacee Agreement for Special Installment Payments, and 10-EX-18, Tenant/Landlord Rental Agreement for Direct Payment.)

RW 10-41 (Computation of Rent Differential Payment) must show total entitlement, installment amount, and payment periods. Approval of the first installment constitutes approval of the total entitlement and periodic payment schedule.

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10.04.24.02 Subsequent Installments

The displacee must be provided with claim forms for subsequent installment payments and the schedule for submitting the claim forms. Displacee must also be advised to inform the RAP Agent of any changes in address or location during the 12-month period.

Thirty days prior to the anniversary date, the RAP Agent shall provide a claim form to displacee. Upon return of signed form, the installment may be paid. No DS&S inspection is required.

If displacee has vacated replacement property and cannot be found after reasonable effort, no further action is taken with respect to that or subsequent installments unless displacee reappears. When payments are suspended because displacee disappears, the RAP Agent shall document the file to show extent and results of efforts made to locate party.

The suspension time counts toward displacee's eligibility for relocation assistance payments; e.g., disappeared for 42 months, no further payments are authorized.

10.04.25.00 RD Payments - Documentation

Documentation in support of the claim should be in the District RAP file, including:

- Claim form, Form RW 10-2.
- Computation of Rent Differential Payment, Form RW 10-41.
- Current Replacement Housing Valuation.
- Copy of Rental Agreement for replacement property or evidence of rent paid on the replacement property.

10.04.26.00 Down Payment (DP) [49 CFR 24.402(c)(1)]

An eligible 90-day occupant (tenant or owner), or Non-tenured occupant, who purchases a DS&S replacement dwelling may convert the RD to a DP. Even if the Rent Differential is zero, an eligible 90-day occupant or Non-tenured occupant is entitled to the minimum DP of $7,200 if they meet the "spend-to-get" requirements.

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A 90-day occupant or Non-tenured occupant whose RD is $7,200 or less automatically qualifies for a $7,200 DP. If the RD is over $7,200, the DP is limited to the amount of the RD (10.04.13.01). Example:

- RD $4,200 = DP $7,200
- RD $9,100 = DP $9,100

A displaced person eligible to receive a payment as a 90-day owner-occupant is not eligible for this payment.

A Subsequent occupant is not eligible for this payment. If the RD calculation is zero, then the DP would be zero.

10.04.26.01 Application of Down Payment (DP) [49 CFR 24.402(c)]

The DP is designed to help eligible displacees purchase and relocate to DS&S comparable housing. Eligible displacees may be entitled to receive the full amount of the RD if it is applied toward the down payment for the purchase of the replacement property, even if this results in a 100% purchase. Any remaining RD can be applied to the incidental expenses related to the purchase, including nonrecurring items paid in escrow.

10.04.26.02 Conditions (DP)

The following conditions apply to entitlement of the DP:

- Displacee must meet eligibility requirements in Section 10.04.01.00.
- Displacee may finance by any means or may pay cash.
- Displacee must apply the funds to the DP and nonrecurring IE, up to the amount of the RD.
- Displacee must pay for anything in excess of the calculated entitlement. The District is not committed to paying for DP actually made or required for a replacement.

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10.04.26.03 Manner of Disbursement (DP)

If the DP is $7,200, and the displacee is entitled to the full amount after submitting supporting documentation that all the funds will be used for the down payment and the qualifying incidental expenses, the displacee can be paid directly after the close of escrow on the replacement property, or the funds can be assigned by the displacee to the escrow account. If the amount of the DP is over $7,200, the RD must be placed into escrow and applied toward the purchase of housing. The only exception is to repay funds advanced by displacee (e.g., credit report, appraisal fee). Displacees cannot be reimbursed for funds deposited with the Offer and Acceptance (a.k.a. earnest deposits).

10.04.26.04 Conversion of Payment (RD to DP) [49 CFR 24.403(e)]

A displaced person who initially rents a replacement dwelling and receives an RD that is less than $7,200 or the full amount (e.g., because an installment payment was made, or the displacee did not "spend-to-get") is eligible to receive a DP if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed one (1)-year period. Any portion of the RD that has been previously paid shall be deducted from the DP.

EXAMPLE:
Non-LRH (RD = $2,100)

DP allowance	$7,200
Less lump sum rental assistance already paid	-$2,100
Additional State payment toward DP and eligible IE	$5,100

EXAMPLE:
LRH (RD = $21,000)

DP allowance	$21,000
Less installment payment of RD already paid	-$ 2,100
Additional State payment toward DP and eligible IE	$18,900

The remaining cash entitlement must be applied toward the DP or IE for the replacement dwelling being purchased. Escrow instructions must clearly state that none of the remaining entitlement may go directly to displacee.

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10.04.26.05 Down Payment into Escrow

The following procedures for DPs into escrow are in addition to those outlined above.

If displacee has agreed to buy a replacement, they shall be advised of the amount available and the need to apply all funds to the purchase of a replacement.

When escrow is opened, the RAP Agent must inform the escrow agent of the DP arrangements and must request:

- A copy of the escrow instructions or a similar document.
- The itemized estimate of escrow expenses, if possible.
- A certified copy of the closing escrow statement and Regulation "Z," if applicable, at the time escrow closes.

After the above information is received and reviewed, the Agent should:

1. Calculate the exact amount of payment.
2. Prepare a claim form and have displacee sign it (Form RW 10-2).
3. Prepare an Assignment of Funds Letter (Exhibit 10-EX-9) and have it signed.
4. Prepare an Escrow Instruction Letter (Exhibit 10-EX-11) to escrow company.

If necessary, the advance payment may be based upon estimated IE with reconciliation at the close of escrow. The RAP Agent should recalculate the DP entitlement and pay any additional costs as soon as they are known, assuring the funds are distributed properly between the loan account and displacee. If correct instructions are given, overpayments will be automatically refunded from escrow. A copy of the certified closing statement is attached when the additional claim is processed.

When escrow has closed, a certified copy of the closing statement is placed in the District RAP file.

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10.04.26.06 Down Payment to Displacee

When escrow on the purchase of displacee's replacement closes before the State makes any payments, displacee is reimbursed for the DP actually applied to the loan and all IE paid in escrow. Any remaining amount of the RD can be paid directly to the lender using an assignment from the displacee.

10.04.26.07 Incidental Expense for 90-Day Occupants and Subsequent Occupants

When an eligible 90-day occupant or Subsequent occupant decides to purchase rather than rent replacement property, a portion of the DP benefit may be attributed to IE. In LRH situations, these amounts may be substantial. The following factors must be taken into consideration when the District pays for these expenses:

- The cost to displacee must be ordinary and necessary for a buyer to pay in a normal transaction where the replacement dwelling is located. Costs may vary from county to county and city to city within California.
- Loan broker, origination, and application fees are usually all inclusive in the MD reimbursement for homeowner-occupants. For tenants, these fees may be added together and paid to the extent they do not exceed predetermined prevailing loan establishment fees.

Eligible IE must be limited to those nonrecurring costs that would have been reimbursable for the 90-day Owner-Occupant (e.g., loan origination fees, title search, recording fees, but not prepaid expenses such as estate taxes and property insurance) but without the usual restrictions that the amounts be limited to the amount of the displacement mortgage or the value of the comparable replacement property.

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10.04.27.00 Owner-Occupants with Partial Ownership Interests

When a dwelling is owned by several persons and occupied by one or more owners, the RHP is the lesser of:

- The difference between the owner-occupant's share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling.
- The difference between the total acquisition cost of the acquired dwelling and the amount determined by the State as necessary to purchase a comparable dwelling.

When the partial owner-occupant purchases a replacement that is less costly than the estimated replacement cost and is DS&S for the owner-occupant, then "spend-to-get" is that party's share in the acquisition price plus the PD. The other partial owner that does not occupy the property is not entitled to a relocation assistance payment (RHP, Nonoccupant Owner who Leases Space to Another) except for possible moving of personal property that is stored on site.

EXAMPLE:

Cost of replacement	$150,000
Cost of acquisition	-$130,000
PD	$ 20,000

Assume there are two partial owners of the acquired dwelling. The partial owner-occupant has a one-half interest in the displacement or $130,000 ÷ 2 = $65,000. The total "spend-to-get" for this partial owner-occupant is $85,000 ($65,000 + $20,000).

However, if the RAP Agent determines that the displacee needs to obtain a loan in order to relocate, e.g., in the case of an owner-occupant with a partial interest who must obtain a loan to purchase a replacement property, the cost of obtaining the loan could be considered "necessary" and would be an eligible expense.

49 CFR 24.401(c)(1) requires that the RHP for an owner-occupant with "partial interest" in the property being acquired is computed using the full acquisition cost of the displacement dwelling. To receive the maximum payment, an owner-occupant with a partial interest must spend his or her share of the acquisition payment, plus the amount of the computed RHP, in order to receive the maximum computed RHP. Owner-occupants with partial interests

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who cannot secure financing or who cannot afford to purchase comparable replacement housing may be treated as tenants and receive an RD. The Department is not required to provide owner-occupants with partial interests a greater level of assistance to purchase a replacement dwelling than what would have been required to provide such persons if they owned fee-simple title to the displacement property.

10.04.28.00 State Rental Prior to Acquisition

Whenever a tenant-occupied property has been appraised, the owner has received the Department's offer, and control of the property by the Department (by Grant Deed, Order for Possession, Right of Entry, or other means) is imminent, the District may enter into an agreement with the owner whereby the Department will rent the property if it becomes vacant. Such properties include, but are not limited to, apartment units, commercial buildings, and mobile home park spaces.

The District must consider and document whether or not:

- Comparable vacant rental properties in the subject area are scarce.
- There is a good probability that the property would be re-rented prior to the Department gaining control of the property.
- The Department's possible cost of relocation benefits to any subsequent tenants (Non-Tenured) will exceed the cost to rent back the property from the owner.
- Reoccupation of the parcel might delay Right of Way's delivery of the property for construction.

If justified and approved, the Acquisition Agent will offer to rent the property in accordance with procedures in the Acquisition Chapter of the Right of Way Manual.

Rental payments to the owner must cease when the Department gains control of the property.

10.04.29.00 Mixed-Use Properties

If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the PD.

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Where a displacee lives on the same premises as a displaced business, multi-use/mixed use property, farm, or nonprofit organization, a determination must be made as to whether that living situation falls within the definition of "dwelling" in the federal guidelines. 49 CFR 24.2(a)(10) defines "dwelling" as "the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit." If the displacee was legitimately living in such a circumstance, then the residential value must be segregated (10.06.18.00).

10.04.30.00 Multiple Households of Displacement Property

If two or more individuals are living together and occupying one dwelling unit as one household, the Department is not obligated to provide them with more than one replacement dwelling. Relocation eligibility is based upon the displacee's share of the replacement dwelling.

However, when two or more occupants maintain separate households within the same dwelling, they have separate entitlements to relocation payments. The decision as to whether two separate households were maintained within the same dwelling is a judgment determination by the RAP Senior. The parcel file should be sufficiently documented to support the decision reached.

Issues to consider are:

- The use of the dwelling (sharing of cooking and food storage facilities, bathroom facilities).
- The relationship of the occupants. Note: Students sharing a house together shall be considered as one household per FHWA.
- One or more of the occupants are paying rent to others in the household as evidenced by rent receipts, tax returns claiming a renter's credit, or tax returns claiming rental income.

AND

- It is clear (by signed statements) that the occupants are not moving to a replacement site together.

The payment computation for each household should be based on the part of the dwelling that the household occupies and the space that is shared

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with others. An attempt should be made to locate similar comparable DS&S living facilities that the households can share - if it is the most cost-effective method. The record should be sufficiently documented to support the decision reached.

See 10-EX-34 for additional guidance on determining multiple households.

Note: If the owner rents or leases a room(s) in the displacement dwelling to another party, there should be no reduction of rooms when considering a most comparable replacement dwelling for the owner.

10.04.30.01 Multiple Households of Replacement Property

Displacees may choose to rent or purchase a replacement property with another party who is not part of the relocation. Relocation eligibility must be based on the displacee's share of the replacement property. If a displacee enters into a rental agreement with another party, the RAP Agent must determine the percentage of financial responsibility that the displacee has accepted. Generally, each party will be paying one-half of the rent and utilities, so that a one-half share of their replacement dwelling rental rate must be used to determine the "spend-to-get" requirement before paying any portion of the RD.

If the displacee chooses to purchase a replacement property with another person who was not part of the relocation, then the percentage of ownership as indicated in the title documents must be used to determine the "spend-to-get" requirement before paying any portion of the RHP (either PD/MD/IE or a DP).

Example 1: An elderly 90-day owner-occupant chooses to purchase a replacement property with her recently divorced daughter. Title to the replacement property indicates that each has a divided one-half interest. Therefore, the displacee's PD/MD/IE will be based on one-half of the purchase price, mortgage amount, and incidental expenses.

Example 2: Parents pay cash to help their child buy a replacement dwelling. Title to the replacement property indicates that each has an undivided one-half interest. While the parents must be on the title, this will not affect the computation of the PD that may be placed into escrow.

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10.04.30.02 Documentation for Multiple Households

If there is more than one family in residence in a dwelling unit, the Acquisition or RAP Agent should obtain the following additional information:

- Names of heads of household.
- Makeup of each family.
- Relationship among the various heads of household.
- Number of rooms each family privately occupies.
- Move-in date of each family.
- Amount of rent or other consideration each additional family or individual pays to the owner.

This data is used to apportion relocation payments among the families or make more than one relocation payment when the property is vacated, if necessary. This additional data is also on the Certificate of Occupancy (RW 10-25). Any variation between information previously obtained (e.g., from the appraisal report or appraisal section data cards) and that obtained from the initial RAP interview must be explained in the RAP Diary.

10.04.30.03 Proration When One Household Splits into Two or More

Eligible occupants who subsequently separate or divorce and establish separate households, whether by choice or by litigation, qualify for payments as one displaced family.

The payments may be divided between the occupants (husband and wife or other adult household members who are listed on the rental agreement or the title report) in any proportion on which they agree. This requires a written agreement establishing the method of division and the percentage each party may claim. The agreement may not be changed without the written consent of both parties.

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EXAMPLE:

Comparable DS&S replacement rent for a 4-bedroom home is $850/month plus $100/month for utilities = $950/month.

Displacement property is 3 bedrooms and rents for $500/month, which includes all utilities, except electricity, which averaged $50 per month, for a total of $550/month.

Household consists of 7 persons: husband and wife on title, husband's father on title, and four children.

RD = $16,800

Husband and wife choose to separate. The husband's father will relocate with him, which requires a one-bedroom replacement property. The wife will relocate with the 4 children, which requires a 3-bedroom replacement property. The husband and wife agree to split the RD and the FMS in half. The husband will be entitled to one-half of the RD if he rents a one-bedroom for at least $425/month. With the added utilities of $50 (one-half of the estimated $100), he will be entitled to $8,400. The wife must spend at least $425/month (plus utilities) on a 3-bedroom DS&S replacement property to be entitled to one-half of the Rent Differential.

Separated or divorced displacees may agree to divide moving costs differently than their RHPs. All RHPs, however, must be based on the same percentage division. For instance, the parties may agree on a 90%-10% division of moving costs and a 50%-50% split of RHP payments. However, they cannot agree that one party may receive 70% of the PD and 10% of the IE.

Payments of moving expense can be based on actual costs or scheduled room-count method, but the two methods cannot be mixed. Payments are not made until all occupants have vacated the property except that partial payment can be made if denial will cause a hardship. The District has the option to issue a Notice to Vacate to any remaining occupants.

If the parties cannot reach agreement, entitlement is calculated as if they relocated together. Payment is determined by type of eligibility established by the first party to relocate and file a claim. Although only one party needs to sign the claim forms, checks must be payable to both individuals.

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EXAMPLE:

The tenants are eligible for moving expenses and may be eligible for either an RD or DP. If the first party to relocate elects a rental unit and files a claim for payment, the family maximum entitlement is based on this specific type of relocation. No other claim will be honored by the Region/District except where the initial claim was less than the maximum entitlement and the parties eventually reach agreement and file amended claims within the normal filing period.

If a divorce or separation occurs and one spouse vacates the property prior to the initiation of negotiations, the spouse who remains in occupancy is eligible for all relocation benefits that may accrue.

See Exhibit 10-EX-25.

10.04.31.00 Seasonal Residents

Persons owning or renting seasonal residences are generally not eligible for any relocation payments other than for moving expenses. A seasonal residence can be distinguished from a domicile in that a domicile is the place of a person's fixed, permanent home and principal establishment and to which place the person, when absent, has full intention of returning. The occupant of a seasonal residence could receive actual moving expenses or a fixed move payment, but is generally not eligible for RHPs.

10.04.32.00 Subsequent Occupants

A subsequent occupant is a residential occupant(s) that moved into the property after initiation of negotiations. Subsequent occupants must be in occupancy on the day the Department obtains control of the property (close of escrow, effective order of possession, effective right of entry) in order to receive monetary benefits.

Even though these occupants are not eligible for relocation benefits until the Department has control, the RAP Agent should provide the potential displacees with a Notice of Eligibility - Subsequent Occupants (10-EX-41) that states they must remain in occupancy until the Department has control or they will not be entitled to relocation assistance payments. The RAP Agent must also provide a 90-Day Information Notice but without addresses of comparable properties, since their eligibility for relocation assistance payments has not yet been established. At the first meeting with the potential displacees, the RAP Agent can obtain preliminary information that will help in

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determining possible relocation payments. Such information may include legal residency, income, household numbers, and/or functional needs. The RAP Agent must verify all information on the date the Department obtains control prior to providing any entitlements.

In addition to the Conditional Entitlement Letter for Subsequent Occupants (10-EX-42), the RAP Agent must provide the subsequent occupants with a 30-Day Notice to Vacate with addresses of comparable replacement property.

10.04.33.00 Personal Property Only [49 CFR 24.301(e)]

49 CFR 24.301(e) allows for the reimbursement of eligible expenses for a person who is required to move personal property from real property, but is not required to move from a dwelling. Eligible expenses include those described under Transportation, Packing, Disconnecting, Storage, and Insurance (including replacement value). Residents may also be reimbursed in accordance with the provisions outlined under Low Value/High Bulk (10.05.05.14) if the occupants were not required to move from the site. RAP Agents will provide displacees with the Notice of Eligibility for Personal Property Only (10-EX-46).

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RESIDENTIAL DEFINITIONS

- Dwelling [49 CFR 24.2(a)(10)]: The place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

- Mortgage [49 CFR 24.2(a)(18)]: Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which real property is located, together with the credit instruments, if any, secured thereby.

- Owner of a Dwelling [49 CFR 24.2(a)(20)]: A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:
    1) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or
    2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or
    3) A contract to purchase any of the interests or estates described in Subparagraphs (p)(1) or (2) of this section; or
    4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

- Person [49 CFR 24.2(a)(21)]: Any individual, family, partnership, corporation, or association.

- Tenant [49 CFR 24.2(a)(26)]: A person who has the temporary use and occupancy of real property owned by another.

- Life Estate: A person who holds a life estate has the right to occupy a property for life. Many times, a life estate is retained by a person who has been granted such right by a grantor or who conveys the remainder interest to another person. The computed RHP may depend upon distribution of the acquisition payment in accordance with state law, but should be sufficient to enable the displaced person to relocate as an owner with an interest at least equivalent to the interest held prior to the acquisition of the property. The payment computation will be based on the total amount of the acquisition payment for a dwelling comparable to the acquired dwelling.

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10.05.00.00 - MOVING AND RELATED EXPENSES - NONRESIDENTIAL (BUSINESS, FARMS, AND NONPROFIT ORGANIZATIONS)

10.05.01.00 Relocation Benefits

Any business, farm operation, or nonprofit organization (nonresidential) which qualifies as a displacee [49 CFR 24.2(a)(9)] is entitled to relocation benefits if the acquisition of the property in whole or part causes a need to relocate the operation and/or personalty to another location. Relocation can be to the remaining portion of the property if a partial acquisition has occurred. (See 10.05.13.01: Reestablishment payments for moves to the remainder.)

Relocation benefits are limited to advisory assistance and payments for actual moving and related expenses as the Department determines to be reasonable and necessary. The majority of this section describes the specific moving entitlements.

The Uniform Act does not require that nonresidential displacees be made whole and thus they receive fewer benefits under the Uniform Act than residential displacees. Payments are limited to just moving and related expenses, with no provision to assist in acquiring a replacement property (similar to the residential RHP). However, nonresidential displacees may qualify for a Reestablishment Payment to mitigate some of the expenses associated with establishing their operation at the new site (10.05.13.00).

10.05.01.01 Persons Not Lawfully Present in the United States

Moving expenses for an unincorporated business, farm, or nonprofit organization will be paid if an owner, manager, or operating officer certifies the other owners, signs the claim forms, and provides the necessary documentation for himself/herself. The sole owner of a business, farm, or nonprofit organization who cannot or will not certify as to their U.S. residency status is not entitled to any relocation benefits, including advisory assistance.

Any partnership that includes persons who cannot or will not certify as to their U.S. residency status is not entitled to any relocation benefits, including advisory assistance. The remaining partners are entitled to moving expenses,

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but the payments must be prorated based on the number of U.S. versus non-U.S. residents. Example: A partnership of five (5) persons, two (2) of whom can certify as to their U.S. residency status, will receive 2/5ths of the actual, reasonable, and necessary expenses. This proration must be applied to all moving expenses, including reestablishment, search expenses, and the in-lieu payment.

Moving expenses for an incorporated business will be paid if the corporation certifies that it is authorized to conduct business within the U.S.

10.05.02.00 Relocation Planning

49 CFR 24.205(c)(2)(i)(A-F) requires each business be interviewed by the RAP Agent prior to the ION. After the RAP Senior receives the Parcel Occupancy Data Sheet and assigns the file, the RAP Agent will schedule an interview with each business that has received a Notice of Intent to Appraise (or similar document). The RAP Agent will also interview each business lessee identified on the Parcel Occupancy Data Sheet. To increase the effectiveness of the interview, the RAP Agent may accompany the appraiser during the initial and/or subsequent inspections. RAP Agents may use the "Nonresidential Interview Checklist" (10-EX-35) issued January 13, 2005 as the basis for the interview. The purpose of each interview is to:

1. Determine the relocation needs and preferences of each business entity to be displaced such as:
   - Replacement site requirements.
   - Current lease terms and other contractual obligations. Note: This information may have already been obtained by the appraiser, so the RAP Agent should check with the appraiser first before asking for additional copies from the lessee. However, the RAP Agent can certainly obtain clarification or additional information, if needed, and share the same with the appraiser.
   - Financial capacity of the business to accomplish the move. This will help identify any advance relocation payments required for the move. Note: HQ must approve advance moving payments.
   - Professional services required to assist in planning the move, assist in the actual move, and reinstall machinery and/or other personal property.
2. Explain the relocation assistance program, ensuring the occupant understands that they must still be in occupancy at the ION in order to receive any benefits.

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3. Identify and resolve personalty and realty issues, working closely with the appraiser to ensure that the FMV includes the contributory value of all fixtures, and that there is a separate M&E appraisal as appropriate.
4. Estimate the time required for the business to vacate so that the displacee's operation has limited downtime, and the move is phased in segments to reduce loss of income.
5. Estimate the anticipated difficulty in locating a replacement property.

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SUGGESTED INFORMATION TO BE OBTAINED DURING A BUSINESS INTERVIEW:

1. What is the type and general characteristics of the business displacee?
    - Manufacturing: What type of product? What is the source of materials?
    - Wholesale: What is the product mix? What are the transportation requirements?
    - Retail: What is the type of business? Does it have a specialty clientele?
    - Service Business: What is the service? Who are the clientele? What is the competition?
    - Ownership/Structure - Sole proprietorship, family business, partnership, corporation or institution?
2. General Information:
    - Employment: How many employees?
    - Number of years in operation?
    - How long at current location?
    - Other locations?
    - Amount of payroll?
    - Amount of gross sales?
3. Issues related to the replacement site:
    - Facility: Parking, zoning, building type, special building requirements, taxes, utility requirements.
    - Preferences of owner: Location, price, terms, future expansion capability.
    - Other considerations: Street accessibility for walk-in trade or delivery, rail access, access to specialized utilities (high consumption, large disposal requirements), landscaping, structural capacity, traffic requirements.
4. Other issues to be discussed during the interview process:
    - Do you anticipate losses created by interruption of the business? If so, how can we mitigate?
    - Can the move be phased to minimize hardships and reduce downtime?
    - Do you anticipate costs to adapt a new location to your current requirements?
    - What other increased costs are anticipated, such as taxes, insurance, utilities, transportation, etc.?
    - What are the anticipated problems with zoning and licensing at a replacement location?

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10.05.03.00 First RAP Call

A nonresidential displacee, owner, or lessee is entitled to the same information in the same time frame as the residential displacee. An explanation of benefits to an owner must be made at the First Written Offer, and within 14 days to a tenant/lessee. In addition to the Occupancy Certification (RW 10-25), the RAP Agent must obtain a Certification of U.S. Residency (RW 10-44).

During the first call, the RAP Agent must look at all personal property on the displacement parcel and request a certified inventory of these items from the displacee. The Agent should note in the diary the general nature of the operation and the type of personalty. The Agent should review the Appraisal and the Right of Way Contract to determine which items are being treated as realty and which items are personalty.

10.05.04.00 Advisory Assistance

49 CFR 24.205(c)(2) requires that a minimum level of advisory assistance (AA) be provided to a nonresidential displacee from the time the appraiser inspects the displacement property until the displacee is completely relocated and reimbursed all eligible expenses. AA includes the following:

a. Determine Need: The RAP Agent should obtain enough information about the nonresidential displacee's operation to determine the type of relocation assistance that it will need to resume operations at the new site, such as zoning requirements, licensing requirements, environmental restrictions, type of site improvements needed, and the appropriate time frame and timing to relocate. An on-site inspection and an interview with the nonresidential displacee are the best way to obtain the information on the requirements it will have to relocate to the replacement site.

b. Provide current and continuing information: The RAP Agent should provide the nonresidential displacee with possible addresses of replacement sites that will accommodate their operation based on their needs as determined in item a. The RAP Agent should obtain feedback from the displacee for each replacement site offered to ensure that the information provided meets the needs of the displacee. In addition, the information should be updated and revised based on changes in the market and need expressed by the displacee's feedback. Referral to a real estate broker does not satisfy the requirement that the RAP Agent continuously work with the displacee

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to provide information on replacement sites. The RAP Agent has an obligation to keep in close contact with the displacee during the entire relocation process even if the nonresidential displacee does not immediately accept the offer of assistance at the First RAP Call.

c. Minimize hardship: The RAP Agent has a responsibility to work closely with the nonresidential displacee to minimize the hardships of relocating to a replacement site. The nonresidential displacee who relocates may experience a decrease in operations due to downtime or limited hours during its search for a replacement site, or during the actual move and reestablishment at the replacement site. This downtime may also impact employees' hours and service level to customers. The RAP Agent can mitigate some of the hardships by obtaining accurate information on the moving options, requesting bids from qualified moving companies and specialized contractors, being on site when moving companies are preparing estimates, and monitoring the move at the displacement and replacement sites. The RAP Agent is obligated to provide ongoing advice relative to planning the move, explaining various methods to accomplish more specific objectives and help with resolving encountered problems.

d. Research and supply compatible aid programs that could be of benefit: The RAP Agent should maintain a current list of services that are available to nonresidential displacees such as Small Business Administration (SBA), Service Corps of Retired Executives (SCORE), California Minority and Women Business Enterprise (M/WBE), Department of Housing and Urban Development (HUD), Farmers Home Administration (FHA), local Chamber of Commerce, local development commissions and property management firms, as well as lists of specialized moving companies and professional moving consultants that can be of use to the displacee. The RAP Agent should explore all possible sources of relocation planning, counseling, and financing that may be utilized by the displacee. Local officials should also be encouraged to provide incentives for the displacee to relocate within the community, if only to avoid adverse economic impacts due to a loss of jobs and a corresponding increase in unemployment. Local agencies can provide incentives such as being flexible with zoning and building requirements, offering tax abatements or special financing, or waiving Conditional Use Permit fees.

The ability to assist a nonresidential displacee depends on the RAP Agent's knowledge of the business, how it functions and what it requires to be successful. As such, RAP Agents should devote a considerable amount of

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time to meeting with the nonresidential displacee and obtaining a thorough knowledge of the operation.

The Relocation Assistance Brochure is a good tool for guiding discussion during the First RAP Call and subsequent meetings. In addition, the Notice of Eligibility provides written reinforcement of the explanation of benefits and level of advisory assistance. The RAP Agent must specifically point out to the nonresidential displacee the mandatory notification of the displacee's obligation to provide an inventory and permit monitoring of the move as noted in 49 CFR 24.301(i).

10.05.05.00 Moving Expenses - Eligible

The following sections outline various eligible moving expenses as provided for by 49 CFR 24.301 and 49 CFR 24.303.

10.05.05.01 Transportation of Personal Property

Eligible displacees are entitled to the cost to transport personal property and other items of personalty not acquired (e.g., trade fixtures, inventory) to the replacement property, not to exceed 50 miles from the displacement property. The Department may extend the 50-mile limit if no other replacement property was available or suitable for the displaced business, farm, or nonprofit organization.

Transportation includes packing, unpacking, crating, and uncrating, including any special packaging or equipment that must be used to protect sensitive or high valued items (e.g., computers, rare or exotic inventory, and photosensitive equipment).

The displacee executes the agreement with the moving company, vendor or specialist, and may assign reimbursement for the preapproved amount directly to the moving company, vendor or specialist. The Department does not enter into the agreement between the two parties.

10.05.05.02 Disconnecting/Dismantling

Displacees may also be entitled to the cost to move all non-acquired personalty which also includes disconnecting, dismantling, removing, reassembling, and reinstalling personal property. This includes movable machinery, equipment, substitute personal property (not loss of tangible personal property), and connections to utilities available within the building.

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10.05.05.03 Utility and Service Lines

Another possible moving expense is the cost of connection to available nearby utilities from the right of way to improvements at the replacement site. Utilities may include the following internal service lines: water, gas, electrical, compressed air, vacuum, vent, sewer, and oil. They may be located overhead, underground, or on the surface.

The cost of installing the typical service connections is not an allowable expense such as: utility distribution centers (water meters, gas meters, and main electrical service panels), perimeter and overhead electrical outlets for lighting and power, normal gas or water lines. From a RAP viewpoint, these in-place service connections are real property improvements and the values associated with them become part of the real estate. Again, these costs become part of the real estate and are not allowable moving expenses. They may be eligible, however, as a reestablishment expense up to $25,000.

An eligible business or farm is entitled to reimbursement of costs for reinstalling movable machinery and equipment (M&E) and other personal property, including substitute personal property described in 49 CFR 24.301(g)(16). This includes connection to utilities available nearby and modifications necessary to adapt the utilities at the replacement site to the personal property.

From a relocation standpoint, the Department can pay the cost to connect or hook up any item of M&E or other personal property from the piece of equipment to the nearest available utility connection, but only to the extent these services were required at the displacement property. This connection might be an outlet located nearby or a subpanel located some distance away that is necessary for a particular piece of equipment necessary to the business. The Department can only pay to connect M&E and other personal property (or substitute personal property as noted above) the Department is paying to relocate. All such costs must be actual and reasonable. Items acquired by the State and subsequently repurchased by the displaced business and realty items retained by the owner as specified in the Right of Way Contract are not eligible relocation expenses. The Department will also not pay to connect any newly added items of M&E, other personal property, or for any betterments.

The cost to adapt or convert relocated M&E to a different type of power supply may also be an allowable moving expense. Examples of alternative power supplies include conversion from direct current to alternating current, from three (3)-phase to single-phase, from 440 volts to 220 volts, or from one heat source to another (e.g., from bottled or natural gas to electricity).

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Examples of ways to adapt either the M&E or the power supply include new motors, transformers, rectifiers, and similar equipment necessary to accomplish the required conversion. Except in unusual circumstances, actual payment shall be limited to the least expensive alternative; that is, the cost to adapt the M&E to available utilities or to provide compatible utilities to the existing M&E.

10.05.05.04 Telephone Equipment

Businesses may be reimbursed for the following telephone service fees/costs if incurred in the relocation process:

- Reconnection of Existing System
- Purchase of New System (if old system was pulse type and relocation site only accepts Touch-Tone phones)
- Long Distance Service Transfer Fees
- Computer and Data Dedicated Lines

If a business is able to relocate its existing system to its new location but chooses to purchase/lease a more elaborate system, a credit for phone relocation costs is provided toward the new system.

If a new system is the only alternative for the business, the RAP Agent should obtain two bids to document the reasonableness of the charges. In all cases, the file shall include a description of the existing phone system including:

- Number of phones, regular dial, multi-line, push button, PB + Hold, PBX.
- Special features such as hold, call forward, and conference calls.
- Names of local and long distance companies and representatives, if assigned.

Telecommunications (data) and tele-video installations require special handling and should be separately inventoried and documented.

10.05.05.05 Modifications to Personal Property

49 CFR 24.301(g)(3) allows reimbursement for actual, reasonable and necessary expenses to modify personal property to comply with federal, state, or local law, code or ordinance. Modifications necessary to adapt personal property to the replacement structure, the replacement site, or the utilities at the replacement site are also authorized. Additionally, connection to available nearby utilities from the right of way line to the improvements at

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the replacement site may be allowed, if the RAP Senior determines they are actual, reasonable and necessary (49 CFR 24.303).

Displacees may be reimbursed for the cost of adapting personal property to the replacement structure, the replacement site, or the utilities at the replacement site. To be reimbursable, costs for personal property modifications must be necessary, unavoidable, and reasonable.

The modifications authorized by this section must be clearly and directly associated with the reinstallation of the personal property, and cannot be for general repairs or upgrading of equipment because of the personal choice of the displacee.

Costs for repairs, modifications, or improvements to the replacement real property due to the requirements of laws, codes, or ordinances can only be paid as a Reestablishment Expense.

Authorized modifications include circumstances when personal property and equipment were "grandfathered" in the displacement structure, but changes or upgrading of the personalty is required by the Americans with Disabilities Act (ADA) and/or the Occupational Safety and Health Administration (OSHA).

The modifications must be clearly and directly associated with the reinstallation of the personal property and cannot be for general repairs or upgrading of equipment because of the personal choice of the business owner.

10.05.05.06 Physical Changes at New Location

Displacee may be reimbursed the cost of making physical changes in or to a building to which a business concern relocates.

Provisions and Limitations: Displacee may be eligible for reimbursement of costs to make physical changes at a new location as a moving expense under the following provisions and limitations:

- The physical changes must be necessary to permit the reinstallation of machinery or equipment or substitute machinery or equipment necessary for continued operation of the business.
- The cost of foundations and concrete pads or other similar construction required for reinstallation of relocated or substitute machinery or equipment may be eligible provided construction is necessary for proper

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operation of the equipment and compensation for a similar installation was not made as part of the price paid to acquire the former property.
- Changes in or to a building or structure may not increase the value of the building or structure for general purpose uses, may not increase the structural or mechanical capacity of the building or its components beyond the requirements of specific types of equipment moved from the old location or replaced with a substitute. No relocation payment for structural change shall be made for any items that were paid for on the acquired property.

Items acquired by the Department but repurchased by displacee and realty items contractually retained are not eligible for payment.

Claiming Costs for Physical Changes: To qualify for reimbursement, the displaced business must submit the following documentation before the move:

- A detailed description or drawing of the old and new installation.
- A copy of all instructions given to the contractors.
- A statement explaining why the physical change is necessary and applicable codes and ordinances, if any.

The RAP Agent will:

- Review the documentation and determine whether the physical changes meet the requirements set forth above and whether the costs are reasonable.
- Ensure the Department has not previously paid for the items in the acquisition.

FHWA has provided specific guidance on three specific areas related to changes at the new location.

1. The cost of pits, pads, and foundations can be reimbursed as an eligible moving cost if they are necessary for the reinstallation of equipment or machinery or the installation of substitute items that are necessary for the business operation, unless the value of the pits, pads, and foundations was clearly included in the just compensation paid for the real property. Normally, pits, pads, and foundations only add value to a property for particular business operation and would not generally enhance real property. They should not be included in the valuation of the real property unless the highest and best use of the property being acquired is for the business operation for which it is being used, and the fair market value is determined on this basis.

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2. Underground tanks are generally considered realty and purchased as part of the real estate. However, if under State law, the tanks are considered to be personal property, site preparation costs necessary for the installation of the tanks could be considered an eligible moving expense. The site preparation would have to be necessary for reinstallation of the tanks (or substitute tanks), and the installed tanks would have to be required for the operation of the particular business being created.

10.05.05.07 Storage of Personal Property

A nonresidential displacee MAY be entitled to storage of the non-acquired personalty based on the Region/District RAP Senior's determination that is absolutely necessary in order to vacate the displacee for the project.

49 CFR 24 specifically excludes personal property on real property already owned or leased by the displaced person, so a displacee cannot be reimbursed the cost to store personal property that was moved from the displacement property to another property already owned or leased by the displacee.

Storage of personalty is not an automatic benefit and should only be authorized when it is in the best interest of the public and the project. The RAP Senior must determine if the storage of personal property is a reasonable and necessary moving expense for the displacee. The determination should be based on the needs of the Region/District, the nature of the displacee's operation, the plans for permanent relocation, the amount of time available for the relocation process, and whether storage would facilitate relocation. It is the RAP Senior's responsibility to set the terms for storage, including prohibiting the storage site's use as a temporary business operating site and the length of time.

Examples of justifiable storage are:

- Displacee has diligently looked for replacement property, but has not been able to locate something because of the unique nature of their operation or organization.
- Construction of the replacement property has been delayed by some unforeseen circumstance, again not the result of the displacee's actions.
- The project's time schedule supports relocating the displacee's personalty immediately, AND the displacee's operation or organization will not be adversely impacted by the storage of their personalty.

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The displacee's storage must be preapproved by the RAP Senior based on the maximum period of time the displacee will need before permanent occupancy of the replacement property can take place, up to 12 months. Displacees are not automatically entitled to a full 12 months of storage.

Region/District may authorize a flat storage rate for the displacee's storage based on a market analysis of storage rates for comparable units. The displacee can be reimbursed at the end of the agreed-upon time period after submitting a claim, including invoices and paid receipts. An optional method of payment is for the displacee to execute an Assignment of Funds wherein the Region/District may advance the first and last month's storage rent to the Storage Facility, and make periodic payments (e.g., quarterly) for the agreed-upon time period.

All arrangements for storage should be documented in writing between the Region/District and the displacee, and if applicable, the storage facility.

Displacees are also entitled to the actual, reasonable, and necessary costs to move their personalty into and out of storage, up to 50 miles for each move (including necessary unloading and stacking). The Region/District is only responsible to move the same amount (or less) of inventory out of storage to the replacement site. The displacee must be advised to control their inventory (volume, weight) during the period of storage, or be responsible for the cost to move the additional items.

In unusual circumstances (e.g., displacee's inventory consists of 20 tractor trailers), the market rate analysis for a storage site may consider vacant lots, empty warehouses, or other secure sites.

Extensions beyond 12 months should be rare and only when the displacee's circumstances are so unusual that an additional month or two of storage is warranted.

10.05.05.08 Move and Storage Insurance

Displacees are entitled to insurance for the replacement value of the personalty in connection with the move and during storage.

In most situations, the displacee should elect to have the property insured based on its value rather than its weight. The moving company will provide an estimate of the replacement value, which should be confirmed with the displacee before electing that coverage. Special coverage may need to be

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obtained by the Department or the moving company for sensitive or high valued items of personalty (e.g., moving an antique company's Ming vases).

Direct payments to the displacee as a "self-move" (10.05.09.00) should be based on the lowest of three bids, including an appropriate amount for insurance. The RAP Agent should evaluate the potential risk to the personal property and select the appropriate coverage. A lower cost insurance with a higher deductible would be an appropriate choice when there is a low risk of property loss. Example: The personal property is being moved in seven separate moving vans. The likelihood that all seven moving vans would have 100% of the personal property damaged is highly unlikely. In most cases, the displacee will arrange for any additional coverage through their own insurance company. The Department is not responsible for the highest price coverage, just the most reasonable. However, if there is damage to the personal property and the insurance requires a deductible, the Department must reimburse the displacee for the deductible.

10.05.05.09 Lost, Stolen, or Damaged Property

The displacee is entitled to the replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

If the insurance coverage includes a deductible payment, the Department will be responsible for reimbursing the displacee for that amount after the claim for damages has been paid.

10.05.05.10 Licenses, Permits, Fees and Certifications

The displacee is entitled to the cost of any license, permit, or certification required for the particular business or organization to operate at the replacement location that is not transferable to the replacement property. These fees can be a one-time cost, or a periodic fee. Service charges or nonrefundable fees required by law, licenses, or permits needed to operate at the new location are eligible costs. Examples: day care license, alcohol and beverage control permit, resale license, sanitary inspection certification.

There are no limitations on the costs, which can be reimbursed for licenses, permits, or certifications required of the displacee at the replacement site. The costs participated in should be for those "actual, reasonable, and necessary" items charged by the licensing agency. However, the payment is

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based on the remaining useful life of the existing license, permit, or certification.

Example 1: A business is displaced from Local Agency "A" and moves to Local Agency "B." Local Agency "A" had no permit requirement at the displacement location. At the replacement location, Local Agency "B" requires a permit costing $1,000. The Department would reimburse the entire $1,000.

Example 2: A business is displaced from Local Agency "A" and moves to Local Agency "B." Local Agency "A" required the displacee to have a business license costing $750 each year. Local Agency "B" charges a slightly higher fee ($1,000) for their annual business license, but also requires a solid waste permit that costs $1,200 each year. If the nonresidential displacee moved on July 1, 2011, reimbursement would be based on one-half of the $1,000 to be paid for 2011 to Local Agency "B," plus the entire cost of the new solid waste permit that was not required at the displacement site.

Other eligible expenses are those costs previously paid as part of the Reestablishment Payment that related to the replacement site such as general occupancy licenses, occupancy permits, building permits, or one-time assessments (e.g., Conditional Use Permits) that any business would have to pay for occupancy of a property.

Impact fees or one-time assessments for anticipated heavy utility usage as determined by the Department is now an eligible moving expense rather than a reestablishment expense (49 CFR 24.303).

10.05.05.11 Professional Services [49 CFR 24.301(g)(12)]

Nonresidential displacees may be eligible for reimbursement to hire professional consultants to:

- Plan the move of the personal property (e.g., schematics, time frame)
- Move the personal property (e.g., organize and in phases), and
- Install the relocated personal property at the replacement location.

These services must be directly related to moving personal property. Conceptual building or site layouts intended for construction/reconstruction at the replacement site are not considered eligible expenses under 24.303(b).

Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business

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operation including, but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). The RAP Agent must establish a preapproved hourly rate based on reliable bids or estimates. If bids and estimates cannot be obtained, the RAP Agent may compare the rates of other similar professional providers in the area. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation is an eligible expense. Professional services also include attorneys' fees for representation before zoning authorities, and the cost of obtaining a soil analysis necessary in the preparation of a replacement site. However, if any of the services identified under "professional services" are performed by a regular employee of the displacee (such as staff engineers) or professional contractors ordinarily used by the business for its everyday operations (such as legal counsel on retainer), these services (including the cost of the report or document) are considered ordinary costs of doing business, and are not eligible for reimbursement.

Professional services should be arranged for specialty or complex moves (e.g., sand and gravel plant, koi fish farm that are not normally performed by a typical moving company). The consultant should prepare specifications (10-EX-36) that are detailed instructions as to how the move is to be performed in order to minimize the hardships on the displacee, and to be present during each phase of the move.

The RAP Senior must preapprove the use of professional consultants, and require the displacee to obtain bids and Scopes of Work to plan and/or move the personalty to the replacement property. The RAP Senior should review the bids and authorize the displacee to hire the consultant with the lowest bid. As part of Advisory Assistance, the RAP Agent should conduct periodic reviews of the consultant's work to ensure the displacee is receiving adequate service.

The displacee enters into an agreement with the professional consultant, and may assign reimbursement for the preapproved amount directly to the professional consultant. The Department does not enter into the agreement between the two parties.

The use of a professional consultant does not absolve the RAP Agent from the need to monitor the move.

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10.05.05.12 Relettering and Reprinting

Displacee's existing inventory of stationery may become obsolete as a result of the move (e.g., new address, new phone number). Relettering signs and replacing stationery on hand at the time of displacement are eligible expenses. Other personalty items that may require changing the printed address or phone number are company vehicles, business cards, yellow page advertisement, and t-shirts or pens that are given to the public. The RAP Agent must determine if there is still some use to the items before authorizing reimbursement for relettering. It is important to note that the Department never confiscates obsolete items.

The displacee may be reimbursed the actual and reasonable cost to conform existing stationery by inking out and stamping in a new address, or the displacee may be entitled to the amount paid (less salvage value where appropriate) for printing a reasonable supply of printed matter to replace those made obsolete by the move. The RAP Agent and displacee should review the inventory on hand (estimating the amount that will be remaining on the date of the move) and reach an agreement on what stock must be modified, what must be replaced, and what can still be used at the new location (e.g., standard invoices, internal memos). The displacee should be advised that such an agreement should be reached prior to making any commitments with a printer for new stock.

10.05.05.13 Searching for a Replacement Location [49 CFR 24.301(g)(17)]

A displaced business, farm operation, or nonprofit organization is entitled to reimbursement for actual expenses, not to exceed the regulatory limit of $2,500, as the Department determines to be reasonable, which are incurred in searching for a replacement location including transportation, meals and lodging, time spent searching, and searching fees paid to a real estate professional. Other eligible expenses include the actual time and effort required to obtain permits and to attend zoning hearings, but not the assessed fees for the actual permits (see 10.05.05.10). The time spent to actually negotiate the purchase of a replacement business site is also reimbursable, based on a reasonable salary or earnings rate. However, the rate should be based on a preapproved hourly rate that is reasonable and necessary.

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The expenses incurred by the displacee and eligible for reimbursement must be:

- Incurred after the ION (FWO or NIA).
- For property that is suitable for the impacted business, not residential properties.
- Itemized on a statement attached to the claim form and incorporated by reference. The statement must list the dates of search chronologically, time spent, location of search, and reason for choosing or not choosing a location. (See 10-EX-2, Business Search Expense Summary.)
- Reimbursed at the current maximum State rates for mileage and per diem. Receipts are only required for lodging.

Time spent by the displacee and employees to locate a suitable replacement site can be reimbursed at the average hourly rate per a statement by the displacee. Broker and agent fees to locate a replacement site must be supported by paid receipts and copies of service agreements, and must be exclusive of any fees or commissions related to the purchase of such site. Commissions may not be reimbursable as part of the Related Nonresidential Eligible Expenses (10.05.11.00).

Reimbursement for mileage can only be for properties within the 50-mile radius, unless the Region/District determines that there are no suitable replacement properties within the 50-mile area. In such a case, search expenses and the actual move may be beyond 50 miles.

Displacees should document their time and expenses related to searching for a replacement site, and attach it to their claim.

Note: Search costs are not reimbursable to a business that elects to receive an in-lieu payment.

10.05.05.14 Low Value/High Bulk [49 CFR 24.301(g)(18)]

When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value as determined by the RAP Senior, the allowable moving cost payment shall not exceed the lesser of:

1. The amount which would be received if the property were sold at the site, or
2. The replacement cost of a comparable quantity delivered to the new business location.

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Examples of personalty include stockpiled sand, gravel, minerals, metals, scrap, building supplies, automobiles and automotive parts, and other similar items held in bulk.

The business owner should be permitted to make the decision on whether the material is to be moved to the new business location or discarded in some other fashion (donate, on-site sale, disposal); however, the amount of the reimbursement will be limited to the lesser of the two amounts.

Note - This provision also applies to the relocation of "personal property only" for residential and nonresidential displacees.

Example of a Low Value/High Bulk Payment:

Atkins Hardware has a 500-gallon kerosene tank with a remaining content of 100 gallons. Each gallon of the kerosene sells retail at the time of displacement for $2.00. The cost to provide a truck, pump the tank contents, filter it for water and foreign debris, deliver it to the new location is estimated at $400.00, which is greater than the material's value (100 gallons x $2.00/gallon = $200.00). Delivering new kerosene to the new store location would cost about $1.45 per gallon for a 500-gallon delivery, and about $1.75 per gallon for a 100-gallon delivery. Comparing the remaining 100 gallons of kerosene were sold at the old site ($200.00) to the cost of 100 gallons delivered to the new site ($175.00), the Agent can pay the displacee $175.00, but only after the tanks have been removed from the displaced site.

10.05.05.15 Other Moving Expenses

49 CFR 24 allows the Department to reimburse eligible nonresidential displacees for other moving related expenses that are not listed as ineligible under 49 CFR 24.301(h). Headquarters R/W must preapprove any additional expenses based on a written recommendation from the R/DDC.

10.05.06.00 Certified Inventory

The nonresidential displacee must provide the RAP Agent with a certified inventory of the personal property eligible for relocation. The inventory should be prepared by the displacee and verified by the RAP Agent, who may choose to accompany the displacee during the preparation of the list. A complex operation (e.g., warehouse or auto parts distributor) may require the use of a professional consultant to prepare the inventory. The RAP Agent

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should arrange for this service to be performed and pay for the service using a claim form and Assignment of Funds.

The certified inventory must not contain any property classified as realty (and acquired), property on consignment, or real property items that were relocated in lieu of purchase (as reflected in the signed Right of Way Contract). The owner's certification shall contain a statement as follows:

> *I, (name of owner), certify that the above listed items represent a true and complete inventory of my personal property located at (address) as of (date).*

The RAP Agent should ensure that the owner understands this certification ensures that all the items are personal property, that the displacee has full ownership of the items, none of the items were acquired as part of the realty (e.g., fixtures and equipment), nor were any of the items reacquired by the owner at salvage value.

If personalty located on the displacement property is determined to be consignment goods, the owners of the consignment goods are considered displacees and thus eligible for relocation payments.

The certified inventory should be sufficiently detailed to allow ready identification of all items to be relocated. If an inventory is difficult to describe because of magnitude or complexity, consideration should be given to describing by gross weight, volume, or other reasonable measure, including photographs and videos where appropriate.

In addition, the certified inventory should not include any items that will not be moved and subject to reimbursement under "Adjustments to Move" (10.05.11.00) so that the RAP Agent can obtain an accurate cost to move.

Review 10-EX-32 for "Certified Inventory - Nonresidential."

10.05.06.01 Fluctuating Inventory

Inventories are rarely fixed and the RAP Agent should be aware of the nonresidential displacee's business activity in order to obtain accurate inventories for the bidding and moving processes. There are businesses whose inventory will change seasonally, or even daily. Subsequent to the actual move of a nonresidential displacee, the RAP Agent must review the inventory to establish what had to be moved. Substantial changes from the original or pre-move inventory should be addressed or reflect in an adjusted cost for the

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move. The inventory stage of the moving process is critical. Early and continuous involvement by the RAP Agent is essential.

The RAP Agent should also be aware of any inventory that belongs to someone other than the nonresidential displacee, such as items on hand for sale under consignment, i.e., convenience gas station, craft or hobby shop, secondhand store.

Due to the length of time between the first written offer and the actual relocation, the RAP Agent must obtain three complete inventories from the nonresidential displacee:

1. Within 30 days of the First RAP Call - in order to obtain accurate bids and provide the nonresidential displacee with a determination of the cost so that good business decisions can be made regarding when and how to move the personal property.
2. Within 30 days of the anticipated move - in order to ensure the lowest qualified bid is sufficient and not excessive to pay the cost to move the personal property that is expected to be on hand on the date of the move.
3. The day of the move - as part of the RAP Agent's responsibility to monitor the moving operation at the displacement and replacement sites.

The RAP Senior can waive the requirement to obtain three separate inventories for noncomplex operations with small inventories when the cost to obtain the inventories may exceed the minor variations in the moving cost.

10.05.06.02 Notification and Inspection [49 CFR 24.301(h)(12)(i)]

A nonresidential displacee must comply with certain requirements in order to receive reimbursement for all moving and related costs. The RAP Agent should ensure the displacee is aware of the restrictions and consequences by reviewing the Notice of Eligibility (10-EX-43), especially the conditions that state the displacee must:

1) Inform the RAP Agent with a minimum of 15 days' advance written notice of the approximate date of the start of the move or disposition of the personal property. Notification of the actual move date must be received at least three (3) working days in advance.
2) Permit the RAP Agent to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and

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to monitor the move. This includes photographs and videos as appropriate.

3) Provide the RAP Agent with a certified inventory of the items to be moved prior to obtaining cost estimates from moving companies, and again at least 15 days in advance of the estimated move date.

The RAP Senior may deny payment if displacee fails to comply with any of the above, noting in the diary and the file that the displacee was advised of the notification and monitoring requirements. However, if the displacee can produce verifiable records, bills, and receipts, documenting actual expenses incurred, and can identify the property moved, it may be difficult to support the denial based on the sole fact that the displacee did not notify the Region/District of the actual move date.

10.05.06.03 Monitoring

The Uniform Act requires that all moving expenses be actual, reasonable, and necessary. To assure compliance with these requirements, the RAP Agent must provide surveillance of a move commensurate with its costs. The goal of monitoring is to protect the Department's interest while assisting the nonresidential displacee.

The RAP Unit shall monitor complicated or costly moves to assure that all moving expenses are actual and reasonable and to verify that the items of personal property listed on the owner's certified inventory are moved from the displacement property to the replacement location. If the monitoring activities will involve a significant expenditure of time, the RAP Unit should consider using a resident engineer or private moving consultant.

See 10-EX-37 for additional guidelines on monitoring.

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10.05.07.00 Move by Commercial Carrier

Payment is based on actual reasonable cost of a move performed by a commercial mover or contractor. The following procedure shall be followed:

- Either the owner or the Agent will secure at least two firm bids (10.05.07.01) based on the certified inventory (10.05.06.00) from qualified carriers and submit them to the RAP Unit for approval prior to the move. The Agent should accompany the owner and the moving companies during the estimating process. The moving companies should be advised that the Department will pay for the move. Bids must contain the statement noted in Section 10.04.02.09, Actual Reasonable Cost of Move by For-Hire Carriers.
- After reviewing and approving the bids, the RAP Agent authorizes the displacee to employ the lowest responsible bidder to perform the move. The displacee may elect to use another mover, but the Department will limit reimbursement to the amount of the lowest bid, OR the amount of the displacee's mover, whichever is less.
- At its discretion, the RAP Unit may secure bids either as a service to the owner or where it questions the reasonableness of the bids submitted or qualifications of the bidder. A moving consultant may be used to evaluate bids for extremely complex commercial/industrial moves when the RAP Unit lacks the expertise to determine reasonableness of the bids.
- The owner shall submit Claim Form RW 10-30 and paid, receipted, and itemized bills to the District after moving from the premises. A responsible employee of the moving company must sign the bills. Written prearrangements or assignments for the Department to pay the mover directly may be used.
- The RAP Agent shall review and approve the bills. Payment of the authorized amount is in accordance with District delegations.

Displacee may authorize the RAP Unit to solicit competitive bids and enter into a contract on their behalf with the lowest responsible bidder to have the move performed. Payment is in accordance with current competitive bid procedures.

10.05.07.01 Obtaining Bids

A bid is an offer to perform a specific task at a specific price. It is a lump sum fixed amount to do an identified task. The Department does not solicit estimates to determine the cost to move personal property because they are generally a value or opinion of the cost without actually calculating costs

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based on weight or size. The RAP Agent should not accept open-ended bids such as time (hourly rate) and materials (price per item).

For a bid to be accurate, the terms of the move and the inventory must be clearly established. Special conditions related to the move, such as time of day, access to and through the building, dismantling and reassembly of complicated items, must be known by all the moving companies who have been tasked to prepare the bid.

Typically, the RAP Agent and the nonresidential displacee work together to select appropriate moving companies and specialists who will provide three bids to relocate the personal property. Each moving company is provided the certified inventory, moving specifications (see 10-EX-36) and afforded an opportunity to inspect the displacement and replacement sites. The moving companies submit the bids to the RAP Agent who will provide copies to the nonresidential displacee.

The RAP Agent determines the most qualified bid based on the cost and the accuracy of the bid. The nonresidential displacee can select any bidder, but the Department's obligation to participate in the costs will be limited to the selected bid.

Moving companies and contractors can also be reimbursed a reasonable fee for preparing the moving or cost estimates.

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10.05.07.02 Bid Adjustments

Complex moves are likely to require an adjustment to the work schedule or scope. These adjustments may require a change in the amount that the moving company should be paid; however, the RAP Agent must ensure that the adjustments are appropriate before agreeing to pay the moving company more than the bid.

Adjustments that are appropriate are those related to a change in the inventory that requires more or less time by the moving company. Adjustments that may be appropriate are those caused by bizarre circumstances that occur during the move such as a dramatic change in weather that requires more protection of the personal property such as tarps or covered vehicles, or a power outage that shuts down the elevator that is being used to move the personal property.

Adjustments that are not appropriate are those increased costs due to time and materials that should have been considered in the initial bid. Some examples are: narrow steps to depart the building that slow down the move, no loading docks which require renting forklifts or using more laborers. Also, normal business risks are those unforeseen circumstances that are not the fault of the mover, but do not justify an increase in cost to the agency such as a flat tire on the way to a move which causes an hour delay and forces the move into overtime. Anyone in business must accept a certain degree of risk and the business profit is the reward for dealing with these risks.

Sometimes, the delay is due to the nonresidential displacee's intentional or unintentional actions such as not providing immediate access to the personal property, or delaying the dismantling of a piece of equipment that is scheduled for move. The RAP Agent should discuss these issues with the RAP Senior before agreeing to pay the moving company more money because of the nonresidential displacee's actions. The moving company and the nonresidential displacee should have a written contract that protects both parties should one of them fail to perform. The Department does not enter into the agreements with the moving company and the nonresidential displacee, and should not pay additional costs due to the failure of either party to perform.

The RAP Agent should work closely with the moving companies that are providing bids to include the appropriate contingencies in the bids.

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Examples of appropriate and unwarranted adjustments:

1. The snowstorm hits at noon with heavy icing of the roads. To be on the safe side, the mover recalls the truck to the warehouse. Another half-day is added to the move.
    - Adjustment is warranted if the snowstorm is unusual (Sacramento in May); it is unwarranted if snow is a contingency that should have been considered when providing the bid.
2. Summer heat slows the work effort, and the packing and loading takes three hours longer than planned.
    - Adjustment is unwarranted, as this contingency should have been planned for.
3. The moving personnel forget the dollies and this causes a three-hour delay.
    - Adjustment is not warranted.
4. The nonresidential displacee shows the moving personnel a storage area omitted in the inventory.
    - Adjustment is warranted.
5. The moving firm is extremely busy and must send a less experienced work crew, so the move takes 25% longer.
    - Adjustment is not warranted as this is based on the moving company's business decision.
6. Chairs in the reception area are bolted to the floor, and the mover was not aware of this and sent no tools for removal.
    - Adjustment is warranted if it was not obvious the chairs were bolted during the bidding process, or that the chairs were to be dismantled before the movers came.
7. On the scheduled day of the move, heavy rain floods the loading dock areas. The carrying distance to the truck causes an increase in total loading time.
    - Adjustment is warranted.
8. The electrician informs you that he is not sure about the reinstallation of certain items of machinery. He suggests a manufacturer's technician to assist him. You point out that with this added cost, he will not be the low bid. He reminds you that he is in the middle of the move. Any delay in the move will be disastrous.
    - Adjustment is warranted.

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10.05.08.00 Self-Moves [49 CFR 24.301(d)(2)]

A Self-Move payment may be based on the lower of two bids or estimates prepared by a commercial mover or qualified RAP Agent. Low cost or uncomplicated moves may be based on a single bid or estimate, or

If the nonresidential displacee elects to take full responsibility for the move of the operation, the Region/District may pay the displacee directly for the moving expenses, based on the lower of two acceptable bids or estimates.

The nonresidential displacee must advise the RAP Agent of their desire to complete all or part of the move themselves at least 30 days before the anticipated date to vacate the property. The displacee must still provide a certified inventory, with a copy attached to the Self-Move Agreement.

The displacee will be paid once all personal property identified has been relocated to the replacement site. Advance payments are discouraged.

The displacee may opt to complete only a part of the move (e.g., moving the office and office equipment) and request the Region/District pay the actual costs to move the remaining property (e.g., inventory in the warehouse, including reassembly of the shelves/racks).

A Self-Move by the displacee does not negate the Region/District's responsibility to pay other related expenses, e.g., search costs, reestablishment, or professional services.

The nonresidential displacee should be advised that a Self-Move will be based on the lowest qualified bid adjusted for profit and overhead. As outlined in 49 CFR 24, Non-Regulatory Supplement 49 CFR 24D, the bid, which includes profit, overhead, or other additional costs that the nonresidential displacee would not actually incur, should be adjusted to reflect the actual expenses that the nonresidential displacee will incur.

10.05.08.01 Self-Move Based on the Lower of Two Bids

The displacee who elects to take full responsibility for the move may receive a payment for the moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the RAP Agent, or prepared by a qualified Agent. It may be necessary to obtain several types of bids to cover all aspects of the move (e.g., disassembly/reassembly of the specialized equipment, separate move for computer equipment). The amount of the Self-Move is generally based on the lower of two bids from

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qualified moving companies for each aspect of the move; however, uncomplicated or low cost moves can be based on one bid or estimate. The bids should reflect only the items on the certified inventory that the displacee has identified as personalty subject to the self-move. The total of the lowest of all the bids should be included in a Self-Move Agreement (10-EX-38).

The agreed-upon amount to be paid for a self-move should never include specialized moving costs that are performed by others; e.g., telephone, fire, and burglar alarm reinstallations. Costs for these specialized operations must be separately itemized and documented for reimbursement following completion of the work. (This does not apply to hardwired fire and burglar alarms since these are normally considered realty.)

The bidders should be advised to provide moving estimates exclusive of their charges for profit and overhead, and include the following statement:

> "This estimate was prepared for the State of California Relocation Assistance Program as a basis for determining the maximum reimbursement the displacee may receive to perform a "Self-Move."

The lowest bid is automatically used as the basis for the Self-Move Agreement. The hourly rate for equipment rental can be based on the actual cost of the equipment rental, but not exceed the cost a commercial mover would charge.

Moving companies and consultants can be reimbursed a reasonable fee for preparing the moving estimates.

A residential displacee cannot be paid for a Self-Move based on the lower of two bids or estimates.

10.05.09.00 Adjustments to the Move

There may be items of personalty that the displacee will not or cannot use at the replacement site. The displacee is entitled to the cost to move all personalty; but if the displacee decides not to move some of the personalty to the new location, there are two optional payments: Payment for Loss of Tangible Personal Property (if the item will not be replaced) OR Substitute Personal Property (if the item will be replaced). (See Table 10.05-A.)

The displacee must identify the items not to be moved on the certified inventory.

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This section should not be followed if the nonresidential displacee abandons personal property at the displacement property. (See Section 10.05.25.00.)

10.05.09.01 Loss of Tangible Personal Property [49 CFR 24.301(g)(14)]

Displaced businesses, farms, and nonprofit organizations may be eligible for a payment for the actual direct loss of tangible personal property, which is incurred as a result of the move or discontinuance of the operation. The payment will be based on the lesser of:

1. The fair market value of the item as installed and set up (e.g., wired, bolted, permitted) for continued use at the displacement site, less the proceeds from its sale; or
2. The estimated cost of moving and reconnecting the item "as is," including cost to install and obtain permits, based on the lowest acceptable bid or estimate obtained by the Region/District.

For the displacee to be eligible for this payment, the displacee must:

- Prepare a certified inventory identifying items that will not be moved, and whether it will be replaced at the new site.
- Identify the property NOT to be moved prior to the moving companies preparing their estimates to move all the items to the replacement property.
- Enter into a written agreement (10-EX-12) with the Region/District electing this method of payment and agreeing that the described personal property is not to be moved.
- Make a reasonable effort to sell the described personal property based on discussions with RAP Agent on any restrictions or limitations that must be followed.
- At the time of the move to the replacement property, dispose of the items listed in the inventory in a safe and legal manner (e.g., donation, refuse, sale, and gift). The Region/District is not responsible for removing these items from the displacement site.
- Submit a claim for reimbursement based on the lesser of the cost to move item "as is" or its fair market value "as is," along with all supporting documentation. Displacee may also submit a claim for reimbursement for costs related to the sale, or attempted sale, of the item, along with all supporting documentation. Note: Said claims cannot be paid until all other personal property has been removed from the displacement site.

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To determine the cost to move the item, the moving companies should be advised in advance by the RAP Agent that they will need to prepare TWO estimates—one for all the personal property, and then one for all the personal property EXCEPT the item or items that will not be moved. The difference between the two estimates is the cost to move the item. It is possible that the cost to move a small item, e.g., a desk or a couple of chairs, will be minimal or zero. (See Table 10.05-B.)

When calculating the approximate cost to move the item, the RAP Agent should ensure that the amount:

- Does not include an allowance for storage.
- Does include all other related moving costs such as packing, unpacking, dismantling, and reassembly, including utilities and modifications to the personalty.
- Is based on a maximum of 50 miles. Note: If the business or farm operation is discontinued, the moving cost will be based on the maximum of 50 miles.
- That the value of the goods held for resale is based on the cost to the business, and not the sales or listed price.

The owner of the property is entitled to payment for reasonable costs incurred in attempting to sell an item that is not being relocated (limited per 10.05.11.03). Payment may be made only after the owner has made a bona fide effort to sell the item, though the District RAP Senior can waive the requirement to sell. The sales price, if any, and the actual, reasonable costs of advertising and conducting the sale shall be supported by copies of the bill of sale or similar documents and any advertisements, offers to sell, auction records, and other items supporting the bona fide nature of the sale.

If the piece of equipment is operational at the acquired site, the estimated cost to reconnect the equipment shall be based on the cost to install the equipment as it currently exists, and shall not include the cost of code requirement betterments or upgrades that may apply at the replacement site. The allowable in-place value estimates (49 CFR 24.301(g)(1)(i) and the moving cost estimate (49 CFR 24.301(g)(14)(ii)) must reflect only the "as is" condition and installation of the item at the displacement site. The in-place value estimate may not include costs that reflect code or other requirements that were not in effect at the displacement site; or include installation costs of machinery or equipment that is not operable or not installed at the displacement site.

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Table 10.05-A
Differences between Loss of Tangible Personal Property AND Substitute Personal Property

Business is discontinued or the item will not be moved and is not replaced in the relocated business = LOSS OF TANGIBLE rules.	Payment is the lesser of: • Fair market value of the item for continued use at the displacement site minus the proceeds from its sale. • Estimated cost of moving the item, not to exceed 50 miles, with no allowance for storage. If the business is discontinued, the estimated cost is based on a moving distance of 50 miles.
Business is relocated and an item of personal property used as part of the business is not moved, but is promptly replaced with a substitute item at the replacement site = SUBSTITUTE rules.	Payment is the lesser of: • Cost of substitute item, including installation costs at replacement site, minus any proceeds from sale or trade-in of replaced item. • Estimated cost of moving and reinstalling the item, not to exceed 50 miles, with no allowance for storage.

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Table 10.05-B
EXAMPLE OF LOSS OF TANGIBLE PERSONAL PROPERTY

An eligible business, "J&J Temporary Services," determines that the document shredder will not be moved to the replacement site because of its condition and the displacee will not replace it at the new location.

Fair Market Value in Place of the Document Shredder based on its use at the current location	$1,500
Proceeds: Price received from selling the Document Shredder	-$ 500
Net Value	$1,000

OR

Estimated cost to move based on the following information: $ 150

The lowest move estimate for all the personal property - $5,000, compared to the same bidder's estimate to move all the personal property minus the document shredder - $4,900. The difference is only $100 because moving the shredder did not take a lot of extra time, effort or equipment on the mover's part, so the difference is minimal. Add the estimated cost for disassembly/reassembly based on an estimate from a document shredder service company - $50 to reset the machine at new location.

Based on the "lesser of," the amount of the "Loss of Tangible Personal Property" = **$ 150**

In addition, the displacee is entitled to the reimbursement for all reasonable costs incurred in selling the document shredder (e.g., a couple of flyers at used office equipment stores and an ad in the local paper for $50) based on supporting documentation.

The trade-in value of old equipment may be used instead of the net proceeds of the sale. Amounts received in trade, net proceeds of the sale, and estimated cost of moving must be documented.

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The displacee is not entitled to a payment for Loss of Tangible Personal Property for:

- M&E that is classified as realty but is retained by displacee, nor
- Cost of moving structures, improvements, or other real property of which the displacee reserves ownership.

10.05.09.02 Purchase of Substitute Personal Property [49 CFR 301(g)(16)]

If an item of personal property, which is used as part of the business, farm, or nonprofit organization, is not moved, but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displacee is entitled to payment of the lesser of:

1. The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; OR
2. The estimated cost of moving and reinstalling the replaced item, based on the lowest acceptable bid or estimate obtained by the Department for eligible moving and related expenses, including dismantling and reassembly, and code requirements, but with no allowance for storage.

Estimating the cost to move the item is calculated in the same manner as an item identified under the "Loss of Tangible Personal Property." See Table 10.05-C.

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Table 10.05-C
EXAMPLE OF SUBSTITUTE PROPERTY

An eligible business, "A&A Construction Company," determines the copy machine will not be moved to the new location because it is now obsolete, but it will be replaced.

Cost of a substitute Copying Machine including installation costs at the replacement site	$3,000
Trade-in Allowance	- $2,500
Net Value	$ 500

OR

Estimated cost to move, including any disassembly/reassembly, including code requirements	$ 550

Based on the "lesser of," the amount of the "Substitute Personal Property" =	**$ 500**

In addition, if the displacee had attempted to sell the copier before trading it in, there could be an additional reimbursement for all preapproved costs incurred in the attempt to sell it (e.g., $25 for advertising it at the "Used Office Equipment Are Us" store).

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WORKING WITH TANGIBLE PROPERTY LOSS and SUBSTITUTE PROPERTY:

The Maxtop Company has a large drill press that is personal property that is worth about $2,500 installed and about $1,500 if sold at an auction. A new drill press installed would cost the displacee $4,000, and the vendor would give the displacee a $1,200 credit to trade in the old drill press.

1. The large drill press is operational at the displacement site, and the displacee chooses to move the drill press. Cost to move is based on the cost to haul ($200), cost to take down including water and electrical disconnects ($180), set up with all utilities and floor mounting ($250), and the cost of a required enhanced personal safety barrier at the new location ($400). Total payment = $1,030.

2. The large drill press will not be needed at the replacement site and the displacee wants a "loss of tangible personal property payment." Displacee can sell it for $400. The payment is based on the lesser of: 1) The in-place value less sale ($2,500 - $400 = $2,100), or 2) the moving cost without the cost to modify the replacement property ($1,030 - $400 = $630). Total payment = $630.

3. The displacee has another drill press in storage that is not currently functional and does not want to move it. The payment is based on the lesser of: 1) the in-place value as is ($1,500), or 2) the moving cost without reconnect since it is in storage and not connected to utilities ($200). Total payment = $200.

4. The displacee needs to have a drill press at the replacement site but wants to update his operation and requests a payment based on "substitute property." The payment is based on lesser of: 1) cost of a new drill press including installation minus trade-in value ($4,000 - $1,200 = $2,800), or 2) the cost to move including installation ($1,030). Total payment = $1,030.

10.05.09.03 Cost to Sell Personalty [49 CFR 24.301(g)(15)]

Reimbursement for costs associated with the sale, or attempted sale, of personalty not to be moved is an additional payment and not included in the "lesser of" calculation. However, reimbursement is limited to those costs that are "necessary." The RAP Agent and the displacee should discuss limitations to the method of sale. The cost for an auctioneer or an advertisement in the Wall Street Journal is not considered a reasonable expense when selling a low valued or easily disposed of item. The RAP Agent should ensure that the

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displacee understands that reimbursement is limited to the Region/District's determination of reasonableness.

10.05.09.04 Value in Place

The term "value in place as is for continued use" means the depreciated value of the item as it is installed at the displacement site as of the date of the acquisition. Generally, an item will be valued based on the current cost at the time as installed at the displacement site, and then depreciated to reflect the current condition and estimated remaining useful life. Standard professional personal property appraisal methods are acceptable. The in-place value "as is" condition may not include costs that reflect code or other requirements that were not actually in effect at the displacement site; or include installation costs for machinery or equipment that is not operated or not installed at the displacement site.

The estimated moving cost for an item is also to be limited to the "as is" condition of the item at the displacement site. Therefore, estimated reconnection costs may NOT include costs to meet code or other requirements that would be necessary to relocate the item to a replacement site. Since the item is claimed as a loss and is not to be relocated, allowable reconnect costs may only reflect an estimate of the cost that would be incurred to install the item as it currently exists at the displacement site. Also, the moving cost estimate may not include reconnect costs for an item that is not operable or installed at the displacement site.

10.05.10.00 Related Nonresidential Eligible Expenses [49 CFR 24.303]

The following expenses shall be provided if the Department determines that they are actual, reasonable and necessary:

1. Connection to available nearby utilities from the right of way to improvements at the replacement site (see 10.05.05.03).

2. Professional Services (see 10.05.05.11).

3. Impact fees or one-time assessment for anticipated heavy utility usage as determined by the Department (see 10.05.05.03).

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10.05.11.00 Personal Property Only [49 CFR 24.301(e)]

49 CFR 24.301(e) allows for the reimbursement of eligible expenses for a person who is required to move personal property from real property, but is not required to move from the site. Eligible expenses include those described under Transportation, Packing, Disconnecting, Storage, and Insurance (including replacement value), and Low Value/High Bulk (10.05.14.04). RAP Agents will provide displacees with the Notice of Eligibility for Personal Property Only (10-EX-46).

Personal property moves do not trigger eligibility for reestablishment payments, nor are they eligible for actual moving expense payments under 49 CFR 24.301(g)(8) through (g)(17):

1. Disconnecting and reassembly of mobile homes. (10.07.02.00)
2. Refundable mobile home park fees. (10.07.02.00)
3. Licenses, permits, fees required at the replacement site. (10.05.04.10)
4. Professional services to plan the move. (10.05.04.11)
5. Relettering of signs and replacement of stationery. (10.05.04.12)
6. Loss of Tangible Personal Property/Substitute Property. (10.05.11.00)
7. Searching expenses. (10.05.04.13)

10.05.12.00 Items Not Eligible for Move

Items identified as realty (including trade fixtures) in the appraisal, even if retained by the owner at salvage value, are not eligible for moving. Machinery and equipment identified in the M&E appraisal is usually acquired by the Department and is also not eligible for moving expense.

However, items not acquired through the appraisal process are eligible for moving expenses.

Refundable security and utility deposits are ineligible for reimbursement [24.301(h)(12)] because of their refundable nature.

Refer to 7.08.06.08.

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10.05.12.01 Ineligible Moving and Related Expenses [49 CFR 24.301(h)]

A nonresidential displacee is not entitled to payment for:

a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this rule does not preclude the compensation under "Owner Retention of Dwellings."
b) Interest on a loan to cover moving expenses.
c) Loss of goodwill, loss of profits, or loss of trained employees.
d) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in 10.05.21.00 (10).
e) Personal injury.
f) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Department.
g) Expenses for searching for a replacement dwelling.
h) Physical changes to the real property at the replacement location of a business or farm operation except as provided in 10.05.05.06.
i) Costs for storage of personal property on real property owned or leased by the displacee.
j) Home business that is not the primary site for the business (e.g., realtor or CPA who works at home but the company has a primary location, someone who makes craft items and sells them at other locations or on consignment, or telephone or Internet services and sales).

NOTE: If a business is legitimately operated out of a residence that will be relocated, then the relocation benefits should be adjusted to ensure there is no duplication of payment.

10.05.13.00 Reestablishment Expenses [49 CFR 24.304]

In addition to the payments available under this section for moving expenses, a small business (see definitions), farm, or nonprofit organization is entitled to receive a payment, not to exceed $25,000, for expenses actually incurred in relocating and reestablishing such small business, farm, or nonprofit organization at a replacement site.

The nonresidential displacee must completely vacate the displacement property and be operating the new operation at the replacement property before this payment can be made. The $25,000 cannot be advanced to the

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nonresidential displacee, even if the only qualifying payment is the increased costs of operation during the first two years (item 6 below).

There is no requirement that the displaced nonresidential displacee remain in the same or similar type of business when they reestablish.

The test for reestablishment expenses is not a comparative standard. Therefore, it does not match the amenities or characteristics of the replacement site against the displacement site. Instead, the test is one of necessity, i.e., is the expense necessary to reestablish the displaced business.

Reestablishment expenses must be actual, reasonable, and necessary. Eligible expenses include, but are not limited to, the following:

1) Repairs or improvements to the replacement real property as required by Federal, State, or local law, code, or ordinance.
2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business. (Review ineligible items under 10.05.13.02 and 10.05.14.00.)
3) Construction and installation costs for exterior signing to advertise the business. (See 10.05.12.04.)
4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting. Can include some costs that were ineligible under items (1) and (2) above. Improvements made for aesthetic purposes are not eligible for reimbursement under any provision.
5) Advertisement of replacement location (10.05.14.03).
6) Estimated increased costs of operation during the first two years at the replacement site for such items as:
    - Lease or rental charges,
    - Personal or real property taxes, and
    - Insurance premiums.

    In order to meet the 18-month deadline to file a claim, displacees should be advised to submit their claim for these expenses prior to the 24-month period based on projected costs.

    The nonresidential displacee must provide copies of documents (e.g., lease agreement, tax bill, insurance statement, utility costs) and proof of payment before the RAP Agent can determine if any or all of the Reestablishment payment can be made based on this eligible item.

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7) Other items that the Region/District may consider as necessary expenses related to the reestablishment of the business (e.g., escrow and title fees to acquire the replacement property, SBA loan fee, and ADA compliance).

When discussing the payment of claims under this provision, the RAP Agent should ensure the claimant fully understands that items claimed must be reasonable and necessary and that substantiating documentation must be attached to the Claim (RW 10-30). Refer to "FHWA Guidance on Reestablishment" for further guidance (10-EX-30).

The RAP Agent must provide the Acquisition Agent with a completed RW 10-38 whenever a Reestablishment Payment has been made.

Reimbursement of claims under this provision is not made to business owners or tenants that claim an in-lieu payment.

In determining whether two or more displaced legal entities constitute a single business that is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

1) The same premises and equipment are shared;
2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
3) The entities are held out to the public, and to those customarily dealing with them, as one business; and
4) The same person, or closely related persons own, control, or manage the affairs of the entities.

The RAP Agent should consider how the businesses share or separate their operation by looking at the name, purpose, customers, tax records, employees, licenses, permits, phone numbers, and office space.

10.05.13.01 Reestablishment Payments on the Remainder

Reestablishment payments can be paid to a business that must reconfigure or make modifications to the remainder in order to accommodate the displaced portion of the business. The RAP Agent must make sure the payments are based on the list of eligible reestablishment expenses, and are not a duplication of a portion of the acquisition payment that was based on cost to cure or damages.

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10.05.13.02 One-Time Advertisement of Replacement Location (Reestablishment)

The RAP Unit must determine the amount is reasonable and necessary for the business to retain current clients and must approve the amount before it is incurred.

An example of an approved claim is a one-time newspaper announcement that a hairdresser has moved from one beauty shop to another. Individual mailing of a one-time announcement to the individual customers may also be necessary. Another example is a lawn mower repair shop that does not regularly advertise in newspapers.

Reimbursement for eligible advertising expenses must be included in the total of reestablishment expenditures, limited to $25,000.

An unacceptable claim is one from a business that typically uses newspaper, radio, and television advertising on a regular basis. In these cases, a minor change in the business' regular ads can mention the new address.

10.05.13.03 Exterior Signing

Eligibility for this payment exists whether or not the business had a sign at the displacement property. However, some sign expense is more properly assigned as a moving cost. A sign designated as personal property at the displacement site is eligible to be moved and reinstalled as a moving expense. Signs that can be relettered or otherwise modified due to the move can be claimed as a moving expense. Erection of signs not eligible as a moving expense can generally be claimed as a reestablishment expense.

10.05.14.00 Reestablishment Expenses for Nonoccupant Owners

A small business, farm, or nonprofit organization, including a nonoccupant landlord, whose sole activity at the site is providing space at the site to others, is eligible for a Reestablishment Expense Payment up to $25,000. The owner does not have to own or rent personal property that must be moved in connection with the displacement. Typical examples of leased space are:

- Mobile Home Parks
- Business properties (e.g., warehouses, office space) including bare land used for storage of equipment

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- Farms and ranches (or any bare land used for agricultural or livestock grazing)
- Coin operated laundries or any other vending operation (newspapers)
- Residential units

A nonoccupant owner is not entitled to moving expenses because the requirements are that they have no personal property stored on the site. The sole reason and use for the property is to lease it to someone else. If a person leases a furnished place, they are not eligible for the Nonoccupant Owner payment.

Note: A landlord who leases furnished residential or nonresidential properties is not eligible for a Reestablishment Payment as a Nonoccupant Owner.

The RAP Agent should provide the Nonoccupant Owner with a Notice of Eligibility – Nonoccupant Owner Leasing Space to Others (10-EX-50) as soon as its eligibility is determined.

To be eligible for this payment, the displacee must establish that the renting or leasing of space is a bona fide business activity, and not part of a real estate investment or family situation, as supported by the displacee's income tax records (Schedule C).

To ensure the displacee's operation is in fact a business, the RAP Agent should obtain from displacee records that support the status as a business (e.g., copies of income tax records, business license, lease agreements, or any other reasonable documentation). The income from the property must contribute materially [49 CFR 24.2(a)(7)] to the owner's overall income. The definition of "contributes materially" is: during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the Region/District determines to be more equitable, a business or farm operation:

1) Had average annual gross receipts of at least $5,000; or
2) Had average annual net earnings of at least $1,000; or
3) Contributed at least 33 1/3 percent of the owner's/operator's average annual gross income from all sources.

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To be eligible to receive the payment, the Nonoccupant Owner must:

- Not be part of a commercial establishment with three or more locations (e.g., franchise or chain operation).
- Acquire a replacement property within the 18-month time period.
- Lease the replacement property as evidenced by a copy of the new lease agreement.

Eligible expenses are those listed in Section 10.05.14.00 as Reestablishment.

The Nonoccupant can have more than one Reestablishment Payment if two distinct and separate properties are affected by the same project, as long as they are leased as separate entities (e.g., two buildings on one parcel that is leased to two separate lessees for different uses, and two rental units in a condominium complex that are separate and distinct residential units, leased to two separate families). However, one 32-unit apartment building is limited to one reestablishment payment. To receive more than one Reestablishment Payment, the owner must reestablish each operation.

FHWA has determined that the following situations or expenses are ineligible for a Nonoccupant Owner Reestablishment Payment:

- The replacement site cannot be a site that was previously owned or leased by the displacee.
- A lessee who subleases space is not eligible for a Reestablishment Payment.
- A request for reimbursement of expenses incurred by the displacee as a result of the Department acquiring the displacement property.
- Recurring fees (insurance, taxes, MIP, interest) and nonrecurring closing costs associated with the replacement property.
- Other items, such as incidental expenses necessary to purchase the replacement property, customarily paid by the buyer.

Note: The Nonoccupant Owner cannot receive an In-Lieu Payment (10.05.17.00) regardless of the determination of eligibility for a Reestablishment Payment under this provision.

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10.05.15.00 Ineligible Reestablishment Expenses [49 CFR 24.304(b)]

The following is a nonexclusive listing of reestablishment expenditures ineligible for reimbursement:

1) Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures.
2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
3) Interest on money borrowed to make the move or purchase the replacement property.
4) Payment to a part-time business in the home which does not contribute materially (10.05.26.00) to the household income.

Except as specifically stated under 24.304(a)(1)-(3), physical changes to the real property at the replacement property are not eligible for reimbursement. The RAP Agent must be extremely careful in reviewing and approving proposed capital improvements to the replacement property that are not specifically listed above (1), (2), and (3). New construction items, such as roofs, bathrooms, storage areas, do not qualify as a reimbursable expense because the cost will be recaptured when the improved property is sold. General construction items, such as repairs to the roof, electrical system, exterior structure, are also not reimbursable unless specifically related to the operation of the machinery and equipment. Improvements to leased properties can lead to a misuse of the Reestablishment payment if the $25,000 is spent on improvements the landlord should make in order to lease the site, or because of agreements the displacee may have for a lower lease rate if improvements are made to the property.

The cost of constructing a new business building on the vacant replacement property is considered a capital expense, and as provided in 49 CFR 24.304(b)(1) is generally ineligible for reimbursement as a reestablishment expense. In those rare cases when a business cannot relocate without construction of a replacement structure, HQ can request a waiver (49 CFR 24.7) from FHWA.

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10.05.16.00 Small Business In-Lieu Payment [49 CFR 24.305]

A small business displacee may be eligible to choose a fixed payment "in lieu" of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by 49 CFR 24.303 and 24.304.

The In-Lieu Payment for a small business or farm is based on the average annual net earnings, and can range between $1,000 and $40,000.

The displaced business is eligible for the payment if:

1) The business owns or rents personal property, which must be moved in connection with such displacement and for which an expense would be incurred in such move; and the business vacates or relocates from its displacement property.
2) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Department, and which are under the same ownership and engaged in the same or similar business activities.
3) The business is not operated at a displacement dwelling solely for the purpose of renting the property (improvements and/or land) to others.
4) The business contributed materially (10.05.27.00) to the income of the displaced person during the two (2) taxable years prior to displacement.

49 CFR 24.305 states the business cannot be relocated without a substantial loss of its existing clientele or net earnings. The Region/District will assume that all displacees automatically meet this criterion if the other four criteria are met. (49 CFR 24, Non-Regulatory Supplement 24D #14, August 16, 1999.)

In determining whether two or more displaced legal entities constitute a single business that is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

1) The same premises and equipment are shared;
2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
3) The entities are held out to the public, and to those customarily dealing with them, as one business; and
4) The same person, or closely related persons own, control, or manage the affairs of the entities.

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The RAP Agent should consider how the businesses share or separate their operation by looking at the name, purpose, customers, tax records, employees, licenses, permits, phone numbers, and office space.

10.05.17.00 Farm Operation - In-Lieu [49 CFR 24.305(c)]

The In-Lieu Payment for a farm operation is not based on the same criteria, calculations, and limitations as a small business except that they must have personal property that must be relocated from the displacement property to another location (not on the remainder). The other requirements that do not apply are as follows:

1. Farms are not subject to the required loss of substantial patronage (though the Department assumes this occurs for all other nonresidential displacees).
2. Farms are not subject to the multiple location requirement.
3. Fixed payments to farms are limited to the operations at the displacement property.
4. Farms must contribute materially to the operator's support, thereby eliminating home or hobby operations.

In the case of a partial acquisition of land that was a farm operation before the acquisition, the fixed payment shall be made only if the Department determines that:

1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
2) The partial acquisition caused a substantial change in the nature of the farm operation in that it is no longer the same operation (e.g., there was a dairy operation at the displacement property, and the nonresidential displacee is operating a petting zoo at the replacement site).

10.05.18.00 Nonprofit Organization - In-Lieu [49 CFR 24.305(d)]

The In-Lieu Payment for a nonprofit organization is based on the same criteria, calculations, and limitations as a small business, except that any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two (2) years' annual gross revenues less administrative expenses.

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Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales, or other forms of fund collection that enable the nonprofit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising, and other like items as well as fund-raising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expense. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

The organization must have an exempt status with the State or Federal income tax office and must provide proof of its nonprofit status. It can obtain a certificate or other documentation from either the State of California Franchise Tax Board or the Internal Revenue Service.

10.05.19.00 Calculating the In-Lieu Payment [49 CFR 24.305(e)]

The In-Lieu Payment is based on average annual net earnings for the last two years. If an in-lieu payment is made, no payment may be made for search costs, reestablishment expenses, actual moving costs, or actual direct loss of tangible personal property. If a business, farm, or nonprofit organization elects to take and is reimbursed for moving costs and later qualifies for an in-lieu payment, the amount of moving expenses previously paid must be deducted from the in-lieu entitlement.

The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the two (2) taxable years immediately prior to the taxable year in which it was displaced.

If the business or farm was not in operation for the full two (2) taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two (2) taxable years prior to displacement, projected to an annual rate. The displacee shall furnish the RAP Agent with proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence.

Average Annual Net Earnings - include any compensation the business (sole proprietor or partnership) paid to the owner, spouse, or dependents during the past two-year period. For a corporate owner of a business, earnings shall include any compensation paid to the spouse or dependents of the owner with an interest in the corporation. For the purpose of determining ownership,

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stocks held by a husband or wife and their dependent children shall be treated as one unit.

Compensation paid to the owner is not limited to wages and may include contributions the business makes to pension or profit sharing plans on the owner's behalf.

For any year that has a negative net income, including qualifying compensation (income) paid to the owners, the entitlement calculation will be based on zero for the year, rather than the negative amount.

10.05.19.01 Using Alternate Tax Years to Calculate an In-Lieu Payment

If the net income of a displaced business is very low in one or both years prior to displacement, the payment can be based on a different time period of two consecutive years when the RAP Senior determines it to be more equitable, but not earlier than two years prior to the ION on the project.

Examples when the tax periods preceding displacement are not representative of the average annual net earnings are:

- During the second year, there was a period of negative income due to unseasonably bad weather or a natural disaster.
- The displacee has only been in business for two years and the first year's income is not indicative of current operations, or the business has only been in operation for a short period of time (e.g., six months). In this case, the existing net earnings income data would be extrapolated and used to project what the net earnings could have been if the business had been in business for a full two years. If the business is seasonal, this fact should be taken into account in the computations.
- Capital improvements or investments were made of such magnitude that it distorts the net earnings.
- The proposed project has caused so many residents to leave the area that the business' net income declines.

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10.05.19.02 Documentation from Displacee

The owner must submit a request to have their In-Lieu Payment calculated along with supporting documentation. The RAP Agent should ensure the displacee understands this payment is "in lieu" of all other moving payments.

Certified copies of Tax Returns for the last two years should include the Schedule C (Profit or Loss from Business or Profession) and either Form 1040 (Individual Tax Return for the owner and each corporate officer), Form 1065 (Partnership Tax Return for each partner) or Form 1120 (Corporate Tax Return), as appropriate.

Business owners seeking use of the alternate tax year provision must provide information to support their contentions. They must provide tax returns for the alternate two-year period, the two tax years immediately preceding the year of displacement, and any intervening years that document the decline in net income.

10.05.19.03 Processing the Request

The RAP Agent shall process the displacee's request for an In-Lieu Payment as follows:

1) Reviews the displacee's request for validity, and requests additional documentation to determine eligibility.
2) If displacee is deemed ineligible, rejects the request in writing, stating the reason for rejection and advises displacee of their appeal rights.
3) If the request is adequate, calculates the average annual net earnings for the last two taxable years (10.05.18.00). Completes the claim (RW 10-30) entering the amount of the payment.
4) Personally delivers the completed claim to displacee with a letter showing amount to be paid. Advises displacee that payment will be made after the property has been vacated - and only if no other moving expenses are claimed.
5) Verify the property is vacant.
6) After displacee signs the claim, processes it for payment. Returns income tax returns to displacee.

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10.05.19.04 Computing Average Annual Net Earnings

Examples of how to calculate the "Average Annual Net Earnings" are calculated as shown:

EXAMPLE A:

2010	$15,000	Schedule C
	$11,000	Individual 1040*
	$26,000	
2009	- $11,000	Schedule C
	$10,000	Individual 1040*
	- $ 1,000	
	Adjusted to zero	
2008	$15,000	Schedule C
	$ 3,000	Individual 1040*
	$18,000	

*Salary paid to owner, their spouse, and dependent children added here.

The RAP Senior determines the income from 2009 is not indicative of a normal year and uses 2008 as an alternate year.

The average of 2010 ($26,000) and 2008 ($18,000) is $22,000. The maximum allowable payment is $40,000.

EXAMPLE B:

2010	- $15,000	Schedule C
	$16,000	Individual 1040*
	$ 1,000	
2009	- $11,000	Schedule C
	$10,000	Individual 1040*
	- $ 1,000	
2008	- $10,000	Schedule C
	$18,000	Individual 1040*
	$ 8,000	

The RAP Senior determines the income from 2010 and 2009 is representative of the business' operation, even though the income the owner received in 2010 is greater than the business' loss. The higher amount in 2008 is a result of the owner taking a greater draw and should not be used as an alternative tax year.

The average of 2010 ($1,000) and 2009 (-$1,000 which is converted to zero) is $500. The maximum allowable payment is $1,000.

* Income from business in question.

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10.05.20.00 No Duplication of Payments

Since Appraisal, Acquisition, and RAP are equally responsible for assuring that duplication of payments is avoided and that proper charges are made for Federal participation, a great deal of coordination among the functions is necessary. RAP Agents should be familiar with the Acquisition and Appraisal Chapters, which describe the duties assigned to the respective branches.

The RAP Agent must provide the Acquisition Agent with a completed RW 10-38 whenever an In-Lieu Payment has been made.

The subject of no duplicate payments may raise extremely complex issues. All explanations to displacees should be handled with care and caution since the potential for misunderstandings is extremely high.

10.05.21.00 Compensation for Loss of Goodwill

Goodwill is defined as the benefits that accrue to a business because of its location; reputation for dependability, skill or quality; and any other circumstances resulting in probable retention of old or acquisition of new patronage. Loss of Goodwill is paid as an acquisition expense, but some of the items considered in calculating a loss of goodwill may also be covered as a relocation expense. Therefore, the District must identify those cost elements of fixed moving costs (in-lieu payments), reestablishment expenses, and Loss of Goodwill payments that are paid, or would be paid, for the same purpose.

10.05.21.01 Loss of Goodwill Procedures

A business, farm, or nonprofit organization must be informed that relocation payments are offset against any other similar payment made for Loss of Goodwill.

The RAP Agent should be aware that:

- A goodwill appraisal might be made prior to State's first offer or at some later date.
- Displacee may be eligible for payment of moving and related expenses (10.05.05.00) and reestablishment expenses (10.05.13.00) or a fixed payment in lieu of these two payments (10.05.15.00).
- Moving and related expenses may not be offset against Loss of Goodwill payments.

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- Although the relocated parties generally must incur reestablishment costs before they are paid, some known costs, such as increased rent, may be paid prior to actual occurrence.
- If the Loss of Goodwill payment exceeds the in-lieu payment, displacee will only be eligible to receive compensation for Loss of Goodwill plus RAP payments for moving and related expenses.
- If a Loss of Goodwill payment has not been made and the payment to be made is less than the in-lieu payment, displacee has the option of receiving either the in-lieu payment or the Loss of Goodwill plus RAP payments for moving and related expenses and for reestablishment costs not included in the Loss of Goodwill payment.

The RAP Agent should carefully analyze proper and reasonable offset of RAP payments against Loss of Goodwill payments when a goodwill appraisal indicates a loss to the displaced business. The District must fully document all offsets in the parcel file.

10.05.22.00 Notices to Acquisition

A business in-lieu payment may be made prior to payment of a claim for loss of business goodwill. Immediately after approving an in-lieu payment, the RAP Unit notifies Acquisition of the amount of the in-lieu payment, using RW 10-38, "Notice to Acquisition of In-Lieu Payment or Reestablishment Expenses."

A Business Reestablishment (10.05.14.00) may contain items that could be included in the preparation of an appraisal for Loss of Goodwill, thus the possibility of duplication of payment exists when a Loss of Goodwill payment is made. If reestablishment costs are reimbursed prior to the Loss of Goodwill payment, the RAP Unit notifies Acquisition that a reestablishment payment has been made, using RW 10-38, "Notice to Acquisition of In-Lieu Payment or Reestablishment Expenses," with RW 10-30 attached. This notice is made immediately after the District approves the reestablishment expense for payment.

Close coordination between RAP and Acquisition during all phases of a nonresidential relocation is essential. The RAP Agent should check with the Acquisition Agent to see if any loss of business goodwill claims have been paid to avoid duplicate payments.

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10.05.23.00 Abandoned Personalty

If the nonresidential displacee abandons an item of personal property at the displacement site, the owner is not entitled to moving expenses or losses for the items involved. The displacee is not entitled to reimbursement for moving costs (including adjustments to move under 10.05.11.00) until all personal property has been removed from the displacement site. If property is abandoned, and the displacee will not remove it, then Property Management must be notified of the items and make arrangements for its disposal. The disposal costs cannot be deducted from the displacee's relocation benefits, nor can relocation benefits be denied for eligible expenses just because the displacee did not relocate all the personalty. See Property Management and/or Clearance and Demolition policies and procedures regarding disposal methods and recovering expenses from the owner.

10.05.24.00 Hazardous Material

The following guidelines may be used to relocate hazardous materials that are considered personal property because of their nature and/or containment:

- The costs of analyzing contents of containers prior to removal from the displacement site are reimbursable moving expenses if required by regulation or under the rules of the disposal facility. The analysis should be a reasonable and necessary prerequisite for the move.
- The cost of insuring the shipment is a reimbursable expense.
- Eligible reimbursable moving expenses include the cost of shipping these materials from the displacement site to the replacement site <u>or</u> to the nearest approved disposal site, at displacee's option. The 50-mile limit may be waived, if necessary, under the authority of 49 CFR 24.301(g)(1).
- Fees charged at the disposal site are not federally participating moving expenses. The generator of the hazardous material has a continuing responsibility with respect to future requirements that may arise in conjunction with its storage or treatment. Since this liability was not caused by the Department's acquisition of real property, costs incurred as a result are not considered reimbursable moving expenses. The payment of fees at the disposal site may be a problem for some displacees, and they may decide to abandon the hazardous material. If this is a possibility, the RAP Unit should contact HQ R/W as soon as possible.

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10.05.25.00 Grace Period on Business Property

The DDC-R/W can authorize grace periods to former owners or tenants of Department-acquired business properties in accordance with the following terms and conditions:

- Grace periods can be granted for an individual parcel, a portion of a project, or an entire project when businesses are undertaken in a market where replacements are difficult to find and orderly relocation creates a need to mitigate business disruption.
- Grace periods are normally a maximum of 60 days and may be shorter if warranted by circumstances.
- Displacees are not required to pay rent during the grace period if they have a commitment to pay rent on a replacement site and they have furnished proof of that obligation to the District.
- The District shall verify the need for the grace period. The need is often related to refurbishment, move time, or equipment installation. Or the need could be time oriented; e.g., a business might have a sales season during which relocation is impractical. A grace period that allows the owner to enter into a rental agreement on the replacement site, to be occupied later, may be justified.
- The specific time or dates of the grace period should be described in the Right of Way Contract or in Property Management's Rental Agreement.
- A business move grace period cannot be authorized on residential property even if the property is qualified for business in-lieu RAP payments.
- A grace period cannot be authorized on farms. Reduced rent or no rent policies on farmlands, granted or exchanged for other considerations (such as maintenance), are not affected by this business move policy.
- A grace period may be authorized on the business use portion of mixed-use properties. The displacee must pay reasonable rent on the nonbusiness portion.
- A grace period based on partial reductions may be used when appropriate. Partial reductions are applied if the business operator is moving to a place of business where rents are less than the existing State rental rate. (If State rent was $500 and replacement rent is $400, the State can allow a $400 per month grace on the State property.) Partial reductions could also be used if owner's move plan entails a phase-in period where the new and the old places of business are operated concurrently.
- Grace periods may be granted when a business owner acquires a site rather than leases. Time may be needed to close escrow, make modifications to the property, etc.

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The District may determine that no reduction is practical when both the replacement site and the State site are producing significant incomes.

The RAP Unit has primary responsibility for administration of the grace period. RAP verifies the dual rent condition of the business and solicits proof of and amount of rent on the replacement site.

The RAP Agent shall advise Property Management by monthly memoranda on the status of the grace period. The RAP Senior must approve those memos, copies of which are retained in the RAP file. The RAP Agent shall make every effort to ensure the grace period is not erroneously extended beyond the time limits of this policy. The RAP Agent shall also communicate with Property Management to the fullest extent about expected grace periods and amounts of rental rates to be covered.

When mixed property grace periods are considered, the RAP Agent consults with Property Management on proper distribution of total rent. Property Management's determination controls the mixed-use property rent proration.

10.05.26.00 Nonresidential Definitions

- Salvage Value [49 CFR 24.2(a)(23)]: The probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

- Small Business [49 CFR 24.2(a)(24)]: A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes receiving a reestablishment expense payment.

- Nonprofit Organization [49 CFR 24.2(a)(19)]: An organization that is incorporated under the applicable laws of a State as a nonprofit organization, and exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501).

- Contributes Materially [49 CFR 24.2(a)(7)]: During the two taxable years prior to the taxable year in which displacement occurs, or during such

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other period as the Region/District determines to be more equitable, a business or farm operation:

1) Had average annual gross receipts of at least $5,000; or
2) Had average annual net earnings of at least $1,000; or
3) Contributed at least 33 1/3 percent of the owner's/operator's average annual gross income from all sources.

- Business [49 CFR 24.2(a)(4)]: Any lawful activity, except a farm operation, that is conducted primarily:
    1) For the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or
    2) For the sale of services to the public; or
    3) As an outdoor advertising display, when the display must be moved as a result of the project; or
    4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.
- Farm Operation [49 CFR 24.2(a)(12)]: Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

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10.06.00.00 - REPLACEMENT HOUSING VALUATIONS

10.06.01.00 General [49 CFR 24.204(a)]

No residential displacee shall be required to move unless at least one, preferably three, comparable replacement dwelling has been made available.

49 CFR 24.204(b) guarantees that "No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible."

A comparable replacement dwelling will be considered to "have been made available" if the displacee has:

1) been informed, in writing, of its location (address), and the monetary entitlements available to help with the purchase or rental of the property.
2) sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
3) been assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

The Department's obligation to provide replacement housing is met when comparable housing is made available to the displacee. The Department can then proceed to issue Notices to Vacate.

The displacee is advised of the address of the comparable replacement properties via the Conditional Entitlement Letter (10-EX-45 for 90-day owners and 10-EX-40 for 90-day occupants), the 90-Day Information Notice, the 30-Day Notice, and the 90-Day Notice.

Any available comparable used to determine a price/rental differential must be available at the listed price during the period displacee is actively seeking replacement housing. This period of active search ends when the earlier of the following dates occurs:

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- Displacee enters into a contract to purchase (acceptance of Deposit Receipt), build, or rent a replacement property.
- Displacee vacates displacement property.

10.06.02.00 Criteria for Selecting Comparable Replacement Properties

The Agent assigned to complete a Replacement Housing Valuation (RHV) must have a thorough knowledge of the requirements for selecting a comparable replacement property. The RHV Agent should ensure that the most comparable of the three properties is Decent, Safe, and Sanitary (DS&S), comparable, and functionally equivalent.

10.06.03.00 Comparable Replacement Dwelling [49 CFR 24.2(a)(6)]

The term comparable replacement dwelling means the probable replacement residence is:

1) Decent, safe, and sanitary (10.06.05.00);
2) Functionally equivalent to the displacement dwelling (10.06.04.00);
3) Adequate in size to accommodate the occupants (see Room Division Guidelines);
4) In an area not subject to unreasonable adverse environmental conditions;
5) In a location generally not less desirable than the location of the displacee's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the place of employment;
6) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses (10.06.15.00);
7) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance (10.04.17.00);
8) Within the financial means of the displaced person.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or less living space than the displacement dwelling. Such may be the case when a DS&S replacement dwelling, which by definition is adequate to accommodate the displacee, is functionally similar to a larger but

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run-down, substandard displacement dwelling. If the owner rents or leases a room(s) in the displacement dwelling to another party, there should be no reduction of rooms when considering a most comparable replacement dwelling for the owner.

10.06.04.00 Functionally Equivalent

49 CFR 24.2(a)(6)(ii) requires that a comparable replacement dwelling be "functionally equivalent" to the displacement dwelling. The dwelling should perform the same function and provide the same utility as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling, but they may never be inferior.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a DS&S replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally equivalent" to a larger, but very run-down substandard displacement dwelling.

Comparability and functionally equivalent do not mean that all aspects of the displacee's lifestyle be replaced, e.g., a rental unit that will accept 14 cats or a single-family residence designed for entertaining. However, special consideration should be given to residences that provide the displacees with unusual views (noted in the market, but an allowable deduction as a major exterior attribute - per FHWA) and easy access (level driveways, or a single story).

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10.06.05.00 Decent, Safe, and Sanitary Dwelling [49 CFR 24.2(a)(8)]

The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. Displacees shall not be relocated to inadequate, substandard housing as a consequence of public acquisition.

The most restrictive standard (local code or above) applies. Agencies which may have applicable housing and occupancy codes include city/county planning departments, city/county departments in charge of building permits or inspections, or city/county housing authorities. Absent any local requirements, the dwelling shall:

1) Be structurally sound, weather tight, and in good repair.

2) Contain a safe electrical wiring system adequate for lighting and other devices.

3) Contain a heating system capable of sustaining a healthful temperature (approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. (See Room Division Guidelines.)

   There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. Though there is no requirement as to the number of people that can share a bathroom, the RHV Agent should reconsider using a residence with only one bathroom for an eight-member household.

   In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

5) Contain unobstructed egress to safe, open space at ground level unless local fire and building codes require additional methods of ingress/egress such as access to a common corridor.

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6) For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person (see 10.06.06.00).

Replacement housing must be permanent. Relocations shall not be made into dwellings that are presently or soon-to-be owned by the Department or another public agency and are to be removed for a public project.

Many local housing and occupancy codes require the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, in protecting the public health and safety. Where such standards exist, they must be honored. Even where local law does not mandate adherence to such standards, FHWA strongly recommends that these issues be considered as a matter of public policy. This Department will arrange for the inspection of lead-based paint for all previously occupied replacement dwellings as appropriate.

The following guidelines are used to judge if the replacement dwelling contains an adequate number of rooms for DS&S purposes.

IMPORTANT: The number of bedrooms required for a family is normally based on family size at the time of initiation of negotiations. An increase in family size after that date may require a replacement dwelling with additional bedrooms in order to meet DS&S standards at time of actual displacement. The need for a larger dwelling should only be considered when the family results from natural or adoptive children increase (not considering future births or adoptions) or other new family members in a clear dependency relationship, such as elderly or invalid parents who must live with the displaced family.

When the size of the family falls below the count made at initiation of negotiations, a smaller dwelling may still meet DS&S standards. However, the Department cannot require a displacee to relocate to a dwelling smaller than the one occupied at initiation of negotiations, nor can it consider smaller dwellings as comparable replacements for computing the amounts of differential payments.

If the inspection reveals a possible concern with mold, lead paint, hot water heater strapping, or other local code requirement, the agent should indicate on the report form (RW 10-40) that additional inspections by qualified persons are recommended.

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10.06.05.01 Waiver of Decent, Safe, and Sanitary Standards

The DS&S standard may be waived where unusual conditions exist, and at the request of the displacee. Such waivers require FHWA preapproval, processed through HQ RW RAP.

Whenever waivers are requested (e.g., insufficient bedroom facilities at present, but displacee plans to construct additional living area), complete documentation is required and is retained in the Region/District RAP file. This includes having the displacees sign affidavits acknowledging the waiver request and setting forth remedial plans to assure ultimate compliance of occupancy in DS&S housing.

If a waiver is granted for the displacees to have fewer bedrooms than is required by this section, then the RHV must be revised to consider comparable replacement properties that have fewer bedrooms.

Example: Displacees must have four (4) bedrooms in the replacement property to meet DS&S requirements because there are seven (7) occupants. However, the displacees have requested a waiver of DS&S standards to relocate into a three (3)-bedroom property. If this waiver is granted, the RHV must be revised to consider three (3)-bedroom properties.

Before displacees request waivers for the number of bedrooms, they must be advised that their RHP may be reduced.

ROOM DIVISION GUIDELINES

- A maximum of two persons may occupy a zero-bedroom unit such as a studio apartment.
- For units larger than zero-bedroom units, two persons per bedroom shall be used as a guideline in determining the number of bedrooms required for replacement housing. More than two persons may occupy a bedroom provided the room is adequate in size to accommodate normal bedroom furnishings for the room occupants (e.g., three toddlers in a larger bedroom, an infant in the bedroom with the parents).
  One person may qualify for a separate bedroom if that person is disabled or incapacitated, and requires additional space for medical equipment or maneuverability.

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ROOM DIVISION GUIDELINES (Continued)

- If applicable housing and occupancy codes for the area of the comparable replacement require a greater number of bedrooms for the household than indicated by the above guidelines, the greater number of bedrooms according to code should be used in the replacement housing valuation. (E.g., children that are wards of the court, or some other jurisdiction, may be required to have a separate bedroom from adults or other children of a different gender.)
- Dwellings with less square footage and/or fewer number of rooms than the displacement dwelling should not be used as comparables. However, if a displacee is relocating to subsidized housing, occupancy standards of the housing authority issuing the subsidy shall be used to determine the number of rooms required.

49 CFR 24.2(a)(6)(ix) states that Section 8 provisions on the number of bedrooms required for the size and composition of the displacement household prevail when determining a comparable replacement property, even if the number of bedrooms is less than the displacement property. If the displacees choose to move from nonsubsidized housing to subsidized housing, the RHV will be based on the occupancy requirements for subsidized housing.

49 CFR 24.2(a)(8)(iv) states that the number of bedrooms for a replacement property may be established by a federal, state or local jurisdiction that has the authority over the displaced residential occupants (requiring children of a certain age be separated from another because of age or gender).

Note - at the time of this revision, Federal Housing Authority (FHA), Housing and Urban Development (HUD), and Fair Employment and Housing Agency (FEHA), all stated in their guidelines that separation by age and gender was discriminatory, and agencies could not mandate households separate their members by age and/or gender.

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10.06.06.00 Barrier Free Housing [49 CFR 24.2(a)(8)(vii)]

Regulations provide sufficient flexibility when computing replacement housing payments when accommodations need to be provided for a displaced person with disabilities. (See 10.06.05.00 - item 6.)

The Department's procedures ensure that needs of a displaced person with disabilities are addressed in the RHV.

The Region/District may base the RHV on (1) a dwelling designed for physically disabled persons, or (2) the additional estimated costs to make needed modifications. Whichever method is used, the displacee must be presented with a home that is suitable to their disability needs, and that the PD is based on a comparable replacement property that is barrier free. Method (2) ensures there are limits in the amount of funds the Department will provide in order to acquire and rehabilitate a property to accommodate the displacee's physical limitations.

Customized features contained in the subject, or required in the replacement (e.g., ramp, widened doorways, bathtub railings, and lowered counters), may be replaced in the replacement property as add-ons.

Arrangements for modifications to the replacement dwelling purchased by the displaced person must be made by the displacee. The Region/District shall reimburse the displacee for the actual reasonable costs paid for those modifications up to the spend-to-get limit.

Rental replacement housing could be provided in the same manner, with the consent of the landlord, or the Rent Differential could be increased to appropriately compensate the landlord for any necessary modifications or accommodations necessary for the replacement property to be considered DS&S. Note: Construction of handicapped access is not a moving cost.

If a financial hardship would be created for the displaced person, the RAP Senior could provide an advance replacement housing payment for the needed modifications.

49 CFR 24 requires the replacement property accommodate the displacee's needs in terms of unit size, location, access to services and amenities, reasonable ingress and egress, or use of the unit. 49 CFR 24.2(a)(8)(vii) also addresses the needs of persons with a physical impairment that substantially limits one or more of the major life activities of such individuals. The needs of

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nonphysical disabilities are not addressed since replacement property attributes cannot be identified.

Reasonable accommodation should include the following at a minimum: Doors of adequate width, ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights. Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access, and other items that may be necessary, such as physical modification to a unit, based on a displaced person's physical needs.

10.06.07.00 Cost of Comparable Replacement Dwelling [49 CFR 24.402(a)]

The upper limit of a replacement housing payment (Price Differential or Rent Differential) shall be based on the cost of a comparable replacement dwelling, considering the following:

1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling.
2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (e.g., the site does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purpose of computing the payment.
3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Department may offer to purchase the entire property. If the owner refuses to sell the remainder to the Department, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.
4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

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10.06.08.00 Determining the Cost of Comparable Replacements

Requires knowledge of:

- Characteristics of the displacement dwelling so it can be compared with replacement dwellings for sale or rent in the market.
- Number of eligible occupants occupying the displacement dwelling.
- Multiple occupancy rule (separating into separate households). (10.04.17.00.)
- Definition of comparable replacement dwelling (10.06.03.00) and DS&S dwelling (10.06.05.00).
- Policy on mixed-use properties (10.04.28.00).
- Definition of "major exterior attribute" (10.06.16.00) and how this affects the determination of the cost of comparable replacement dwelling.
- Policies concerning adjustments to comparable replacement dwelling rental or purchase costs (10.06.09.00).

10.06.09.00 Other Considerations

RAP valuations are always based on the original or primary status of displacees as found (e.g., owner). Calculations of alternate benefits normally are not made unless the following conditions are met:

- Displacee requests a change of status from owner to tenant.
- Dwellings are available in the alternate status.
- Such dwellings can be provided at no greater cost to the Department (i.e., more economically) than maintaining the original or primary status.

Alternative RAP valuations must be accompanied by a concurrent primary valuation to support the "no greater cost" of the alternate.

(See 10-EX-29 - FHWA Guidance on RHVs.)

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10.06.10.00 Partial Acquisitions

The requirements for computing a replacement housing payment of a partial acquisition with a remaining uneconomic remnant differ from a partial acquisition with a remaining buildable lot.

If the remaining property is an uneconomic remnant (7.03.04.01 and 7.03.04.02), FHWA requires the Department to make an offer to acquire it. The value of the remnant cannot be used in the RHP computation unless the owner elects to sell it to the Department.

EXAMPLE: Uneconomic Remnant

Owner Wishes to Sell:

Cost of Comparable	$80,000
Less: Acquisition Cost of Displacement Property	- $50,000
Less: Value of Uneconomic Remnant	- $10,000
Equals: Price Differential	= $20,000

Owner Does Not Wish to Sell:

Cost of Comparable	$80,000
Less: Acquisition Cost of Displacement Property	- $50,000
Equals: Price Differential	= $30,000

Note: The Department can condemn excess property if the appraisal supports the premise that the remainder is uneconomic in the market.

If the remaining property is considered a buildable lot, 49 CFR 24.403(a)(3) allows the Department the flexibility in determining whether to buy it or not. If the Department offers to acquire it, its value may be included in the RHV computation, regardless of the owner's acceptance or rejection. However, if the Department does not offer to acquire it, the value of the remainder may not be used in the RHV computation. (See Section 07.03.04.04.)

10.06.11.00 Last Resort Housing

The initial or updated RHV often provides the first indication, in terms of money, that a displacee falls under last resort housing procedures.

If the amount of the entire PD or RD exceeds LRH limits, FHWA allows alternate methods in the selection of comparable replacement properties if they are more cost-effective. Example: Instead of using a higher priced six-bedroom dwelling, it may be more cost-effective to consider a five-bedroom property

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and add the cost to construct a sixth bedroom. This would also apply to rehabilitating a non-DS&S dwelling that is available on the market, rather than selecting a superior property as to size, cost, and condition.

10.06.12.00 Replacement Housing Valuation Report (RHV)

A Replacement Housing Valuation (RHV) Report is prepared for each residential household that will be displaced by the project. The request is generated by the Request for an RHV prepared by the agent who conducted the First RAP Call and submitted directly to the RHV Senior or through the RAP Senior. The report should not be initiated until the RHV Senior verifies the number of occupants that are eligible for relocation benefits based on tenure and U.S. residency. In some cases, the RHV for an RD is not requested until the displacees have advised the RAP Agent that they are ready to search for a replacement property. Care should be taken to ensure the average monthly rent is based on the last three months, even if the displacees are now tenants of the State's property.

The RHV Senior and RAP Senior should agree on a time frame for the delivery of the report based on the displacee's needs and the project schedule.

The report shall contain:

- Certification of person preparing report and approval by the Senior Reviewer.
- A description page for the displacement dwelling, including photographs and an analysis of adjustments to the acquisition price.
- A description page for each comparable replacement dwelling, including photographs.
- A map showing location of displacement dwelling and comparable replacement dwellings.

The RHV Agent should obtain a copy of the Fair Market Value (FMV) appraisal to obtain data on the displacement property, but care should be taken when counting the number of rooms in the property.

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10.06.12.01 Date of Valuation

An eligible displacee has one year to purchase or rent and occupy a DS&S replacement property (10.08.01.01). The date displacee purchases, contracts to build, or rents and occupies permanent DS&S replacement property, establishes the final date of value for the RHP.

If a 90-day owner-occupant vacates the displacement property within the one-year time period (10.08.02.00) but does not purchase and occupy or otherwise contract for permanent DS&S accommodations, displacee is entitled to an updated replacement valuation any time during the one-year period (10.08.02.00) but only if the displacee cannot purchase or rent a comparable DS&S property for the value of the RHV. When updating the RHV after displacement, do not consider any changes to income or number of occupants that might have occurred since the one-year time began.

90-day occupants and non-tenured occupants have one year from vacating the displacement property to have the RHV updated.

10.06.12.02 Report Revisions

The RHV does not need to be revised unless the displacee and/or the RAP Agent determine that the comparable replacement properties are no longer indicative of market value, or are not available to the displacee who is actively looking for a replacement site.

The RAP Agent must note in the file when the RHV is determined to be valid or when a revision is warranted.

Typical examples of when an RHV may need to be revised:

- Acquisition appraisal is revised.
- Number of occupants or eligibility of displacee(s) changes (prior to the start of the one-year time period).
- Initial determination was based on erroneous information.
- Prior to service of a RAP Notice.
- A change in market conditions warrants a revision.
- Displacee has filed a relocation appeal objecting to the amount of the RHP.

All rental offers are conditional upon displacee's action, usually within 90 days. Upon expiration of this period, the displacee must be given an updated determination if they are actively seeking replacement housing.

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10.06.12.03 Preparation of the Replacement Housing Valuation

Replacement Housing Valuations (RHVs) must be prepared by someone other than the FMV appraiser, and usually someone other than the Acquisition or RAP Agent involved in the parcel, unless the RHV will be less than $10,000.

Preparation of the RHV

Initial - within 30 days of:

- The FWO for 90-Day Owner-Occupants.
- The First RAP Call for 90-Day Occupants, unless required documentation to establish base monthly rent (income, utility costs, or rental rates) or number of occupants (occupancy certifications and U.S. residency) has not been received.

Revisions (prepare new report) and updates (ensure comps are still appropriate) are required when:

- 90-Day Occupant (tenant or owner) advises the RAP Agent that they are actively seeking a replacement property, and they have not vacated from the displacement property.
- The real estate market has changed significantly indicating that replacement properties will cost more or less than previously calculated, and the displacee has not vacated.
- Displacee files an appeal on the RHP.
- Prior to issuing a Notice.
- Annually from the FWO if the displacees have not vacated.
- The displacee has vacated, but cannot purchase or rent a replacement property within the one-year time period because of values.
- 90-Day Occupants have been State tenants for over three months and have not actively sought a replacement property.

Revisions or updates based solely on changes to income, occupancy, or a recent rental increase are not appropriate.

Decreases in the RHP (PD or RD) are not appropriate unless the Region/District can document that the displacee has made little or no effort to acquire a replacement property after a reasonable period of time.

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10.06.12.04 Approval of the Replacement Housing Valuation - Dual Roles

The same Senior R/W Agent may:

- Review and approve the FMV appraisal and RHV on the same dwelling if that Senior does not also have overall RAP responsibility, in accordance with delegations.
- Review and approve the RHV and be responsible for the RAP function if that Senior does not have responsibility for the FMV appraisal, in accordance with delegations.

10.06.12.05 Approval of the Replacement Housing Valuation - Authority

Replacement Housing Valuations shall be approved in accordance with the RAP statewide delegations. The Senior Agent approving the RHV may need to conduct a field review of the displacement property and all the comparable properties included in the valuation prior to approving the report.

The Agent who prepares the RHV (RHV Agent) and the Senior Agent who approves the RHV (RHV Senior) shall sign RW 10-42.

10.06.12.06 Completing the Report

An RHV report is completed on RW 10-42 which includes the certification by the preparer and the approver. The displacement property information is found on page 2 and the comparable replacement property information is on the remaining pages.

An original photograph of the displacement property and each probable comparable replacement property must be attached to the report, along with a map depicting the location of the properties.

Selection of the most comparable property must be in compliance with this section and 49 CFR 24.204.

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10.06.13.00 Valuation Method

The RHV Agent determines the probable purchase or rental amount of a comparable replacement property by analyzing at least three comparables that are available for sale or rent. Less than three comparables may be used only when three are not available, in which case an explanation is given on the valuation sheet.

The selected comparables must be those most nearly comparable to and at least equal to or better than the displacement property. Particular attention to living area and functional equivalency is necessary for all comparable dwellings selected (10.06.04.00).

The replacement value shall be the probable sales price or rental rate of an available property most comparable to the displacement property. The reasons for choosing the most comparable property are shown on the valuation sheet.

Where there are no directly comparable units available, the RAP Agent shall consider the following in selecting a replacement property:

- Rehabilitation of or additions to an existing replacement dwelling.
- Relocation and rehabilitation, if necessary, of an existing dwelling.
- Use of the next highest value residential unit available.
- Use of similar properties in a higher value neighborhood.

Reasonable cost should be a consideration in implementing any alternatives.

10.06.14.00 Selection of Comparables

The RHV Agent should personally inspect the displacement dwelling unit, both inside and out, to assure the proposed replacement properties are comparable and meet the standard of equal to or better. In addition to a brief description of condition, quality, and effective age of the unit, the Improvement Remarks Section of RW 10-42 should contain brief descriptive terms necessary for the RHV Senior to understand special or unusual features found in the displacement dwelling unit. A remark may also be appropriate where the displacement dwelling unit has a special feature (e.g., large kitchen, hardwood floors, built-in furniture, or luxury decoration). Conversely, a remark should be made where the subject lacks usual items (e.g., an unfinished room, unusually poor condition, or dirt floors).

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An analysis of the displacement neighborhood is needed if the proposed comparable properties are not within the same neighborhood. Public and private facilities that are significant amenities to the displacement neighborhood should be identified and considered in selecting the comparable replacement neighborhood. Particular attention should also be paid to displacee's place of employment or other location upon which displacee may depend.

The RHV Agent cannot adjust the asking price of a comparable replacement property when computing the replacement housing payment. This procedure was deleted from the Final Rule issued January 4, 2005, so there is no longer any authority or basis for agencies to make adjustments which would reduce the amount of the homeowner's replacement housing payment.

The comparable unit chosen for the calculation of the RHP should be physically inspected inside and outside. Proposed Comparable Replacement Dwelling data shall be entered on RW 10-42 in sufficient detail to allow any reviewer to readily compare all descriptions of the comparable replacement dwelling to those of the displacement dwelling. All features lacking in the comparable dwelling as compared to the displacement dwelling and all features found to be in addition to those in the displacement dwelling shall be described. Additional data sheets may be used. The comparable replacement dwelling should usually be chosen from an area of equal or higher value, although a dwelling that is somewhat smaller (50-75 sq ft [15-23 sq m]) but is modern and functionally equivalent may be chosen to replace an old, dilapidated dwelling (10.01.09.03).

To the extent possible, an investigation should be made of the special features of the displacement dwelling, the surrounding neighborhood, and the overall environment.

NOTE: The Region/District is responsible to provide reasonable comparable replacement dwellings to the residential displacee. The Region/District is not obligated to replace multi-use amenities that the displacement property might contain, such as in the case of residential properties that have rental units attached or built on the property (e.g., an apartment over the garage).

As part of the Advisory Assistance and as a service to the displacee, the District should identify other similar use properties that are available to the displacee. However, from a valuation and replacement standpoint, the pertinent comparables should only reflect a reasonable replacement of displacee's basic dwelling unit. Availability of similar mixed-use or multi-use properties does not constitute an offer of available replacement property under the

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requirements of the Uniform Act. The displacee's residential portion must be carved out.

There are three types of adjustments that could be made to the displacement property: Major Exterior Attributes (10.06.15.00), Carve-out for Mixed or Multiple Uses (10.06.16.00), and Carve-out for a Dwelling Site (Oversized Lot) (10.06.17.00).

An adjustment to the replacement property may include construction costs to correct minor DS&S deficiencies (including handicapped facilities).

The RHV Agent should exercise good judgment when selecting comparable properties and remember to be prudent and economical when attempting to replace all aspects of the displacement property's amenities. 49 CFR 24 states that a comparable property is in a neighborhood "not less desirable," not necessarily the same neighborhood.

10.06.15.00 Major Exterior Attributes [49 CFR 24.403(a)(2)]

When the site of the comparable replacement dwelling lacks a "major exterior attribute" of the displacement dwelling site, the contributory value of such attribute should be subtracted from the acquisition cost of the displacement dwelling for purpose of computing the maximum replacement housing payment. Such an action is known as a carve-out.

There are three key issues in this statement. First, the carve-out is initially based on the comparable replacement, e.g., the first priority is to locate an available replacement dwelling comparable to the displacement dwelling, then look at the differences that could necessitate a carve-out.

The second issue is that for an item to be eligible to be a "carve-out," it must be exterior to the residential dwelling. Items that are part of the dwelling but may be difficult to replace are not items that are eligible for a carve-out.

The final issue is that when subtracting from the acquisition cost for a carve-out item, the monetary figure to be used is the contributory value of the items. The item that is carved out should be of some significant value to warrant a carve-out. Not every exterior item needs to be carved out.

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10.06.15.01 Carve-out for Major Exterior Attributes

The comparable replacement dwelling used in computing the RHP must be comparable to the displacement dwelling unit. When the comparable used in computing the PD is similar except it lacks a major exterior attribute (such as a swimming pool or outbuilding) that contributes materially to the value of the displacement unit, the contributory value of the major attribute is subtracted from the total acquisition price of the displacement dwelling to arrive at the value of a comparable dwelling and home site. The RHP is the difference between the adjusted value of the displacement dwelling (displacement value) and home site and the price of a comparable dwelling (replacement value) and home site.

Items of realty identified in the appraisal report contributing less than $500 to the value of the entire property shall not be carved out from the displacement property value.

10.06.16.00 Computing a Replacement Housing Payment When a Higher and Better Use is Indicated

In computing a replacement housing payment for an owner-occupant whose residential property is appraised at a higher and better use (land as if vacant), use the acquisition cost for the land area that represents a typical lot size plus the contributory value of the owner-occupied dwelling as shown in the FMV appraisal. (49 CFR 24 Non Regulatory Supplement.)

10.06.16.01 Carve-Out for Mixed-Use and Multiple Use Properties

Special procedures are required when the displacement property is not a typical residential unit. A special valuation approach is used to isolate the residential value in a property that possesses more than just a single residential use.

If the displacement dwelling is part of a property that contains another dwelling unit and/or space used for nonresidential purposes, there must be an allocation of the acquisition price of the displacement property to the isolated residential use. This is known as a carve-out. The residential land area is determined by inspection. For example, on a farm, include the footprint of the house and any outside areas dedicated to the residential use.

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The way in which the land value is allocated will depend on whether the displacement dwelling is situated on land with a residential highest and best use, or on land with a nonresidential highest and best use. The entitlement or RHP is based on the amount actually paid for the residential portion.

If the Highest and Best Use is residential, determine the land area occupied by the residential use. Then apply the residential land value (site value) from the FMV appraisal to the land area occupied by the residential use. Last, add the contributory value of the residential improvements from the FMV appraisal.

If the Highest and Best Use is nonresidential, determine the land area occupied by the residential use. Apply the nonresidential land value from the FMV appraisal (the amount actually paid) to the land area occupied by the residential use. Where the dwelling is located above or below the other use (vertical configuration), the land value must be prorated between the uses. See 10-EX-19, Example #3. Add the contributory value of the residential improvements from the FMV.

10.06.17.00 Carve-Out for Dwelling Site (Oversized Lot) [49 CFR 24.2(a)(11)]

The term "dwelling site" means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area. This definition ensures that the computation of replacement housing payments are accurate and realistic a) when the dwelling is located on a larger than normal site, b) when mixed use properties are acquired, c) when more than one dwelling is located on the acquired property, or d) when the replacement dwelling is retained by the owner and moved to another site.

If the displacement dwelling is located on a site that is significantly larger than typical for the displacement area, a deduction from the acquisition price of the surplus land's contributory value may be required. The RHV Agent should use the information in the appraisal report to obtain the contributory value of the area surplus to the typical lot size, if available. If the information is not contained in the FMV report, the RHV Agent must conduct the necessary research.

Residential land is commonly sold on a site value basis, wherein minor differences in overall area do not have an effect on the total value of the site. In these cases, the surplus land may have little or no contributory value. When choosing the comparable replacement properties, the RHV Agent may use lot sizes that are reasonably similar but slightly smaller than the

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displacement property lot size if the residential utility and values in the market are also similar.

The adjustment shall be made to reflect the cost of the displacement dwelling on a typical residential site (site value) based on the properties available in the replacement area. The RHV Agent should use the information in the appraisal report to obtain the contributory value of the property in excess of the displacement's typical lot size.

When selecting a comparable replacement property, the RHV Agent should use property sites that are equal to or slightly larger than the displacement property's lot size (including the carved-out portion for "typical" lots). In rare cases, the agent may use lot sizes that are reasonably similar but slightly smaller than the displacement property lot size if the residential utility and values in the market are also similar.

10.06.18.00 Carve-Out for Replacement Property

The amount of the RHV cannot be paid to the displacee until they meet all the criteria identified in 10.08.00.00. In situations where the displacee purchases or rents a replacement residence for an amount that exceeds the RHV, the maximum RHP can be paid.

If the displacee's actual replacement property contains another dwelling unit and/or space used for nonresidential purposes (mixed use/multiple use), or the property is significantly larger than the comparable replacement dwelling site per the Replacement Housing Valuation (oversized lot), an adjustment to the purchase price of the actual replacement property must be made to isolate the cost of the residential portion of the actual replacement property (dwelling and land) to ensure the displacee has met the "spend-to-get" requirements for a DS&S dwelling. The same methods and cautions used for adjusting the displacement property and comparables apply to the replacement property.

10.06.19.00 Special Valuation - New Construction

In last resort situations, the cost of new construction must be analyzed when the probable selling prices of comparable replacement dwellings approach the cost of constructing new replacement housing. If more economic, this method should be used for preparing the RHV. The value should be based on a sufficiently detailed analysis to support the conclusion, and the basis should be indicated. The amount should enable the owner to construct the replacement housing.

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The RHV Agent should secure cost figures from the best sources available and thoroughly review them to ensure applicability and validity. Although the use of specific plans and specifications is preferred, cost figures from internal sources in the District or supported estimates from contractors may be used if necessary. The quality and scope of the cost figures must assure that the replacement dwelling can be built at the figure determined.

New replacement housing should be interpreted broadly to include the normal costs associated with construction of a new home. Inclusion of the cost of site acquisition and contract administration is proper. Normal and adequate landscaping and miscellaneous yard improvements (including residential fencing, driveways, and walks) should be considered in the cost estimates.

The cost to construct becomes the RAP entitlement to be offered if it is in fact the most practical and economic. The basis for determining costs is explained when the RAP Agent makes the offer to the owner.

The RAP Agent must fully explain the following options to the owner:

- Owner makes arrangements for construction.
- Owner purchases a replacement dwelling.
- If time permits, owner waits for listings to become available.
- State may adjust the offer based on higher listing levels if justified by the circumstances.

The owner should be made aware that the RHV may be adjusted in the future based upon availability of comparable property appearing in the market. If comparables do appear in the market at a lower price than the RHV based on the cost of new construction, the RHP should be withdrawn upon expiration and a new offer made, unless displacee has relied on that information and made binding commitments.

10.06.20.00 Special Valuations Required

The RAP Agent may encounter relocation situations that require special valuation. The examples in Exhibit 10-EX-19 illustrate the application of special valuation procedures for the most commonly encountered situations.

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10.06.21.00 Rent Differential (RD) Calculations

When preparing the RHV for an RD, the RHV Agent must compare the average base monthly rent for the last three months, including utility costs.

Utility costs are those expenses for heat, lights, water, sewer, and garbage. The source for these expenses can vary between urban and rural sites (e.g., propane gas, septic system, and private garbage pickup). As utility costs vary depending upon the season, the displacee must provide the average monthly utility costs based on the last year, not the last three months.

The monthly rent for the comparable replacement properties needs to be adjusted to include average estimated utility cost based on the neighborhood and size of the dwelling, which may be obtained from the utility companies.

The RHV Agent should take special care in calculating utility costs especially when comparing a rural displacement property to comparable properties in an urban area with different types of utility service. Additionally, the average utility costs at the comparable replacement property must consider increased size and rooms as mandated by DS&S standards (e.g., comparing a two-bedroom residence with septic and propane, to a three-bedroom residence with sewer and all electric appliances).

Rent Differentials may be based on other factors than the average monthly rent at the displacement property. Depending on the situation, the RD could be based on economic rent, plus average utilities or it could be based on 30% of the displacees income, without adding average utility costs. The RHV Agent should not take these factors into consideration when selecting the most comparable property.

10.06.22.00 Mobile Home Replacement Housing Valuation Issues

Replacement Housing Valuation requirements for mobile homes, manufactured homes, and recreational vehicles are generally the same as for conventional dwellings, but there are differences in the way the comparable data is gathered and used. In addition, since mobile homes are sometimes bought or rented separately from the replacement site, which may be owned or rented, two computations are needed: one for the mobile home and one for the site.

Appendix A, 49 CFR 24.2(a)(17) provides examples on the types of mobile homes and manufactured housing that can be found acceptable as

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comparable replacement dwellings for persons displaced from mobile homes. A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if the following criteria are met:

- The recreational vehicle is purchased and occupied as the 'primary' place of residence.
- It is located on a purchased or leased site and connected to or has available all necessary utilities to function as a housing unit on the date the Department conducts the DS&S inspection.
- The dwelling, as sited, meets all local, state and federal requirements for a DS&S dwelling.
- Note: Some local jurisdictions will not permit the consideration of these vehicles as DS&S dwellings. In those cases, the RV will not qualify as replacement dwelling.

10.06.22.01 Mobile Home Probable Selling Price

The comparables must conform to the definition of a comparable replacement dwelling.

There are several places to find market prices of mobile homes:

- Mobile home dealers.
- Local multiple listing services.
- Units for sale by individuals.
- Mobile home parks.

Where available, retail prices from the manufacturer of the displacement mobile home unit may help, taking into consideration any changes in materials and quality.

New mobile homes must often be used as comparable replacement dwellings because the number of comparable used units on the market is inadequate. The use of new mobile home units as comparables may create inequities if some displacees receive payments based on new units and others receive payments based on used units. Consequently, the selection of new or used units as comparables should be carefully made and consistently applied.

Mobile home accessories, such as awnings, skirting, and storage sheds, shall be added to the most probable selling or rental price when:

- The acquired mobile home has the accessory, or
- The accessories are required to get an adequate replacement site.

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If these accessories are included in the analysis of the replacement, the RAP Agent should itemize them on the RAP valuation form to avoid duplicate payments. The final valuation must include all delivery and installation costs necessary for occupancy and exclude incidental costs (e.g., sales or use tax, transfer fee, and permit fee).

10.06.22.02 Replacement Site (Mobile Home)

When the most comparable mobile home used to calculate the PD is located on a rented site, the rent charged at that specific site must be used in determining the RD.

If a new mobile home not yet located on a site is used to compute the PD, then the current rental rate for mobile home sites should be obtained by surveying parks with comparable vacant sites.

10.06.22.03 Rental Sites (Mobile Home)

The current rental value for mobile home sites may be obtained by surveying parks with comparable available vacancies.

10.06.22.04 Purchase Sites (Mobile Home)

The purchase of a mobile home site usually involves isolated single mobile home relocations. The RAP Agent must find comparable replacement sites in the local real estate market, paying particular attention to local zoning regulations to ensure that a mobile home is permitted. If the site is unimproved, the estimated costs to build a mobile home pad and bring in utilities is added to the replacement value of the site.

10.06.22.05 Purchase/Rental of Mobile Home and Site

In cases where the replacement mobile home and site are purchased or rented together, the RAP Agent must seek packaged comparables in the market. If none are available, comparables will have to consist of the replacement mobile home and replacement site done separately.

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10.07.00.00 - MOBILE HOMES

10.07.01.00 Applicability [49 CFR 24.501]

This section describes the requirements for relocation payments to a person displaced from a mobile home and/or mobile home site who meets basic eligibility requirements. Except as modified by this section, such a displaced person is entitled to a moving expense payment of their personalty in accordance with 10.04.02.00. Replacement housing payments should be paid in accordance with the same requirements as persons displaced from conventional dwellings.

10.07.02.00 Moving and Related Expenses [49 CFR 24.301(c)]

The owner of a mobile home that is not acquired by the Department is eligible for the actual, reasonable, and necessary expenses to relocate that mobile home to another site.

The owner of the mobile home who occupies the unit is also eligible for an RHP described further in this section. However, if the mobile home is not acquired, but the homeowner-occupant obtains an RHP under one of the circumstances described in 10.07.03.00, the owner is not eligible for payment for moving the mobile home. The owner-occupant may also be eligible for a payment for moving personal property from the mobile home.

The following rules apply to payments for actual moving expenses under 49 CFR 24.301:

1. A displaced mobile home owner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings which were not acquired, anchoring of the unit, and utility "hookup" charges.
2. If a mobile home requires repairs and/or modifications so it can be moved and/or made decent, safe, and sanitary, and the Department determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.
3. A nonrefundable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park,

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if the person is displaced from a mobile home park or the Department determines that payment of the fee is necessary to effect relocation.

Exhibit 10-EX-21 shows moving cost methods that displacees may select. The two basic cases are shown in the following table:

Criteria	Method
Mobile home is purchased and is not relocated.	Displacees may be paid to move their contents based on actual cost or Moving Expense Schedule A or B (10.04.02.03).
Mobile home is not purchased by the State, but is relocated.	Payment for the move may be based on actual cost or self-move. If the mobile home and household goods are moved to separate locations, actual cost method must be used for both the mobile home and household goods. Occupants of mobile homes may be paid for moving their personal property in the mobile home by any of the three methods described in 10.04.02.02. A payment for moving the mobile home itself is made on an actual cost basis.

10.07.02.01 Actual Cost of Mobile Home Moves

Displacee shall obtain two bids and submit them to the District for approval prior to the move. If necessary, the District may assist displacee in obtaining the required bids. Upon approval of the bids, the District will inform displacee to proceed with the lowest bidder. Prior to approval, the District must carefully review the bids with special attention to:

- Disconnecting and reconnecting utilities and appliances.
- Providing an additional axle and/or brakes, if necessary, to comply with State requirements.
- Alternative of shipping the unit on a lowboy trailer.
- Need to rent wheels and/or tires.
- Temporarily protecting separated doublewide units.
- Resealing the roof, especially for older units.
- Dealing with floor material when units are split.
- Replacing items such as awnings, skirting, and steps to bring them up to code.
- Setting up on replacement pad, which includes leveling and fitting skirting to the new contour.

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10.07.02.02 Moving Expenses for Personalty

The occupant of a mobile home unit is entitled to moving expenses for their personal property contained in and around the mobile home unit. Moving expenses can be paid for either with an actual move (by a for-hire carrier), an MSA, or a Fixed Moving Schedule payment.

If the mobile home unit is moved to a replacement site, some of the personal property may be moved as part of the unit. The RAP Agent should ensure that items moved with the mobile home unit are not included in the calculation of a Fixed Moving Schedule.

The nonoccupant owner of a mobile home unit may also be entitled to moving expenses for personal property. These items might include the appliances in the mobile home or yard fixtures that were not acquired. The basis for the payment can be an actual move, a self-move, or a Fixed Moving Schedule. Again, the RAP Agent should ensure that items moved with the mobile home unit (e.g., appliances) are not included in the calculation of a Fixed Moving Schedule.

10.07.02.03 Additional Actual Costs

Allowances for food and lodging required during move and setup time for mobile home relocation are paid in accordance with the appropriate procedures in 10.04.02.01. The RAP Agent shall predetermine the number of rooms and meals and incidental allowances based on size and composition of the displaced family.

When a mobile home is moved to an individual site, the RAP Agent must predetermine that the mobile home meets code requirements for placement on the site.

Payment for acceptable miscellaneous mobile home moving costs (such as painting or waxing, skirting, awnings, landscaping, and minor work to hide protuberances) is made only to achieve the move where alternatives are:

- To buy the unit and pay a PD that exceeds the total move cost.
- To indefinitely postpone the move.

These items must be required in available comparable parks. A statement of landscaping requirements should be obtained in advance of the move.

The standard 50-mile limit applies to mobile home moves.

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10.07.03.00 Replacement Housing Payment for 90-Day Mobile Home Owner-Occupants [49 CFR 24.502]

A displaced owner-occupant of a mobile home is entitled to an RHP if the person both owned and occupied the mobile home on the displacement site for at least 90 days prior to the FWO, and all the other basic eligibility requirements are met.

To be eligible for benefits, the Department must either:

a) Acquire the mobile home and the mobile home site, or
b) Determine that the mobile home that is not to be acquired cannot be moved because:

- It is not and cannot economically be made decent, safe, and sanitary; or
- The unit would incur substantial damage or unreasonable cost; or
- There is no available comparable replacement site (and is not capable of being moved); or
- It does not meet mobile home park entrance requirements.

A 90-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a PD based on a comparable mobile home available for purchase, plus an RD based on a comparable mobile home site available for rent. The 90-day owner-occupant who rents the mobile home site may be eligible for a DP in lieu of the RD if a replacement site is purchased. All basic eligibility requirements must be met.

10.07.03.01 Price Differential (PD)

A PD is paid when the Department purchases the mobile home.

The District must make a market value appraisal of the mobile home as soon as it qualifies for purchase. The PD is the difference between the amount paid for the unit and the probable cost of the most comparable replacement dwelling, which could be another mobile home setup or a conventional residential property.

Payment may be released when transfer of title is complete. As with other replacement housing entitlements, spend-to-get applies. The cost of

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awnings, carports, skirting, landscaping, and installation may be added, but incidental expenses should not be included in the PD calculation.

Site purchase differentials apply when the Department acquires a mobile home site from the owner-occupant and displacee purchases and occupies a replacement property.

10.07.03.02 Purchase of Replacement

If a replacement unit is purchased from a dealer, displacee must open an escrow account with an authorized escrow agent. Escrow instructions must prohibit the release of funds prior to satisfactory installation of the mobile home and passage of title. Between private parties, the transaction may be handled by escrow or the funds held in the District until completion of the transaction. For assignments and verification of occupancy, Exhibits 10-EX-23 and 10-EX-24 may be used. Either way the transaction is handled, other RAP payments due the claimants may be deposited into escrow to reduce the need for purchase financing.

10.07.03.03 Suitable Replacement Sites

The requirements for comparable replacement dwellings apply to the selection of replacement sites. Displacee should be given as many choices of suitable replacement sites as are available at the time of relocation.

Where many units must be relocated and only a small number of sites can be found, it is not required that all vacancies are filled before authorizing purchase. Generally, the vacancy rate should be less than ten percent of need before authority to purchase and pay an RHP is granted.

The reason for purchasing mobile homes even though there are some vacancies available is so displacees will not have to draw straws to decide who must move into the few available vacant spaces and who can wait for the RHPs offered to those who cannot find a space.

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10.07.03.04 Incidental Expenses

There are some variations in the eligible items discussed in 10.04.13.00. The major ones are:

- Sales tax or use tax payments - reimbursement is based on the calculated replacement cost or the actual taxes paid, whichever is less. The sales taxes paid on necessary added improvements are also eligible.
- DMV title transfer fees.
- Permit fees - such as charges for building and transportation permits, if not part of the moving expenses.

10.07.03.05 Mortgage Differential Payment

Mobile home loans typically have shorter terms and higher interest rates. Interest rates may be obtained from local institutions that provide mobile home financing. The displacee must have a loan on the displacement property (conventional dwelling, mobile home unit, mobile home site), to qualify for an MD payment.

The following instructions cover the two basic relocation situations:

- Conventional Dwelling to Mobile Home - The maximum rate to be applied is the current prevailing loan rate in effect for conventional dwellings when displacee obtains the financing commitment.

- Mobile Home to Mobile Home or Conventional Dwelling - The maximum rate to be applied is the current prevailing interest rate applicable to the type of replacement dwelling displacee purchases and occupies.

10.07.03.06 Converting PD to RD for 90-Day Mobile Home Owner-Occupant

A 90-day mobile home owner-occupant may elect to rent, instead of purchase, a DS&S replacement dwelling. If so, the 90-day owner-occupant should be advised that they can receive an RD in lieu of the entire RHP (PD, MD, and/or IE) for purchasing a replacement dwelling. Inform the displacee a new RHV will be prepared and Conditional Entitlement Letter provided. The new Conditional Entitlement Letter - 90-day Occupant will be accompanied by a cover letter stating that the new comparable rental address and computation are being provided per their request.

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The 90-day owner-occupant need not be entitled to a PD as such to qualify for an RD. The maximum RD is calculated in the same manner as with 90-day occupants, except that the space rent at the displacement property is based on economic rent, and the RD cannot exceed the calculated Price Differential.

Any advance monies from an RHP (e.g., credit report and appraisal fees paid into escrow for a potential purchase) that have already been paid should be deducted from the RD to avoid duplicate payments.

The 90-day/30-day Notices required under 49 CFR 24.203(c) that are sent to a 90-day owner-occupant who chooses to rent will provide the addresses of comparable replacement properties that are available for rent, not sale.

<u>EXAMPLE - 90-day Mobile Home owner-occupant who rents</u>:

Comparable Replacement Mobile Home lists for:	$66,000
Fair Market Value of Displacement Mobile Home:	$55,700
Maximum Price Differential for Mobile Home:	$10,300
Comparable Space Rent for Replacement site:	$700/month
Actual Space Rent at Displacement site:	$300/month
Maximum Space Rent Differential	
$700 - $300 = $400 x 42 = $16,800:	$16,800
Maximum Replacement Housing Payment:	$27,100
Price Differential for Mobile Home = $10,300	
Space Rent Differential = $16,800	
New Replacement Housing Valuation for RD	
Actual Fair Market Rental of Replacement Dwelling	$800/month
Economic Rent at Displacement (Mobile Home + Space)	$650/month
Maximum Rental Differential	
$800 - $650 = $150 x 42 =	$6,300

Owners can receive a $6,300 Rent Differential since it is less than the maximum Replacement Housing Payment ($27,100). They also have one year from the date they occupied the replacement property rental to convert back to an owner and receive the balance of the RHP ($27,100 - $6,300 = $20,800), plus any entitlement they may qualify for as a Mortgage Differential and Incidental Expense. However, they would not be entitled to an additional moving payment for the second move.

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10.07.04.00 Replacement Housing Payment for 90-Day Mobile Home Occupants [49 CFR 24.503]

A displaced 90-day occupant of a mobile home is eligible for an RHP if the person:

a) Rented and occupied the mobile home on the displaced mobile home site for at least 90 days prior to the ION.

And:

b) Meets all the other basic eligibility requirements.

10.07.04.01 Rent Differential (RD)

Rent Differential payments for the mobile home tenant may be combined with other benefits to which displacees are entitled (10-EX-21). The Department only has to acquire the site from the tenant in order for the tenant to be eligible for an RD payment.

There may be circumstances when the displacee owns the mobile home and rents the site (and vice versa). The displacee's tenure as a tenant or an owner is determined by their status in the mobile home unit, not the mobile home site.

Example: Owns the mobile home, rents the site. Treat them as an owner (all other eligibility requirements must be met).

Example: Rents the mobile home, owns the site. Treat them as a tenant (all other eligibility requirements must be met).

10.07.04.02 Down Payment (DP)

An eligible 90-day occupant may convert the RD to a DP of at least $7,200. The full amount of the DP must be applied to the purchase price of the replacement dwelling (e.g., mobile home, mobile home site, conventional dwelling) and related incidental expenses.

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Down Payments are done in the same manner as conventional dwellings (see Section 10.04.25.00 for details) except:

- Escrow requirements are the same as mobile home PD.
- The RD can be based on just the mobile home, the mobile home site, or both.
- The Department needs to acquire only the site to qualify displacee for payment.
- 90-day mobile home owner-occupants who formerly rented their site can qualify for a DP on a replacement site up to the amount of the RD.

See Exhibit 10-EX-22, Guidance on Converting a Rent Differential (RD) to a Down Payment (DP) for a Mobile Home, for sample computations.

10.07.05.00 Replacement Housing Payment Based on Dwelling and Site

Both the mobile home and mobile home site must be considered when computing an RHP. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the RHP shall consist of a payment for a dwelling and a payment for a site. However, the total RHP shall not exceed the maximum payment (either $31,000 or $7,200) permitted under the section that governs the computation of the dwelling before last resort housing payment provisions must be applied.

10.07.05.01 Cost of Comparable Replacement Dwelling

If a comparable replacement mobile home and/or mobile home site is not available, the RHP shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

A mobile home site in a rural area should never be compared to a mobile home site in a mobile home park. If the mobile home unit will be moved, then the RHP for the mobile home site should be based on a comparable replacement site as to size and amenities. If necessary, the cost of site preparations necessary to accommodate a mobile home (e.g., pad, utilities, ground preparation) should be included in the calculation of the RHP.

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If the Department determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Department may determine that, for purposes of computing the PD, the cost of a comparable replacement dwelling is the sum of:

- The value of the mobile home; and
- The cost of any necessary repairs or modifications; and
- The estimated cost of moving the mobile home to a replacement site.

10.07.06.00 Initiation of Negotiations

If the mobile home is not actually acquired, but the occupant is considered displaced under this part, "initiation of negotiations" is the date the offer is made to acquire the land, or, if the land is not acquired, the written notification that he or she is a "displaced person."

10.07.07.00 Person Moves Mobile Home

If the owner is reimbursed for the cost of moving the mobile home under this part, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

10.07.08.00 Partial Acquisition of Mobile Home Park

The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Department determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance.

10.07.09.00 Part Ownership of a Mobile Home

The occupant of a mobile home who owns a partial interest in the unit should be treated as an owner of the mobile home unit. The Department is not required to provide persons owning only a fractional interest in the displacement dwelling with a greater level of assistance to purchase a replacement dwelling than would normally be required if the person was the sole owner of the property.

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The partial interest owner may be entitled to receive an RHP based on the difference between the asking price of a comparable mobile home site and the total acquisition price of the displacement site - not their fractional interest or share. If no mobile home sites are available for purchase within the displacee's financial means, then the fractional interest owner may be entitled to an RD.

10.07.10.00 Mobile Home DS&S Inspections

Decent, safe, and sanitary requirements are generally the same as those for conventional dwellings, except a mobile home must have an HCD approval decal. The mobile home must be placed in a fixed location on real property in accordance with local laws and ordinances.

A RAP Agent should inspect a mobile home prior to purchase since it may lack qualifying DS&S features.

10.07.11.00 Rental of Vacant Spaces

Situations have arisen in the acquisition of mobile home parks where displacees, by reason of occupancy at the time of the offer, relocated before the Department acquired the park. The owner of the mobile home park re-rented the vacant spaces to Non-Tenured occupants. When the Department attempted to vacate the mobile home park, ineligible displacees were unable to relocate their mobile homes since:

- The mobile homes were not acceptable in other mobile home parks in the area because they were of substandard size or condition, or
- No replacement housing of any type was available in the replacement area.

The lack of sufficient spaces to relocate eligible tenants has also caused problems. This has resulted in project delays and the implementation of LRH payments, at a substantial cost to the State, to relocate these persons. Two potential solutions to these problems are available:

- Rental of spaces in the park to be acquired to prevent Non-Tenured occupants from moving into the right of way.
- Rental of spaces in probable replacement mobile home parks to secure future spaces for eligible displacees who could not otherwise relocate.

The Acquisition function may rent vacant mobile home spaces in replacement parks, as noted above, using an appropriate agreement with

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the owner. This procedure is implemented only if absolutely necessary since its effect on the replacement housing market could be significant and politically sensitive. It should be the last possible use of normal relocation benefits short of proceeding with LRH.

Rental of spaces in other mobile home parks must be discussed and justified in the RID. All other means of providing solutions to relocation problems must be explored before rental of spaces can be recommended. The RID must discuss type and location of replacement parks and their ability to accommodate displacees.

10.07.12.00 Mobile Home as Replacement for Conventional Dwelling

A mobile home may be used as a replacement for a conventional dwelling provided it satisfies DS&S requirements. Eligibility and benefits under the various occupancy and replacement combinations are covered in 10-EX-21.

Most owner-occupants, whether long-term or short-term, who move from conventional housing to mobile homes will not qualify for RHPs (PD or RD).

Because mobile homes are generally less expensive than conventional dwellings, they will not meet the spend-to-get requirement. This is particularly true where an owner-occupant moves from conventional dwelling and purchases a mobile home and rents the site, or vice versa. The result is that displacee simply purchases a replacement dwelling for less than the price paid for the acquired property or rents a displacement dwelling for less than the economic rent of the acquired dwelling.

Where the RAP Agent knows that owner-occupants of conventional dwellings are considering mobile homes as replacement housing, the RAP Unit must notify the owner-occupants in writing that they may not qualify for any replacement housing payment. The RAP Agent should carefully consider each case on its own merits because the value of the acquired property may be low enough, or the cost of the mobile home high enough, that the owner-occupant could qualify for payment. Claims not meeting spend-to-get requirements shall be denied.

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10.08.00.00 - RELOCATION PAYMENTS

10.08.01.00 Eligibility for Payment

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or for owners, the date of final payment.

10.08.02.00 Payment of Benefits

To be entitled to their full moving expense payment, the displacees (residential, business, etc.) must completely vacate the displacement property and submit a completed claim form as required in this section.

To be entitled to their full replacement housing payments, the residential displacees must rent or purchase and occupy a DS&S replacement dwelling within one year or the later of the following dates:

- For tenants, the date of displacement.
- For non-tenured owners, the date of displacement or the date of final payment, whichever is later.
- For 90-day owners, the date of final payment, or the date the address of a comparable replacement property is provided, whichever is later.

The District may approve time extensions for residential owners and tenant-occupants for good cause.

When displacee enters into a legally binding contract to construct or rehabilitate a replacement dwelling and cannot occupy within the required time limit for reasons beyond their control, date of contract shall be the date of occupancy provided displacee entered into the contract before expiration of the normal one-year period. Payment shall be deferred until actual occupancy. No progress payments may be made during construction or rehabilitation unless the District determines an exceptional condition exists.

The claim may also be completed when displacee relocates before the State acquires the displacement property and an offer has been made for such acquisition (except for non-tenured occupants). However, safeguards must be in place to ensure the displacee will return any price RHP overpayments as a result of an increase in the acquisition price paid for the displacement property.

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10.08.03.00 Time Period to File a Claim [49 CFR 24.207(d)]

All claims for a relocation payment shall be submitted to the Region/District within 18 months after:

- For tenants, the date of displacement;
- For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

The RAP Agent shall return claims received after cutoff dates to displacee explaining why the claim cannot be paid and advising displacee of the right to appeal. Any late payment resulting from the appeals process must be scheduled separately. See Section 10.01.11.15 Tickler File on requirements to track displacee deadlines and sending them a Reminder Letter.

This time period shall be waived by the Region/District for good cause.

See 10-EX-28 for the timelines for residential occupants to occupy and file claims.

10.08.04.00 Documentation of Claims [49 CFR 24.207(a)]

Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills or statements for work performed, paid invoices, copies of cancelled checks, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and submit any required claim for payment.

The RAP Agent must verify qualifying activities, such as moving and occupying replacement housing, by personal inspection with documentation in the diary. In some cases, the RAP Agent may confirm payment of bills by telephoning the accounting office of the moving company or other vendor and annotating the diary.

10.08.05.00 U.S. Residency Certification

A U.S. Residency Certification (RW 10-44) must be in the RAP file before any claims are approved.

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10.08.06.00 Expeditious Payments [49 CFR 24.207(b)]

The RAP Senior shall review all claims submitted in an expeditious manner, providing the claimant with a status of the claim (approved, pending, additional information required) within 15 days of receipt. The Claims Package shall be submitted to Accounting within 30 days following receipt of sufficient documentation to support the claim.

The RAP Agent should assist the displacee in completing all claim forms. The first claim form is normally the claim for moving expenses, although some displacees require an advance of their RHPs to secure the rental unit or open an escrow for purchase. See Section 10.08.07.00 for advance payment procedures.

Claims for relocation benefits can be processed as soon as the displacee meets the conditions for their entitlement (10.08.02.00).

The claim may also be completed when displacee relocates before the State acquires the displacement property and an offer has been made for such acquisition.

10.08.07.00 Advance Payments [49 CFR 24.207(c)]

If the displacee demonstrates the need for an advance RHP in order to avoid or reduce a hardship, the Region/District may issue an advance of the RHP and assign it an escrow account or a landlord.

Advance payments for replacement housing can only come out of pending RHPs, not moving expenses.

In rare circumstances, an advance of moving expenses can be made directly to a vendor to secure moving equipment (e.g., moving truck, boxes, dolly). The advance should not exceed 50% of the total estimated moving expense. The RAP Senior must document in the RAP file that the advance of moving is necessary to avoid creating a financial hardship for the displacee.

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Region/Districts should establish criteria and procedures to ensure advance payments are subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished. Determination of acquisition price may be delayed if the Department obtains an OP or RE. Advance RHPs may be made only under the condition the owner-occupants sign an agreement (RW 10-27) that is made a part of claim for payment and states:

- Displacee understands the amount of the advance payment is not necessarily the same as what displacee may be entitled to when acquisition price of dwelling is determined.
- Displacee will refund to the Department the amount of the payment that is greater than displacee would otherwise be paid after acquisition price is determined.

When replacement housing is built or rehabilitated, payments are made only when the unit is completed, DS&S, and occupied by the displacee. The District may make partial payments on an exception basis when such action is deemed necessary for reasonable relocation activity. In doing so, the District must take reasonable safeguards to avoid erroneous payments.

- Advanced Differential Payment - determined in the same way as other purchase differentials, except the maximum offer shall be used in place of the amount the Department paid for the acquired dwelling.

- Interest Differential Payment - computed in the normal manner, except it is based on the number of remaining months after the effective date of an OP.

- Incidental Expense Payment - calculated as described in Section 10.09.08.00.

Restitution may be paid in cash, credited against purchase price in a negotiated settlement, or made as stipulated in a judgment.

If displacee qualifies for a larger housing payment than the amount advanced, the additional amount is paid after Final Order of Condemnation is recorded.

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A claim for advance payments is one that is approved by the Region/District prior to the displacee meeting the entitlement conditions (10.08.02.00). The Region/District can approve advance payments only if funds are required and displacee has:

- Opened escrow for replacement property or entered into a rental agreement for replacement property.
- The replacement property has passed the DS&S inspection.
- Assigned the funds to the escrow company or landlord (10-EX-9).
- Signed a statement agreeing to occupy the replacement dwelling within 30 days of close of escrow, or date certain for rental properties.
- Signed the Agreement for a PD Advance (90-day Owner-Occupant) (RW 10-27).

Advance payments are allowed under certain conditions but the Region/District should take reasonable safeguards to ensure that the displacee will still be able to complete the relocation with the balance remaining of the move/RHP, and that the Department will be able to retrieve advance monies if there is a change in the displacee's planned relocation (e.g., refund from escrow accounts, advances to landlords, deposits for moving equipment). The Region/District should not advance any relocation funds for work that is not associated with the rental or purchase of replacement property, or with the movement of personalty.

One of the obvious risks with any advance money is that negotiations for the replacement property will fall through. Monies advanced to bring a property into compliance with DS&S standards or to acquire a site for construction of a replacement property is a huge risk and should not be considered.

It is strongly recommended that in the situation above, advance monies for a RHP should only occur if the site is already acquired, the approved construction loan is in place, and the loan and advance payment would be sufficient to complete construction to satisfy DS&S criteria.

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10.08.07.01 Assignment of Funds

Displacee may assign part or all of claim to another as long as it is related to the relocation or replacement property. Assignment of Funds are usually an advance of relocation funds for renting or purchasing replacement property. Sometimes a displacee will request an assignment of funds to pay a vendor directly for work already performed, such as:

- Pay moving company expenses.
- Repay loans for securing the replacement property.
- Pay any direct relocation expense, including rehabilitating replacement unit.

Relocation payments are not assignable for obligations, such as general debts and rent owed to former landlord.

All parties (displacee as Assignor, person/company receiving the funds as Assignee) must sign the Assignment of Funds form before the payment can be processed.

When an Assignment is used, claim schedules and checks are made payable to the designated person or company (Assignee) for account of the displacee. The Assignee's mailing address must be shown. The RAP Agent should ensure that the amount of the assignment is credited against the displacee's total replacement RHP, and indicate the balance remaining for possible future payments.

10.08.08.00 Assignment of Advanced Funds into Escrow

Replacement Housing Payments can be placed in trust or into an escrow (through a bank or escrow office) at displacee's option. Escrow accounts are usually opened for the purchase of a replacement property but an escrow account can be established for the lease or rental of a replacement property. Escrows for a lease or rental may be necessary to distribute periodic RD payments over $10,000, or as a condition by the landlord in order to qualify the displacee for the rental unit (10.04.23.01).

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The following procedures must be completed prior to processing an assignment of advance funds into escrow:

1) Perform DS&S inspection of replacement property.
2) Have the displacee and escrow officer sign the Assignment of Funds.
3) Displacee must sign a statement agreeing to occupy the replacement property (RW 10-45).
4) Escrow officer must read and acknowledge the letter of instruction regarding the use of the funds. (Use 10-EX-9 and 10-EX-11 as sample letters.)

10.08.09.00 Check Delivery

Accounting shall mail payment directly to the payee designated on the Payee Data Sheet unless the RAP Agent designates otherwise. Typical situations for the RAP Agent to arrange for delivery of the payment via mail or personal service are:

- Funds deposited into an escrow account and RAP Agent needs to review instructions with escrow officer prior to releasing the check.
- Monies were ordered in advance but cannot be released until the displacee complies with the requirement to actually occupy the replacement property.
- DDC-R/W, or designee, authorizes an employee with no prior involvement to make personal delivery to the displacee.

Personal delivery should be on an exception-only basis. No one directly involved in relocation of a displacee may personally deliver payment [23 CFR 710.304(p)(ii)].

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PROCESS FOR STANDARD CLAIM FORM

Perform DS&S inspection

- No later than 5 days after learning that replacement property has been selected.

Complete claim form

- Verify names of displacees that should appear on claim form against Occupancy Certification Form (RW 10-25). Use full names.
- No one may sign a claim for displacee(s), except where otherwise determined by law.
- Only one eligible displacee must sign to make claim valid, except all eligible displacees must sign claim when warrant will be made payable to only designated displacees. In this case, payment box should reflect only those paid, together with designation "sole claimant(s)."
- If benefits are split, make a note in margin that another claim exists or is pending.

Prepare claim package

- Attach all documentation provided by displacee needed to support the claim.
- Review the claim (RW 10-26) for propriety of payments (e.g., eligibility, amount of payment, and timeliness of fulfilling all qualifying conditions).
- Approve payment on face of original claim form.
- Securely staple all documentation relative to one claim form into a claim package with claim form on top. If applicable, include the completed Assignment of Funds (10-EX-9 or 10-EX-10).
- Prepare the Payee Data Record in accordance with Accounting Guidebook.
- Payee Data Record STD. 204 must be completed and attached to each claim form for any payee other than the displacee (i.e., moving companies and escrow companies). Note: If claims have been paid to this company before, it is not necessary that they complete a new Payee Data Record.

Approval

- Obtain appropriate approval of claim from RAP Senior.
- Process approved claim for payment through P&M office. P&M will review coding for accuracy, ensure STD. 204 is attached, and all necessary signatures have been obtained.

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Submit for Payment

- P&M forwards the payment package (RW 10-5) to RW Accounting Office to process payments. Should be submitted within 5 working days of Senior RAP Agent's approval.
- RW Accounting will issue/mail revolving check within 5 days of receiving payment package. The Accounting Office will make payment out of the Department's Revolving Fund and will reimburse the Fund in a timely manner.

10.08.10.00 Deductions from Payments [49 CFR 24.403(a)(6)]

The Region/District must deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Relocation payments are separate from other obligations, and, even if the displacee is a tenant of the Department, deductions from a relocation payment to satisfy delinquent rent or any other debt besides advanced relocation payments is not permitted.

10.08.11.00 Notice of Denial [49 CFR 24.207(e)]

If the Region/District disapproves all or part of a claim submitted by the displacee, or refuses to consider the claim on its merits because of untimely filing or other grounds, the displacee must be notified in writing within 30 days of receipt of the claim that is being denied. The displacee must also be notified of their right to appeal the Region/District's determination.

10.08.12.00 Receipt of Cash from Displacees

The Department's general policy is that RAP Agents are not to receive cash from displacees. If it is absolutely necessary to receive cash, the Agent must immediately notify the RAP Senior. A written acknowledgment must be given to displacee and must contain the date, amount, purpose, and signatures of both displacee and Agent. In addition, the discussion between RAP Agent and RAP Senior must be noted in the RAP diary and signed by both parties.

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10.08.13.00 Collection of Overpayments

If a RAP overpayment is discovered, the RAP Senior must submit a written request to Accounting to establish an accounts receivable bill. Accounting should be advised of the:

- Name and address of person to be billed.
- Amount of the overpayment that needs to be reimbursed.
- Project identification [Co-Rte-PM-Parcel].
- Explanation of the miscalculation that resulted in the overpayment (e.g., incorrect data used in calculating the mortgage differential). Note: The explanation will probably be provided to the displacee so special care should be used in providing a clear explanation.

Accounting then sets up a proper account and bills the displacee. However, the RAP Agent should notify the displacee in advance that a bill for an overpayment is forthcoming to eliminate any misunderstandings.

If the overpayment is not collected and further efforts are expected to be fruitless, the account balance is discharged in accordance with provisions in the Property Management Chapter.

10.08.14.00 Over Encumbrances

If the RD is paid in installments, the total entitlement is encumbered when the first installment is paid.

The RAP Agent should track the installments to ensure that any portion of the RD that is not fully expended can be disencumbered. Such cases may occur when the displacees:

- Die prior to the end of the 42-month subsidy period.
- Elect to use only a portion of the remaining entitlement for a down payment on a replacement dwelling.
- Fail to submit a claim for the balance of the RD even after repeated attempts by the RAP Agent to locate or encourage the displacee.

Disencumbrance requests are processed through the Region/District P&M office.

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10.08.15.00 Payments Not Considered Income [49 CFR 24.209]

Relocation payments cannot be:

- Considered as income for Federal or State income tax purposes.
- Considered as income or resources to any recipient of public assistance (Government Code Sections 7269 and 7269.1) or Social Security benefits.
- Attached through a court action or by a public agency. (Section 690.8a of the Code of Civil Procedure, Sections 17300, 17401, and 17409 of the Welfare and Institutions Code.) Note: In bankruptcy situations, the Department must advise Trustees of any possible relocation payments.

10.08.16.00 Duplication of Payments [49 CFR 24.3]

No person can receive any payment under the Uniform Act if that person receives another payment under Federal, State, or local law that is determined to have the same purpose and effect as the relocation payment. FHWA does not require the Region/District conduct an exhaustive search for such payments, only avoid creating a duplication based on the Region/District's knowledge at the time a payment is computed.

The claim forms include a certification that the displacee will not accept reimbursement or compensation from any other public agency for any expense reimbursed by the Department.

Where their employer has advised displacee that their place of employment is being changed, the displacee may be entitled to certain moving and relocation payments from the employer. If the employer is another public agency, the displaced person/employee may not claim duplicate relocation payments from the Department and the employer.

When the potential for duplication relocation payments exists, such as in hardship acquisitions or a payment for goodwill, the RAP Senior will obtain whatever information is needed (e.g., verification from employer, goodwill appraisal) to ensure there is no duplication of payment.

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10.09.00.00 - APPEALS

10.09.01.00 General

The Department shall promptly review relocation assistance appeals in accordance with the requirements of this section as mandated by 49 CFR 24.10(a).

10.09.01.01 Right to Appeal

The right to appeal shall be described in all RAP written documents that are distributed at public hearings or to individual displacees. The right to appeal shall also be mentioned whenever verbal presentations on relocation assistance are made at public hearings.

On relocation calls, the RAP Agent shall explain how to make an appeal and give the following information to displacee:

- Displacee has the right to appear personally at all hearings.
- Right to appeal relates only to RAP and not to the market value of the property or to the terms of the Right of Way Contract.
- An appeal decision will be issued in writing within 60 days of reviewing all material necessary to render an opinion.
- Relocation Assistance Appeal Form will be provided to displacee upon request (RW 10-6).
- Displacee has the right to pursue legal action after completing the appeal process.

The appeal form (RW 10-6) shall be made available to the displacee via the RAP Agent, in the RAP package, or from the Department's Right of Way intranet site.

10.09.02.00 Appealable Actions [49 CFR 24.10(b)]

Any aggrieved person may file a written appeal with the Department in any case in which the person believes that the Department has failed to properly consider the person's application for relocation assistance. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a relocation payment required under the Uniform Act.

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Additionally, persons determined to be ineligible for relocation benefits because of their U.S. residency status (10.01.10.00), or because the relocation is temporary (10.10.05.00), may file an appeal.

10.09.03.00 Time Limit [49 CFR 24.10(c)]

The displacees must file an appeal within six months of the last day of the deadline for submitting a claim for moving or replacement housing payment (10.08.03.00). When the displacee vacates the acquired property, the RAP Agent should provide a letter to the displacee advising of the time periods to occupy replacement property, file claims for reimbursement, and to file an appeal.

If the person was not required to relocate, or was determined not be eligible for relocation benefits, the appeal must be filed within six months of the Region/District's initial determination of eligibility.

The Region/District can extend the time period for anyone to appeal if there is a good cause.

10.09.04.00 Filing of Appeal

A person who is dissatisfied with any aspect of their relocation assistance may request a Relocation Appeal in writing or by form (RW 10-6) with the RAP Senior. The form (RW 10-6) will be sent to the HQ R/W Relocation Appeals Board Secretary, who will log it in and provide a copy to the Region/District.

If the appeal is submitted directly to the Region/District, the RAP Senior will forward it directly to HQ R/W Relocation Appeals Board Secretary. If the matter is related to any of the items listed under 10.09.07.00, the matter must be resolved by the Statewide Relocation Appeals Board (Board). All other matters may first be reviewed by the Region/District Review Panel (Panel).

The RAP Senior shall review all requests for an appeal and ensure that the person's issue is related to relocation assistance, eligibility, or entitlement. If the appeal is related to some other aspect of the right of way process (appraised value, acquisition process, or renting from property management), the RAP Senior will refer the matter to the appropriate function, and advise the person in writing that the matter has been referred to another R/W Senior.

If the matter is clearly related to relocation, the RAP Senior initiates the process to conduct a Region/District Review Panel. The RAP Senior must

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immediately send the person (appellant) a letter advising them of the appeal process and time frame (see Table 10.09-A).

10.09.05.00 Region/District Review Panel

The RAP Senior will immediately notify the Supervising R/W Agent that an appeal has been received and that the RAP Senior will conduct an internal review with at least two other agents familiar with RAP, and the Agent assigned to the RAP file.

The agents will review the issues presented in the Request and either concur or not concur with the appellant's issues. If the Panel concurs, the Supervising R/W Agent must notify the appellant in writing of the Region/District's decision and actions that will be taken to remedy the matter. A copy of this letter must be sent to the RAP Appeals Board Secretary in HQ R/W.

If the Panel does not concur with all issues presented in the Request, then the matter is referred to the Board. The appellant must be notified by the Supervising R/W Agent, in writing, of the following:

- The Panel's decision, citing applicable rules and regulations.
- That the matter is being referred to the "Statewide Relocation Appeals Board," and a hearing will be scheduled by HQ R/W.
- The right to representation, right to review the file, and right to submit other documentation to be included in the appeals package, or presented at the hearing.

The RAP Senior must submit the complete Appeals Package (see Table 10.09-B) to HQ R/W RAP within 15 days of the notification to the displacee.

10.09.06.00 Right to Representation and Review of Files [49 CFR 24.10(d) (e)]

A displacee has the right to be represented by legal counsel or another representative in connection with the relocation appeal, but solely at their own expense. The appellant also has the right to present oral and written evidence to the Statewide Relocation Appeals Board.

The Department must allow the displacee the opportunity to inspect and copy all materials pertinent to the appeal, except materials which have been classified as confidential or subject to the Privacy Act. The District shall classify

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the following materials as confidential and shall not allow the appellant to inspect or copy them.

- RAP file diaries.
- Correspondence to and from the Legal Division.
- Additional materials that the Legal Division determines to be confidential and unavailable to the appellant, on a case-by-case basis.

The RAP Senior can impose reasonable conditions on the person's right to inspect (such as time, place, and time period). Prior to the displacee's inspection of the file, the Legal Division must first review the entire RAP file and the appeals package to determine which material is confidential and which is not.

The Region/District may charge reasonable fees for any copied material in accordance with Departmental policy.

10.09.07.00 Statewide Relocation Appeals Board

The Statewide Relocation Appeals Board will hear all relocation matters referred by the Region/District Review Panel, and all appeals on matters related to the following:

- Constructive occupancy (10.01.03.06).
- Consequential displacement (10.01.03.07).
- Loss of eligibility due to sale of excess or rescinded route property or due to suspended routes (10.10.02.00).
- Promissory Estoppel (10.01.04.00).
- Claim for Reestablishment Payment when displacee has also received a payment for Loss of Goodwill.

10.09.08.00 RAP Appeals Package

The RAP Senior must submit the RAP Appeals Package to HQ R/W RAP Appeals Board Secretary before the hearing can be scheduled. The package must be page-numbered and exhibits labeled before it can be copied by HQ R/W. The HQ R/W RAP Appeals Board Secretary will ensure the package contains only excerpts of the diaries, and may discuss certain documents with the Legal Office before requesting copies. After copies are made, the HQ R/W RAP Appeals Board Secretary will send the RAP Senior enough copies for the Senior, the RAP Agent, the Appellant, the Appellant's attorney, and other parties as appropriate. The RAP Senior will then advise the Appellant, in

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writing, that the hearing has been scheduled, and include a copy of the RAP Package.

Table 10.09-A
RELOCATION APPEAL PROCESS

Step	Responsible Unit	Process
1	RAP Senior	Immediately reviews the "Request for a Relocation Appeal" within 5 days of receipt, and decides to: 1) refer to another function, 2) hold an internal hearing, or 3) refer immediately to Statewide Appeals Board. Advises Appellant of RAP Senior's determination within 5 days of receipt of appeal request. Copy of appeal request and letter to appellant is sent to HQ R/W RAP.
2a		If Panel concurs with the appellant, advises both HQ R/W and the appellant of the findings within 10 days of initial receipt.
2b		If Panel does not concur, forwards a complete Appeals Package to the Board for a hearing. Must be received in HQ R/W within 10 days of Panel's decision.
3	HQ R/W	Reviews the Appeals Package, and immediately determines if the matter should be resolved by a full Board or just a Hearing Officer.
3a		Schedules a hearing within 10 days of receipt of the package. Hearing should be scheduled within 45 days of appellant's Request.
3b	Appeals Board	Conducts the hearing and provides a written decision within 45 days of final submission of all evidence and testimony.

10.09.09.00 Statewide Level Hearing

"The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed."
[49 CFR 24.10(h)]

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The Director of Transportation designates a Statewide Relocation Appeals Board and/or Hearing Officer to investigate appeals and make written recommendations to the Director or designee.

Upon receipt of the Appeals Package from the Region/District, the Appeals Board Secretary (HQ R/W) will meet with the Hearing Officer (an attorney from the Department's Legal staff) to determine if the appeal is complex or non-complex. The most complex appeals will be resolved by a full Board; all others will be resolved by a single Hearing Officer.

A hearing will be scheduled at a time and location that is convenient for the Board, the Region/District, and the appellant, including appellant's attorney and/or witnesses.

10.09.09.01 Scope of Review [49 CFR 24.10(f)]

In deciding an appeal, the Board must consider all pertinent justification and other material submitted by the Appellant and the Region/District, and all other available information that is needed to ensure a fair and full review of the appeal [49 CFR 24.10(f)].

The RAP Senior and Agent will be present at the hearing to explain relocation procedures and replacement valuation processes. Since the Appeals Hearing Officer or Board will consider such factors as work consistency and quality at the hearing, the presence of relocation assistance and/or housing valuation personnel to provide knowledgeable and professional testimony will expedite the process.

If the hearing results in the need for additional valuation analysis or other relocation assistance appeal investigations, the parties must respond with due diligence to the Board's request.

10.09.09.02 Determination and Notification After Appeal [49 CFR 24.10(g)]

The decision of the Director, or designee, and the Hearing Officer's or Board's recommendation are provided to the appellant and the Region/District. If the full relief requested by appellant has not been granted, the appellant is advised of their right to seek judicial review. Statements in the letter from the Director, or designee, to appellant such as "a representative of the Department will assist you in preparing and filing your claim" shall be construed by the District as an instruction.

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10.09.10.00 Appellant's Travel Expenses

Payment of appellant's travel expenses is in accordance with rules applicable to State employees and the following:

- No expenses are paid if travel distance is 50 miles or less from appellant's current residence to the hearing site (by the most direct route, not airline).

- No expenses are paid to anyone other than the appellant(s) - no lawyers, friends, witnesses, or family. Payment is limited to those persons who have the right to relocation benefits or have appealed to be declared eligible for benefits.

- Per diem expenses of eligible appellants are paid on the basis of current Board of Control rules and regulations.

- A single appellant receives the same per diem expenses as a State employee on an incurred basis.

- For husband and wife appellants, the second person's per diem expenses are limited to the standard reimbursement rate for meals.

- For roommates, business partners, etc., each appellant is entitled to claim full per diem rates with appropriate documentation of separate accommodations.

- Mileage expenses are paid on the basis of the cost of normal round-trip airfare or established Board of Control rate per mile for use of appellant's private car, whichever is less.

Only expenses incurred to appear before a formal Appeals Board or Hearing Officer are eligible for payment. Informal meetings and such do not qualify an appellant for payment of any expenses.

All appellant expense claims are charged to the project (Phase 2 EA).

10.09.11.00 Resubmission of Appeals

If appellant has not performed those acts necessary to establish eligibility pursuant to prescribed procedures and the appeal has been heard and denied, no additional appeals are permitted until appellant has established such eligibility. After appellant has established eligibility, appellant shall be allowed one additional appeal.

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10.09.12.00 Payment of Approved Claims

Copies of the decision and recommendation shall be attached to any claim for payment submitted pursuant to an appeal decision.

Table 10.09-B
APPEAL PACKAGE

Category	Specifics
Memo from Region/District RAP Senior to HQ R/W RAP - Appeals Board Secretary	• Background of events leading up to the appeal. • Region/District's Internal Review Panel - Decision detailing the disposition of the appeal with the reasons for its position.
Appellant's Request for a Relocation Appeal - form or letter	• Include copies of any supporting documents submitted by Appellant.
Basic Identifying Data	• County, Route, Parcel Number(s), Expenditure Authorization, Appraisal Report Number. • Name of property owner if other than appellant and street address of property acquired.
Replacement Property Data	• Street address and photographs. • DS&S Inspection Report (if applicable).
Basic Acquisition Data (up to date of appeal)	• Date of First Written Offer, Date R/W Contract signed on behalf of State, Closing Date of Acquisition Escrow. • Effective Date of Right of Entry or Order for Possession. • Final Order of Condemnation.
Dates affecting eligibility not provided elsewhere	• Acquisition/occupancy of acquired property by appellant. • Date appellant vacated property. • Date appellant purchased/occupied replacement property. • Trust deeds. • Trust deed notes, if increased interest payments are involved.

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Table 10.09-B

APPEAL PACKAGE (Continued)

Category	Specifics
Data pertinent to payment calculation if the payment is in dispute and copies of Replacement Housing Valuation Reports	• Cost of replacement property. • Price paid or offered on purchase of property. • Replacement rental rates. • Actual rental rates. • Economic rental rates. • Interest rates. • Remaining trust deed balance. • New trust deed amount. • Certified copy of buyer's closing statement.
Copies of Appraisal Form RW 7-9	• Include related pages describing the subject property.
Status of any other relocation payments to appellant	• Information such as dates and amounts claimed but not paid or not yet claimed.
Information on any other potential claimant residing in the unit	
Correspondence	• Copies of letters or other correspondence pertinent to the issue(s) being appealed.
Diary notes	• Typed excerpts from acquisition or relocation diaries pertinent to the issue(s) being appealed marked confidential.
Basis for revised payment if the amount of replacement housing or rental payment is the issue and there is a significant change in the amount of such payment	• Tabulate comparable properties used in the determination by address and show most probable sales price or rental rate. Indicate if comparables are comparable or superior to subject as to location, size, quality, and condition. Provide a narrative review discussing comparability of replacement properties and covering elements of a comparable replacement dwelling.
Reference to Chapter Section(s) or 49 CFR 24 Sections that apply to Appellant's issues	

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10.10.00.00 - OTHER RELOCATION ISSUES LAST RESORT HOUSING - CONSTRUCTION, EXCESS AND RESCINDED ROUTES, REHAB AND DEMOLITION, TEMPORARY RELOCATION

10.10.01.00 Last Resort Housing Determination [49 CFR 24.404(a)]

Whenever a project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants ($31,000 and $7,200 respectively) and payments exceeding the limits are not cost-effective for the Department nor the appropriate solution for the displacee, the Department can consider alternate measures under Last Resort Housing, as justified:

1) On a case-by-case basis, for good cause, which means appropriate consideration has been given to:

    i. The availability of comparable housing in the program or project area; and
    ii. The resources available to provide comparable replacement housing; and
    iii. The individual circumstances of the displaced person; or

2) By a determination that:

    i. There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole; and
    ii. A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and
    iii. The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project or program costs. (Will project delay justify waiting for less expensive replacement housing to become available?)

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10.10.01.01 Methods of Providing Comparable Replacement Housing [49 CFR 24.404(c)]

Methods of providing comparable replacement housing under LRH include the construction of new replacement dwellings and rehabilitating existing replacement dwellings. RARF 2001-04 describes how to implement LRH in those rare cases when the Region/District has obtained approval to use other methods to provide comparable replacement housing.

10.10.02.00 Excess, Rescinded Route, Design Change, and Suspended Route Relocation Procedures

Relocation legislation and procedures were written to cover the typical acquisition process where property is acquired and cleared for an impending construction project. It was not foreseen that property previously acquired for construction would be returned to private ownership with improvements and occupants intact. As a result, policies and procedures developed for typical construction projects must be modified for disposal of excess parcels acquired as such or created by design change or rescinded route property. Exceptions to usual rules are necessary to deal equitably with the displacement situation.

See RARF 2001-06 for further guidance.

10.10.02.01 Land Acquired as Excess

Owner-occupants and inherited tenants of improvements located on land acquired as excess (uneconomic remnants or economic remainders) are not automatically eligible for relocation benefits. The occupants must be displaced by a project as determined by the Region/District. Displacement can be as a result of a consequential displacement determination, a future highway project, requirement for a mitigation parcel, or a rehabilitation/demolition project.

Occupants on the excess should enter into a Rental Agreement through Property Management and may be allowed to remain on the property until sold as excess, subject to their occupancy.

The exact relocation circumstances of each excess parcel must be determined before the initiation of negotiations. Inappropriate service of

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notices and delivery of RAP packages may create relocation assistance obligations for which the Department would not otherwise be responsible.

Tenants or owners that are in occupancy prior to the Department's control of the property will be eligible for relocation benefits if the Department requires them to move at any time until title from the State is transferred to another. Determination of benefits will be based on their occupancy status (tenant or owner) at the time the State obtained control of the property, but their benefits will be based on the needs (income, occupants, rental rate) at the time of determination.

An owner who sells the economic remainder to the Department at their request and is later displaced, is entitled to benefits as this is not considered a voluntary transaction under 49 CFR 24.101(a).

10.10.02.02 Rescinded Route or Design Change - Excess Land

Government Code Section 54235, et seq., provides specific requirements for disposal of surplus residential properties on or after January 1, 1980. Section 54238.3 provides that the provisions of Section 54235, et seq., shall not apply to properties declared to be surplus on or after January 1, 1984, except for Route 7 (710) in Los Angeles. Section 54238.3 provides certain relocation benefits to occupants who are forced to move because of disposal of rescinded route excess land.

10.10.03.00 Rehabilitation or Demolition Relocation Procedures

All occupants displaced from dwelling units because of rehabilitation or demolition may be eligible for some relocation benefits (see Table 10.10-A). The extent of available benefits depends upon the income levels of the occupants and whether the displacement is temporary or permanent. The Department's obligation under the law is to ensure displaced occupants are provided either temporary or permanent replacement housing that is affordable and adequate for their housing needs.

Displacement costs necessary for temporary moves during rehabilitation of a structure may be paid to occupants of any structure regardless of the status of the project.

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10.10.03.01 Entitlements

Tenants temporarily displaced from properties under the guidelines above are entitled to:

- A written 90-day Notice, except in emergency situations where the notice period is not possible. Notices will include an outline of the benefits available.
- Relocation advisory services.
- The right to reoccupy the vacated unit after rehabilitation.
- An adequate temporary replacement dwelling.
- Actual and reasonable moving expenses, both to the temporary replacement dwelling and back to the rehabilitated dwelling.
- Appropriate rent differential payments, if eligible.

Tenants who are persons or families of low or moderate income are eligible for rent differential payment if:

- Their rental rate is increased by the Region/District to an amount exceeding 30% of their gross monthly income within one year of completion of rehabilitation of their dwelling, provided the average annual income falls within the guidelines of the HUD Low Income Chart (10-EX-44), or,
- They move to a permanent replacement dwelling as a result of a rehabilitation program affecting their dwelling.

Rental Differentials, not to exceed $7,200, shall be based on the difference in cost between an available adequate replacement dwelling (including utilities) and existing rent (including utilities) in the rehabilitated or demolished dwelling or affordable rent (30% of gross monthly income), whichever is higher.

10.10.03.02 Types of Displacement

Tenant displacements may be permanent or temporary to other State or privately owned housing or to a motel unit for a few days while their unit is made habitable. Although RAP eligible tenants have the right to return to their former dwelling, they should be encouraged to make their move a permanent one to avoid a double moving expense payment.

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10.10.03.03 Charging Procedures

Relocation forms used for processing claims and payments will be clearly identified as "Rehabilitation RAP."

Expenditures under this procedure are normally not eligible for Federal participation.

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Table 10.10-A
PAYMENT FOR DISPLACEMENTS DUE to REHAB or DEMO

Type of Displacement	Payment Eligibility	Methods of Payment
1. Short-term Displacement of Occupants Only (No Furniture Moving)	Occasionally, because of the interruption of services or other inconveniences resulting from rehabilitation, it is expedient to provide tenants with temporary housing in overnight-type accommodations. Payment of reasonable, additional expenses to occupants may be made provided the expenses are necessary and are documented with paid receipts.	• Rental offsets. • Bank draft purchase vouchers through District Accounting Offices. • Normal RAP claim procedures for actual, reasonable moving expenses.
2. Temporary Move to Other Department Housing	The rental rate of the temporary unit is market rate or amount of pre-rehabilitation rent of the unit being rehabilitated, whichever is less. Tenants are eligible for actual moving expenses both ways, including any necessary furniture storage and travel expenses. The normal RAP room count schedule may be used. If temporarily displaced tenants return to the rehabilitated unit, their new rental rate shall not reflect the increase in market value attributable to rehabilitation for a period of one year following date they occupy the unit. Adjustments may be made to the rental rate in effect prior to rehabilitation in accordance with the Rental Rate Policy.	See #1 above. The Fixed Moving Schedule, excluding a dislocation allowance, may also be used.

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Table 10.10-A
PAYMENT FOR DISPLACEMENTS DUE to REHAB or DEMO (Continued)

Type of Displacement	Payment Eligibility	Methods of Payment
3. Temporary Move to Private Housing	Tenants are eligible for actual, reasonable moving expenses both ways, including necessary furniture storage and travel expenses. RDs are paid (up to 90 days) directly to the landlord when the monthly rent exceeds pre-rehabilitation rent. If temporarily displaced tenants return to the rehabilitated unit, their new rental rate shall not reflect the increase in market value attributable to rehabilitation for a period of one year following date they reoccupy the unit. Adjustments may be made to the rental rate in effect prior to rehabilitation in accordance with the Rental Rate Policy.	See #1 above.
4. Permanent Displacement to Other Department Housing	Tenants are eligible for actual, reasonable moving expenses. The rental rate for the Department's replacement unit shall be the lower of: • Market rate and average monthly utility costs. • Rental rate of the unit tenant was displaced from. The replacement rental rate shall remain in effect for one year, except that normal rent increases by application of the Rental Rate Policy may be made.	• Rental offsets. • Bank draft purchase vouchers through the Accounting Office. • Normal RAP claim procedures for actual cost or room count method, including dislocation allowance.

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Table 10.10-A
PAYMENT FOR DISPLACEMENTS DUE to REHAB or DEMO (Continued)

Type of Displacement	Payment Eligibility	Methods of Payment
5. Permanent Displacement to Private Housing	All tenants are eligible for actual, reasonable moving expenses. RDs, not to exceed $7,200, are paid to low and moderate income tenants whose rent, at time of displacement, is increased to more than 30% of their income. The Department is not responsible for additional differential payments in those cases where displacees' rent is increased following occupancy of the replacement property. The calculation is based on available adequate replacement dwellings (30% of gross income).	Moving costs may be paid by the methods shown in #1 above. RDs, not to exceed $7,200, are paid for a maximum of 42 months and are handled by District RAP personnel through normal RAP claim procedures.

10.10.04.00 Suspended Routes

Occasionally, it is necessary to suspend acquisition and relocation activities on proposed routes due to budgetary constraints. When funding is withdrawn on a project, it is often necessary to immediately and formally withdraw any outstanding offers to purchase the properties. Relocation activities may also be affected.

When project activities resume, the person occupying the parcel when the "new" initiation of negotiations occurs becomes the eligible party for relocation benefits.

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10.10.05.00 Temporary Relocations

49 CFR 24.2(a)(9)(ii)(D) defines a person not required to relocate permanently as a "person not displaced," and thus not eligible to receive relocation benefits under the Uniform Act. There are circumstances where the acquisition of real property (including access rights and temporary construction easements) takes place without the intent or necessity that an occupant of the property relocate permanently, but must do so temporarily during construction.
Example: The project will restrict access to adjacent residential homes for a three-month period during construction. These persons, though not considered displaced under the Uniform Act, must be treated fairly and equitably, and will receive the following:

- Storage of personal property that they do not want to leave in the residence or business during their absence.
- Moving expenses to relocate personal property they will need at the temporary location.
- Increased housing costs for a DS&S temporary location. (House payment is $500 per month, but the monthly rent for a furnished apartment for three months is $600 per month. The increased cost is $100 per month.)

Note: Acceptable temporary locations may be an unfurnished studio or even a hotel room.

The Region/District and the displacee should agree on what personal property should be stored, relocated, or left at the site.

They are not entitled to:

- Replacement Housing Payments (e.g., PD, MD, IE, or RD).
- Comparable replacement properties, including an increased room count because of the number of occupants (e.g., from a 3-bedroom to a 5-bedroom because there are 10 occupants).
- Nonresidential moving expenses (beyond minimal movement of personalty to the temporary location), e.g., Reestablishment or In-Lieu Payments.

Any person who has been temporarily relocated for a period beyond one year is considered permanently displaced and entitled to permanent relocation benefits.

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10.10.05.01 Temporary Residential Lodging due to Nighttime Construction Work

Because of the nature of some construction projects, construction activities may be carried out 24 hours a day. Unusually high nighttime noise or dust levels may affect residents in close proximity to the construction work. When this situation occurs, it may be in the best interest of the Department to arrange for temporary lodging of residential occupants.

All costs are handled as "construction costs" to be managed and funded by the Office of Construction.

The RAP Agent will assist in making arrangements for temporary lodging due to nighttime construction work. The RAP Agent shall charge time to a "Phase 3" Expenditure Authorization and expenses to a "Phase 4" Expenditure Authorization.

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10.11.00.00 – DELEGATIONS

10.11.01.00 Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Relocation Assistance 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**
49 CFR §24.2(a)(9)	10.01.03.06	Displaced Person – Constructive Occupancy	District	Supervising RW Agent
49 CFR §24.4(b)	10.01.12.01	Assurances, Monitoring, and Corrective Action	HQ	Supervising RW Agent
49 CFR §24.205	10.02.01.00	Approval of the RID That Addresses the Project Impacts on Potential Displacees	District	RIM/RIS: Senior RW Agent RIR: Supervising RW Agent
49 CFR §24.203(c)(4) 49 CFR §24.204(b)	10.03.13.00	Urgent Need to Vacate Without 90-Day Notice (Health & Safety Issues)	District	Supervising RW Agent
49 CFR §24.301(g)(1)	10.04.02.00 10.04.02.01	Payment for More than One Move/Transportation Costs Beyond 50 Miles (Residential)	District	Supervising RW Agent
49 CFR §24.301(g)(4)	10.04.02.00 10.05.05.07	Storage of Personal Property for Longer Than 12 Months	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**
49 CFR §24.401(d)(3)	10.04.12.04	Mortgage Differential Based on Higher Than Prevailing Rates	District	Senior RW Agent
49 CFR §24.401(e)(9)	10.04.13.00	Eligibility for Other Than Normal Expenses for the Incidental Expense Payment	District	Senior RW Agent
49 CFR §24.401(b)(c) 49 CFR §24.402(b)(c)	10.04.-08.00 10.04.23.00 10.04.26.03	Payment Methods (Residential)	District	Senior RW Agent
49 CFR §24.402(b)(2)(i)	10.04.17.03	Use of Economic Rent in a "Little or No Rent" Situation	District	Senior RW Agent
49 CFR §24.403(a)(5)	10.04.30.00	Determination of More Than One Household in a Dwelling	District	Senior RW Agent
49 CFR §24.301(g)(1) 49 CFR §24.301(g)(17)	10.05.05.01 10.05.05.13 10.05.24.00	Payment for Transportation and Search Costs Beyond 50 Miles (Non-Residential)	District	Senior RW Agent
49 CFR §24.301(g)(12)	10.05.05.11	Use of Professional Services for a Complex Move	District	Up to $10K: Senior RW Agent Over $10K: Supervising 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**
49 CFR §24.301(i)	10.05.06.02	Denial of Relocation Benefits if Non-Residential Displacees Fail to Comply with Notification Requirements	District	Supervising RW Agent
49 CFR §24.305(e)	10.05.19.01	Use of Alternate Tax Years for an In-Lieu Payment	District	Senior RW Agent
49 CFR §24.301(g)(7)	10.05.25.00	Approval of Grace Period for Business Displacee to Remain in State-Acquired Property	District	Supervising RW Agent
49 CFR §24.2(a)(8)	10.06.05.01	Submit Waiver of DS&S Standards Request to FHWA	HQ	Senior RW Agent
49 CFR §24.403 49 CFR §24.102(n)	10.06.12.04	Approval of Replacement Housing Valuations - Dual Role	District	Senior RW Agent
49 CFR §24.102(n)	10.06.12.05	Approval of Replacement Housing Valuations (Excluding Last Resort Housing)	District	Senior RW Agent
49 CFR §24.102(n)	10.06.12.05	Approval of Replacement Housing Valuations – Last Resort Housing	District	Up to $50K: Supervising RW Agent Over $50K: RW Manager

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Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	**RW Manual Section**	**Responsibility**	**Delegation**	**Lowest Level of Sub-Delegation**
49 CFR §24.403(a)(1) 49 CFR §24.404(a)	10.06.13.00	Preparation of RHV When Three Comparables are Not Available	District	Senior RW Agent
49 CFR §24.403	10.06.18.00	Carve-Out for Replacement Property	District	Senior RW Agent
49 CFR §24.403 49 CFR §24.404	10.06.19.00	Special Valuation – New Construction	District	Supervising RW Agent
49 CFR §24.403 49 CFR §24.404	10.06.20.00	Special Valuations Required	District	Senior RW Agent
49 CFR §24.404	10.07.11.00	Rental of Vacant Mobile Home Spaces	District	Within Displacement Park: Senior RW Agent To Other Park: Supervising RW Agent
49 CFR §24.401(a)(2) 49 CFR §24.207(d)	10.08.02.00 10.08.03.00	Time Extensions to Occupy Replacement Housing and File Claim	District	Senior RW Agent
49 CFR §24.207(b)	10.08.06.00	Expeditious Approval of Claim – Non-Last Resort Housing	District	Senior RW Agent
49 CFR §24.207(b)	10.08.06.00	Expeditious Approval of Claim –Last Resort Housing	District	Up to $50K: Supervising RW Agent Over $50K: RW Manager

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Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	**RW Manual Section**	**Responsibility**	**Delegation**	**Lowest Level of Sub-Delegation**
49 CFR §24.207(b)	10.08.06.00	Expeditious Approval of Claim – Moving Claims	District	Up to $50K: Senior RW Agent Over $50K: Supervising RW Agent
49 CFR §24.207(c)	10.08.07.00	Advance Relocation Payments	District	Supervising RW Agent
49 CFR §24.207(b)	10.08.09.00	Approval for Personal Delivery of RAP Checks	District	Senior RW Agent
49 CFR §24.10(c)	10.09.03.00	Time Limit to File Appeal (Extensions)	District	Senior RW Agent
49 CFR §24.10(b)	10.09.05.00	Region/District Review Panel - Relocation Appeals	District	Supervising RW Agent
49 CFR §24.l0(b)	10.09.07.00	Statewide Relocation Appeals Hearing Officer or Board	HQ	Supervising RW Agent
49 CFR §24.207(c)	10.05.02.00	Advance Relocation Payments (Non-Residential)	District	Supervising RW Agent
49 CFR §24.2(a)(6)(ix)	10.06.05.01	Subsidized Housing When Requires Fewer Bedrooms Than What Had Been Required by Section 8	District	Supervising RW Agent
49 CFR §24.2(a)(6)(iii)	10.06.05.01	More Than 2 People Per Bedroom	District	Supervising RW Agent

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Exhibits are located online:

- External Exhibits site
- Internal Exhibits site (internal Caltrans link)

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Forms are located online:

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- Internal Forms site (internal Caltrans link)

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11.19.00.00 STATUTE AUTHORIZED USE – HOMELESS SUPPORT

01.00 State Statutes
02.00 Site Identification
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11.20.00.00 DELEGATIONS

01.00 Delegations of Authority

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11.00.00.00 - PROPERTY MANAGEMENT

11.01.00.00 - GENERAL

11.01.01.00 Interim Policy Memorandum Updates

From time to time Headquarters Right of Way (HQ R/W) will issue interim policy memorandums to clarify policies and procedures prior to a new publication of the R/W Manual. When an interim policy memorandum is created and approved, there will be an email notification sent to the following groups: Functional Council members, R/W Management Board members, Statewide Supervising R/W Agents, other potential stakeholders, and subscribers of the R/W Manual update list. Additionally, the interim policy memorandum will appear under the *Active Right of Way Manual Directives (Interim Policy Memos)* section at the R/W Manual Revisions website.

11.01.02.00 Responsibility

Region/District Property Management manages all property held for future transportation projects, excess properties, and employee housing. For project and excess properties, this includes maintaining an inventory of state-owned properties, inspecting properties for loss prevention, marketing rentable properties, establishing tenancies, collecting rents, arranging property maintenance, and terminating tenancies. For employee housing, this includes obtaining rental agreements and arranging property maintenance.

11.01.03.00 Delegations

All Property Management approvals have been delegated to the Regions/Districts in accordance with the Statewide Delegation Matrix. (See Chapter 2, Statewide Delegation Matrix, Manual Section 2.05.00.00.) Property Management staff have full delegation to operate and approve within the parameters outlined in this chapter and as shown in the delegation matrix. Any activities outside the scope of this manual or the delegation matrix shall be subject to HQ R/W's approval. Approval may be conveyed in writing or electronically. The region/district shall maintain a copy of the approval in the rental file(s) to which it applies.

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11.01.04.00 No Re-Rent Residential

As a general rule, no vacated residential units shall be rented on projects with current environmental clearances. Vacated improvements on such projects should be cleared immediately. If an environmentally cleared project is in the STIP or SHOPP and has programmed funds for normal right of way, the no re-rent policy is mandatory.

In addition, the District/Region should consider establishing a residential no re-rent policy on other projects if a shortage of replacement housing exists, or may develop, or for other reasons, such as specified action in the Freeway Agreement or official local agency request. The recommendation should contain complete justification, with advantages and drawbacks, and detailed analysis on social and economic consequences. The analysis must recognize that improvements cannot be removed prior to environmental clearance of the project and must consider the effect of boarded vacant improvements upon the neighborhood.

Approval for establishing a no re-rent policy is as follows:

- Environmentally Cleared Projects - No approval is necessary. If the project is also in the STIP or SHOPP and has programmed funds for R/W activities, an exception to establishing a no re-rent policy requires a rental/clearance plan approved by the DD or authorized delegate.

- No Re-Rent Recommended in the R/W Stage RAP Study - Approval of the R/W Stage RAP Study constitutes approval to institute the policy, although separate written approval from the DD is required.

- No Re-Rent Recommendation Submitted Separately from R/W Stage RAP Study - Written approval from the DD is required.

11.01.04.01 No Re-Rent Nonresidential

The District/Region may also implement a no re-rent policy for nonresidential property when conditions warrant. The justification and approval required are the same as outlined above.

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11.01.05.00 Property Held for Future Purposes

Where improved property is acquired far in advance of scheduled construction and the DD or authorized delegate has approved an exception to the no re-rent policy, the policy of the Department of Transportation (Department) is:

- Keep the property occupied.
- Maximize rental revenue.
- Minimize adverse effects of right of way clearance on the community.
- Be a good neighbor.
- Demolish the improvements if necessary.

11.01.06.00 Disbursement of Rental Income to Counties

Streets and Highways (S&H) Code Section 104.6 requires that 24% of all rents received from real property acquired for future state highway purposes shall be disbursed to the counties where the rental properties are located. Department policy is to code all properties in the Right of Way Property System (RWPM), Property Screen, TPR510M, with a "Y" in the "24% TO CO" field. The only exception to this policy is when the Department owns a mobile home, but not the land. In this case, an "N" will be entered into the "24% TO CO" field. Accounting is responsible for disbursing the funds to the counties in accordance with S&H Code Section 104.10. The 24% represents payment for taxes or assessments.

11.01.07.00 Special Assessments by Local Agencies

State-owned property is exempt from property taxation per Article XIII, Section 3, Subdivision (a) of the California Constitution. With the passage of Proposition 218 and the addition of Article XIII D of the California Constitution, State-owned property may be subject to special assessments provided that certain procedural and substantive requirements are met.

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Prior to imposing a special assessment, the local assessing agency must have done the following:

- Identify all the parcels which will have a special benefit conferred upon them and upon which a special assessment will be imposed.
- Prepare a detailed resident engineer's report supporting all assessments. The report must be prepared by a registered professional engineer certified by the State of California. The report must contain the total amount chargeable to the assessment district, the amount chargeable to each parcel within the assessment district, the duration of the payments, the reason for the assessment, and the basis upon which the amount of the proposed assessment was calculated.
- Hold a public meeting on the proposed assessment and receive approval from a majority of the property owners casting a ballot.

If a special assessment bill, which will normally be shown on the secured tax roll, is received, the following actions should be taken:

- The Region/District should determine if the Department owns fee title to the subject parcel being assessed. The Department shall not pay any special assessments on real property in which the Department holds a property right less than fee title.
- The Region/District should determine whether the Department is subject to the assessment by sending a letter to the assessing agency informing it that the Department is exempt from an assessment unless the assessment is expressly allowed by law. The assessing agency should be asked to identify the specific provision in the law that allows for the assessment. If there is no expressed authorization for the assessment, the assessing agency should be asked to discontinue billing the Department.
- If the assessing agency provides express legal authorization for the assessment, the Region/District must then determine if the State-owned parcel receives a special benefit from the assessment. If the parcel in question is under pavement, it is highly unlikely that there is any special benefit conferred upon that parcel since the Department is already tasked to maintain such parcels. If it is determined that the parcel does receive a special benefit, the assessment should be submitted to the Division of Accounting for payment. If it is determined that the parcel does not receive a special benefit, the assessing agency should be informed of the determination and asked to discontinue billing the Department.
- In instances where the Region/District determines that the special assessment is to be paid, the Region/District must identify the law that

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allows for the assessment when submitting the payment package to the Division of Accounting.

If a special assessment was levied on the parcel prior to the acquisition of the parcel, that special assessment should have been paid in full including any future installments owed at the time of the acquisition.

For further information regarding special assessments, please refer to the memorandum dated August 27, 2019 (internal Caltrans link).

11.01.08.00 Rental of State-Owned Properties to State Employees

State employees, including employees of the Department, are eligible to rent state-owned properties provided their jobs do not involve managing the property, estimating or setting the rental rate, or performing other property management activities.

11.01.09.00 Use of Bilingual Agents

Every effort should be made to use bilingual Agents when working in areas where tenants are non-English speaking. The Agent may also utilize the Caltrans Volunteer/Certified Bilingual Listing or the Department's contracted interpreting services. For more information on the Caltrans Volunteer/Certified Bilingual Listing and the Department's contracted interpreting services, please refer to the Office of Business and Economic Opportunity's Limited English Proficiency intranet site which may be found at https://obeo.onramp.dot.ca.gov/title-vi-program/limited-english-proficiency.

11.01.10.00 FHWA Approval of Less Than Fair Market Rent

23 CFR 710.403(e) states that acquiring agencies shall charge current fair market value or rent for the use or disposal of all real property interests, including access control, if those real property interests were obtained with title 23, United States Code, funding. Exceptions to the requirement for charging fair market value must be submitted to FHWA in writing and may be approved by FHWA in the following situations:

- When it is in the overall public interest based on social, environmental, or economic benefits, or is for a non-proprietary governmental use.
- Use by public utilities in accordance with 23 CFR part 645.

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- Use by railroads in accordance with 23 CFR part 646.
- Use for bikeways and pedestrian walkways in accordance with 23 CFR part 652.
- Uses under 23 U.S.C., Public Transportation. For public transportation purposes, whenever the public interest will be served, by publicly owned mass transit authorities where this can be accomplished without impairing automotive safety or future highway improvements.
- Use for other transportation projects eligible for assistance under Title 23 of the United States Code, provided that a concession agreement shall not constitute a transportation project exempt from fair market value requirements.

The Department must evaluate and justify all instances when charging a less than fair market rental rate is in the overall public interest based on social, environmental, or economic benefits, or for a non-proprietary governmental use. Additionally, the Department must ensure that the public will receive the benefit used to justify a less than fair market rental rate.

When evaluating a less than fair market rental rate, for the above situation, the Department must be able to understand and provide a statement of the public's problem and how the proposed agreement will address or improve said problem. The Department must be able to articulate all the benefits the public will receive by having in place such an agreement at less than fair market rent. It is essential that the proposed use allowed by the agreement complies with all State and Federal laws.

The method for ensuring that the public will receive the benefit of proposed agreement is the use defined within the agreement. The proposed agreement shall be constructed as to only allow for a very narrow and specific use that creates a benefit to the overall public. Additionally, the Department shall commit to inspecting the property in accordance with the frequency described in this Chapter; this will ensure that the property is only being used to provide the benefit to the public in accordance with the agreement.

The District/Region shall submit a written Public Interest Finding (PIF) to HQ R/W for submission to FHWA for the approval of the proposed less than fair market rental rate. The PIF must address the evaluation criteria of the less than fair market rate and the methodology for ensuring the public receives the benefit as outlined within this section.

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11.01.10.01 Federal Participation in Revenue and Expenses

The federal share of net income shall be used for activities eligible for funding under Title 23, in which case the state may retain rental and lease revenues without crediting federal accounts. Since rental and lease revenues are deposited into the State Transportation Fund, which is a Special Revenue Fund used primarily for Title 23 projects, the Department has met the intent of CFR 710.403(f). Furthermore, the Department is not required to track and report the expenditures from these revenues. Revenues should be coded as ineligible for federal reimbursement. (See Exhibit 11-EX-1, Letter to FHWA dated March 4, 1999.)

Under 23 CFR Part 710 Subpart D, property management costs continue to be eligible for federal participation until final project voucher. The Department has made a policy decision, however, that it will not seek federal reimbursement for property management costs (i.e., operating expense and support costs). Therefore, expenditures should be coded as ineligible for federal reimbursement.

11.01.11.00 Other Applicable Federal Regulations

Policies and procedures for managing real property acquired in connection with a federal-aid transportation project are contained in Title 23 CFR, Sections 710.401 through 710.409. The policies are applicable to all state and political subdivisions that manage real property acquired for transportation projects in which federal funds are used for any phase of the project.

11.01.12.00 Title VI, Civil Rights Act

Title VI of the 1964 Civil Rights Act forbids discrimination against any person in the United States because of race, color, or national origin by any agency receiving federal funds. See Manual Section 2.04.01.00 for additional information.

11.01.13.00 Right of Way Property System

Right of Way policy mandates use of the RWPM. See the RWPM User's Manual for additional information. A copy of the User's Manual is on the Right of Way Intranet under HQ Offices, Real Property Services (under functional unit links).

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11.01.14.00 Filming on State-Owned Property

Government Code Sections 14998-14998.13 is known as the Motion Picture, Television, and Commercial Industries Act of 1984.

Government Code Sections 14999.50-14999.55 is known as the State Theatrical Arts Resources (STAR) Partnership.

Government Code Sections 15363.60-15363.65 is known as the Film California First Program.

These various Government Code sections established the regulations and guidelines in association with filming on state-owned property such as: The Director of the Film Office shall be the permitting authority for the use of state-owned property and state employee services for the purpose of making commercial motion pictures; allows production companies and other film industry companies to lease property owned by the State of California at no charge or below market rates; allows state agencies to be reimbursed for the film costs incurred including state employee costs, maintenance costs, electrical costs, etc., and directs state agencies to identify surplus properties that may be available for use.

Current Department policy asserts that the Department will not charge any production company working through the California Film Commission (Commission) a rental/lease charge for utilizing surplus property for filming. However, the Department will charge production companies for employee time including overtime charges and any miscellaneous costs. Production companies shall be responsible for any related costs, such as maintenance or electrical costs, that the state incurs because of filming at the property.

Whenever a production company contacts a Region/District, you will contact either the Commission or your local Film Liaisons in California, Statewide (FLICS) person to coordinate any activities. The Commission is responsible for issuing permits, collecting fees, and making sure insurance coverage is obtained.

The Regions/Districts' initial responsibility is to show the property to interested production company representatives. If the production company decides to use the property, the Agent involved will ensure Department of Transportation, Division of Right of Way, STAR Program Agreement (Agreement), will be prepared. This will serve as the rental/lease agreement between the Department and a production company. Upon execution by both parties, the Agreement will be sent to the Commission for

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inclusion in their permit. (See 11-EX-49, Department of Transportation, Division of Right of Way, Star Program Agreement).

If any production company working through the Commission wishes to film on property obtained with title 23, United States Code funding, FHWA approval will be required prior to the execution of an Agreement or use of the property. This is due to the Department's policy of not charging a production company rent for use of the property, while FHWA approval is required when less than fair market value is charged for the use of a property. A PIF must be submitted to HQ R/W for submission to FHWA for approval of the less than fair market rental rate; please see Section 11.01.10.00 for further information.

Once a production company has been approved to film on state-owned property, it is the responsibility, with the assistance of the Commission if needed, of the Region/District to have an agent(s) on site for monitoring purposes. The agent will be there to answer questions and make sure the production company is adhering to the requirements of the Agreement.

R/W must consult with the Division of Environmental Analysis (DEA) when properties are deemed historic in order to capture any specific requirements or restrictions associated with the use of the property especially regarding any requested alterations to the property.

11.01.15.00 Mobilehome Parks

The Region/District is encouraged to explore all options available to avoid the acquisition of mobilehome parks, even up to the selection of an alternate route. In the event that the Department acquires a mobilehome park, and the tenants own their own mobilehome, contact HQ R/W immediately. Proper management of mobilehome parks is challenging, as they are governed by the Mobilehome Residency Law. Therefore, it is imperative that the Region/District work with HQ R/W and Legal to ensure that the proper laws, regulations, and procedures are being followed.

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11.02.00.00 - CLOSURE PROCEDURE

11.02.01.00 General

Upon execution of a R/W Contract or recordation of an FOC, the Acquisition Agent (or Condemnation Agent for an FOC) shall send an MOS, RW 8-12, to Property Management with a copy of the R/W Contract or FOC as appropriate. The Property Management Senior should assign the parcel to the Agent responsible for the territory. The Agent shall review and be familiar with the documents and the appraisal involved.

In the majority of cases where property is acquired under R/W Contract, there will be a period of time, usually three to six weeks, between receipt of these documents and close of escrow or recordation. If the property is occupied, the Agent shall contact the occupants prior to close of escrow to discuss the terms of rental occupancy. The Agent should read the R/W Contract carefully to determine any special conditions imposed that might affect, for example, the rental rate, term of occupancy, rental commencement date, or special disposition of acquired property.

Where property is acquired through an FOC, the Agent shall take immediate action to contact the occupants since rental commences on the day following recordation of the FOC.

11.02.02.00 Determination of Rentable Properties

Properties shall be considered rentable if re-rental is appropriate and there is a high probability that a tenant can be found. Pertinent factors to consider in determining rentability include topography, zoning, accessibility, lead time, availability of utilities, size and location of parcel, and condition and nature of improvements.

11.02.03.00 Contact with Grantor and/or Tenant

The Agent shall accomplish the following upon initial contact with the grantor or tenant:

- Determine existing rental rate, if any.
- Determine current rental period (e.g., rent paid monthly and due dates).
- Determine if rent is prepaid, up to and including what date.

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- Determine who is responsible for payment of various utilities (water, gas, electricity, sewer, and garbage).

- Complete the Rental Application.

- Advise tenant of policies regarding security deposit, or transfer of deposit from grantor at time of close of escrow, and payment of first month of lease, if applicable.

- Advise tenant of period property will be available for rental or lease, and determine if tenant intends to stay.

- Inform tenant that all monthly rents are due on the first of the month and advise tenant that prompt payment of rent is mandatory in all cases.

- Advise tenant about Possessory Interest Tax, if applicable (see Manual Section 11.07.17.00).

11.02.04.00 Inspection of Property and Determination of Rental Rates

The Agent shall thoroughly inspect all property, including improvements, prior to acquisition or as soon as possible after acquisition. This inspection enables the Agent to become familiar with the property for purposes of reviewing the rental rate set by Appraisals and to note and abate any hazardous conditions that may exist.

11.02.05.00 Procedures Upon Acquisition

The start tenancy date must be entered in the RWPM Tenancy Screen as soon as the Agent is notified that acquisition is complete.

11.02.06.00 Establishing New Accounts

Written agreements covering rental and lease of all state property are required. The standard forms listed below shall be used but may be modified, with approval of the DDD-R/W or delegated representative, to comply with actual conditions or when special situations arise.

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TYPES OF AGREEMENTS

- Residential Rental Agreement
- Lease Agreement (Commercial, Industrial)
- Agricultural Lease Agreement
- Advertising Structure Agreement

Please refer to the specific agreement templates on the Property Management website (internal Caltrans link).

First, the Agent shall contact the RAP Unit to determine the RAP eligibility of each tenant occupying the property. The Agent shall then make any changes needed in the agreement to protect the tenant's RAP eligibility.

The Agent is responsible for seeing that agreements are processed promptly. The Agent shall have the tenant sign a minimum of two copies of the agreement and submit the agreement to the Property Management Senior for review before submitting it to the person authorized to execute on the state's behalf.

Each prospective tenant must complete a Residential Rental Application, RW 11-5, or a Non-Residential Rental Application, RW 11-6, based on the property type.

The Agent is responsible for collecting the initial rent and security deposits. (See Exhibit 11-EX-2 for departmental cash handling procedures.)

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11.02.07.00 Rental Filing System

A uniform Rental Filing System is necessary for accurate and proper control of rented properties. Each rental account file shall be kept by account number. If files become too large for one folder, additional ones shall be started. To provide a complete parcel rental history for each rental unit, all folders for one parcel shall be kept in one place; for example, in an accordion-type folder with the parcel number on it. The rental file shall be in chronological order and shall contain the items shown below.

RENTAL FILE CONTENTS

- Diary
- R/W Contract
- MOS
- FOC (if applicable)
- Rental Application
- Credit Report (if applicable)
- Rental Rate Documentation
- Rental Agreement (executed copy)
- Lead-Based Paint Disclosure (if applicable)
- Invoices or paid bills for repairs
- Vacancy Report (if applicable), 11-EX-65
- Map of location
- Inspection Forms with Photographs of Inspection
- Stormwater Inspection Forms

When property is vacated and then re-rented, the previous tenant's file shall be kept intact in the rental folder, current tenant data at the front. It is suggested that tabs be inserted in the file to indicate where the new tenancy data starts. Alternatively, the previous tenant's file may be kept separately in order by account number. The MOS, R/W Contract, and copy of the move-out inspection form should be transferred to that new rental file with any other pertinent information that provides file continuity.

Each rental unit in a multiple unit parcel shall have its own rental unit number and may be filed in its own folder as long as all unit files are kept together under the parcel number.

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11.02.08.00 New Property - Grantor Retains Improvements

Occasionally, the Department enters into a R/W Contract that permits the owner to retain improvements if they are relocated by a certain date. If improvements are occupied at close of escrow, an appropriate ground rental rate shall be charged until the improvements have been removed, unless the R/W Contract provides for rent-free occupancy, within the grace period as specified in the Right of Way Contract, of the land. The Agent should discuss unique situations or uncertainties with the Property Manager Senior or authorized representative before making a commitment. (See also Manual Section 11.04.06.00.)

11.02.09.00 Rental Period - Hardship Acquisition

On hardship acquisitions, grantors are required to vacate the property within 120 days from the date of close of escrow, provided replacement housing is available. The rental agreement is limited to a term of not more than 120 days, except in extreme cases where hardship would be compounded by requiring relocation within the 120-day period.

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11.03.00.00 - PROPERTY INVENTORY

11.03.01.00 General

Each district shall keep its inventory of rentable and non-rentable properties in RWPM up to date and accurate. The Region/District shall also keep a physical file of each property in its inventory.

Permanent easements, temporary construction easements, utility easements, employee housing, and other similar real property interests acquired or owned by the Department are not to be entered into the RWPM.

11.03.02.00 Inventory Disposal Record

The Acquisition Agent prepares the Inventory Disposal Record (IDR), Form RW 12-1, and assigns a Register Number when the MOS is prepared. (See Manual Section 8.50.03.00 for additional information.) The IDR is used for accountability of improvements and personal property purchased through Right of Way transactions, and to record the discharge of accountability at the time of clearance.

11.03.03.00 Improvement Disposal Authorization

The Improvement Disposal Authorization (IDA), Form RW 12-2, is a formal request to the DD or authorized delegate for permission to dispose of state-owned improvements or personal property. Approval of the IDA is authority to proceed with disposition of the improvements as specified. No property shall be disposed of in a manner at variance with the approved IDA without prior approval of the DD or authorized delegate.

11.03.04.00 Improvements and Personal Property

For purposes of this inventory procedure, "improvements and personal property" means those structures, improvements, or personal property (such as furniture) whose disposal requires an IDA, RW 12-2. Miscellaneous items purchased as part of the real estate, such as TV antennas, air coolers, carpets, gasoline pumps, compressors, and drapes, are listed on the IDA. This applies whether the items are to be marketed, demolished, or transferred to another department or agency. Improvements such as landscaping and driveways that normally are destroyed in right of way cleanup contracts or by the road contractor as part of clearing and grubbing need not be listed.

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Items of personal property purchased, such as furnishings, must also be shown. A Bill of Sale may be given an item number and copy attached to the IDR.

Whenever salvaged property is removed from state-owned parcels, it shall be placed in a secured area in District/Region facilities. The Agent will keep the required inventory forms in a file to account for each item. The Agent shall be responsible for the secured area and the keys thereto.

11.03.05.00 Numbering of IDAs and IDRs

IDAs and IDRs carry the Parcel Number, Improvement Register Number, Expenditure Authorization Number, Co. Rte. and KP, and Federal-Aid Project Number. District filing is by Parcel Number.

11.03.06.00 Active Inventory of Improvements File

The District/Region shall maintain a file of active IDRs. A copy of the IDA for a parcel is placed in the file when the IDR file is set up. When all improvements have been disposed of in accordance with the IDA and the "Disposal Record" section (back) of the IDR has been completed, these two documents are transferred to the parcel file.

When multiple IDAs are required to dispose of improvement items carried under one Register Number, the disposal information should be transcribed from the multiple reports to the original form. The original is filed in the permanent district records.

A copy of the Inventory and Disposal Record shall be retained until it is necessary to process the improvements for clearance and an Improvement Disposal Report file is set up.

When it has been certified that all improvements have been disposed of in accordance with the Improvement Disposal Report or Reports, and the "Disposal Record" section (back) of the Inventory Disposal Record is completed, the Improvement Disposal Report shall be transferred to a closed file. The original in the active file may be destroyed.

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11.03.07.00 Closed Inventory of Improvements File

The closed inventory record form shall be part of the District's/Region's permanent records. As long as any items originally set up remain uncleared, however, the record must remain in the active file.

11.03.08.00 Water Stock

If appurtenant stock is acquired, such as for agriculture watering, it shall be held until the need for a water supply ceases. If it is not necessary to retain appurtenant water stock, the district shall submit the stock to the company secretary for cancellation.

In those cases involving excess land, the District/Region must arrange for reissuance of the stock to the purchaser at the time of sale.

If non-appurtenant water stock is purchased, it shall be held until the need for a water supply ceases. It shall then be submitted to the water company for cancellation with immediate reimbursement to the state by the water company or reimbursement upon resale of the stock, at the water company's option.

If it is not necessary to purchase water stock, the Region/District shall acquire the land without paying any consideration for the water stock.

Each District/Region shall maintain an inventory and disposal record of water stock. The Region/Ddistrict shall inventory each acquired share or fractional share of water stock and keep a complete record of all water stock acquired.

After stock certificates are reissued in the state's name, the District/Region shall forward them to the Division of Accounting for filing.

The state is subject to assessments whenever it holds such shares of mutual water company stock. Prior approval from the DD or authorized delegate is required before any assessment can be paid.

Mutual water company stock that is acquired in connection with acquisition of land for other than right of way purposes shall be processed as set forth in this section.

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11.03.09.00 Lost or Stolen Property

Government Code Section 14613.7 requires each state agency be protected by the California Highway Patrol (CHP). The CHP personnel shall document all crimes, miscellaneous law enforcement-related incidents, or services provided on State-owned or State-leased property for statistical record keeping purposes. In addition, Government Code 14613.7 requires the CHP to compile all reported information and report to the State Legislature as necessary.

All notifications of an incident and/or crime shall be expeditiously directed to the Department's Statewide Operations Security (SOS) Office via email or fax no later than the third working day following the discovery of an incident and/or crime. Incidents/crimes involving injury or death of individuals or property losses totaling over $500 shall be reported no later than the first working day following the discovery or notification.

An STD, 99, Report of Crime or Criminally Caused Property Damage on State Property, shall be prepared for all crimes or incidents occurring on State-owned or State-leased property and sent to:

Statewide Operations Security Office
1120 N Street, Mail Station 55
Sacramento, CA 95814

The IDR should be properly annotated concerning lost, stolen, or destroyed property.

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11.04.00.00 - RENTAL RATES

11.04.01.00 General

Our policy is to charge fair market rent and to rent only to tenants willing and able to pay fair market rent. For definition of Fair Market Rent, see Manual Section 11.04.02.00. Exceptions are made for:

1. Tenants whose rental rates are established by Right of Way Contract.

2. Residential tenants who qualify for the Affordable Rent Program. (See Exhibit 11-EX-3, Affordable Rent Tenants. See Exhibit 11-EX-38 Gross Income for The Purpose of Calculating Affordable Rent)

3. Local rent control (see Manual Section 11.04.05.00).

4. Instances when it is in the overall public interest based on social, environmental, or economic benefits, or is for a non-proprietary governmental use. Prior written approval must be obtained from FHWA when the property was acquired with title 23, United States Code, funding.

5. Instances in which the Department must charge a less than fair market rate due to legislation. FHWA approval may be required if the property was acquired with title 23, United States Code, funding.

The District/Region shall set up in RWPM all state-owned properties that are suitable for renting and are proposed for occupancy as rental accounts and shall charge rent as follows:

- **Property Improved with an Owner-Occupied Residential Unit** - Grantor's rental shall commence on the 16th day after the close of escrow or the day after the Order of Possession becomes effective.
- **Property Occupied by a Business -** A rental grace period (maximum of 60 days) may be granted to the tenant (former owner, inherited tenant) if circumstances warrant. The grace period may commence on the day after the close of escrow, or the day after the Order of Possession becomes effective, or at some other time during the lease term, depending on whether or not the business has a commitment to pay rent on a replacement site. See Manual Section 10.05.25.00 for further details.

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- **All Other Classes of Property, Including Property Partially Tenant-Occupied -** Rentals shall commence on the day following close of escrow or the day after the Order of Possession becomes effective.
- **Exceptional Cases -** Adherence to rental rates established by executed R/W Contracts is required. Lease purchase sale of excess land to a tenant-buyer will provide for a lease at above market rate. See Excess Land Chapter, Manual Section 16.05.14.00, for further details.

These provisions do not preclude longer free occupancy periods where necessary or desirable with the DDD-R/W's approval. The terms of either the R/W Contract or the transmittal memorandum must indicate, however, that the state is receiving a consideration for the extended rent-free occupancy.

The initial rental rate for all improved properties and rented unimproved properties is in the appraisal report.

- **Tenant-Occupied Properties -** The actual existing rental rate and the estimated fair market rental rate are shown.
- **Owner-Occupied Properties -** Only the fair market rental rate is shown. The rentals of similar properties shall be the basis for estimating the fair market rental rate.

11.04.01.01 Rental Rate Increase Policy

Department policy is to review rental rates annually and make the appropriate adjustments. Effective January 1, 2020, pursuant to an amendment to Section 827 of the Civil Code, a 90-day written notice is required prior to raising rents for residential tenancies when the increase is greater than 10 percent; prior to January 1, 2020, a 60-day written notice is required prior to raising rents for residential tenancies when the increase is greater than 10 percent. A 30-day written notice is required when the rent increase is 10 percent or less for residential tenancies. For non-residential tenancies, a 30-day courtesy notice is highly recommended.

Effective March 15, 2019, the Department will be subject to rental rate caps for residential properties that are not alienable separate from the title to any other dwelling unit, i.e. multi-family residential properties, and do not have a certificate of occupancy issued within the previous 15 years. In the course of any 12-month period the rental rate increase for these properties cannot exceed 5 percent plus the percentage change in the cost of living, or 10 percent, whichever is lower. Between March 15, 2019, and January 1, 2020, if the rent has been increased by more than the prescribed amount in this

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paragraph, then the applicable rent on January 1, 2020, shall be the rent as of March 15, 2019, plus the maximum permissible increase and the Department is not liable for any rental overpayments for the rental increase over and above the prescribed amount in this paragraph. This statute, Section 1947.12 of the Civil Code, is in effect until January 1, 2030.

For **residential** properties that are alienable separate from the title to any other dwelling unit, i.e. single-family residences, townhomes, and condominiums, or any residential properties that have been issued a certificate of occupancy within the previous 15 years, the rental rate cap does not apply. Again, this statute, Section 1947.12 of the Civil Code, is in effect until January 1, 2030. The following language for residential properties that are exempt from the rental rate cap must be in the rental agreement for all tenancies that commenced or renewed on or after July 1, 2020; for tenancies that existed prior to July 1, 2020, the tenant must be provided the following language in a written notice:

- "This property is not subject to rent limits imposed by Section 1947.12 of the Civil Code and is not subject to the just cause requirements of Section 1946.2 of the Civil Code. This property meets the requirements of Sections 1947.12 (d)(5) and 1946.2 (e)(8) of the Civil Code and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation."

The Department's rental rate policy for residential properties that are alienable separate from the title to any other dwelling unit or have been issued a certificate of occupancy within the previous 15 years, which are not subject to the statutory rent caps described in this section, shall be as follows:

- If the current rent is 25% or less below fair market rent, there will be annual 10% rent increases until actual rent equals market rent.
- If the current rent is more than 25% below fair market rent, there will be 10% rent increases every six months until actual rent is 25% or less below fair market rent and then there will be annual 10% rent increases until actual rent equals fair market rent.

11.04.01.02 Price Gouging During a State of Emergency

Upon the proclamation of a state of emergency declared by the President of the United States, the Governor of California, or a city and/or county official, board, or other governing body vested with authority, anti-price gouging statutes go into effect immediately after such proclamation or declaration.

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Pursuant to Penal Code Section 396, it is unlawful to increase the rental rate advertised, offered or charged for housing, to an existing or prospective tenant, by more than 10 percent for a period of 30 days following the proclamation or declaration of a state of emergency or any period the proclamation or declaration is extended by the applicable authority. The rental rate may be increased by more than 10 percent during a state of emergency if the increase was contractually agreed to by the tenant prior to the proclamation or declaration.

Additionally, pursuant to California Penal Code Section 396, for a period of 30 days following the proclamation or declaration of a state of emergency, or any period the proclamation or declaration is extended by the applicable authority, it is unlawful to evict a residential tenant and then rent or offer to rent to another person at a rental rate greater than the evicted tenant could be charged.

California Penal Code Section 396 defines the rental rate as follows:

- For housing rented within one year prior to the proclamation or declaration of emergency, the rental rate is the actual rental rate paid by the tenant.
- For housing not rented at the time of the declaration or proclamation, but rented, or offered for rent, within one year prior to the proclamation or declaration of emergency the rental rate is the most recent rental rate offered prior to the proclamation or declaration of emergency.
- For housing rented at the time of the proclamation or declaration of emergency but which becomes vacant while the proclamation or declaration of emergency remains in effect and which is subject to any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity that establishes a maximum amount that a landlord may charge a tenant for rent, the rental rate is the greater of the actual rental rate paid by the previous tenant or 160 percent of the fair market rent established by the United States Department of Housing and Urban Development.
- For housing not rented and not offered for rent within one year prior to the proclamation or declaration of emergency, the rental rate is 160 percent of the fair market rent established by the United States Department of Housing and Urban Development.

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11.04.02.00 Rent Determinations

Property Management is responsible for establishing fair market rent determinations on residential properties. Property Management may request assistance from Appraisals, but must provide Appraisals with detailed information about the subject properties. For information and responsibilities for rent determinations on nonresidential properties, see Manual Section 11.05.01.00 for guidance.

A fair market rent determination is an estimate of the amount of rent, which a parcel would command in the open market, if offered under the terms and conditions typical of the market for similar properties.

The rent determination shall be based on current rents being paid in the area for comparable property. An analysis of the comparable rental and other market data such as size, location, condition of property (exterior and interior), etc., will be completed. The subject properties and comparable data shall be viewed in the field and the comparable property will be inspected if available. Exhibit 11-EX-46, Documentation of Residential Fair Market Rental Rate, will be used for all rent determinations. The rent determination includes a signed statement that the agent has personally viewed and inspected the parcel. The rent determination shall also be signed by a Property Management Senior and placed in the rental file.

At minimum, a 48-hour notice will be given to the tenants prior to inspecting the property for rent determinations.

11.04.02.01 Changing the Rental Rate Shown in the Appraisal

Although Property Management will normally use the rental rate shown in the appraisal, it has the right to revise the rate if justified by more recent market data. If a change in the rental rate for residential properties is proposed, the Agent shall complete Exhibit 11-EX-46, Documentation of Residential Fair Market Rental Rate, and submit to the Property Management Senior or designee for approval. For nonresidential properties, the Agent will complete Exhibit 11-EX-53, Nominal Value Nonresidential Rental Appraisal, and submit to the Property Management Senior or designee for approval. (See Manual Section 11.05.04.00 for additional information in regard to nonresidential properties.) All documentation shall be filed in the rental folder.

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11.04.03.00 Lease Term

At its discretion, the District/Region may set the length of lease terms up to five years, provided rate adjustments are incorporated and 90-day (or less) cancellation clauses are included. Suggested guidelines are as follows:

- **The Property Is in an Active Market, Subject to Recent or Anticipated Property Value Increases -** Consideration should be given to keeping the term short (e.g., one year). The advantage is that the rent can be reappraised and adjusted with market changes; the disadvantage is that a yearly reappraisal and renewal are required.
- **Properties Are of Relatively Low Value (e.g., Agricultural and Nominal Leases) and the Market Is Stable -** Consideration should be given to a longer-term lease (e.g., 3-5 years). This reduces the need for annual reappraisal and lease renewal where little or no rental change is likely. In such a case, a rental adjustment lease clause may be omitted.
- **Other Leases (e.g., Commercial and Industrial) in a Stable Market -** Consideration should be given to a longer-term lease (e.g., 3-5 years). To keep up with the rental market, the lease should contain a provision for annual rental escalation. Examples include level or graduated rental step raises (based on projected market trends) and raises tied to a Consumer Price Index. (Please refer to the Lease Agreement template on the Property Management website (internal Caltrans link) for standard rent escalation clauses.)

  Use of a flat rate must be justified and documented in the file or preapproved in writing by the DD or authorized delegate.

Where possible, all leases should be written with a short termination time (e.g., 90 days or less) to provide maximum flexibility. Leases with terminations longer than 90 days should be written on an exception basis only and must not conflict with project certification schedules. Similarly, multiyear leases must be written to avoid such conflict.

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11.04.04.00 Escalation Clauses

The assigned Agent shall annually review each lease agreement containing a rental escalation clause. The Agent shall adjust the lease rate according to the terms of the agreement and notify the lessee. It is highly recommended that the Agent provide at least a 30-day courtesy notice to the lessee informing them of the rental rate increase. The rental file and RWPM shall be appropriately documented. In order to ensure proper billing, the Agent should go into the "Update Tenancy" screen in RWPM and enter the new rental amount and effective date under the "Pending Amounts" section. Additionally, the Agent should update the "Market Rent" and "Date of Value" on the "Property" screen within RWPM. The Property Management Senior shall be responsible for reviewing the rental files and the RWPM to ensure compliance.

11.04.05.00 Owners Retain Improvements

If the R/W Contract requires the owner to remove retained improvements within a short time period (e.g., 90 days), a rental rate providing a current market return on the acquired property is charged. The rental rate shall not include a return on retained improvements. If the acquired land is of such size and irregular shape (e.g., narrow strips) that the market rental rate cannot be readily determined, the monthly rental rate may be set at one percent (1%) of the payment for the acquired property or the nominal monthly rental rate, whichever is greater.

After the close of escrow, if any structural improvement retained by the grantor remains on the acquired property past the term agreed to, the District/Region shall charge fair market rent for the use of the property purchased from the grantor. The Agent should also check the Right of Way Contract for clauses pertaining to provisions agreed upon if such issue occurred. (For example, the right of the Department to sell or demolish the improvements remaining on State property.)

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11.05.00.00 - NONRESIDENTIAL RENTALS

11.05.01.00 Fair Market Rent Determinations

Appraisals shall independently establish, review, and approve fair market rent for nonresidential properties with the following exceptions:

- Nominal value rentals up to $200 per month or $2,400 per year
- Oil and gas rights set by contract or other binding document
- Field offices and other properties being used by the Department
- Signboard sites
- Porter Bill park leases
- Residential master tenancy leases
- Bid leases
- Bike paths leased to public agencies
- Leases for agricultural, community garden, or recreational purposes under S&H Code Section 104.7
- Interim rent changes (see Manual Section 11.05.04.00 below)

Property Management shall determine the actual rental rates and shall fully justify and document any adjustments from fair market. Any rates less than fair market on property acquired with title 23, United States Code, funding requires approval from FHWA.

11.05.01.01 Appraisal's Requirements

The Appraisal Branch prepares, reviews, and approves fair market rent determinations for all nonresidential properties except those noted above.

The service is provided upon written request from Property Management. These requests should be scheduled so as to give Appraisals as much lead time as possible, and will include the following information:

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- A map of the property.
- Parcel number, county, route, post mile/kilometer post and property address.
- Improvements that belong to the tenant and should be excluded from consideration.
- Special items on the property, such as machinery or equipment. An inventory should be available if needed.
- Whether construction of improvements on the property will be permitted.
- Term of the proposed lease and estimated length of time property will be available for rent.

Rent determinations will be updated upon written request from Property Management.

11.05.02.00 Nominal Value Nonresidential Rentals

Many properties cannot be rented for more than nominal rent because of use, size, irregular shape and/or location. Nominal rent for this purpose is defined as $2,400 per year ($200 per month).

At the Region/District's option, the Appraisal Branch staff or the Property Management Branch staff may be used for rent determinations on nominal value nonresidential rentals.

In these cases, Exhibit 11-EX-53, Nominal Value Nonresidential Rental Appraisal, is required. It should identify and describe the parcel, and summarize the data and analysis that lead to the appraiser's conclusion of fair market rent. The nominal rental conclusion should be stated as a specific rental amount. A map of the appraised property is required (8½" x 11" print is sufficient); photographs are recommended.

The rent determination should include a signed statement that the Appraiser or Property Agent has personally viewed and inspected the parcel. The determination should also be signed by the function's Senior.

All nominal rents shall be supported by the use of comparables in the area or other available market data, such as the opinions of realtors or other experts. Consideration shall be given to:

- Length of time the property will be available.

- Market demand.

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- Any savings in maintenance costs to the state.

Many parcels of vacant land require annual expenditures by the state for weed abatement and trash removal, and these expenditures can be passed on to lessees with nominal rent leases. Any reduction in rent for maintenance costs saved by the Department shall be clearly documented in the file.

11.05.03.00 Rental Grace Period on Business Properties

See Manual Section 10.05.25.00, for information on rental grace periods.

11.05.04.00 Rental Rate Increases Prior to Appraisal

When Appraisals is unable to furnish the fair market rent for nonresidential properties on a timely basis, and where the existing rental rates are thought to be substantially below market, Property Management may establish interim rental rates based on the best available data. The interim rental rate must be documented in the property file, including comparables used and supported adjustments.

When a rental rate is established without an appraisal determination, the Agent shall inform the lessee that the rental rate is temporary, pending an appraisal determination. A clause similar to the following should be included in the rental agreement or lease:

> *Lessee agrees that the rental rate of $_____ per month/year set forth above is an interim rate for a period of at least six (6) months. The lessor will obtain an appraisal of the fair market rent for the leased property. Lessee agrees that lessor may adjust the rental rate based on the market rent appraisal by giving lessee sixty (60) days' prior written notice.*

11.05.05.00 Rental Rate Review

The Property Management Senior or designee shall review the rental rate on all nonresidential accounts annually and shall maintain an up-to-date sampling of fair market rental rates for similar properties in the vicinity of the state-owned properties. The exceptions are those rental rates that are determined by set increases such as CPI Index and those that are established in the rental agreement or lease for multiple years.

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11.05.06.00 Rental Rate Increase Policy

See R/W Manual Section 11.04.01.01.

11.05.07.00 Electric Vehicle Charging Stations – Nonresidential Tenancies

Pursuant to Section 1952.7 of the Civil Code, a landlord is required to approve a nonresidential lessee's written request to install an electric vehicle charging station for any lease agreements executed, extended, or renewed on and after January 1, 2015.

Section 1952.7 of the Civil Code does not apply to the following: a commercial property where charging stations exist for use by lessees in a ratio that is equal to or greater than two available parking spaces for every 100 parking spaces at the property; and, a property where there are less than 50 parking spaces.

The lessee does not have the right to install charging stations in more parking spaces than are allotted to the lessee. If the lessee has no parking spaces allotted to them, the lessee can convert a certain number of existing parking spaces by multiplying the total number of existing parking spaces by a fraction, consisting of a numerator being the total square footage leased and the denominator being the total square footage of the entire property. If the installation of a charging station has the effect of granting the lessee a reserved parking space and a reserved parking space is not allotted to the lessee, the landlord may charge a reasonable monthly rental amount for the parking space.

If the landlord's approval is required for the installation of a charging station, the lessee shall obtain approval from the landlord and must agree in writing to do all of the following: comply with the landlord's reasonable standards for installation of the charging station; engage a licensed contractor to install the charging station; and, within 14 days of approval, provide a certificate of insurance that names the landlord as an additional insured under the lessee's insurance policy in the amount of $1,000,000.

The lessee shall be responsible for the following: costs for damage to the property and the charging station resulting from the installation, maintenance, repair, removal, or replacement of the charging station; costs for the maintenance, repair, and replacement of the charging station; and, the cost of electricity associated with the charging station.

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11.05.08.00 Department's Contractor's Use of Property – Construction Staging

Section 5-1.32, "Areas for Use", of the Department's Standard Specifications allows the Department's contractor to occupy the highway only for purposes necessary to perform the work. The areas for use available to the Department's construction contractor must be within the project limits and must be within the environmentally approved project footprint.

It is preferable for the construction staging areas to be incorporated into the Construction Bid Package. This may be achieved by the Plans, Specifications, and Estimates (PS&E) package including designated temporary construction easements or the construction contract's standard specifications allowing the use of Airspace's Freeway Lease Areas (FLAs) within the project's limit.

In the instances in which the Department's construction contractor requires a construction staging area not included within the Construction Bid Package, Property Management properties may be used for construction staging if the following conditions are met:

- If federal funds were used to purchase the property, the property must be leased at fair market value (FMV).
- If the Department believes that it is in its best interest to lease at less than FMV, then the Department must obtain FHWA approval for the less than FMV rate through a Public Interest Finding (PIF). This situation would arise when the Department is required to compensate the construction contractor a certain percentage markup for costs incurred, e.g. force account due to a Director's Order project.
- If the construction contractor is paying less than FMV, rental terms shall only be for the length of time of the construction project (with allowances for short periods before and after the project for site-preparation and site clean-up).
- The rental terms and conditions must include environmental protections, e.g. placement of non-permeable barriers, placement of stormwater best management practices, etc.
- The construction contractor is responsible for obtaining all local permitting.
- The property must be returned to the original condition after the construction staging use is completed.

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11.06.00.00 - RESIDENTIAL RENTALS

11.06.01.00 General

The Agent should fully inform tenants of:

- The Department's rental rate policy.
- Their responsibility to maintain the property.
- Title VI policies.
- Any required disclosures (e.g. lead-based paint).

11.06.02.00 Annual Rental Rate Reviews

The Property Management Senior or designee shall annually review the rental rate on all residential accounts and those accounts where the rental rate is not set by agreement or lease and shall maintain an up-to-date sampling of fair market rental rates for similar properties in the vicinity of the state-owned properties.

A request for fair market rent determinations should be submitted to the Appraisal Branch, completing Exhibit 11-EX-45, Request for Rent Determination. Keep in mind the time frame should allow adequate time for Appraisals to complete the determinations and still allow for Property Management to issue a written 90-day notice of rental rate increase to the tenant.

When Appraisals are unable to furnish the fair market rent determinations for residential properties on a timely basis, Property Management may establish the rental rates. Exhibit 11-EX-46, Documentation of Residential Fair Market Rental Rate, or similar form of Region/District's choice will be completed and filed in such a manner and office location that it will be available to the District Property Management Senior and other personnel for possible reference. A copy will be kept in the rental file. The Region/District Property Management Senior or designee must approve Exhibit 11-EX-46, or similar form.

11.06.02.01 Rental Rate Increases

See R/W Manual Section 11.04.01.01.

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11.06.03.00 RAP Eligibility

The RAP Unit determines the eligibility of existing tenants for relocation assistance and payments and provides this information to the Property Management Senior. Property Management should coordinate with the RAP Unit when RAP-eligible tenants vacate state-owned property.

11.06.04.00 Appeals (RAP-Eligible Tenants Only)

RAP-eligible tenants have the right to appeal the Department's "Property Management Practices," including rental rate increases. All appeals must be in writing and must be filed within 15 days from the date of the notice of rental increase. Tenants shall have the right of personal appearance.

The District/Region shall inform RAP-eligible tenants of their right of appeal and sufficiently explain the appeal procedure so the tenants understand:

- Grounds for appeal.
- How to make the appeal in a timely manner.
- Appeal must be in writing.
- Their right to a personal appearance.

11.06.04.01 Grounds for Appeal and Approval Authority

RAP-eligible tenants may appeal rental rate increases when:

- They believe rental rates have been improperly established.
- They believe the Department's maintenance of the property is inadequate.
- They believe a rental rate increase will cause an extreme financial hardship.

A basic role of the Department in reviewing appeals is to determine that rental rates have been properly established and tenants have been thoroughly advised of the rental rate policy requiring fair market rent.

Extreme financial hardship appeals may be based on tenants' inability to pay increased rent because of unusual or excessive expenses. Other consumer or voluntary expenses of the appellant will not constitute grounds for reducing the new rental rate.

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11.06.04.02 Appeals Hearing

All appeals will be forwarded to the DDD-R/W, who may appoint a single Hearing Officer or form a District Appeals Board to hear appeals and make recommendations for the DDD to consider in making a decision.

If a District Appeals Board is appointed, it shall consist of at least three members who will meet to hear appeals in a timely manner. Board members must be thoroughly familiar with the Department's rental rate policy and rental management procedures.

Appeals will be heard within 20 days after the appeal has been received. Bilingual services will be provided if necessary. Any person may be allowed to assist the appellant in making a presentation. This rental appeal procedure is a departmental administrative policy, however, and is not a legal hearing subject to legal procedures or arguments.

Prior to considering any appeal, the DDD-R/W, Hearing Officer, or Board shall be briefed on reasons for the appellant's rent increase, including pertinent comparable rentals.

All data furnished by the appellant and District staff shall be carefully reviewed to determine if the rental rate has been properly established. The appellant may be asked to provide additional information and to confirm data presented in the appeal.

Upon completion of the appeal hearing, the Hearing Officer or Board shall recommend to the DDD-R/W that the appeal be wholly granted, granted in part, or denied. The recommendation shall be by the Hearing Officer or by a majority vote of Board members, shall be in writing, and shall contain the basis for the recommendation.

The DDD-R/W shall make the final decision. The DDD's decision will be conveyed to the appellant in writing within ten working days after the hearing. Notification of the decision will include the reasons supporting the decision.

Appeals will be processed promptly in accordance with the preceding time frames. The scheduled rental rate increase will be deferred until the tenant has received notification of the results of the appeal. If the appeal is denied, the tenant is responsible for the rental increase from the effective date of the initial notice.

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11.06.04.03 Extreme Financial Hardship

The intent of the financial hardship procedure is to provide tenant(s) a relief mechanism for a temporary period in recognition of extreme financial hardship circumstances resulting from a rental rate increase. It is not the Department's intent to assume continuing involvement in, or responsibility for, tenant financial affairs or to otherwise compromise the rental program on a long-term basis.

When the appeals process documents such an extreme financial hardship, the District's/Region's decision may provide for temporarily suspending the rental rate increase. This will enable the tenant to either resolve the hardship circumstance and thereafter continue in tenancy at the new rate, or to secure alternate housing and relocate from the Department's property. The recommended suspension should rarely exceed six months in duration. The policy should be thoroughly discussed with and understood by the tenant when the appeals process is initiated.

In considering appeals for exceptions, the DDD-R/W will consider all factors leading to the appeal to determine:

- If a true extreme financial hardship caused by the rental rate increase exists.
- If the extreme financial hardship is of a temporary or permanent nature.
- If relocation of the tenant to accommodations within their economic means is feasible.

The appellant shall be notified of the decision as outlined in the appeals procedure.

In all cases where an exception is granted, Accounting must be notified in time to make the new rental rate effective at the end of the exception period.

11.06.05.00 Inherited Tenants

An inherited tenant is one who was in occupancy at the time of the state's acquisition. Rent charged to inherited tenants whose rent at close of escrow is below fair market will be increased to fair market 90 days after close of escrow.

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11.06.06.00 Pet Policy

Department policy is to discourage the occupancy of pets in Department-owned property. In the event a Region or District allows tenants to have pets, the following procedures must be followed:

- A Pet Application(s) (Exhibit 11-EX-51) for each pet must be completed by the tenant(s) and approved by the Department. The pet application(s) with approvals will be kept in the rental file.
- A Pet Addendum(s) (Exhibit 11-EX-52) for each pet must be executed by the tenant(s) and the Department. The Pet Addendum becomes a rider for the rental agreement or lease and shall be attached to such and kept in the rental file.
- A pet deposit will be collected from the tenant(s). The amount of the deposit should be equal to the risk associated with the pet but in no circumstances less than $200. The deposit is refundable depending on the findings discovered during the move-out inspection.

The Agent and Property Management Senior must determine if the tenant(s) must obtain and carry liability insurance due to the presence of approved pet(s) on the properties. If insurance is required, the tenant(s) must provide proof of insurance covering said pet(s). This can be in the form of a renter's insurance policy or an individual pet liability insurance policy. The Agent must verify that there is coverage for said pet(s) on the specific policy. A call to the insurance agent may be necessary if the policy doesn't clearly state that said pet(s) are covered. If insurance for said pet(s) is required, the liability insurance coverage shall be at least $100,000.

It is the responsibility of the tenant(s) to adhere to all requirements of the Pet Addendum including, but not limited to, keeping the property (inside and outside) free from pet waste, not allowing the pet(s) to become a nuisance to neighbors, and preventing the pet(s) from damaging the Department-owned property. (Damage could be digging of holes in the yard, staining of carpet, chewing of fences, etc.)

If at any time during the tenancy, an agent discovers damage (in any form) caused by a pet(s), the damage will be repaired immediately at the sole expense of the tenant(s). If the pet deposit and/or security deposit is insufficient to cover the repair costs, the tenant(s) will be charged the difference. All payments must be made immediately or face immediate termination. If the pet deposit and/or security deposit is utilized during the term of the tenancy to remedy any situation, a new pet deposit and/or

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security deposit will be assessed to the tenant(s). If this situation occurs, a larger pet deposit may be warranted.

When completing a property inspection and pet(s) are present, the agent must include any pet information on the Residential Property Inspection sheet. A copy of the Residential Property Inspection sheet may be found on the Property Management website (internal Caltrans link).

All policies and procedures listed above apply to inherited and existing tenants with pet(s).

Note: RWPM guidelines for collecting and keeping track of a pet deposit are as follows:

- The pet deposit will become part of the security deposit.
- On the "Tenancy" Screen mark the "STD" indicator as "N". This will flag the deposit as being non-standard. In the "Remarks" section, add notes that the security deposit includes a pet deposit and the amount of the pet deposit.
- For existing tenants, an Adjustment Screen will need to be completed and sent to Accounting increasing the amount of the security deposit.
- For new or inherited tenants, the amount of the security deposit will be the sum of the security deposit and the pet deposit. The security deposit should not be reduced to accommodate the need for a pet deposit. These are two separate deposits, each with their own merit.

- Department policy in regard to refunding pet deposits is the same as with security deposits. (See Manual Section 11.07.15.02.) A pet deposit may be utilized only for damage caused by a pet, not delinquent rent or damage not caused by a pet.

Pursuant to Civil Code 54.1, the Department shall not deny the occupancy of guide dogs, signal dogs, and service dogs to tenants that are disabled and require the uses of such animals. Pursuant to Civil Code 54.2, an additional pet deposit may not be imposed on tenants that use such animals. Although an additional pet deposit may not be imposed on tenants, the tenants are still liable for any damage done to the premises by their animals.

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11.06.07.00 Electric Vehicle Charging Stations – Residential Tenancies

Pursuant to Section 1947.6 of the Civil Code, a landlord is required to approve a tenant's written request to install an electric vehicle charging station at the tenant's parking space for any residential rental agreements executed, extended, or renewed on and after July 1, 2015.

Section 1947.6 of the Civil Code does not apply to the following residential rental properties: electrical vehicle charging stations already exist for 10 percent or more of the designated parking spots; parking is not provided as part of the rental agreement; there are fewer than five parking spaces; the dwelling is subject to a rent control ordinance, except for residential rental agreements that are executed, extended, or renewed on and after January 1, 2019; and the dwelling is subject to both a residential rent control ordinance and an ordinance, adopted on or before January 1, 2018, that requires the landlord to approve a tenant's written request to install an electric vehicle charging station at a parking space allotted to the tenant.

The tenant must enter into a written agreement which includes, but is not limited to, the following: compliance with the landlord's requirements for installation, use, and maintenance of the charging station and infrastructure and removal of the charging station; an obligation of the tenant to pay for all costs associated with the charging station and its infrastructure; an obligation of the tenant to pay as part of rent for the costs of the electrical usage of the charging station. A landlord is not obligated to provide an additional parking space to a tenant in order to accommodate a charging station, and if the charging station has the effect of providing the tenant with a reserved parking space, the landlord may charge a monthly rental amount for that space.

Effective January 1, 2020, the tenant must obtain personal liability coverage in an amount not to exceed ten (10) times the annual rent charged, covering property damage and personal injury caused by the installation or operation of the charging station. No insurance is required if the charging station has been certified by a Nationally Recognized Testing Laboratory that is approved by the Occupational Safety and Health Administration of the United States Department of Labor and the charging station and any associated alterations to the properties electrical system are performed by a licensed electrician.

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11.07.00.00 - RENTAL PROCEDURES

11.07.01.00 General

The following sections specify procedures for renting vacated property that are in addition to those set forth in Manual Section 11.02.00.00, Closure Procedure.

11.07.02.00 Marketing Plan

Each District/Region should maintain a Marketing Plan that should be updated annually in July. The Plan should list by project the number and types of properties estimated to become available for rent/lease in the coming fiscal year. The Plan should also indicate the manner in which the properties will be marketed along with estimated costs.

11.07.03.00 Finder's Fees/Rental Incentives

Finder's fees and rental incentives may be used when necessary to reduce the vacancy rate. A finder's fee is a rent credit given to an existing tenant as compensation for referring a prospective tenant to the state. A rental incentive is a rent credit given to a new tenant as an enticement to rent our property. A rental incentive should be used only as a last resort and may be spread over several months when used in a month-to-month rental agreement.

The RWPM Adjustment Request Screen is used to notify Accounting of any rent credit.

11.07.04.00 Advertising

Whenever the District/Region uses newspaper advertisements, it shall comply with Public Contract Code Section 10115.13 relating to the use of certain advertising business enterprises. The Agent shall contact the Department's Office of Business and Economic Opportunity prior to advertising and request a list of any certified media firms for the area. The findings and subsequent actions shall be documented.

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- **Improved Properties** - The Agent should use newspaper advertisements for residences and other improved properties when necessary to attract tenants. Posting of improved properties with advertising signs may be desirable in some cases and is at the District's/Region's discretion. Posting is not desirable where, for example, it would invite vandalism.

- **Vacant Land** - Rentable vacant land shall be posted with advertising signs indicating the property is for rent. Exceptions are allowed only when posting would be unreasonable, uneconomical, invite dumping or vandalism, or conflict with local sign ordinances. In some cases, newspaper advertisements may be desirable for vacant land of high value.

11.07.05.00 Showing Property

Under no circumstances are prospective tenants to be given keys that enable them to inspect state property on their own. If several parcels are available and a prospective tenant is interested in seeing a number of them, the Agent should ask the person to view the properties and improvements from the exterior. Thereafter, the prospective tenant may set up an appointment with the Agent to inspect those of primary interest.

11.07.06.00 Use of the Property

The prospective lessee shall get prior approval for their proposed use of the property by the local jurisdiction's planning/zoning department for all properties except for improved residential properties. In many instances the state's property will not have a zoning designation, in which case the uses allowed by the local jurisdiction will be unknown to the Agent. It is the responsibility of the prospective lessee to get written approval from a representative in the local jurisdiction's planning/zoning department. If the state's property does have a zoning designation, it is the responsibility of the Agent and Property Management Senior to be aware of the zoning designation and to be aware of the permitted uses and conditionally permitted uses allowed per that zoning designation. If the proposed use requires an issuance of an administrative or conditional use permit, the prospective tenant/lessee shall obtain all necessary permits at their sole cost and expense. The tenant/lessee shall provide copies of all written approvals and any necessary permits to the Agent for the tenancy file.

If a property does not have a zoning designation and the local jurisdiction refuses to provide guidance on the uses allowed, then the Property Management Senior shall decide if the proposed use is compatible with the

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property. The Property Management Senior must take into account how the use will affect the adjoining neighbors and neighborhood in general. The Property Management Senior must ensure proper measures are implemented, and explicitly stated in the lease agreement, so not to infringe on the neighbors' right to quiet enjoyment of their properties and to avoid blight in the neighborhood. Items to consider include, but are not limited to, the following: adhering to local noise ordinances, limiting the hours of operations, establishing setbacks of certain uses along common fences, limiting the height of storage of materials, and requiring privacy screens on chain link fencing.

If the property is improved with a structure, the Agent must know what use classification the Certificate of Occupancy originally issued by the city or county building department allowed. If the use classification is changing, such as an Industrial use to a Commercial use, then a new Certificate of Occupancy shall be obtained. The tenant/lessee shall provide a copy of the Certificate of Occupancy to the Agent for the tenancy file prior to occupying the property.

Prior to the tenant/lessee occupying a property improved with a structure, with the exception of improved residential properties, the State Fire Marshal and the local fire department must perform an inspection of the property.

If a property once had underground storage tanks, such as a former maintenance station, the Agent must verify that the property has been cleared for use. The property should have had a site investigation and remediation actions taken for such clearance. It is recommended that the Agent utilize the State Water Resources Control Board's GeoTracker website to verify the status of the property. The Agent shall also consult with the Hazardous Waste Branch within the Division of Environmental Analysis for what types of uses would be allowed on the property based on the type of clearances for the property. Based on the remediation actions taken, a site may have only been cleared for a very specific use, and any other use may require the site to be re-evaluated with additional remediation actions required.

11.07.07.00 Environmental Status

If a Property Management site involves a change in the occupancy classification of a structure, an alteration to an existing structure, or construction of a new structure, then the prospective lessee must provide a NEPA/CEQA document, at their sole cost and expense, which must also include a "6010 Metal Study" report. The prospective lessee may also need to obtain final approval of their plan from the local agency. The Environmental

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Document and the "6010 Metal Study" report must meet applicable CEQA and NEPA requirement and must be reviewed and approved by the Division of Environmental Analysis for the proposed use. Testing must be done to the depth of excavation. If there are any environmental issues with the site, it is the responsibility of the prospective lessee to remediate the site, at their sole cost and expense, to acceptable use levels; all remediation plans must be approved by the Division of Environmental Analysis.

The Agent should consult the Division of Environmental Analysis regarding any specific questions.

11.07.08.00 Rental Application and Credit Report

Before making a commitment to rent, the Agent shall have the prospective tenant complete Form RW 11-5, Residential Rental Application, or RW 11-6, Nonresidential Rental Application, and verify the information. Government Agencies are excepted from rental application and credit report requirements.

- **Credit Reporting Agency Used** - A satisfactory credit report must be received. The applicant(s) shall pay the actual costs of the credit report(s).
- **Credit Reporting Agency Not Used** - The Property Manager or authorized representative must make a diligent effort to verify the information on the Rental Application before committing to rent to the applicant.

11.07.09.00 Guidelines for Selection of New Tenants

Property Management is responsible for renting to qualified applicants only. The Agent shall review all applications and select the most qualified applicant based on available data. The decision shall be based on ability to pay rent and ability and willingness to maintain the property and improvements.

As a guideline in determining the applicant's ability to pay rent, the applicant's gross household income should equal or exceed four times the rental rate. The District/Region may make exceptions to this guideline at its discretion, but it must document all exceptions and retain the documentation in the rental file. Examples of exceptions include good employment history, prior record of consistently paying rents, good credit report, etc. All these factors will determine an applicant's eligibility to rent from the Department.

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One test of ability to pay rent is that the applicant's gross household income should equal or exceed four times the rental rate. The District/Region may make exceptions to this procedure at its discretion, but it must document all exceptions and retain the documentation in the rental file. Examples of exceptions include good employment history and prior record of consistently paying rents.

Federal and state laws prohibit discrimination in housing accommodations against tenants because of race, sex, sexual orientation, gender, gender identity, gender expression, creed, color, religion, national or ethnic origin, ancestry, familial status, source of income, age, marital status, genetic information, military and veteran status, or disability.

For non-residential lessees, the Agent should carefully review the last two years of financial statements such as profit/loss statements, balance sheets, and tax returns. For a new business, the Agent should also examine bank statements to verify that the lessee can cover 6 months of costs. The Agent should speak with the lessee's prior landlord to verify that the lessee paid their rent on time.

The Agent may want to examine a business by evaluating their current ratio. The current ratio is calculated by dividing a business' current assets by their current liabilities. If this yields a number greater than 1, it is an indicator that the business is in a good position to meet their short-term obligations.

If the information is available, the Agent can evaluate a business' quick ratio. The quick ratio is calculated by subtracting inventories from a business' current assets and dividing that by their liabilities. The quick ratio is a better indicator of the ability of a business to meet their short-term obligations based on their liquidity.

11.07.10.00 Use of Cosigners

Cosigners should not be used to qualify an applicant with insufficient income or credit. In the case of a prospective residential tenant who is disabled, a cosigner must be considered in accordance with the Fair Housing Amendments Acts (42 U.S.C. § 3601 et seq.).

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11.07.11.00 Declined Applicants

If an applicant is denied housing, the applicant will receive the denial in writing and the reasons for denial stated.

If Property Management's decision to deny tenancy to an applicant is based wholly or in part on information contained in a credit report, California Civil Code Section 1785.20 requires the following:

1. Provide written notice of the adverse action to the applicant.
2. Provide the applicant with the name, address, and telephone number of the consumer credit reporting agency which furnished the report to Property Management.
3. Provide a statement that the Department's denial was based in whole or in part upon information contained in a consumer credit report.
4. Provide the applicant with a written notice of the following rights of the applicant:
   A. The right of the applicant to obtain within 60 days a free copy of the applicant's consumer credit report from the consumer credit reporting agency identified pursuant to paragraph (2) and from any other consumer credit reporting agency which complies and maintains files on consumers on a nationwide basis.
   B. The right of the applicant under Section 1785.16 to dispute the accuracy or completeness of any information in a consumer credit report furnished by the consumer credit reporting agency.

(See 11-EX-4, Written Notice of Denial.)

11.07.12.00 Executing the Rental Agreement

All occupants 18 years of age or older must sign the rental agreement. (An exception could be students still living at home or living at home during the summer.) Under no circumstances are new tenants to take occupancy prior to signing the rental agreement and paying all monies due, such as security deposits and prorated rents.

The DDD-R/W or authorized representative may execute all residential and nonresidential rental agreements on the state's behalf.

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11.07.13.00 Title VI Guidelines

The Agent will inform the state's tenants about the Department's policy and procedures under Title VI of the 1964 Civil Rights Act and will deliver a "Your Rights under Title VI & Related Laws" brochure at the time the rental agreement is signed.

11.07.14.00 Lead-Based Paint and/or Hazards

Section 4852d of Title 42 of the United States Code requires disclosure of information concerning lead upon transfer of residential property.

Section 4852d requires that the seller or lessor do the following:

a) Provide the purchaser or lessee with a lead hazard information pamphlet, as prescribed by the Administrator of the Environmental Protection Agency under Section 406 of the Toxic Substances Control Act [15 USC § 2686];

b) Disclose to the purchaser or lessee the presence of any known lead-based paint, or any known lead-based hazards, in such housing and provide to the purchaser or lessee any lead hazard evaluation report available to the seller or lessor; and

c) Permit the purchaser or lessee a 10-day period (unless the parties mutually agreed upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

The Department must also do the following:

- Include certain warning language in the rental agreement or lease.
- Provide all tenants the Environmental Protection Agency's lead hazard information booklet titled *Protect Your Family From Lead in Your Home*.
- Have a complete and fully executed Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazard form, Exhibit 11-EX-48, on file.
- Retain signed acknowledgements in the file, as proof of compliance. Department guidelines dictate that we will keep signed acknowledgements in the rental file for as long as we keep the file. It is good practice to attach the *Protect Your Family From Lead in Your Home*. booklet and Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazard form as exhibits to the Residential Rental Agreement.

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11.07.15.00 Flood Disclosure on Residential Properties

Pursuant to California Government Code Section 8589.45, for every lease or rental agreement for residential property entered into on or after July 1, 2018, the Department shall disclose to the Tenant if the rental property is located in a special flood hazard area or an area of potential flooding, if the Department has actual knowledge of that fact.

Actual knowledge of the property being located in a special flood hazard area or an area of potential flooding includes:

- The owner has received written notice from any public agency stating that the property is located in a special flood hazard area or an area of potential flooding.
- The property is located in an area in which the owner's mortgage holder requires the owner to carry flood insurance.
- The owner currently carries flood insurance.

Since the Department does not have any mortgages on state-owned properties and since the Department is self-insured and does not carry insurance policies on state-owned property, the only instance of the Department having actual knowledge of properties being located in a special flood hazard area or an area of potential flooding would be in the instance of the Department receiving written notice from a public agency.

For all residential agreements, including employee housing, entered into on or after July 1, 2018, the Department shall include the Flood Disclosure Addendum, 11-EX-66, as a part of the agreement.

11.07.16.00 Initial Rent Collection

When a new tenancy is created, one month's rent or the prorated amount due for the balance of the month shall be collected prior to the tenant's occupancy. Prorated amounts are based on a 30-day month. (See Exhibit 11-EX-5, Rent Proration Examples.)

11.07.17.00 Security Deposits

A security deposit shall be collected from new tenants, except for state's grantor, before tenancy commences. The security deposit is not a means of establishing a tenant's qualifications, but may be used to remedy any damages or defaults in rent payment.

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Generally, residential tenants shall make a security deposit as follows:

- **Improved Unfurnished Property** - not to exceed an amount equal to two months' rent.
- **Improved Furnished Property** - not to exceed an amount equal to three months' rent.

Effective January 1, 2020, residential tenants who are service members, as defined in Section 400 of the Military and Veterans Code, shall make a security deposit as follows:

- **Improved Unfurnished Property** – not to exceed an amount equal to one months' rent.
- **Improved Furnished Property** – not to exceed an amount equal to two months' rent.

The Department may receive a greater security deposit from service members, up to the amounts specified in Section 1950.5 (c)(1) of the Civil Code (the amounts specified for non-service members), if the following applies:

- The service member has a history of poor credit or of causing damage to the rental property or its furnishing.
- The property is rented to a group of individuals, one or more of whom is not the service member's spouse, parent, domestic partner, or dependent.

For non-residential tenancies, there are no restrictions on the amount of a security deposit. The amount collected should reflect what the market will bear and the risk of damage involved with the lessee's use of the premises.

11.07.17.01 Waivers/Reductions

In certain instances, the District may waive the requirement for collection of a security deposit or reduce the amount. Where the requirement is waived, the account file shall be fully documented. Acceptable conditions for a waiver or reduction are:

- In neighborhoods where improvements are in a state of decline and demand for rental units is relatively low, and where extensive efforts to rent have shown that the improvements are not sufficiently desirable to attract a renter who can make a security deposit.

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- From a tenant inherited from state's grantor where a security deposit had not formerly been established and where the tenant is acceptable in all respects.
- From governmental agencies.
- For unimproved properties.

11.07.17.02 Refund

For residential tenancies, the district shall furnish the tenant, by personal delivery or by first class mail, postage prepaid, a copy of an itemized statement indicating the basis for, and the amount of, any security deposit received and the disposition of the security deposit and shall return any remaining portion of the security deposit to the tenant(s) pursuant to California Civil Code, Section 1950.5. The District must deliver any refund and the itemized statement within twenty-one (21) calendar days of the vacancy date.

In order to meet the twenty-one (21) calendar days deadline, the Agent must submit the information to the Division of Accounting within five working days from the date of vacancy. It is the responsibility of the Agent to ensure the tenant(s) receives the itemized statement within twenty-one (21) calendar days, preferably prior to the tenant(s) receiving a refund from the State Controller.

For non-residential tenancies, the refunding of any security deposit is governed by California Civil Code 1950.7. Although an itemized statement regarding the disposition of the security deposit is not required per statute, the Agent should provide written notice to the lessee regarding the disposition of the security deposit as good business practice. The Department must return the security deposit within thirty (30) days from the date the Department receives possession of the premises.

An exception to the thirty (30) day time frame above is in the instance when the security deposit exceeds one month's rent plus a deposit amount clearly described as the payment of the last month's rent and the only deduction is for delinquent rent; in this case the Department must return, within two weeks after taking possession of the premises, the remaining amount of the security deposit, after deducting the delinquent rent, exceeding one month's rent. The remaining security deposit balance must be returned or accounted for within thirty (30) days of the Department taking possession of the premises.

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If the property is sold, the District/Region, at its discretion, may return the security deposit to the tenant, less any lawful deductions, or transfer the deposit to the new owner. If transferred to the new owner, the District/Region must notify the tenant in writing either by personal delivery or by certified mail. The tenant must be given an accounting of any deductions made and the new owner's name, address, and telephone number. If notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of such notice.

11.07.18.00 Utilities

Utilities generally include gas, water, sewer, telephone, electricity, and garbage service. Multiply these types of services by the number of utility companies involved and the number of properties a Region/District maintains, and it is apparent that initiating, monitoring, and terminating utility services can be a considerable undertaking. The Region/District, therefore, must adhere to the following guidelines, as well as develop additional procedures that address Region/District problems and meet their specific needs.

11.07.18.01 Responsibility for Utility Costs

Tenants shall be solely responsible for all utilities including deposits. On an exception basis, there may be instances when it would be appropriate for the state to pay for electricity and gas, such as in a multiple residential unit where there is only one meter for supplying electrical or gas service for the property. If, however, individual meters are available, tenants should pay for their own utilities.

In those localities where the suppliers of water and sewer require the bill to go directly to the property owner, the Regions/District shall have those bills sent directly to the Department. The Department shall monitor those utility costs and charge the tenant the appropriate amount. This will require a clause in the rental or lease agreement which states the tenant is responsible for the actual cost of those utilities and the Department will notify the tenant of such costs on a regular basis.

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Rental agreements must be specific about:

- Which utilities are assumed by the state and, therefore, are the state's responsibility.
- Which utilities are the tenant's responsibility and are to be paid directly to the utility company by the tenant.
- Which utilities are the tenant's responsibility but are collected from the tenant by the state and conveyed to the utility company.

It is imperative upon the Region/District to ensure adequate utility costs are being collected from the tenant. The Agent may contact utility companies, housing agencies, or other data sources for estimated utility expenses for a particular area. Utility companies usually have information on average costs for their area based on number of rooms, number of occupants, etc. All utility justifications must be documented in the rental file.

Utility charges will be reviewed at least annually, earlier if needed, and adjustments made in accordance with the Utility Clause in the rental or lease agreement.

11.07.18.02 Notifying Utility Companies at Date of Recordation

Region/District should take special care transferring utility charges when an acquired parcel is recorded in the state's name. Problems encountered will vary from one area to another. Specific requirements, therefore, are brief and set forth general guidelines that shall be used to attain a reasonable degree of uniformity among Regions/Districts.

Prior to acquisition or as soon thereafter as possible, the Agent shall observe the utility requirements of the property and note the types of service in the rental file. The determination about which utilities the state will pay shall be based on information the Agent gathers while inspecting the property. If the state is responsible for payment of utilities, the Region/District shall notify the appropriate companies in writing, specifying the date the deed was recorded in the state's name and the date the state will assume responsibility for the utility charges.

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11.07.18.03 Payment of Utility Bills by the State

Whenever utility service is initiated in the state's name or is transferred back into the state's name (e.g., when a tenant vacates rental property), the Agent shall request that the utility company send the initial bill directly to the Region/District Property Management office. The Agent shall review the bill for accuracy and shall submit the bill along with a completed Utility Account Action Request, Form FA-2134, to the Division of Accounting, Accounts Payable, Utility Service Payment Section including the source, charge, EA, special designation, and agency object (x002) codes. For residential rental property, the Agent shall also check to make sure the state is being charged a residential rate and not a commercial rate. Once Accounts Payable receives the bill, they will send the change of address to the utility company so future bills will be sent to Accounts Payable.

When properties are rented or sold the Agent must contact the utility service provider to close the account. The agent will complete the Utility Account Action Request, Form FA-2134, to terminate the account.

On a quarterly basis, Accounts Payable will send a Utility Report to the Regions/Districts for verification.

11.07.18.04 Utility Deposits by Tenant

If a tenant is to assume responsibility for utility service, the Agent shall advise the tenant that:

- The utility company may require a deposit.
- If any problems occur as a result of the deposit, the problems are solely between the tenant and the utility company, as the state will not become involved.

11.07.19.00 Possessory Interest Tax

A tenant's interest is subject to possessory interest tax (PIT) imposed by the county. S&H Code Section 104.13 requires the Department to pay the PIT on behalf of its tenants directly to the city or county where the property is situated. Tenants should be instructed to send any PIT bill they receive to the Region/District office for handling. The exception to these actions is employee housing; tenants of employee housing are responsible for the payment of the PIT for their use of renting state owned facilities.

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When the Region/District receives any PIT bills, either from the tenant or directly from a county, they are instructed to send the PIT bill back to the county with a letter to explain S&H Code requirements concerning PIT. A sample letter may be found at Exhibit 11-EX-9, Sample Possessory Interest Tax Letter. The letter must include reference to S&H Code Sections 104.6, 104.10, and 104.13.
S&H Code Sections 104.6 and 104.10 require the Department to pay 24% of the rents collected to the county in which the property is situated and set forth when the payment must be made. S&H Code Section 104.13, subdivision (c), states that all funds distributed to a county pursuant to Section 104.10 shall be deemed to be in full or partial payment on the total possessory interest taxes due on the Department's property in the county held for future state highway needs but no longer needed for that purpose. If any amount transferred to a county pursuant to Section 104.10 in any year is less than the total possessory interest due on all the Department's property located in that county, the Department must promptly forward to the county the amount of the balance due.

See Manual Section 11.01.06.00 for further information on the 24% payment to the counties.

11.07.20.00 Residential Property Occupancy and Vacancy Inspections

When a new tenant moves into a residential property, or when a newly acquired property has an inherited tenant, the tenant shall accompany the Agent on an inspection of the property. Page 1 of the Residential Property Occupancy and Vacancy Inspections sheet shall be completed. All fields shall be completed noting the condition of the property. Any items that are deemed unsatisfactory shall have a comment as to why the item is unsatisfactory. The form is to be signed by the tenant and the Agent and a copy shall be given to the tenant. The Agent shall photograph the condition of the property including any deficiencies. For deficiencies that make the property unfit for human occupancy, the Agent shall arrange for the remediation of such deficiencies. The Agent shall submit a task order to the contracted vendor and follow up to ensure the repairs are completed. The Agent shall complete a re-inspection after repairs are completed utilizing the Residential Property Inspection sheet. Photographs of the condition of the property after repairs are completed shall be attached to the Residential Property Inspection form. The Agent shall notate the diary to document the initial inspection, the deficiencies found, the actions taken to remediate the deficiencies, and the re-inspection after the repairs have been completed.

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Page 2 of the Residential Property Occupancy and Vacancy Inspections sheet shall be completed when the tenant moves out. If possible, the tenant should accompany the Agent during the inspection and sign the move-out form, which is the basis for deposit refunds or withholdings. The Agent shall photograph the condition of the property, paying special attention to any damages caused by the tenant requiring a deduction of the security deposit. After the inspection, the Agent shall submit a task order to the contracted vendor to repair any damages caused by the tenant. The Agent shall notate the diary to document the move-out inspection and any actions taken to repair the property after the tenant has vacated.

The Agent shall reconcile the Tenancy Account by completing 11-EX-65, Vacancy Report. The Agent shall determine if there are any damages, account under-billings, and account over-billings. The agent shall submit Adjustment Screens in RWPM to reconcile the account. After the reconciliation has been completed, the Agent can then determine the disposition of the security deposit and determine if the tenant is entitled to any refunds or owes a balance to the Department.

A copy of the Residential Property Occupancy and Vacancy Inspections sheet may be found on the Property Management website (internal Caltrans link).

11.07.20.01 Non-Residential Property Occupancy and Vacancy Inspections

When a new lessee moves into a non-residential property, or when a newly acquired property has an inherited non-residential lessee, the lessee shall accompany the Agent on an inspection of the property. Page 1 of Exhibit 11-EX-58, Property Occupancy and Vacancy Inspections, shall be completed. All fields shall be completed noting the condition of the property. Any items that are deemed unsatisfactory shall have a comment as to why the item is unsatisfactory. The form is to be signed by the lessee and the Agent and a copy shall be given to the lessee. The Agent shall photograph the condition of the property including any deficiencies. The Department will only remediate certain deficiencies the Department is responsible for per the lease agreement. The Agent shall submit a task order to the contracted vendor and follow up to ensure the repairs are completed. The Agent shall complete a re-inspection after repairs are completed utilizing the Non-Residential Property Inspection form, Exhibit 11-EX-55 (for internal Caltrans use). Photographs of the condition of the property after repairs are completed shall be attached to the Non-Residential Property Inspection form. The Agent shall notate the diary to document the initial inspection, the deficiencies found,

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the actions taken to remediate the deficiencies, and the re-inspection after the repairs have been completed.

The Agent shall reconcile the Tenancy Account by completing 11-EX-65, Vacancy Report. The Agent shall determine if there are any damages, account under-billings, and account over-billings. The agent shall submit Adjustment Screens in RWPM to reconcile the account. After the reconciliation has been completed, the Agent can then determine the disposition of the security deposit and determine if the lessee is entitled to any refunds or owes a balance to the Department.

11.07.21.00 Uses of Rental Agreement

The Residential Rental Agreement is to be used for month-to-month tenancies only for the following types of rentals:

- Single-family residential property.
- Multiple-family residential property.

11.07.22.00 Courtesy Notice of Termination

The Department's policy is to provide all inherited occupants who are eligible and not eligible for relocation benefits a 90-Day Information Notice. This courtesy notice is not a notice to vacate and is served by the RAP Agent. This notice is served to inherited occupants who are required to vacate due to proposed construction or other state use. This requirement does not alter the state's authority to terminate on a 30-day or 60-day notice as provided in the standard rental agreement when such notice is absolutely necessary. For more information regarding the 90-Day Information Notice, please refer to Manual Section 10.03.10.03.
If the notice of termination is for a tenant that resides in a multi-family dwelling unit, additional provisions regarding the notice of termination may apply (such as providing just cause, providing the tenant a relocation payment, and providing the tenant an opportunity to cure a curable breach prior to issuing a notice to terminate). Please refer to Manual Section 11.07.24.00 for additional information,

11.07.23.00 Rental Refunds

The Region/District shall return any unearned rents to tenants who give proper notice and vacate the property in good condition. The rents owed for a partial month shall be prorated on a 30-day month basis in accordance with Exhibit 11-EX-5, Rent Proration Examples. Prorated rent cannot exceed the

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monthly rent. Tenant is responsible for rent covering the period of time up to, and including, the date of vacation. If property is vacated on the last day of the month, tenant is responsible for the entire month, and rent is not prorated regardless of the number of days in the month. Any remaining security deposit, after any lawful deductions, must be returned within 21 calendar days for any residential tenancies.

- **Tenant Has Paid Rent in Advance and Vacates the Premises on Their Own Volition Before the Rental Term Expires** - The District/Region will make a refund for the difference between the amount paid in advance and the amount owed for the partial month, provided there is no delinquent rent, and the tenant has provided proper notice and is leaving the premises in good condition.
- **Tenant Has Paid Rent in Advance and Vacates the Premises at the State's Request Before the Rental Term Expires** - A refund will be made for the difference between the amount paid in advance and the amount owed for the partial month.
- **Tenant Has Not Paid Rent in Advance and Vacates the Premises Before the Rental Term Expires** - The tenant will be responsible for the period of time up to, and including, the date that vacation of the premises was discovered or enforced. Every effort must be made to collect the amount due. If the amount due is not collected, the amount due will be deducted from the tenant's security deposit.

All requests to Accounting or adjustments to the account will be made utilizing the RWPM Adjustment Request Screen.

The Region/District may waive the requirement that a tenant provide a termination notice when vacating property under a rental agreement.

11.07.23.01 Leases

Refunds will be made of rent collected for the period subsequent to the termination date of the lease. The termination date is determined pursuant to the notification of termination by the state or lessee as required by the lease.

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11.07.24.00 Notices

The Department may use the following notices:

- 3-Day Notice to Pay Rent or Quit, Form RW 11-11
- 3-Day Notice to Correct Breach of Covenant or Quit (Curable Breach), Form RW 11-12
- 3-Day Notice to Quit for Breach of Covenant (Incurable Breach), Form RW 11-13
- 60-Day Notice to Terminate Tenancy, Form RW 11-10
- Notice to Terminate Non-Residential Tenancy, Form RW 11-33
- 3-Day Notice to Correct Breach of Covenant (Curable Breach for residential properties subject to just cause termination requirements), Exhibit 11-EX-68
- 60-Day Notice to Terminate Residential Tenancy - Just Cause, Exhibit 11-EX-69

Effective September 1, 2019, Saturdays, Sundays, and judicial holidays must be excluded when calculating the notice period for any 3-Day Notices.

Form RW 11-10, 60-Day Notice to Terminate Tenancy, should only be used to terminate Residential Tenancies. Exhibit 11-EX-69, 60-Day Notice to Terminate Tenancy - Just Cause, shall only be used when terminating Residential Tenancies that are subject to the just cause termination requirements set forth in Section 1946.2 of the California Civil Code; the just cause must be stated in the notice to be valid. California Civil Code Section 1946.1(b) requires owners of **residential dwellings** giving notice to give notice at least 60 days prior to the proposed date of termination. Although California Civil Code Sections 1946.1(c) and 1946.1 (d) allows for termination based upon on a 30-day notice, it is the Department's policy to provide 60-days' notice for all Residential Tenancies.

Special attention must be made for residential tenants whose rents are subsidized by any federal, state, or local governments; these tenancies require a 90-Day Notice to Terminate and require just cause for termination of the tenancy. The Region/District must consult with Legal if there is a need to serve a Notice to Terminate Tenancy on a tenant participating in a government subsidized housing program to ensure all essential requirements of the notice are met.

Section 1946.1(c) allows an owner of a residential dwelling to give notice at least 30 days prior to the proposed date of termination if the tenant has resided in the dwelling for less than one year.

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Section 1946.1(d) allows for the owner of a residential dwelling to give notice at least 30 days prior to the proposed date of termination if all of the following are true:

1. The dwelling or unit is alienable separate from the title to any other dwelling unit.
2. The owner has contracted to sell the dwelling or unit to a bona fide purchaser for value, and has established an escrow with a title insurer or an underwritten title company, as defined in Sections 12340.4 and 12340.5 of the Insurance Code, respectively, a licensed escrow agent, as defined in Sections 17004 and 17200 of the Financial Code, or a licensed real estate broker, as defined in Section 10131 of the Business and Professions Code.
3. The purchaser is a natural person or persons.
4. The notice is given no more than 120 days after the escrow has been established.
5. Notice was not previously given to the tenant pursuant to this section.
6. The purchaser in good faith intends to reside in the property for at last one full year after the termination of the tenancy.

Effective January 1, 2020, pursuant to Section 1946.2 of the Civil Code the Department shall not terminate the tenancy of any residential tenant, who resides in real property that is not alienable separate from the title to any other dwelling unit (i.e. multi-family dwelling units) and has not been issued a certificate of occupancy within the previous 15 years, without just cause pursuant to Section 1946.2 (b) of the Civil Code if the following applies:

- The tenant has continuously and lawfully occupied a residential real property for 12 months.
- If any adult tenants are added to the agreement before an existing tenant has continuously and lawfully occupied the residential real property for 24 months and either of the following apply:
    - All of the tenants have continuously and lawfully occupied the residential real property for 12 months or more.
    - One or more tenants have continuously and lawfully occupied the residential real property for 24 months or more.

Any notice of termination for a no-fault just cause, as defined per Section 1946.2 (b)(2) of the Civil Code, entitles tenants residing in real property that is not alienable separate from the title to any other dwelling unit and has not been issued a certificate of occupancy within the previous 15 years, who are entitled to receive a just cause for the termination of their tenancy, to be provided a relocation payment of either a direct payment of one month's rent or having their payment of the final month of tenancy waived, in writing, prior to the rent becoming due. The Department shall waive the rent of for

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the final month of the tenancy, the notice of termination shall state the amount of rent waived and that no rent is due for the final month of tenancy. The Agent must create an Adjustment Screen, which must be approved by the Property Management Senior, in RWPM to have Accounting reverse the final month of billing in RWPM. Any relocation assistance shall be provided within 15 calendar days of service of the notice of termination. The Agent shall use Exhibit 11-EX-69 when providing a notice of termination. Section 1946.2 of the Civil Code remains in effect until January 1, 2030 and is repealed as of that date.

Please note that the intent to demolish is considered a form of no-fault just cause per Section 1946.2 of the Civil Code. When a construction project is scheduled to commence, the Department may need to provide relocation payments to tenants if those tenants qualify for such relocation payments under Section 1946.2 of the Civil Code.

Additionally, effective January 1, 2020, pursuant to Section 1946.2 (c) of the Civil Code, before the Department issues a notice to terminate a tenancy for just cause, pertaining to a curable lease violation, to tenants who reside in real property that is not alienable separate from the title to any other dwelling unit and has not been issued a certificate of occupancy within the previous 15 years, that is entitled to receive a notice of termination for just cause, must provide the tenant with an opportunity to cure the violation pursuant to paragraph (3) of Section 1161 of the Code of Civil Procedure. If the violation is not cured within the time period set forth in the notice, a 3-Day Notice to Quit for Breach of Covenant may thereafter be served to terminate the tenancy. The Agent shall use Exhibit 11-EX-68 to provide the initial notice prior for a curable violation prior to serving a notice of termination or a 3-Day Notice to Quit for Breach of Covenant. Section 1946.2 of the Civil Code remains in effect until January 1, 2030, and is repealed as of that date.

For residential real properties that are subject to receiving a just cause notice to termination, provide a relocation payment for a no-fault just cause, and provide an opportunity to cure a curable lease violation prior to issuing a notice to terminate, the Department must provide the following notice to the tenant:

- "California law limits the amount your rent can be increased. See Section 1947.12 of the Civil Code for more information. California law also provides that after all of the tenants have continuously and lawfully occupied the property for 12 months or more at least one of the tenants has continuously and lawfully occupied the property for 24 months or more, a landlord must provide a statement of cause in any notice to

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terminate a tenancy. See Section 1946.2 of the Civil Code for more information."

- The notice above must be in no less than 12-point type.
- For any tenancy that commenced or renewed on or after July 1, 2020, the notice shall be an addendum to the rental agreement, or as a written notice signed by the tenant, with a copy provided to the tenant.
- For any tenancy existing prior to July 1, 2020, the written notice shall be provided to the tenant no later than August 1, 2020, or as an addendum to the rental agreement.

The requirements to provide just cause in the notice of termination, provide a relocation payment, and provide an opportunity to cure a curable lease violation prior to issuing a notice to terminate is not applicable if the property is a residential property that is alienable separate from the title to any other dwelling unit (i.e. single family residences, townhomes, and condominiums) and the tenant has been provided the following notice in writing or in their rental agreement:

- "This property is not subject to rent limits imposed by Section 1947.12 of the Civil Code and is not subject to the just cause requirements of Section 1946.2 of the Civil Code. This property meets the requirements of Sections 1947.12 (d)(5) and 1946.2 (e)(8) of the Civil Code and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation."

The provisions of Section 1946.2 of the Civil Code requiring just cause in the notice of termination, requiring a relocation payment, and providing an opportunity to cure a curable lease violation prior to issuing a notice to terminate is not applicable if residential real property is subject to a local ordinance requiring just cause for termination if any of the following applies:

- The local ordinance was adopted on or before September 1, 2019.
- The local ordinance was adopted or amended after September 1, 2019 and is more protective than Section 1946.2 of the Civil Code. A local ordinance is considered "more protective" if all of the following applies:
    - The just cause for termination of a residential tenancy under the local ordinance is consistent with Section 1946.2 of the Civil Code.
    - The ordinance further limits the reasons for termination of a residential tenancy, provides for higher relocation amounts, or provides additional tenant protections that are prohibited by any other provision of law.

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- The local government has made a binding finding with their local ordinance that the ordinance is more protective than the provisions of Section 1946.2 of the Civil Code.

The provisions of Section 1946.2 of the Civil Code requiring just cause in the notice of termination, requiring a relocation payment, and providing an opportunity to cure a curable lease violation prior to issuing a notice to terminate is not applicable if residential real property has been issued a certificate of occupancy within the previous 15 years.

Please refer to Section 1926.2(e) for an inclusive list of all the residential real properties or residential circumstances that are excluded from requiring just cause in the notice of termination, requiring a relocation payment, and providing an opportunity to cure a curable lease violation prior to issuing a notice to terminate.

Most Non-Residential Tenancies will receive a 30-day notice prior to termination. Yet, special attention must be made to the notice period specified in the actual termination clause in the lease. The termination clause will dictate the notice period required for Non-Residential Tenancies.

11.07.25.00 Cancellation - Failure to Pay Rent

RW 11-11, 3-Day Notice to Pay Rent or Quit, shall be used to cancel a rental agreement or lease where the tenant is delinquent in rental payments. Notice shall be served upon the tenant as specified in Manual Section 11.08.04.00.

If the tenant is eligible for relocation benefits, Property Management must notify the RAP Unit of the delinquency.

During the three-day period after service of the 3-day notice, the state must accept full payment of rent due when offered by the tenant/lessee. Acceptance of full rent due nullifies the 3-day notice. After the end of the three-day period, the state may refuse payment and continue with the eviction process. If payment is accepted after the three-day period, however, the notice is nullified. Entering the date of service of 3-day notice in the 3-Day Notice field of the RWPM Delinquent Tenancy Screen will electronically notify Accounting not to accept rent payments after the three-day period.

When a 3-Day Notice to Pay Rent or Quit is served, the Property Manager must pay special attention to the amount of rent payment the tenant is

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attempting to make during the notice period. For Residential Tenancies, an acceptance of a partial payment of rent invalidates the 3-Day Notice to Pay Rent or Quit because of the difference in the amount of rent demanded on the notice and the amount of rent actually owed. If partial rent is accepted from a Residential Tenant, a new 3-Day Notice to Pay Rent or Quit must be served with the new amount due. The Property Manager should provide Accounting the amount due per the 3-Day Notice to Pay Rent or Quit in order to avoid the situation of accepting partial rent.

For Non-Residential Tenancies, per California Code of Civil Procedure Section 1161.1(b), an acceptance of partial rent after the service of the 3-Day Notice to Pay Rent or Quit does not invalidate the 3-Day Notice to Pay Rent or Quit. The Department may proceed with the unlawful detainer action if partial rent is accepted only if this is specified on the 3 Day Notice to Pay Rent or Quit. Consult with Legal regarding correct wording of the 3-day notice for this circumstance.

The amount owed specified on the 3-Day Notice to Pay Rent or Quit must only account for past due rent. The notice must not include other monies the tenant owes, like late fees, utilities, or damages. The amount owed on the notice cannot be for any rent past one (1) year due.

11.07.26.00 Cancellation - Notice to Vacate for Reasons Other Than Failure to Pay Rent

Where a residential tenant is not delinquent in their rent and the state wishes to terminate a rental agreement that contains a termination clause, a 60-Day Notice to Terminate Tenancy shall be used. If the tenant is participating in a government subsidized housing program, the Agent shall submit a 90-Day Notice to Terminate Tenancy which must include just cause; please see Manual Section 11.07.21.00 for further information.

When a non-residential lessee is not delinquent in their rent and the state wishes to terminate a lease agreement that contains a termination clause, a Notice to Terminate Non-Residential Tenancy, shall be used. This notice may be modified to provide for various lease termination requirements such as varying time frames.

The notice shall be served in the manner described in Manual Section 11.08.04.00. Refund policy is described above.

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11.07.27.00 Cancellation - Breach of Covenant

When it is necessary to cancel a lease or rental agreement where the tenant has breached a covenant of the agreement with the state, RW 11-12, 3-Day Notice to Correct Breach of Covenant or Quit (Curable Breach), or RW 11-13, 3-Day Notice to Quit for Breach of Covenant (Incurable Breach), may be used.

Notice shall be served upon the tenant as specified in Manual Section 11.08.04.00.

If the tenant is eligible for relocation benefits, Property Management must notify the RAP Unit of the breach.

Curable breaches include anything that can be cured or corrected by payment of money (e.g., deposits, insurance, and bonds) and may also include, for example, unapproved pets, excessive garbage or debris, and unauthorized use. When the 3-Day Notice to Correct Breach of Covenant or Quit is served, the tenant/lessee must cure the breach or vacate the property within the notice period. If the tenant/lessee fails to comply with the notice, the Department will proceed with an unlawful detainer action.

Incurable breaches cannot be cured once committed and include, for example, nuisance, committing waste, seriously damaging the property, using the property for an illegal purpose, and subleasing or assigning without prior state approval. When the 3-Day Notice to Quit for Breach of Covenant is served, the tenant/lessee must vacate the property within the notice period. If the tenant/lessee fails to comply with the notice, the Department will proceed with an unlawful detainer action.

11.07.28.00 Departmental Use of State-Owned Property

Properties managed by Property Management may be used temporarily by other District/Region functions if such use is within local government requirements. Although no rent will be charged, the user will be responsible for all maintenance costs, remodeling costs, and any costs necessary to return the property to its original condition. There should be a memorandum of understanding between R/W and the other functional Division outlining the terms and conditions of use.

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11.07.29.00 Termination Requirements

California Civil Code Section 1950.5 requires the following process for residential tenancy, which began after January 1, 2003:

- Within a reasonable time after either party gave notice of termination, the landlord shall notify the tenant **in writing** of the tenant's option to request an initial inspection and to be present at that inspection. (, When the Department provides notice, the 60-Day Notice to Terminate Tenancy has language satisfying the written notification requirement. When the tenant provides notice, Exhibit 11-EX-6B, Notice of Right to Inspection, shall be sent to the tenant in order to provide the required written notification. If a tenant is served any type of 3-Day Notice, the Department does not need to provide the tenant an option of an initial inspection.)

- At a reasonable time, but no earlier than two weeks before the termination or the end of the rental agreement, the landlord shall, upon the request of the tenant, make an initial inspection of the premises prior to any final inspection the landlord makes after the tenant has vacated the premises. (Exhibit 11-EX-6D, Initial Vacancy Inspection and Statement of Proposed Security Deductions) (for internal Caltrans use). This will allow the tenant an opportunity to remedy identified deficiencies in order to avoid deductions from the security deposit. The tenant's request does not have to be in writing; thus, it is mandatory to make a diary entry in reference to the tenant's desires.

- If the tenant requests an inspection, the parties shall attempt to schedule the inspection at a mutually acceptable date and time. The landlord shall give at least 48 hours' prior **written** notice of the date and time of the inspection. (Exhibit 11-EX-6C, Waiver of 48-Hour Notice of Initial Inspection.) This applies even if both parties have agreed to an acceptable date and time. The 48-hour prior written notice can be waived if both parties sign a written waiver.

- The landlord shall proceed with the inspection whether the tenant is present or not, unless the tenant previously withdrew his or her request for the inspection.

- Based on the findings of the inspection, the landlord shall give the tenant an itemized statement specifying repairs or cleaning that are proposed to be the basis of any deductions from the security deposit. (Exhibit 11-EX-6D, Initial Vacancy Inspection and Statement of Proposed Security Deductions) (for internal Caltrans use). This statement shall be given to the

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tenant, if the tenant is present for the inspection, or shall be left inside the premises if the tenant is not present for the inspection. (This statement is not to be confused with nor does it replace the requirement to furnish the tenant within three weeks an itemized statement indicating the basis for, and the amount of, any security deposit withheld.)

- The landlord may use the security deposit to remedy any situation that occurs after the initial inspection or was not identified during the initial inspection due to the presence of the tenant's possessions.

- If a tenant chooses not to request an initial inspection, the duties of the landlord are discharged. It is mandatory to make a diary entry indicating the tenant has not opted for an inspection.

The requirements above only pertain to residential tenancies. Security deposits for non-residential tenancies are governed by California Civil Code 1950.7, and there is no right of an initial inspection for non-residential tenancies.

11.07.30.00 Abandonment of Premises

Pursuant to California Civil Code 1951.2, if a tenant/lessee breaches the agreement and abandons the premises before the end of the term, the agreement is terminated. If the tenant/lessee has failed to pay rent and appears to have vacated the premises, there may be an alternative for regaining possession of the premises without going through the unlawful detainer process. The mere act of the appearance of the tenant/lessee vacating the premises and failing to pay rent does not automatically terminate the tenant's/lessee's right of possession of the premises. The Property Manager shall take action to confirm the tenant's/lessee's intention of abandoning the premises prior to terminating any rights that the tenant/lessee has to possess the premises. In order to confirm the tenant's/lessee intention of abandonment, the Property Manager shall serve a Notice of Belief of Abandonment.

For Residential Tenancies, the Notice of Belief of Abandonment requirements are contained in California Civil Code 1951.3. If the rent on the premises has been due and unpaid for fourteen (14) consecutive days and the Property Manager has reasonable belief that the tenant has abandoned the premises, the Property Manager should serve the tenant Exhibit 11-EX-60, Notice of Belief of Abandonment – Residential. Pursuant to Civil Code 1954, the Property Manager may enter the premises if the tenant has abandoned or surrendered the premises. Prior to serving the Notice of Belief of

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Abandonment, the Property Manager should enter the premises to confirm the suspicion that the tenant has abandoned the premises. Signs of abandonment may include spoiled food in the refrigerator, utility services being shut-off, and a significant amount of personal property being removed from the premises. The date of the termination of the agreement shall be specified in the Notice of Belief of Abandonment and depends on how the notice is served. If the notice is served personally, the date of termination shall not be less than fifteen (15) days after the notice is served. If the notice is mailed, the date of termination shall not be less than eighteen (18) days after the notice is deposited in the mail.

For Non-Residential Tenancies, the Notice of Belief of Abandonment requirements are contained in California Civil Code 1951.35. If the rent on the premises has been due and unpaid for at least the number of days required to declare a rent default, but in no case less than three days, and the Property Manager has reasonable belief that the lessee has abandoned the premises, the Property Manager should serve the lessee Exhibit 11-EX-61, Notice of Belief of Abandonment – Non-Residential. Per the Non-Residential Lease Agreement, the Department reserves its right, without notice, to enter the premises in case of an emergency; if the lessee is unresponsive, has not paid rent, and is not at the premises during normal business hours, this can be considered an emergency. Prior to serving the Notice of Belief of Abandonment, the Property Manager should enter the premises to confirm the suspicion that the lessee has vacated the premises. Signs of abandonment may include an accumulation of mail or periodicals, utility services being shut-off, out of business signs posted on the premises, trade fixtures being removed, and a significant amount of personal property being removed from the premises. The date of termination of the agreement shall be specified in the Notice of Belief of Abandonment and shall not be less than fifteen (15) days after the notice is served. The notice may be served personally, sent to the lessee by an overnight courier services, or deposited in the mail. Unlike the Notice of Belief of Abandonment for Residential Tenancies, the method of service does not affect the date of termination.

For both Residential and Non-Residential Tenancies, the premises shall not be deemed to be abandoned if, prior to the termination date specified on the notice, the tenant/lessee provides written notice stating that the tenant/lessee does not intend to abandon the real property and shall provide an address at which the tenant/lessee may be served by certified mail in an action for unlawful detainer of the real property. Also, the premises shall not be deemed abandoned if the tenant/lessee paid all or a portion of rent due prior to the termination date specified on the notice.
When the Property Manager serves the Notice of Abandonment to the tenant/lessee, the Property Manager should also serve Form RW 11-11. 3-Day

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Notice to Pay or Quit, concurrently. Both notices terminate the agreement upon their expiration date. So, in the instance that a tenant/lessee provides written notice of an intent to occupy the premises, yet has not submitted payment of rent, the Property Manager may quickly pursue the unlawful detainer action based upon the expiration of the 3-Day Notice to Pay or Quit. Keep in mind that if both notices are served concurrently, the Property Manager shall have a separate Exhibit 11-EX-7A, Proof of Service Notice, for each notice served. If both notices are construed to be combined, it may be confused as a single notice and may invalidate any unlawful detainer action based on the expiration of the 3-Day Notice to Pay or Quit. If the Agent has any questions regarding the manner of service, Region/District Legal should be consulted.

11.07.30.01 Abandonment of Personal Property

Whether the tenant/lessee abandons or vacates the premises, there is the likelihood that personal property will be left on the premises. The Property Manager shall take the proper steps of providing notice to the owner of the abandoned personal property, storing the personal property during the notice period, and disposing of the personal property if it is not reclaimed.

For Residential Tenancies, after the District/Region regains possession of the premises and personal property remains, the Property Manager shall, pursuant to California Civil Code 1983, provide written notice to the former tenant and any other person that the Property Manager reasonably believes to be the owner of such property. The notice requirements for the former tenant are contained in California Civil Code 1984, and the Property Manager should serve Exhibit 11-EX-40, Statutory Notice to Former Tenant of Right to Reclaim Abandoned Property – Residential. The notice requirements for persons other than the former tenant are contained in California Civil Code 1985, and the Property Manager should serve Exhibit 11-EX-41, Statutory Notice to Person Other Than Former Tenant of Right to Reclaim Abandoned Property – Residential. Prior to sending such written notices, the Property Manager shall determine the value of the remaining personal property. If the value of the personal property is worth $700.00 or more, the Property Manager shall sell the personal property via public sale. If the value of the property is worth less than $700.00, the Property Manager may dispose of the personal property in any manner. The Statutory Notice to Former Tenant of Right to Reclaim Abandoned Property shall contain a statement regarding how the personal property will be disposed of based upon the value in accordance with California Civil Code 1988. Prior to disposing the property, the Property Manager shall store the personal property for not less than fifteen (15) days if the notice was personally delivered or not less than eighteen (18) days if the

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notice was deposited in the mail. The reasonable cost of storage may be charged before the personal property is returned, unless the personal property remained in the dwelling and is reclaimed within two days of vacating the dwelling; in which case there shall be no charge for storage. When the Property Manager stores the personal property on the premises, the reasonable cost of storage would be the daily rental rate of the premises.

For Non-Residential Tenancies, after the District/Region regains possession of the premises and personal property remains, the Property Manager shall, pursuant to California Civil Code 1993.03, provide written notice to the former lessee and any other person that the Property Manager reasonably believes to be the owner of such property. The notice requirements for the former lessee are contained in California Civil Code 1993.04, the Property Manager should serve Exhibit 11-EX-62, Statutory Notice to Former Tenant of Right to Reclaim Abandoned Property – Non-Residential. The notice requirements for persons other than the former tenant are contained in California Civil Code 1993.05; the Property Manager should serve Exhibit 11-EX-63, Statutory Notice to Person Other Than Former Tenant of Right to Reclaim Abandoned Property – Non-Residential. Prior to sending such written notices, the Property Manager shall determine the value of the remaining personal property. If the value of the personal property is worth less than either $2,500.00 or an amount equal to one month's rent for the premises, whichever amount is greater, the Property Manager may dispose of the personal property in any manner. For instance, if the monthly rent is $5,000.00 and the value of the personal property is reasonably believed to be worth $4,000.00, then the Property Manager may dispose of the personal property in any manner. If the value of the personal property is worth at least $2,500.00 or one month's rent for the premises, whichever is greater, then the Property Manager shall sell the personal property via a public sale. For instance, if the monthly rent is $1,000.00 and the personal property is reasonably believed to be worth $3,000.00, then the Property Manager shall dispose of the personal property via a public sale. The Statutory Notice to Former Tenant of Right to Reclaim Abandoned Property shall contain a statement regarding how the personal property will be disposed of based upon the value in accordance with California Civil Code 1993.07. Prior to disposing the property, the Property Manager shall store the personal property for not less than fifteen (15) days if the notice was personally delivered or not less than eighteen (18) days if the notice was deposited in the mail. The reasonable cost of storage may be charged before the personal property is returned. The personal property shall either be left on the vacated premises or stored by the Property Manager in a place of safekeeping; the Property Manager shall exercise reasonable care in storing the property. When the Property Manager stores the personal property on the premises, the reasonable cost of storage would be the daily rental rate of the premises.

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If the personal property, for both residential and non-residential tenancies, is to be sold via public sale, the Property Manager shall provide the following: notice of the time and place of the sale in a newspaper of general circulation published in the county where the sale is to be sold, the manner of publication shall comply with California Government Code 6066; the last publication shall not be less than five (5) days before the sale is to be held; the notice of the sale shall not be published before the last of the dates specified for taking possession of the personal property in any notice given; and the notice of the sale shall describe the property to be sold in the same manner as described in the notice. Additionally, the Property Manager shall hire a licensed and bonded auctioneer to perform the public sale. Any proceeds from the sale can pay the reasonable costs of storage, advertising, and the public sale. The remaining balance of proceeds shall be paid to the treasury of the county in which the sale took place not later than thirty (30) days after the date of sale. The Property Manager cannot retain the remaining proceeds, after paying for the cost of storage and costs associated with the public sale, for unpaid rent unless there is a court judgement for unpaid rent. If the Region/District does have a judgement for unpaid rent, the Property Manager shall provide the judgement and a Writ of Execution, which may be obtained from the court clerk, to the sheriff with written instructions to levy the remaining proceeds in the county's possession.

Motor vehicles left on the premises are treated differently than other types of personal property. If a vehicle is left on the premises, the Property Manager needs to post a notice on the vehicle advising that the vehicle is parked illegally on State property and must be removed immediately. If the vehicle remains on the premises after 72 hours, the Property Manager should contact the California Highway Patrol to arrange for the vehicle to be towed in accordance with California Vehicle Code 21113 and California Vehicle Code 22651.

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11.08.00.00 - DELINQUENT ACCOUNTS

11.08.01.00 General

All rents shall be collected in accordance with the terms and conditions of the lease or rental agreement. Our standard monthly rental and lease agreements provide that rent is due in advance on the 1st of the month. Rent not received by the 1st of the month is delinquent.

The agreement further provides that a late charge may be charged if the rent is not received by the 10th of the month, per the terms outlined in the rental/lease agreement. Since the Department directs tenants/lessees to make payments by mail, a postmark of the 10th or sooner does constitute receipt of payment as of the date of the postmark per California Civil Code 1476.

11.08.02.00 Suggested Methods of Collection

The Agent should notify the tenant/lessee personally by telephone or letter that rent is delinquent and must be paid. In many cases, the tenant/lessee will pay the rent after this contact and will be prompt in paying thereafter. If the tenant/lessee is delinquent again the following month, however, the Agent shall send a strongly worded letter. Any contact with the tenant/lessee shall be documented in the diary. If the Agent elects to enter into a payment plan agreement, the agreement shall be in writing and approved by the Branch Chief (Senior level or above). Payment plans shall not extend delinquent rents beyond one year since the Department may not include delinquent rent over a year on the 3-Day Notice to Pay Rent or Quit. Also, the 3-Day Notice to Pay Rent or Quit shall not include any late fees or other fees, it shall only include the amount of rent due. If the tenant/lessee fails to make a payment plan payment, the Agent shall immediately serve a 3-Day Notice to Pay Rent or Quit for the total amount of rent due. No further payment plans or compromises will be offered if a tenant/lessee fails to adhere to their payment plan. Payment plans are not to be used as a regular way of doing business, but for those exceptional cases where payment plans are warranted.

If a tenant/lessee has been delinquent for three consecutive months, terminating the tenancy may be in order even though the rent is eventually paid each month. If the situation warrants, termination of the tenancy may be requested prior to this time. The Property Management Senior shall have the discretion to make this decision.

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11.08.03.00 3-Day Notice to Pay Rent or Quit

If rent is not paid immediately after the contacts and letter, the Agent shall serve a 3-Day Notice to Pay Rent or Quit demanding that the tenant/lessee pay the total rent delinquency within three days or vacate the property. The 3-Day Notice to Pay Rent or Quit shall cover the current month's rent, plus any previous period of rental delinquency that may still be unpaid. As discussed in Section 11.07.22.00, the amount owed specified on the 3-Day Notice to Pay Rent or Quit shall only account for past due rent not exceeding one year; do not include any late fees, utilities, or damages on this notice. The Agent must enter the date the 3-Day Notice to Pay Rent or Quit was served in RWPM on the "Delinquent Tenancy" screen in order to notify Accounting of the notice being served. The Agent shall also contact Accounting in order to provide the amount specified on the 3-Day Notice to Pay Rent or Quit in order to avoid an acceptance of a partial payment. The Agent shall immediately start eviction proceedings upon expiration of the three days (see Form RW 11-11, 3-Day Notice to Pay Rent or Quit). The Agent shall send copies of eviction notices and other related documents to Headquarters Cashiering to stop acceptance of payment. Partial or total acceptance of payment will forfeit the legal effect of the 3-Day Notice to Pay Rent or Quit. It is imperative that the Agent enter the date that the 3-Day Notice to Pay Rent or Quit was served in RWPM so Accounting will not accept any payments after the notice period.

If a residential tenant is chronically delinquent but not currently delinquent, a 60-day notice terminating the tenancy may be in order (see RW 11-10, 60-Day Notice to Terminate Tenancy). If a non-residential lessee is chronically delinquent, a Notice to Terminate Non-Residential Tenancy, Form RW 11-33, may be in order; the length of time provided in the Notice to Terminate Non-Residential Tenancy is dictated by the Termination Clause in the Lease Agreement. If a notice to terminate a tenancy is served after a 3-day notice has been served, the legal effect of the 3-day notice is lost.

A 3-Day Notice to Pay Rent or Quit and a Notice of Termination of Tenancy and Notice to Quit may be served concurrently. This process may be used when you want to collect some money from the tenant but still wish to proceed with an eviction. Even though money is accepted, thus forfeiting the legal effect of the 3-Day Notice to Pay Rent or Quit, it does not cancel the Notice of Termination of Tenancy and Notice to Quit.

See Section 11.07.22.00, Notices, for additional information and requirements in regard to serving notices to vacate or to terminate the tenancy.

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11.08.04.00 Method of Service of Notices

The landlord's right to serve a 3-Day Notice to Pay Rent or Quit is provided for in Code of Civil Procedures (CCP) Section 1161. The 3-Day Notice to Pay Rent or Quit is served to the delinquent tenant for the total amount of unpaid rent only, within one year, as of the day of service.

Service of a 3-Day Notice or a Notice to Terminate the Tenancy is governed by CCP Section 1162.

Service for Residential Tenancies shall be made as follows:

- By delivering a copy to the tenant personally.

- If he or she is absent from his or her place of residence, and from his or her usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his or her place of residence.

- If such place of residence and business cannot be ascertained, or a person of suitable age or discretion there cannot be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner. The effective start date of the 3-Day Notice is one day following the postmark date.

Service for Non-Residential Tenancies shall be made as follows:

- By delivering a copy to the tenant personally.

- If he or she is absent from the commercial rental property, by leaving a copy with some person of suitable age and discretion at the property and sending a copy through the mail addressed to the tenant at the address where the property is situated.

- If, at the time of attempted service, a person of suitable age or discretion is not found at the rental property through the exercise of reasonable diligence, then by affixing a copy on a conspicuous place on the property, and also sending a copy through the mail addressed to the tenant at the address where the property is situated. Service upon a subtenant may be made in the same manner.

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- Service of a notice on a corporation differs slightly in that the notice must be served on a corporate officer or an authorized agent of the corporation who will accept on behalf of the corporation. Do a business search on the California Secretary of State's website to locate the name and address of the authorized agent.

For practical purposes, "a person of suitable age and discretion" should be over 18 years of age.

When the Agent cannot personally serve a notice and must mail a copy of the notice, it is prudent for the Agent to mail one copy first-class postage prepaid and one copy certified mail return receipt requested. The certified mail receipt shall be placed in the rental file. To substantiate service, the server shall execute a proof of service by posting and shall place a copy in the rental file. No matter the method of service, the Agent should take photographs to document the service in case the tenant/lessee challenges the receipt of the notice and all actions taken shall be notated in the diary.

The Agent shall make a diligent effort to effect personal service since that is the most effective and uncomplicated method of service.

NOTE: If the tenant is eligible for relocation benefits, Property Management must coordinate service with the RAP Unit to ensure the tenant is advised of their continuing rights in regard to relocation assistance. See Manual Section 10.03.12.00.

The Agent shall send copies of a 3-day notice, eviction notice, or any other related documents to Headquarters Cashiering to stop acceptance of payment. Partial or total acceptance of payment will forfeit the legal effect of the notice.

11.08.05.00 Legal Remedies for Collection and Procedures

Various legal procedures are available to Agents for specific purposes. Agents should bear in mind, however, that they are not attorneys and shall obtain all legal advice and interpretations from Legal.

The state shall resort to legal proceedings to effect rent collection and/or eviction of delinquent tenants because of nonperformance of contractual obligations, usually nonpayment of rent. In addition, unlawful detainers are sometimes necessary for property clearance to meet certification dates. General procedures are outlined in Exhibit 11-EX-7, District Right of Way

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Procedure: Vacating Premises - Unlawful Detainer Action. Since procedures may vary from one judicial district to the next, it is incumbent upon Agents to discover the general requirements for their areas of responsibility. Reference Exhibit 11-EX-7a for the standard Proof of Service Notice. Reference Exhibit 11-EX-7b for an example of a memo to legal.

11.08.06.00 Dishonored Checks

If a tenant/lessee has a dishonored check returned to the Department for any reason, payment is considered not received. There will be a $25 fee automatically charged to the account for the first dishonored check and a $35 fee charged for the second dishonored check in a 12-month period. If tenant/lessee fails to submit an acceptable replacement payment by the 10th of the month, the account will be considered delinquent and a late fee may be assessed.

If tenant/lessee has two dishonored checks within any 12-month period, the Department will no longer accept personal checks on that tenancy.

11.08.07.00 Late Charges

A late charge may be assessed if the full amount of rent is not received on or before the 10th of each month. Payment is considered received if the payment is postmarked on or before the 10th of each month. The late charge covers liquidated damages resulting from breach of the lease or rental agreement. The amount is determined by using 6% of the monthly rent as a guideline. The amount is entered in the late payment clause in the rental/lease agreement. Late charges are not mandatory and the use of late charges are at the discretion of the Region/District. Late charges should be waived for government agencies since most government agencies do not pay for rent in advance and usually pay in arrears.

NOTE: The 6% figure is based on the figure relating to mortgages or deeds of trust in the California Civil Code and is generally used by the property management industry.

11.08.08.00 Vacated Delinquencies

When a delinquent tenant vacates and does not leave a forwarding address, the district has 15 calendar days to conduct an investigation to locate the former tenant before further collection efforts proceed. The Region/District does not, however, have to wait until the end of the 15 days to submit the account to the Division of Accounting, R/W Accounts Receivable.

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The following are sources of information that may lead to the former tenant's whereabouts:

- Certified mail with return receipt requested sent to the tenant's last address.
- Utility companies that show transfer of service.
- Banks, places of employment, or other references that may be listed on the tenant's rental application.
- Labor union affiliations, depending upon the tenant's profession.
- Department of Motor Vehicles, using driver's license number, California ID number, or car license number from the application.

As soon as a delinquent tenant vacates, the district should process the vacated tenancy through the RWPM Adjustment Screen. Within 15 days, the district should refer the account to Accounting for write-off or for referral to the collection agency for further collection efforts.

11.08.08.01 Amounts $250 or Less

If the delinquent amount is $250 or less, the district forwards completed Form RW 11-25, Authorization to Write Off or Adjust Accounts Receivable Bill, to Accounting and requests write-off of the account through the RWPM Adjustment Screen. The write-off request should include a brief justification (e.g., collection efforts are not cost effective based on Board of Control guidelines).

Accounting will immediately write off the account. If the delinquent amount is over $100 and the delinquent tenant's Social Security Number is known, Accounting will submit the account to the Franchise Tax Board (FTB) for two successive years only. However, the Intercept Program is for intercepting refunds of Personal Income Tax accounts only and cannot be used for corporations or partnerships.

If all or a portion of the delinquent amount is collected, either through the FTB Intercept Program or from the vacated tenant, Accounting will reestablish the receivable account.

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11.08.08.02 Amounts Greater Than $250

If the delinquent amount is greater than $250, the district prepares an Exhibit 11-EX-39, Collection Agency Transmittal, and forwards it to Accounting with the required documentation listed below. The vacancy date and amount due will be of critical importance if the collection agency pursues legal action against the debtor, and the district is responsible for ensuring the accuracy of this information. In addition, the district must enter the date the collection package is forwarded to Accounting on the Delinquent Tenancy Screen (TPR521M) in RWPM.

- Copy of first and last pages of rental agreement
- Copy of rental application
- New address documentation
- Copies of diary notes regarding efforts to collect
- Copy of judgment
- Copy of driver's license or California identification card

Accounting will verify the amount owed and forward the collection package to the collection agency under contract to the Department. In addition, Accounting will submit accounts with Social Security Numbers to FTB under terms of its Intercept Program.

The collection agency receives 3.5% commission on whatever they collect. If the collection agency collects 100% of the debt, Caltrans receives 96.5%. It is in the contract that the collection agency can settle the debt with the debtor at 80%. Any percentage lower than that needs to be approved by Caltrans Accounts Receivable/management. The collection agency will still receive 3.5% of the amount collected based upon the settlement.

Once an account is referred to the collection agency, Accounting takes on all responsibility for the account and makes all further contact with the collection agency. Any calls or letters from the delinquent tenant should be referred to the collection agency for response. **Under no circumstances should the Region/District enter into a repayment plan with the delinquent tenant once the account has been referred to the collection agency.**

In accordance with terms of the contract, the collection agency will submit a monthly report to Accounting showing the status of all accounts referred to them for collection. Accounting will forward a copy of the report to HQ R/W to be shared with the Regions/Districts.

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Under terms agreed to among the collection agency, Accounting and HQ R/W, Accounting will write off accounts that are deemed to be uncollectable. If all or a portion of the delinquent amount is subsequently collected, Accounting will reestablish the receivable account.

A collection packet should be submitted within 15 days of vacancy. **Do not delay in submitting your collections packet to accounting**. The State only has four years to collect payments.

On rare occasions, a Region/District may engage in a payment plan with a vacating tenant that will prevent a file from going to collections. As long as the tenant is paying according to the plan, this is permissible. However, if the tenant begins to miss payments, immediately send to collections. **Do not keep renegotiating the terms of a payment plan.** Always keep in mind of the statute of limitations to collect funds is 4 years after vacate date.

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11.09.00.00 - RENTAL INTERNAL CONTROLS

11.09.01.00 Policy

To protect the integrity of the Department's rental assets and to protect employees handling those assets from accusations of fraud, the following control activities shall be performed for each acquired property. These activities shall be fully documented in the rental file's diary notes to facilitate audit and management review.

- Information on newly acquired property shall be entered in RWPM as soon as the information is available.
- Improved non-rentable properties shall be inspected at least once a month.
- The rental file shall contain justification for classifying any property as non-rentable.
- Unimproved non-rentable and occupied rentable properties shall be inspected at least once in the twelve months immediately following the prior inspection date.
- Vacated rentable properties shall be inspected within 15 days of any vacancy and at least once a month thereafter. Vacated rentable properties are those having more than a remote chance of being rented for a reasonable time prior to construction.
- Rentable occupied properties shall be subject to a confirming process of tenant interviews and tenant letters.

The sections below contain descriptions of major steps in the internal control process. The Property Management Senior or designee shall perform many of the specified control activities (such as inspections and reviews). The designee must be a R/W Agent at the associate level or above but must not, however, be the Agent assigned rental management duties for the specific property/rental account.

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11.09.02.00 Newly Acquired Property Closure Procedure

11.09.02.01 Office Review

Upon execution of a R/W Contract or recordation of an FOC, the Acquisition Agent (or Condemnation Agent for an FOC) shall send an MOS, RW 8-12, to Property Management with a copy of the R/W Contract or FOC as appropriate. The parcel should be assigned to the Agent responsible for the territory. The Agent shall review and be familiar with the documents and the appraisal involved.

11.09.02.02 Field Review

In the majority of cases where property is acquired under R/W Contract, there will be a period of time, usually 3 to 6 weeks, between receipt of these documents and close of escrow or recordation. Whenever possible, the Agent should contact the occupants prior to close of escrow to discuss the terms of rental occupancy. The Agent should read the R/W Contract carefully to determine any special conditions imposed that might affect, for example, the rental rate, term of occupancy, rental commencement date, or special disposition of acquired property. The Agent should notify the occupants of obligations to comply with all federal, state and local laws and ordinances, including those for storm water, and of the availability of storm water education and outreach guidance materials.

Where property is acquired through an FOC, the Agent shall take immediate action to contact the occupants since rental commences on the day following recordation of the FOC.

11.09.02.03 Diaries

Each file must have a diary, kept in chronological order, documenting the actions taken throughout the life of a property from acquisition to either construction or disposal. Diary entries are mandatory for every inspection, phone call, letter received and sent, accounting actions, and any other communication or activity. Diaries must be able to explain why an agent took a particular action, not just the action itself. Diaries may be used as evidence in court, and therefore must remain property specific, to the point, and absent of any agent commentary. For each inspection, the Agent shall take dated photographs of the condition of property; paying special attention to deficiencies and the remediation of said deficiencies. Diaries may be kept on the computer instead of hand written, however, each page must be printed

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when full and kept in the physical file. The Diary in the file must reference an electronic version. All diaries must be printed when there is a QEJR or Audit. All Diary entries must be signed.

11.09.03.00 Vacated Rentable Property

The Property Management Senior or designee shall inspect all vacated rentable properties within 15 days after vacancies occur or are discovered and not less than once a month thereafter. The inspections shall be documented on the rental file's diary notes. At least once in the twelve months immediately following the prior inspection date, one of the inspections shall be done concurrently with a maintenance inspection and documented as required under Manual Section 11.10.06.00. All property inspections shall include dated photographs.

11.09.03.01 Agent Activities

When a tenant vacates, the Agent shall thoroughly inspect and secure the property the day of vacation or the next business day. Prior arrangements shall be made to obtain the keys from the vacating tenant. Upon receipt of the keys, the Agent shall accomplish the following:

- Inspect the property and, when necessary, prepare a request to have trash removed, improvements boarded up, hazardous conditions abated, or necessary maintenance performed.
- Perform an inventory of all items purchased by the state and place appropriate documentation in the rental file.
- Determine whether the property should be boarded up to provide protection against vandalism and theft.
- Report any lost or stolen property in accordance with procedures in Section 11.03.09.00.
- Note all activities in the rental file's diary notes and include dated photographs of the condition of the property.
- Prepare the necessary accounting documents to close the tenant's file.

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11.09.03.02 Property Management Senior Activities

The Property Management Senior or designee shall complete the first verification of vacancy status within 15 days after vacancy occurs and shall discuss each vacated rentable property not less than once a month with the Agent. Monthly field reviews shall be made to assure that the properties are still vacant. Every effort should be made to rent those properties. Documentation of office and field reviews shall be kept in District rental file's diary notes for auditing purposes.

11.09.04.00 Occupied Rentable Property

Field inspections of occupied properties shall be made at least once in the twelve months immediately following the prior inspection date to ensure the properties are maintained as well as or better than other properties in the neighborhood. Section 1954 of the California Civil Code allows a landlord to enter the residential dwelling unit in the following cases:

- In case of emergency.
- To make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors or to make an inspection pursuant to subdivision (f) of Section 1950.5 of the California Civil Code.
- When the tenant has abandoned or surrendered the premises.
- Pursuant to court order.
- For the purposes set forth in Chapter 2.5 (commencing with Section 1954.201) of Title 5 of Part 4 of Division 3 of the California Civil Code.
- To comply with the provisions of Article 2.2 (commencing with Section 17973) of Chapter 5 of Part 1.5 of Division 13 of the California Health and Safety Code.

Except in cases of emergency or when the tenant has abandoned or surrendered the premises, entry may not be made during other than normal business hours unless the tenant consents to an entry during other than normal business hours at the time of entry. The landlord shall give the tenant "reasonable" notice in writing of his or her intent to enter and enter only during normal business hours. The notice shall include the date, approximate time, and purpose of the entry. The notice may be personally delivered to the tenant, left with someone of a suitable age and discretion at the

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premises, or, left on, near, or under the usual entry door of the premises in a manner in which a reasonable person would discover the notice. Twenty-four (24) hours shall be presumed to be reasonable notice in absence of evidence to the contrary. The notice may be mailed to the tenant. Mailing of the notice at least six days prior to an intended entry is presumed reasonable notice in the absence of evidence to the contrary. See Section 1954 of the California Civil Code for further requirements.

The Department can only enter a residential dwelling for the reasons enumerated in the California Civil Code Section 1954. An Agent cannot force a residential tenant to allow access for a routine inspection. If a residential tenant denies access for a routine inspection, the Agent shall notate the rental file's diary notes of the attempt to gain access to the dwelling and the tenant's denial of such access. The Agent shall make notes in RWPM, either on the Property Screen or Tenancy Screen, notating the residential tenant's refusal for the routine inspection.

For non-residential tenancies, the right of entry is governed by the lease agreement. The Department's standard Right of Entry Clause in the lease agreement allows for the right to enter for a routine inspection during normal business hours subject to a twenty-four-hour notice. Furthermore, the Department's standard Use Clause in the lease agreement states that the lessee shall comply with all Federal, State, and local laws and ordinances concerning the use of the property; the Agent has the right to enter the property to determine if the property is being used lawfully. If the lessee fails to provide access to the property for the purposes of conducting a routine inspection and determining if the property is being used lawfully, the Agent must serve a Three-Day Notice to Correct Breach of Covenant or Quit.

In addition, Right of Way Property Management manages its properties consistent with cities/counties that have municipal separate storm sewer systems (also known as MS4s) and the objectives of the Department's Storm Water Management Plan (SWMP). Properties are inspected to ensure tenants/lessees are maintaining properties in a neat and orderly manner, with no illicit discharges, and with proper storage of materials. Agents should be mindful of potential stormwater issues while conducting stormwater inspections. A few examples of what to look out for include, but are not limited to, the following:

- The tracking of dirt/mud at the points of ingress/egress.
- Containers not having tight fitting lids, that are not enclosed or covered at the storage site, are not raised off the ground by pallets, and do not have a containment system in case of a leak.

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- Vehicle wash areas that are not designated nor paved and are not covered or bermed to collect the wash water.
- Stockpiles of material that are not covered or do not have fiber rolls are around the perimeter of the stockpile.
- Vehicles leaking fluids that do not have drip pans underneath.
- The lack of fiber-rolls around the perimeter of a property in which the property slopes towards a storm drain or waterway.

Leases with certain types of industrial activity must have coverage under the State Water Resources Control Board's (SWRCB) Industrial General Permit, and the tenant is required to provide documentation of such coverage. Observing lease activities during inspection, along with the tenant's Standard Industrial Classification (SIC) Code, will help determine whether such coverage is needed. Any activities conducted on the premises that are listed in Attachment A of the Industrial Industrial Permit Order 2014-0057 DWQ are required to obtain permit coverage per federal regulations. If a lessee's activity is subject with the Industrial General Permit (IGP) and the lessee discharges into a Water of the United States or tributary, the lessee must prepare a Storm Water Pollution Prevention Plan (SWPPP), implement Best Management Practices (BMPs) described in the SWPPP to prevent pollutants from being discharged, and file a Notice of Intent (NOI) with the SWRCB. If a lessee's industrial activity is protected from rain or runoff exposure to a storm drain, the lessee can apply for a No Exposure Certification (NEC) certifying that no industrial pollutants that are exposed to storm water. A Waste Discharger Identification (WDID) number will be assigned to the lessee after the SWRCB receives a complete application package. The lessee must provide the NOI or NEC filed with the SWRCB along with Receipt Letter from the SWRCB showing the WDID. The Agent can verify the status of the lessee's application with the SWRCB by checking the Stormwater Multiple Application and Report Tracking System's (SMARTS) public access site.

The storm water inspection should be conducted at the same time as the regular property inspection. The Agent shall use the property inspection forms and the stormwater inspections forms to document the condition of the property. The Agent shall take photographs of the condition of the property and photograph all deficiencies and stormwater issues found during the inspections. Any property deficiencies that are the tenant/lessee's responsibilities and stormwater issues discovered during the inspection must be discussed with the tenant/lessee during the inspection. The Agent shall advise the tenant/lessee on the required remediation actions and perform a follow up inspection to verify that all deficiencies were addressed. If the property deficiencies are the responsibility of the Department to remediate,

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the Agent shall submit a task order to the contracted vendor. The Agent shall reinspect the property once the contracted vendor has completed all remediation activities. During the reinspection, the Agent shall take photographs of the condition of the property and the remediated deficiencies and complete the property inspection and stormwater forms. The Agent must document all inspection and remediation activities in the rental file's diary notes.

Upon completion of the field inspection, a copy of the completed inspection form will be offered to the tenant/lessee.

The inspection forms for residential and nonresidential leases are as follows:

- Residential Property Inspection sheet and Residential Storm Water Inspection sheet, or
- Non-Residential Property Inspection sheet and Non-Residential Storm Water Inspection sheet.
- Copies of all property inspection sheets may be found on the Property Management website (internal Caltrans link).

11.09.04.01 Tenant Verification

Occupied rentable property shall be subject to a confirming process consisting of tenant interviews and letters to tenants to verify occupancy dates, rental rates, and deposits. The Division of Accounting and District Right of Way shall conduct this process on a sample basis shortly after tenancy commences.

Accounting shall send confirmation letters to newly inherited and re-rental tenants by using the sampling formula below:

- 100% for the first 10 new tenants each month.
- 20% of all new tenants over 10 each month.

Accounting will compare responses against rental records to confirm data and shall retain responses for audit purposes. Accounting will refer any unreconciled accounts and nonresponses to the Property Manager for personal verification.

The Property Management Senior or designee will personally verify the data with each tenant when there is an unreconciled item or nonresponse and shall document verification in the rental file.

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11.09.04.02 Confirming Process

Occupied rentable property shall be subject to a confirming process consisting of tenant interviews and letters to tenants to verify occupancy dates, rental rate, and deposits. The Division of Accounting will conduct this process on a sample basis shortly after a tenancy commences or when any changes are made to an existing tenancy.

Accounting will compare responses against rental records to confirm data and shall retain responses for audit purposes. Accounting will refer any unreconciled accounts and nonresponses to the Senior Right of Way Agent in Property Management (Senior) for personal verification.

The Property Management Senior will personally verify the data with each tenant when there is an unreconciled item or nonresponse and shall document verification in the rental file.

11.09.05.00 Non-Rentable Property

All non-rentable properties must be continuously accounted for and periodically inspected in the field to assure continued vacancy. New agents shall be advised of all non-rentable properties within their areas of responsibility.

Regions/Districts shall conduct field inspections of non-rentable properties to determine their condition and reevaluate their status and shall retain documentation of these inspections in the Region/District files. Unimproved properties shall be inspected at least once every twelve months from the prior inspection date, and improved properties shall be inspected at least once a month from the prior inspection date. These inspections may be combined with required maintenance inspections, the Agent shall utilize 11-EX-59, Unimproved Property Inspection, which combines the property maintenance and stormwater inspections. The Agent shall document the condition of the property and attach photographs of the property to the Unimproved Property Inspection. If the property requires any remediation, such as weed abatement or debris hauling, the Agent shall submit a task order to the contracted vendor and reinspect the property after the remediation work is completed; the Agent shall complete another Unimproved Property Inspection and attach photographs of the property in its condition after remediation of deficiencies. All field inspections, remediation actions, and follow-up field inspections should be documented in the rental file's diary. All field inspections shall be documented as required under Manual Section 11.10.06.00.

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11.09.06.00 Rental Accounting and Cash Handling

11.09.06.01 New Accounts

At the time a new tenancy is created, one month's rent or the prorated amount due for the balance of the month shall be collected. A security deposit shall also be collected prior to commencement of tenancy in accordance with Section 11.07.15.00.

11.09.06.02 Rental Payments

As standard procedure, tenants shall submit rental payments directly to Accounting. Only in unforeseen and emergency situations (e.g., tenant being served a 3-day notice to pay or quit, or having a medical or financial condition that prevents the tenant from paying the rent according to the terms and conditions of the rental agreement) may an Agent accept payment from a tenant in accordance with the following procedures:

- **Check/Money Order** - Endorse and deliver to the District Cashier or mail (by overnight courier if possible) to Accounting at the following address:
  Department of Transportation
  Attention Cashiering Deposits, MS #58
  P. O. Box 168019
  Sacramento, CA 95816-8019

- **Cash** - Convert the currency and coins to a money order or cashier's check. Endorse the money order or cashier's check and immediately deliver to the District Cashier or forward to Accounting at the above address.

All checks/money orders received by the offices via incoming mail, dropped off at the counter by customer, or received by an Agent must be endorsed immediately upon receipt. The endorsement is stamped on the back of the check/money order as close to the top as possible, above the endorsement signature line.

Another option for the tenants/lessees to make rental payments is through debit card and credit card through the Official Payments website. There is a service fee charged for all payments made through the Official Payments website.
Electronic transfers are not an acceptable form of payment. Accounting will not accept attempts to pay by this method.

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If the tenancy account is not set up in RWPM, the check, money order, or cash must be deposited in Account 84 (Suspense Account). The tenancy account shall be created as soon as the information is available. Upon creating the tenancy account, any monies deposited in Account 84 must be transferred to the tenancy account immediately by completing an Adjustment Screen.

11.09.06.03 Receipts

As a good business practice, Cash Receipts (Form FA 285) shall be issued to record receipt of (1) cash or currency or (2) check or money order in all instances. District R/W employees must request cash receipt books from the District Cashier.

Refer to "Cash Handling Policy" memorandum dated January 2, 2015 (Exhibit 11-EX-2) and "Cash Receipt Book Procedures" dated December 1998 (Exhibit 11-EX-2A) for additional information on completing Cash Receipts, Form FA 285.

In general, the tenant's cancelled check is receipt of the payment.

11.09.07.00 Termination of Rental Accounts

The District/Region shall use the RWPM Adjustment Request Screen to terminate accounts, to authorize refunds of rent or security deposits, and to notify Accounting of amounts to be charged for damages.

11.09.08.00 Rental Offsets

Rental offsets are allowed for work done by tenants with prior written approval from the Property Manager Senior or Supervisor, depending on the offset amount. Work done under rental offset must be inspected by the Department to assure it has been completed in a satisfactory manner. A Rental Offset Agreement, 11-EX-F, must be completed and the receipt must be attached to the Rental Offset Agreement. See Section 11.10.15.00 for detailed information.

11.09.09.00 Contracted Maintenance

Contracted vendors are hired by the Department to perform maintenance on properties. Task orders are submitted to the contracted vendors to remediate deficiencies on State properties in which the Department is

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responsible for remediating. After a vendor completes the requested maintenance on the property, the Agent must inspect the property to verify that the maintenance was completed. When the District/Region receives the contracted vendor's invoice, the invoice must be forwarded to the Contract Manager. When the Contract Manager receives the contracted vendor's invoice, the Contract Manager enters the invoice information into the Maintenance Request Screen in RWPM and prepares a Receiver Form, FA-1226A or FA-1226B depending on the number of invoices. The Contract Manager forwards a copy of the RWPM Maintenance Request Screen, the Receiver Form, and a copy of the invoice to the Property Management Senior; the Property Management Senior must approve the Maintenance Request in RWPM and the Receiver Form for the invoice and have the package forwarded to Accounting for processing.

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11.10.00.00 - PROPERTY MAINTENANCE AND REHABILITATION

11.10.01.00 General

All property shall be maintained in a safe and hazard-free condition. Nonresidential property repairs shall be limited to major items such as roofs, structural weaknesses, main sewer lines, electrical deficiencies, and water service pipes to fixtures as delineated in the Lease Agreement. Residential rental properties will be maintained in a manner that reflects credit on the state and enhances local community values. Certain repairs must be performed on residential property to derive appropriate rental income, improve community relations, and conform to existing laws and ordinances.

As a general rule, the tenant shall be required to provide normal yard care (watering, mowing, weeding, and trash and junk removal). Tenant's failure to provide such care is a justifiable reason for terminating tenancy.

Pursuant to the Health and Safety Code, the State has a specific legal obligation to keep the premises in a condition fit for human occupancy.

Pursuant to Health and Safety Code Section 17980.6, if a building is in such a nature that the health and safety of residents or the public is substantially endangered, an enforcement agency may issue a notice to repair or abate the code violations of the substandard building to the State.

Pursuant to Health and Safety Code Section 17980.7, the enforcement agency may sue the State for failure to repair violations in a timely manner. If a court rules that a building is in a condition which substantially endangers the health and safety of residents, the court has the authority to:

- Order the State to pay all reasonable and actual costs of the enforcement agency including, but not limited to, inspection costs, investigation costs, enforcement costs, attorney fees or costs, and all costs of prosecution.
- f necessary repairs require the tenant to relocate, order the State to provide or pay relocation benefits to each lawful tenant. These benefits shall consist of actual reasonable moving and storage costs and relocation compensation. See R/W Manual Section 10.10.03.00 and contact District RAP Unit for assistance.
- Order the State to offer the first right of occupancy to each tenant who received relocation benefits after the rehabilitation.

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Pursuant to Health and Safety Code Section 17980.8, the State is also responsible for the enforcement agency's cost to abate the nuisance if the State does not do so in compliance with the citation and applicable code sections.

11.10.01.01 Storm Water Management

Properties shall be managed to prevent the discharge of pollutants into storm water drainage systems. Property Management will use standardized language in the rental/lease agreements that addresses storm water pollution prevention by the tenant/lessee in new and renewed leases. The standardized language requires the implementation of storm water best management practices (BMPs) that are activity specific and elimination of illicit connections and illegal discharges to the storm drain system. Storm water education and outreach materials that include storm water pollution prevention fact sheets will be provided to the lessee/tenant. The fact sheets contain the BMPs that are applicable to the lessee's activities. Fact sheets should be referenced in the rental/lease agreement and attached to the rental/lease agreement as an exhibit.

BMP Fact sheets can be found on the Right of Way Storm Water website (internal Caltrans link).

Lessees are required to comply with all federal, state and local storm water laws and ordinances. This would include operators of certain industrial activities to obtain coverage under the Industrial General Permit for storm water discharges associated with industrial activity issued by the State Water Resources Control Board (SWRCB). The District will maintain a list of leases with industrial activities that require coverage under the Industrial General Permit. Lessees with coverage under the Industrial General Permit should provide the District with a copy of the following: Notice of Intent or No Exposure Certification filed with the SWRCB; Receipt Letter with Waste Discharge Identification (WDID) number; SWPPP prepared for the Notice of Intent in compliance with the General Industrial Permit.

The Department's Statewide Storm Water Permit and Storm Water Management Plan (SWMP) cover transportation corridors, facilities and activities (including employee housing at maintenance stations) within the Department's municipal separate storm sewer system (MS4). Except for employee housing, Property Management leases are on lands held for future construction or excess lands. Therefore, rather than the Department's MS4, these properties generally discharge to local agency municipal separate storm sewer systems (local MS4) and are subject to their storm water

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requirements. However, Property Management manages its properties consistent with local MS4s by inspecting properties to ensure tenants/lessees comply with the terms of their rental agreements and lease agreements, maintain the property, and use storm water best management practices.

Refer to the Right-of-Way Property Management and Airspace Storm Water Guidance Manual for storm water pollution prevention BMP fact sheets, guidance materials and compliance procedures.

The Right of Way Stormwater Manual can be located on the Right of Way Storm Water website (internal Caltrans link).

11.10.02.00 Asbestos and Lead Paint

Removal, disposal, or disturbance of asbestos and lead-based paint in conjunction with maintenance of property shall be in compliance with all state and federal requirements and shall be performed by a State certified contractor for lead and asbestos. If Property Management suspects the presence of such materials, it shall obtain surveys prior to starting any maintenance that would disturb the materials. Regarding lead-based paint, special attention should be given to residential properties constructed prior to 1978 since lead-based paint was widely used prior to that time. Standard property maintenance contract clauses specify how the contractor should deal with these materials.

11.10.02.01 Staff Training

Property management staff should have an initial 6-hour professional training on lead-based paint training awareness, as facilitated by HQ. Further, property management staff should have annual review training as facilitated by HQ. Copies of certificates of completion should be kept in the supervisor's employee file to document the completion of such training.

11.10.02.02 Rental Agreement

The federal government banned lead-based paint for use in housing in 1978. For dwellings constructed prior to 1978, there is a likelihood the dwelling contains some amount of lead. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X, to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to eliminate and reduce such hazards.

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Section 1018 of Title X mandates certain disclosures of information concerning lead upon renting a dwelling constructed prior to 1978. The Department must provide the tenant with a lead hazard information pamphlet; the tenant shall receive the EPA pamphlet entitled, *Protect Your Family From Lead in Your Home*. Additionally, the Department must disclose to the tenant the presence of any known lead-based paint, or any known lead-based paint hazards, and provide the tenant with any lead hazard evaluation reports available to the Department; the Agent shall utilize 11-EX-48, Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards, to acknowledge that the tenant has been informed of the presence of lead-based paint and/or lead-based paint hazards and the tenant has received all available records and reports pertaining to lead-based paint and/or lead-based paint hazards. The Agent must have the tenant initial the acknowledgement section of 11-EX-48 regarding the receipt of all reports and records pertaining to lead-based paint and/or lead-based paint hazards and the receipt of the EPA pamphlet. The Agent and tenant shall sign the Certification of Accuracy section of 11-EX-48.

For dwellings constructed prior to 1978, the Agent must include the Lead-Based Paint Clause and have the tenant initial the acknowledgement that they received the EPA pamphlet. The EPA pamphlet and 11-EX-48 shall be made as exhibit and attached to the rental agreement.

11.10.03.00 Maintenance Expenditure Guidelines

11.10.03.01 Vacant and Non-Rentable Property

All vacant and non-rentable properties shall be maintained in a manner that will reflect credit on the state and preserve local community values. In essence, this means that all state-owned properties shall be maintained as well as or better than other properties in the neighborhood.

All vacant and non-rentable properties shall be kept free of safety or health risks. This may include fencing of the property, boarding up doors and windows, installing outdoor lighting such as sensor lighting, etc. Where appropriate, the hiring of private security services may be warranted.

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11.10.03.02 Rented State-Owned Property

Maintenance expenditures by the state shall be governed as follows:

- **Commercial or Industrial Lease** - Major repairs only shall be made to the exterior walls, roof, main sewer lines, and water lines to building. Lessees shall do all interior work at their own expense. Deviation from this policy will be allowed only when it would be in the state's best interest with the DD's or authorized delegate's approval prior to start of work.
- **Master Tenancy Agreement** - For "Master Tenant Controlled Units," the state shall make no improvements or repairs of any nature whatsoever. Deviation from this policy will be allowed only when it would be in the state's best interest with the DD's or authorized delegate's approval prior to start of work.
- **Agricultural Lease** - The state shall make no improvements or repairs of any nature whatsoever. Deviation from this policy will be allowed only when it would be in the state's best interest with the DD's or authorized delegate's approval prior to start of work.
- **Advertising Structure Agreement** - The state will make no repairs and perform no maintenance whatsoever on the advertising structure.
- **Rental Agreement, Month-to-Month Tenancy** - Maintenance expenditures will be governed by exercising judgment at the region/district level that is commensurate with good business practices and within the limits set forth in this chapter of the R/W Manual. Some of the more common maintenance and repair services the state should provide include, but should not be limited to, exterior and interior painting, yard maintenance, and repair or replacement of plumbing, electrical facilities, roofs, windows, heaters, and built-in appliances. The state shall make improvements and repairs to residential dwellings to ensure they are fit for human occupancy in accordance with Civil Code Sections 1941.1 and 1941.3, and Health and Safety Code Sections 17920.3 and 17920. 10.

Please refer to the specific agreement templates on the Property Management website (internal Caltrans link).

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11.10.04.00 Health and Safety Requirements

Exterior Areas:

State property shall be maintained in a clean and orderly condition so as not to detract from the general appearance of the neighborhood. If this condition is not met, the Agent shall investigate further and implement one or more of the following corrective measures to improve the property's appearance:

- Perform weed abatement.
- Remove dead and diseased trees.
- Remove litter and post proper signs.
- Eliminate or reduce safety hazards; e.g., by filling or capping wells, filling holes, caves, and ponds; and erecting fences and barricades where necessary.
- Remove attractive nuisances such as abandoned cars, refrigerators, and freezers.
- Post proper signs to reduce trespassing such as illegal parking, dumping, or storage.

If the property is occupied and its appearance does not meet neighborhood standards, the Agent shall immediately notify the tenant verbally and in writing that the unsuitable conditions must be corrected (see Exhibit 11-EX-8, Correction Notice - Unsuitable Conditions).

When it is necessary to clear weeds or diseased trees or to correct an unsafe or unsanitary condition, Property Management may enter into a service contract with a local municipality or private contractor for performance of the necessary work. Please refer to the Division of Procurement and Contract's *Contract Manager's Handbook* (internal Caltrans link) for additional information on service contracts.

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Interior Areas

Any property condition that may affect health and safety of occupants should be investigated immediately. If a tenant notifies Right of Way (R/W) of an adverse condition affecting health and safety, R/W will inspect the property no later than the next business day. Certain situations, such as those involving hazardous materials, structural problems, mold, etc., will require hiring a State certified specialist to inspect and report on the nature and extent of the problem, and provide recommendations to remedy the situation.

If a tenant notifies R/W of a health and safety issue, the Region/District should send the tenant a letter confirming the outcome of the agent's and, if applicable, the professional's inspection and how the problem, if any, will be resolved. If the inspection did not reveal a problem, the Region/District should still send a written response to the tenant confirming the outcome of the inspection. All such investigations, resolutions, if any, and communications with the tenant must be documented in the property file.

11.10.05.00 Exterior and Interior Appearance of Improved Properties

Agents must thoroughly inspect all vacant or occupied properties to ensure the properties are being maintained properly to preserve the neighborhood's appearance. In particular, Agents shall observe conditions outlined in the table entitled "Inspection of Improved Properties." Whenever adverse conditions are found, the Agent shall investigate and take appropriate corrective action.

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INSPECTION OF IMPROVED PROPERTIES

Tenant-Occupied Property – Exterior

Areas of Concern:

- Yard areas should be properly watered, mowed, and weeded and should generally reflect a clean and orderly condition.
- There should be no broken windowpanes or boarded-up windows.
- Painted surfaces shall not be peeling or greatly discolored, and the stucco, wood, or concrete block should not be deteriorating.
- The roof should not be segregating, sagging, or leaking.
- There should be no structural deficiencies such as broken stairs, ceilings, garage doors, or fences.
- Swimming pools should be properly maintained.
- Window and door screens should look presentable.

  TV antennas should be erect and securely fastened.

Tenant-Occupied Property – Interior

Areas of Concern:

- All interior areas shall be maintained in a clean and orderly fashion so that full compliance with health and safety codes is evident.
- There should be no broken electrical or plumbing fixtures or damaged appliances.
- Interior areas should not show signs of water damage, water leaks, excessive moisture or mildew or other similar problems.
- There should be no indications of rodents, pests or other similar problems.
- The walls and ceilings should not be damaged, and the paint, wallpaper, or paneling should not be noticeably deteriorating.

  Floors, floor coverings, doors, cabinets, custom drapes, venetian blinds, heaters, and air conditioners should not be damaged or allowed to noticeably deteriorate.

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Unoccupied Property That Will Be Re-Rented

Areas of Concern:
All the physical conditions outlined above under "Tenant-Occupied Property - Exterior" and "Tenant-Occupied Property - Interior."

Unoccupied Property That Will Not Be Re-Rented

Areas of Concern:
All the physical conditions outlined above under "Tenant-Occupied Property - Exterior" that are pertinent to preserving neighborhood appearance and values.

The Agent should continue to inspect and supervise maintenance of the property until the Clearance and Demolition Unit assumes responsibility for clearance of improvements. Following clearance, Property Management is still responsible for inspection and maintenance of the unimproved property until it is turned over to Construction or sold as excess.

If there is a known vandalism problem in the neighborhood, it may be advisable to board up the improvements if such action does not demote the general neighborhood appearance, does not create unfavorable public opinion, and has proven to deter vandalism.

11.10.06.00 Field Inspections

Since nearly all state-owned property purchased for future highway use or related purposes is acquired considerably in advance of scheduled clearance requirements, sound management practices dictate that the state perform some replacement, rehabilitation, and maintenance to meet acceptable neighborhood standards. Additionally, the properties are to be managed in a manner that prevents the discharge of pollutants to storm water drainage systems and waterways. Consequently, field inspections by state personnel provide the method to achieve and maintain a desirable community relationship and identify needs for property maintenance. Inspections also identify lessee activities that have potential to discharge pollutants into storm drainage systems. All Property Management Agents shall be responsible for inspecting and documenting every rental account under their control. If a property is occupied, it shall be inspected at least once every twelve months. If a property is unoccupied and unimproved, the property shall be inspected at least once every twelve months. If a property

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is improved and unoccupied, the property shall be inspected at least once a month. The Agent may inspect more frequently if the situation calls for such; yet, the Agent must inspect the property per the minimum frequencies described within this section. Documentation must occur on corresponding inspection forms as noted in the below table, with dated photographs documenting the condition of the property in the before condition.

If any deficiencies are noted in the inspection report, the deficiencies must be remediated. The Agent shall make a diary entry notating the remediation action necessary, the party responsible for remediating the deficiencies, and a date when the Agent will follow up to verify that the deficiencies have been remediated. If the responsible party is the State, the Agent shall have a task order submitted to the contracted vendor for remediation. If the responsible party is the tenant/lessee, the Agent shall provide a deadline for the tenant/lessee to remediate the deficiencies; if the tenant/lessee fails to remediate the deficiencies, the Agent shall serve a 3-Day Notice to Correct Breach of Covenant or Quit, unless the tenancy is subject to Section 1946.2 of the Civil Code in which case a notice with an opportunity to cure must be provided prior to serving a 3-Day Notice to Quit for Breach of Covenant (Please refer to Section 1946.2(c) of the Civil Code and Manual Section 11.07.23.00). If the tenant/lessee is responsible to remediate deficiencies that pose an immediate threat to any person or the environment, the Agent shall immediately serve a 3-Day Notice to Correct Breach of Covenant or Quit or potentially a 3-Day Notice to Quit for Breach of Covenant, please contact Legal for tenancies subject to Civil Code Section 1946.2 regarding noticing requirements. Each time the Agent re-inspects the property to verify the progress of the remediation the Agent shall complete an inspection form, take photographs of the property, and document the diary as to the condition of the property.

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DOCUMENTING INSPECTIONS

Residential Properties

Form:
Residential Property Inspection sheet and Residential Storm Water Inspection sheet

Explanation:
If the property is occupied, an inspection shall take place at least once every twelve months. If the property is unoccupied, an inspection shall take place at least once a month. A checklist for interior and exterior inspections that is used for viewing the property, recording observations about its condition, and documenting any storm water concerns. All blanks are to be filled in and comments are to be made when deficiencies are noted. Tenants' comments and concerns are to be solicited and noted on the back of the form. Date of inspection must be entered into RWPM. Copies of the inspection forms are to be signed by the supervisor and maintained in the file. The supervisor shall provide direction on necessary actions to remediate any deficiencies noted on the inspection forms. The Agent shall notate the diary with the inspection date, the condition of the property, and any actions required to remediate any deficiencies. The Agent must attach dated photographs to the inspection report.

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DOCUMENTING INSPECTIONS (Continued)

Improved Nonresidential Properties

Form:
Non-Residential Property Inspection sheet and Non-Residential Storm Water Inspection sheet

Explanation:
If the property is occupied, an inspection shall take place at least once every twelve months. If the property is unoccupied, an inspection shall take place at least once a month. Used to document inspections of rental properties on a periodic basis as part of the state's maintenance control program, record pertinent observations about the exterior and interior appearances of the properties, and document any storm water concerns. In addition to observations, the Agent shall record the rental account number, address of the property inspected, date of inspection, possible recommended maintenance, and date work completed. Date of inspection must be entered into RWPM. Copies of the inspection forms are to be signed by the supervisor and maintained in the file. The supervisor shall provide direction on necessary actions to remediate any deficiencies noted on the inspection forms. The Agent shall notate the diary with the inspection date, the condition of the property, and any actions required to remediate any deficiencies. The Agent must attach dated photographs to the inspection report.

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Unimproved Properties

Form:
Unimproved Property Inspection sheet

Explanation:
Inspections shall be conducted at least once every twelve months. This inspection form will document the condition of vacant land properties, including issues pertaining to debris dumping, weed abatement, fencing, homeless activity, encroachments, and illegal parking. This form also documents stormwater concerns for vacant properties. The Agent shall document any deficiencies noted during the inspection. Date of inspection must be entered into RWPM. Copies of the inspection forms are to be signed by the supervisor and maintained in the file. The Agent's supervisor shall review the form. The Agent shall notate the diary with the inspection date, the condition of the property, and any actions required to remediate any deficiencies. The Agent must attach dated photographs to the inspection report.

Note: If a tenant notifies R/W of a health and safety issue, the District/Region must send the tenant a letter confirming the outcome of the inspection and how the problem, if any, will be resolved. If the inspection did not reveal a problem, the District/Region must still send a written response to the tenant confirming the outcome of the inspection. Copies of all correspondences must be placed in the file. All such investigations, resolution, if any, and communications with the tenant must be documented, and noted as diary entries, in the property file.

11.10.07.00 Rodent and Pest Control

Property maintenance inspections shall include a determination on whether rodent and pest control is necessary and shall be documented on:

- Residential Property Inspection sheet.
- Non-Residential Property Inspection sheet.
- Residential Property Occupancy and Vacancy Inspections.
- Property Occupancy and Vacancy Inspections sheet (used for all non-residential move-in and move-out inspections).

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Copies of all property inspection sheets may be found on the Property Management website (internal Caltrans link).

Local health authorities or other qualified persons may make the inspections. Rodent and pest control measures shall be documented in the file.

If it is determined that extermination services are needed, assistance may be obtained from local health authorities or from licensed exterminators.

Contracts for exterminator services are subject to approval by Headquarters Maintenance to assure that no unauthorized chemicals are used on state property. (See the Division of Procurement and Contracts' *Contract Manager's Handbook* (internal Caltrans link) for further details.

Property Management will prepare a Receiving Record when bills/invoices are received from the contractor and forward to Accounting for payment.

11.10.07.01 Bed Bugs

Section 1954.603 of the Civil Code requires all residential tenants to be given written notice regarding the general information about bed bug identification, behavior and biology, the importance of cooperation for prevention and treatment, the importance of and for prompt written reporting of suspected infestations to landlords, and the procedure to report suspected infestations to the landlord.

Pursuant to Section 1954.604 of the Civil Code, tenants must cooperate with pest control operators with the inspection to facilitate the detection and treatment of bed bugs, including providing requested information to the operator that is necessary to facilitate the detection and treatment of bed bugs. Entry to inspect dwellings must still comply with Section 1954 of the Civil Code, yet Section 1954 of the Civil Code acknowledges that entry to inspect by a pest control operator for the purposes of eliminating bed bugs is a necessary service for the purpose of Section 1954 of the Civil Code.

Pursuant to Section 1954.605 of the Civil Code, the Department shall notify tenants whose units were inspected of the findings of the pest control operator. The notification shall be in writing and shall be made within two business days of the pest control operator's findings. For confirmed infestations in common areas, all tenants shall be provided notice of the pest control operator's findings.

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For all residential tenancies, the Agent shall provide the 11-EX-64, Bed Bug Information Sheet, to all residential tenants. The Bed Bug Information Sheet shall be made as an exhibit and attached to the rental agreement. The Agent shall also have the tenant initial the Bed Bug Information Sheet Clause in the rental agreement acknowledging the receipt of the Bed Bug Information Sheet.

11.10.08.00 Smoke Alarm Devices

Smoke alarms are required to be installed, maintained, and tested in every residential rental unit in accordance with Section 13113.7 of the Health and Safety Code. Additionally, all smoke alarms must be approved and listed by the State Fire Marshal pursuant to Section 13114 of the Health and Safety Code.

11.10.08.01 Installation and Type of Smoke Alarm

All smoke alarms in residential dwellings shall:

- Be operable. The Agent shall test all smoke alarms during any inspections. When the tenancy is created the Department shall ensure that the smoke alarm is operable. The tenant shall be responsible for notifying the Department if the tenant is aware that a smoke alarm is inoperable. It is the responsibility of the Department to remedy any deficiency associated with a smoke alarm. The Agent shall submit a task order to a qualified contracted vendor to remedy any deficiencies.
- Receive their primary power from the building wiring provided that such wiring is served from a commercial source and shall be equipped with a battery backup. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.
- Display the date of manufacture on the device, provide a place on the device where the date of installation can be written, and incorporate a hush feature.
- Be interconnected where one or more smoke alarm is required to be installed within an individual dwelling or sleeping unit, the smoke alarm shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. Exceptions to this include the following: Interconnection is not required in buildings that are not undergoing alterations, repairs, or construction of any kind; Smoke alarms in existing areas are not required to be interconnected where alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or

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basement available which could provide access for interconnection without the removal of interior finishes; Smoke alarms are not required to be interconnected where repairs or alterations are limited to the exterior surfaces of dwellings, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck; and, Smoke alarms are not required to be interconnected when work is limited to the installation, alteration or repairs of plumbing or mechanical systems or the installation, alteration or repair of electrical systems which do not result in the removal of interior wall or ceiling finishes exposing the structure.

- Be installed in accordance with manufacturer's instructions, State Fire Marshal regulations, and applicable local codes and ordinances.
- Be installed by a properly licensed person or company. The installer must obtain the required permits and have the work inspected by the proper local authority.
- Be installed in the following locations: Each sleeping room; Outside each separate sleeping area in the immediate vicinity of the bedrooms; On each additional story of the dwelling, including basements and habitable attics and not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.
- Be inspected by the Agent or a qualified contractor at least once every twelve months to ensure proper operation.

To ensure access to the rental unit, written notice will be given to the tenant at least 24 hours prior to installation and inspection.

All present rental agreements will contain or be amended to contain the Smoke Detection Clause when installation is completed.

11.10.08.02 Battery-Operated Smoke Alarms

A battery-operated smoke alarm may be substituted for a hard-wired alarm in residential dwellings where:

- In existing buildings where no construction is taking place.
- On buildings that are not served from a commercial power source.
- In existing areas of buildings undergoing alterations or repairs that do not result in the removal of interior walls or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available

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which could provide access for building wiring without the removal of interior finishes.

- Repairs or alterations are limited to the exterior surfaces of dwellings, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck.
- Work is limited to the installation, alteration or repairs of plumbing or mechanical systems or the installation, alteration or repair of electrical systems which do not result in the removal of interior wall or ceiling finishes exposing the structure.

Commencing July 1, 2014, in order for a smoke alarm to be approved and listed by the State Fire Marshal, a smoke alarm that is only operated by a battery shall contain a nonreplaceable, nonremovable battery that is capable of powering the smoke alarm for at least 10 years. If any existing battery-operated smoke alarm, which does not meet these requirements, becomes inoperable or, if a dwelling unit intended for human occupancy has a building permit issued for alterations, repairs, or additions exceeding one thousand dollars ($1,000), then the Department must replace the smoke alarm with a nonreplaceable, nonremovable battery operated smoke alarm.

For smoke alarms with any other type of battery, batteries shall be changed at least once every twelve months at the time of the annual field inspection. The Agent should note the date the battery was changed on the Residential Property Inspection sheet.

11.10.09.00 Carbon Monoxide Alarm

All residential units with a fossil fuel burning heater or appliance, fireplace, or an attached garage is required to install, test, and maintain a carbon monoxide device in accordance with Health and Safety Code Sections 17926 and 17926.1. Additionally, all carbon monoxide alarms must be approved and listed by the State Fire Marshal pursuant to Section 13263 of the Health and Safety Code. Combination carbon monoxide and smoke alarms are permitted in lieu of carbon monoxide alarms.

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11.10.09.01 Installation and Type of Alarm

All carbon monoxide detectors in residential dwellings shall:

- Be operable. The Agent shall test all carbon monoxide alarms during any inspections. When the tenancy is created the Department shall ensure that the carbon monoxide alarm is operable. The tenant shall be responsible for notifying the Department if the tenant is aware that a carbon monoxide alarm is inoperable. It is the responsibility of the Department to remedy any deficiency associated with a carbon monoxide alarm. The Agent shall submit a task order to a qualified contracted vendor to remedy any deficiencies.
- Receive their primary power source from the building's wiring provided that such wiring is served from a commercial source, and where primary power is interrupted, shall receive power from a battery. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection.
- Be interconnected where more than one carbon monoxide alarm is required to be installed within a dwelling unit or within a sleeping unit, the carbon monoxide alarm shall be interconnected in a manner that activation of one alarm shall activate all of the alarms in the individual unit. Interconnection of carbon monoxide alarms are not required in existing buildings built prior to January 1, 2011, under any of the following conditions: Physical interconnection is not required where listed wireless alarms are installed and all alarms sound upon activation of one alarm; No construction is taking place; Repairs or alterations do not result in the removal of interior wall or ceiling finishes exposing the structure in areas/spaces where carbon monoxide alarms are required; Repairs or alterations are limited to the exterior surfaces of dwelling, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck; and, Work is limited to the installation, alteration or repair of plumbing, mechanical, or electrical systems, which do not result in the removal of interior wall or ceiling finishes exposing the structure in areas/spaces where carbon monoxide alarms are required.
- Be installed in the following locations: Outside of each separate sleeping area in the immediate vicinity of the bedrooms; on every occupiable level of a dwelling unit, including basements; and, where a fuel burning appliance is located within a bedroom or its attached bathroom, a carbon monoxide alarm shall be installed within the bedroom.

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11.10.09.02 Carbon Monoxide Alarms with Alternative Power Sources

A carbon monoxide alarm may receive power from another power source, other than the building's wiring, in residential dwellings where:

- Installed in buildings without commercial power, a battery-operated carbon monoxide alarm shall be permitted.
- An addition is made to an existing dwelling, or a fuel-burning heater, appliance, or fireplace is added to an existing dwelling, not previously required to be provided with carbon monoxide alarms, a battery-operated carbon monoxide alarm shall be permitted.
- In Residential occupancies, a carbon monoxide alarm shall be permitted to receive their primary power from other power sources recognized for use by the National Fire Protection Association (NFPA) Standard 720.
- In Residential occupancies, a carbon monoxide alarm shall be permitted to be battery-powered or plug-in with a battery backup in existing buildings built prior to January 1, 2011, under any of the following conditions: No construction is taking place; Repairs or alteration do not result in the removal of interior wall and ceiling finishes exposing the structure in areas/spaces where carbon monoxide alarms are required; Repairs or alterations are limited to the exterior surfaces of dwellings, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck; and, Work is limited to the installation, alteration or repair of plumbing, mechanical or electrical systems, which do not result in the removal of interior wall or ceiling finishes exposing the structure in areas/spaces where carbon monoxide alarms are required.

11.10.10.00 Rehabilitation of Residential Property

The Department's policy is to upgrade and maintain housing at standards that meet the most recent edition of the California Building Standards Code (Title 24 of the California Code of Regulations). Rehabilitation standards shall include safety and energy saving devices such as smoke alarms, carbon monoxide alarms, ceiling insulation, and weather stripping. This rehabilitation policy shall apply to residential rental property on routes where construction is not imminent.

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11.10.10.01 Inspections

The first step in the rehabilitation process is a code inspection to determine whether housing units are in compliance with the California Building Standards Code. The Agent must contact their local State Fire Marshal representative to schedule an inspection. Agents may ask the local city or county building services department for a building inspection, yet the city or county may refuse to inspect since State-owned property is not within their jurisdiction. The Agent shall attend the building inspection to document the deficiencies discovered by the pertinent inspector. Each inspection will be documented in writing with a clear description of the property's condition and recommendations for work required to bring the property up to code.

The State Fire Marshal inspector or local building inspector should also be used to monitor the contractor's work while it is being done and upon completion.

11.10.10.02 Specifications and Estimates

Qualified District/Region personnel or licensed contractors shall prepare a description of work with specifications and cost estimates. Certain restrictions may prohibit a contractor who is hired as a consultant from bidding on a subsequent contract that the contractor recommended, suggested, required, etc., in the consulting contract. When requesting a consulting service contract, inform DPAC of any follow-up contract that will be based on the recommendations or other end product of the consulting contract. (Note that general information gathering on commonly accepted industry practices is allowed. See Manual Section 11.10.13.00.)

11.10.10.03 Public Works Contracts

Depending on scope of work, a project may require a public works contract. Per Section 1101 of the Public Contract Code, a public works contract is an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. Any vendor performing a public works job of $500.00 or more is required to have a current California Contractors State License Board license to legally provide this service. Vendors must carry or obtain various types of insurance, licenses, permits, and performance or payment bonds, depending on the amount of the contract. These contracts are processed as a Service Contract through the Division of Procurement and Contracts (DPAC). Whole roof replacements, initial (first time) painting, replacement of heating/air conditioning systems, parking lot resurfacing, sidewalk repair, etc., are

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covered by public works contracts. Contact an analyst in DPAC for more information if you are not sure if your project qualifies as a public works contract. (Also, see Section 11.10.12.00 for a description of service contracts.) Any work which would require a city/county permit will require a permit from the State Fire Marshal.

Prior to requesting a public works contract, the Contract Manager shall prepare a package for approval by the DDD or their authorized designee. The package should include the following information:

- Description of work.
- Plans and specifications.
- Written estimate of cost.
- Economic justification. At a minimum, the economic justification should contain estimates of the property's value in its present condition and its value after rehabilitation.
- Reasons why the work is necessary.
- Verification that funds are available.
- Status of the project for which the property was acquired, e.g., being held for construction or being considered for rescission with dates.

11.10.10.04 Public Works Contracts Under State Contract Act

Public Works projects that exceed a certain total cost as determined by the Department of Finance are subject to the State Contract Act (Public Contract Code Section 10100, et seq.) and will be handled as major contracts. The Department of Finance adjusts this cost limit every two years. Contact DPAC to find out whether your project will fall under the State Contract Act. Requests for contracts subject to the State Contract Act should be submitted to DPAC, who will determine if they or another office should process the request. Occasionally, Department of General Services might be involved, but DPAC will determine when this is necessary.

The package described in Manual Section 11.10.10.03 and specifically the plans, specifications, and written estimate of cost must be approved by the DD or authorized delegate prior to requesting a contract that is covered under the State Contract Act.

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11.10.10.05 Occupied Housing

Rehabilitation of occupied housing should be done only under the following circumstances:

- For minor interior work.
- With the tenant's prior consent.
- After an asbestos and lead survey indicates there are no health and safety concerns due to the presence of asbestos or lead.
- There are no other health and safety concerns that may arise while the rehabilitation work is being done.

If health and safety factors are involved or if extensive interior rehabilitation is needed, temporary or permanent relocation of tenants to other accommodations, preferably to other state rental property, should be considered. Pursuant to Government Code Section 7265.3, a public entity may make payments in the amounts it deems appropriate, and may provide advisory assistance under this chapter, to a person who moves from a dwelling, or who moves or discontinues his business, as a result of impending rehabilitation or demolition of a residential or commercial structure, or enforcement of building, housing, or health codes by a public entity, or because of systematic enforcement pursuant to Section 37924.5 of the Health and Safety Code, or who moves from a dwelling or who moves or discontinues a business as a result of a rehabilitation or demolition program or enforcement of building codes by the public entity, or because of increased rents to result from such rehabilitation or code enforcement. Property Management should contact the District RAP Unit for assistance.

- If the repair requires a short-term displacement, the Department should offer a rental offset for the cost of a hotel. The Department must provide a maximum cap to the daily rate of the hotel accommodations. All agreed to expenses must be memorialized in writing. The amount of the rental offset will be the actual cost of the hotel accommodations. The tenant must provide the receipt, and the Agent must complete a Rental Offset Agreement. The Agent must process an Adjustment Screen in RWPM for the rental offset.
- If the repair requires a long-term displacement, the Department should move the tenant into another Department housing unit. There should be a rental offset for moving costs into the other Department housing unit and there should be a rental offset for the moving cost back into the rehabilitated unit. The District/Region must agree to the amount of the rental offset for moving costs and memorialize the agreement in writing.

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The Agent must complete a Rental Offset Agreement and process an Adjustment Screen in RWPM for the offset.

- If the building becomes uninhabitable and it is not cost effective for the District/Region to rehabilitate the housing unit, the Department should move the tenant into another Department owned housing unit. The Agent should try to find another unit that is the same market rental rate of the previous unit. If this is not feasible, the rental rate should be the same rate as the previous unit for a term of 60 days. At the same time as moving the tenant into the alternate Department owned housing unit the tenant should be offered a new month-to-month rental agreement at the increased market rental rate, which will be effective at the end of the 60-day grace period. If the tenant refuses to accept the increased rental rate, the Agent should serve a 60-Day Notice to Terminate the Tenancy. Regardless of the acceptance of the new rental rate, there should be a rental offset for the cost of moving. The District/Region must agree to the amount of the rental offset for moving costs and memorialize the agreement in writing. The Agent must complete a Rental Offset Agreement and process an Adjustment Screen in RWPM for the offset.
- If the building becomes uninhabitable and it is not cost effective for the District/Region to rehabilitate the housing unit and the Department doesn't have another unit, the Department may, at its option, serve a 60-Day Notice to Terminate the Tenancy and relocate the tenant to a temporary lodging. The Department should offset the rent and provide a maximum cap to the daily/weekly/monthly rate not to exceed the per diem allowances afforded to Department employees. All agreed to expenses must be memorialized in writing. The amount of the rental offset will be the actual cost of the temporary lodging. The tenant must provide the receipt, and the Agent must complete a Rental Offset Agreement. The Agent must process an Adjustment Screen in RWPM for the rental offset.

11.10.11.00 Rehabilitation and Maintenance on Historic Structures

Public Resources Code Section 5024 requires all state agencies to inventory all agency-owned structures listed in or potentially eligible for inclusion in the National Register of Historic Places or registered or eligible for registration as a state historical landmark. Typically, this would include structures that are 50 years of age or older; however, some structures may have achieved historical significance within the past 50 years if the structures meet the criteria for exceptional significance. Property Management is responsible to ensure that all structures subject to provisions of Section 5024 are adequately and appropriately maintained.

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All maintenance and rehabilitation work on Department-owned historic structures shall be performed in a manner to protect and preserve the characteristics that qualified the structures for listing. Plans and specifications for maintenance and rehabilitation activities shall be submitted to the District's Division of Environmental Analysis for processing to the State Historic Preservation Officer (SHPO) for review and approval prior to undertaking any such work. The District's Division of Environmental Analysis shall submit these plans and specifications to the Chief, Architectural and Historic Studies Section, Headquarters Environmental Analysis, for processing to SHPO.

For all structures that are 50 years of age or older, the Agent shall confirm with the Division of Environmental Analysis to verify that the structure isn't considered historic.

11.10.12.00 Reasonable Accommodations and Reasonable Modifications

Multiple federal and state laws protect people with disabilities from discrimination from landlords. Federal laws include the Fair Housing Amendments Act (42 U.S.C. Sections 3601-3631), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794), and Title II of the Americans with Disabilities Act (42 U.S.C. Sections 12131-12165). California laws include the Fair Employment and Housing Act (Government Code Sections 12955-12956.2), the Unruh Civil Rights Act (Civil Code Section 51), the Disabled Persons Act (Civil Code Sections 54.1 and 54.2), and Government Code Section 11135. Refusing or failing to provide reasonable accommodations and reasonable modifications for individuals with disabilities is considered a form of discrimination.

A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. It is considered discriminatory for the Department to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford a person with an equal opportunity to use and enjoy a dwelling.

A reasonable modification is a structural change made to the existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. It is unlawful for the Department to refuse to permit a reasonable modification of existing premises if such modifications may be necessary to afford such person full enjoyment of the premises.

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Since the Department is a State Agency that receives federal funding, pursuant to Section 504 of the Rehabilitation Act of 1973, all costs associated with a reasonable accommodation and/or modification are borne by the Department. The Department may not require persons with disabilities to pay extra fees or deposits or place any other special conditions or requirements as a condition of receiving a reasonable accommodation and/or modification.

To prove that a requested accommodation and/or modification may be necessary, there must be an identifiable relationship between the requested accommodation and/or modification and the individual's disability. The Department may not inquire as to the nature and severity of an individual's disability. However, the Department may request reliable disability-related information that is necessary to verify that the requester meets the definition of disability, describes the needed accommodation and/or modification, and shows the relationship between the requester's disability and the need for the requested accommodation and/or modification.

The Department can deny a request for reasonable accommodation and/or modification if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation and/or modification. A request for a reasonable accommodation and/or modification may be denied if the providing the accommodation and/or modification is unreasonable. An unreasonable request is a request that would impose an undue financial and administrative burden on the Department or it would fundamentally alter the nature of the Department's operations. Factors to consider include the cost of the requested accommodation and/or modification, the benefits that the accommodation and/or modification would provide to the requester, and the availability of the alternative accommodations and/or modifications that would adequately meet the requester's needs. If the request is cost prohibitive or fundamentally alters the Department's operations, the Department and the requester should engage in an interactive process to reach an acceptable compromise.

If the Department receives a reasonable accommodation and/or modification request, the Property Management Senior should consult with Region's/District's Legal to discuss the situation on a case by case basis.

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11.10.13.00 Maintenance Performed by Service Contract

It is important to distinguish between work that can be done under a service contract and work that requires a public works contract (Manual Section 11.10.10.03). Legal has determined that minor on-call repair and maintenance services (required on an as-needed basis to provide a practical means of maintaining state-owned rental housing or state facilities in a safe and habitable condition) are not defined as public works and may be obtained using service contracts. Such services include electrical, plumbing, minor carpentry to replace broken stairs or windows, repainting, heating and air conditioning repairs, roof repair, etc. The specific repairs do not lend themselves to the preparation of plans and specifications, nor is it known at the time the contract is advertised and awarded when the services will be performed. Contact an analyst in the Division of Procurement and Contracts (DPAC) for more information if you are not sure what type of contract would be appropriate for your needs.

DPAC prepares and processes all service contracts upon receipt of a completed Service Contract Request (Form ADM-0360) from R/W. Except for emergency work, all maintenance contracts are subject to competitive bidding. Since considerable time is required to prepare, advertise and award the contract, it is recommended that the completed ADM-0360 be sent well in advance of the date the services will be needed. Contact DPAC for more information on the length of time required to process a service contract.

General information gathering from companies regarding common industry practices, rate structures, general costs, billing methods, etc., in order to create a scope of work is acceptable. However, care should be given to not influence a company representative's opinion for the preparation of a scope of work, or to give a representative privileged information (and not make it available to all potential bidders) which could then be used by that company when it tenders a bid on the contract. It is neither legal nor ethical to tailor a scope of work or contract to a specific party. Any contact with a company representative requesting information on cost estimates, billing methods, etc., offers the possibility that the company or other bidder may at some point in the future protest a decision not in their favor.

It is recommended that if a company representative is contacted for the purpose of learning what the commonly accepted standards or practices in that industry are, the representative is advised that: 1) the Department is soliciting publicly available (i.e., not proprietary) information to prepare a statement of work on a potential contract, and 2) the representative, by

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providing such information, will not preclude the company from bidding on future contracts. It is also recommended that more than one company be contacted for this information. (Note that certain restrictions may apply if a contractor is hired under a consulting service contract. See Manual Section 11.10.10.02.)

Property maintenance contractors can be obtained using the types of contracts and methods described elsewhere in this section.

11.10.13.01 Inspection of Repairs

Type of Inspections:

Small repairs with an estimated cost of less than $500.00: An Agent shall inspect all maintenance issues before submitting a task order with the contracted vendor. After the work has been completed, Agent shall inspect the completed repair. If the repair is to remedy a health and safety issue, an Agent must inspect the completed repair. The Agent shall document all findings of the deficiency and repair in the rental file. Meeting with the contracted vendor prior to the start of any work is highly recommended. This will allow the Agent to ask any questions and communicate Department policy. Payment to the contracted vendor cannot be made until the work has been completed satisfactorily and has either been inspected or confirmed to be completed.

Medium repairs with an estimated cost of less than $1,000.00: An Agent shall inspect all maintenance issues before submitting a task order with the contracted vendor. The Agent shall inspect the repair during and after the work has been completed and document all findings in the rental file. Meeting with the contracted vendor prior to the start of any work is highly recommended. This will allow the Agent to ask any questions and communicate Department policy. Payment to the contracted vendor cannot be made until the work has been inspected and completed satisfactorily.

Large repairs with an estimated cost over $1,000.00: An Agent other than the assigned Agent, preferably the Contract Manager, shall inspect all maintenance issues prior to the submission of a task order to the contracted vendor. The inspecting Agent shall inspect the repair during and after the work has been completed and document all findings in the rental file. Meeting with the contracted vendor prior to the start of any work is highly recommended. This will allow the inspecting Agent to ask any questions and communicate Department policy. If the repairs must be completed in stages

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and the service contract specifies approval of each stage, the Agent inspecting the repair shall approve each stage of the repair prior to the contracted vendor proceeding to the next stage. Payment to the contractor cannot be made until the work has been inspected and completed satisfactorily.

Inspections for work requested and work in progress or completed should be accomplished in accordance with the guidelines in the following guide entitled "Inspection Guidelines for Service Contracts."

INSPECTION GUIDELINES FOR SERVICE CONTRACTS

(These guidelines also apply to services obtained by other methods discussed elsewhere in this section (e.g., CAL-Card, etc.). However, rental offsets will require on-site inspection of all jobs regardless of size.)

Small Repairs – Estimated Cost Less Than $500

Examples:

- Change a faucet
- Mow a lawn
- Fix a window

Type of Inspection:
Agent shall inspect all maintenance repairs. Managers should order random inspections to assure small repairs are done satisfactorily. However, any repair to remedy a health and safety issue must be inspected by an Agent regardless of cost.

Medium Repairs – Estimated Cost Less than $1,000

Examples:

- Paint partially
- Install flooring
- Repair cabinet
- Repair roof

Type of Inspection:
An Agent shall inspect the work before and after the job is done.

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Large Repairs – Estimated Cost Over $1,000

Examples:

- Repaint entire interior or exterior of house
- Install new flooring and carpeting
- Repair roof

Type of Inspection:
An Agent other than the Agent assigned shall inspect work before, during, and after the job is done. It may not be possible to detect bad workmanship after the job has been completed when much of the work is no longer visible. Where certain stages of work require inspection before the next stage commences, the contract must state this condition of approval and payment upon full inspection. Payment to the contractor cannot be made until the work has been inspected and completed satisfactorily.

11.10.13.02 Requesting Work

When the Agent is made aware of a deficiency on the property, which requires a remediation by the contracted vendor, the Agent should discuss the deficiency with their supervisor for direction on how to proceed. Once a plan for remediation is developed, the Agent must arrange for the submission of a task order to the contracted vendor.

The Agent must contact the Contract Manager for the specific contract that will be utilized for the remediation. The Agent and the Contract Manager shall develop an estimate of the cost of remediation. The Contract Manager shall verify that the estimated cost of remediation is within the remaining contract budget. The Contract Manager shall submit a task order which will include the following:

- The task order number, the contract agreement number, the parcel number, and date issued.
- The contractor's information.
- The date that the repair work will begin and the date that the repair work should be completed.
- The location of the repair work.
- The scope of services (Task Order scope of work, expected results, and deliverables).

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- A dollar cap amount of the repair work. The task order shall state that if the cost of remediation, once the work begins, will be above the cap amount specified in the task order, then the contractor shall contact the Contract Manager for approval to proceed with the remediation.

11.10.13.03 Multi-provider and Single Provider Service Contracts

Contracts can be written for on-call services as needed over the duration of the contract or for a single, specific job. An on-call service contract can have multi-providers (if approved by DPAC) or a single provider. A contract for a single, specific job will only have a single provider. Right of Way Contract Managers are urged to use single providers rather than multi-providers. If a multi-provider contract is absolutely needed, check with DPAC to see if multi-providers will be allowed before submitting a contract request (FormADM-360). When a contractor's bill is received on a multi-provider or single provider contract, the Contract Manager shall update the Maintenance Request Screen in RWPM itemizing the work done and indicating the appropriate charges. The Contract Manager shall complete a Receiver (FA-1226A or1226B, depending on the number of invoices) and forward the updated Maintenance Request Screen, the Receiver, and the invoice to the supervisor for approval. The supervisor shall review the invoice and ensure that the Receiver and the Maintenance Request Screen are accurately completed, sign the Receiver, and enter the date approved on the Maintenance Request Screen in RWPM. Where services are provided on an hourly rate basis, the contractor shall submit a copy of the Contractor's Time Reporting Sheet (RW 11-23) with the employee's information, classification, and hours reported. This form will be attached to the final invoice to process payment. It is vital to keep a copy of the invoice and RW 11-23 in the Contract Manager's contract file for purposes of verifying compliance with prevailing wages (for more information on prevailing wages, please refer to Manual Section 12.04.04.00). The payment package will consist of the approved Maintenance Request Screen, the signed Receiver, and the invoice. Two copies of the payment package must be submitted to Accounting for payment in accordance with Manual Section 11.10.12.06.

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11.10.13.04 CAL-Card Small Purchase Program

Through the DGS CAL-Card Small Purchase Program, Department authorizes cardholders to make approved small purchases of goods and services with VISA bankcards within certain limits. Cardholders must comply with all existing procurement and contract statutes, laws, rules, accounting guidelines, regulations, policies, and procedures. See the Department CAL-Card Handbook for limitations and detailed instructions, available on the DPAC Intranet. Information on general liability insurance requirements, Worker's Compensation, and verification of Trades Contractor License is also explained in the CAL-Card Handbook.

Property Management uses the CAL-Card primarily for procurement of services, and such usage must be in compliance with the Public Contract Code. The CAL-Card limits for services or like services are $9,999.99 in a 12-month period for the same type of service with the same vendor. Pursuant to Public Contract Code Section 10329, a series of related services that would normally be combined and bid as one job cannot be split into separate tasks, steps, phases, locations, or delivery times to circumvent to avoid the need to advertise or obtain competitive bids. The duration of the service cannot exceed two (2) years. The Contract Manager shall utilize the CAL-Card Service Agreement Under $10,000 (ADM-4028) when utilizing CAL-Card as the method of payment for services. Although bids are not required, it is recommended that more than one contractor be contacted in order to find the best value. If multiple quotes are not obtained, then the CAL-Card cardholder must provide documentation of fair and reasonable pricing as specified in Section 8.2 of DPAC's *Acquisitions Manual for Non-Information Technology and Information Technology Goods and Services*.

When using the CAL-Card for property maintenance, it is very important to distinguish between procurement of merchandise and procurement of services, particularly if the procurement is a combination of parts and labor. If labor exceeds 50% of the total cost, the procurement is considered a service. If, on the other hand, parts are 50% or more of the total cost, the procurement is considered merchandise.

Prior to procuring maintenance services using CAL-Card, the Agent shall complete a Purchasing Authority Purchase Order (STD. 65) and submit it for budgetary control and approval to the Senior in charge of R/W Property Management. The completed Purchase Request is submitted to the CAL-Card cardholder so charges can be made and services obtained. The cardholder retains a copy of the Purchasing Authority Purchase Order, credit card receipts, and any other backup documentation for verification and post

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audit by Department or DGS. To process payment under CAL-Card, a complete package must be received in Accounting by the 10th of each month. The package consists of:

- Purchasing Authority Purchase Order (STD. 65)
- Original Charge Slips and/or Sales Invoices
- Original Cardholder Statement of Account (SOA) signed on the back by the Cardholder and approving official.
- Original STD. 204, Payee Data Record (unless already on file)
- Drug-free Workplace Certification, STD. 21 form (unless already on file)
- Two copies of the Maintenance Request Screen. (Accounting will return one copy with schedule information.)

11.10.13.05 Non-Credit Card Process (Under $10,000)

The non-credit card process (Form ADM-3015, Service Agreement Under $10,000) may be used for maintenance services where the CAL-Card is not accepted or where employees do not have access to a credit card. The aggregate amount of the Service Agreement cannot exceed $9,999.99, and the term over which services are to be provided cannot extend beyond three years in length. See instructions on Form ADM-3015. The Contract Manager shall obtain a minimum of two quotes. If the Contract Manager only obtains one quote, the Contract Manager shall provide justification that the quote is fair and reasonable.

The following package must be submitted to Accounting to pay the contractor's invoice:

- Original Invoice
- Original Receiving Record (FA-1226A) or two copies of the Maintenance Request Screen
- Original STD. 204, Payee Data Record (unless already on file)
- Drug-free Workplace Certification, STD. 21 form (unless already on file)

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11.10.13.06 Submitting for Payment

Maintenance Requests, Contracts, Travel Expense Claims, Draft Purchase Orders, Statements of Account, Purchase Requests, and other coded documents must be properly coded (Object 058) so Accounting can accurately charge the property maintenance expenditures to the appropriate project EA. Upon completion of any of these documents, Property Management will sign, date, and forward the document to Accounting for processing.

On rare occasions, the Division of Maintenance will perform work on a rental account and will complete the appropriate document, in which case Maintenance shall contact Property Management for proper coding information. Maintenance shall forward the document to Property Management for review to ensure proper coding.

To keep track of Maintenance Requests and other documents sent to Accounting for processing, an Agent or inspector shall enter the maintenance data into RWPM in a timely manner and file a copy of the document in the appropriate contract agreement file. If for any reason Accounting fails to return a copy of the Maintenance Request or other document to Property Management within two weeks, the Property Manager must follow up with Accounting to determine the cause of the delay.

After Accounting processes the Maintenance Request or other coded document, the reviewer shall use a copy of the Maintenance Request, Receiver, TRAMS Multipurpose Posting Tag, or other document showing the coding information to ensure the coding provided to Accounting was not changed during processing. The Accounting information should be entered on the Maintenance Request Screen and then filed.

Government Code Section 927-927.13 is known as the Prompt Payment Act (Act). The intent of the Act is to have state agencies pay properly submitted, undisputed invoices within 45 days of receipt, or automatically calculate and pay the appropriate late payment penalties as specified in the Act. To avoid late payment penalties, the state agency has 30 calendar days to submit a correct claim schedule to the Controller, and not more than 15 calendar days for the Controller to issue the warrant. If the state agency does not submit the claim schedule to the Controller within 30 days, the state agency will be responsible for the late payment penalties. If the state agency submits the claim schedule to the Controller within 30 days and the Controller does not issue a warrant within 15 days, the Controller is responsible for the late payment penalties.

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In order to meet the timelines described above, the Region/District shall submit the payment package to Accounting within 15 days of receiving the invoice.

11.10.13.07 Summary of Various Contract Processes

A brief summary of the various contract processes discussed above is included in Exhibit 11-EX-10, Summary of Contract Processes.

11.10.14.00 Draft Purchase Order (DPO)

A Draft Purchase Order (DPO) (Form ADM-1024) is a method of procurement and payment which cannot be met by the standard purchase order or CAL-Card. A DPO may be used for minor purchases of supplies and materials needed for maintenance of state-owned properties. Generally, the state's tenant or state personnel will use or install the items purchased.

A DPO may be used subject to the following limitations:

- To pay for goods or services of $10.00 to $500.00 (including tax and freight). Consult with Accounting for further details.
- Transaction must be "face-to-face" (do not mail).

A DPO shall **NOT** be used when any of the following conditions apply:

- In other than "face-to-face" transactions.
- To purchase items available in either Department warehouses or DGS warehouses.
- To purchase items covered by existing contracts.
- To purchase items costing less than $10.00, except in rare emergency situations.
- To pay for hazardous services, such as pest or weed control involving chemicals.
- To pay for future services, such as advance rent.
- To circumvent proper service contract procedures, such as splitting purchases of service.
- To pay for items in violation of current departmental directives, such as eye examinations when safety glasses are required.

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Maintenance personnel may use a DPO, subject to the above limitations, to purchase materials needed to repair employee housing. The Maintenance Superintendent for each territory should have access to the draft forms. If RW is performing maintenance activities on behalf of maintenance, upon completion of repairs, Maintenance will contact Property Management for proper coding information and send the DPO to Property Management to review coding. Maintenance for employee houses are not 058 funds, but rather a fund that Maintenance provides. If RW is performing maintenance activities on behalf of maintenance, Property Management will place a copy of the DPO in the proper account file and forward the document to Accounting for processing.

To track DPOs sent to Accounting for processing, the Property Manager shall maintain either a log of such documents in process or a copy of the document in a separate file or binder. If Accounting fails to return the DPO or other document to Property Management within two weeks, the Property Manager must follow up with Accounting to determine the cause of the delay.

11.10.15.00 Travel Expense Claim (TEC)

The TEC, Form FA0302, may be used for "after-the-fact" reimbursement for purchase of supplies or materials needed to maintain state-owned properties. Property Management personnel should use the TEC when they are in the field and discover a maintenance problem that requires immediate attention. Under no circumstances should the TEC reimbursement process be used instead of purchasing goods and services through methods described by DPAC.

Material needed for repairs can be purchased with employees' own funds for which they will be reimbursed by check by presenting a TEC to Accounting. All expenses must be explained on the TEC, and expenses over $25.00 requires approval by the Office Chief or Deputy. The TEC should be filled out and given to Accounting along with applicable receipts.

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11.10.16.00 Emergency Repairs

When the Agent determines that an emergency condition exists, the pre-inspection may be dispensed with in the interest of expediting emergency repairs. The Agent shall take whatever steps necessary to have the corrective work performed as soon as possible.

It is the Agent's responsibility to determine if the extent of a maintenance deficiency classifies as an emergency situation. This will be accomplished by physically inspecting the property, during normal business hours, and evaluating the conditions for health and safety concerns. If an emergency happens after normal business hours, the Region/District shall have a process in place for tenants to contact the Department to either have an on call contracted vendor address the situation or to authorize the tenant to arrange for immediate repair. When the Agent determines that an emergency condition exists, corrective measures will be scheduled as soon as possible and not to exceed 24 hours.

If the emergency condition is an immediate threat to the health or safety of any tenant, the Region/District may move the tenant to alternative housing. Alternate housing includes other Department owned housing or commercial lodging. If commercial lodging is used, the tenant must submit receipts for reimbursement. The maximum amount of reimbursement to the tenant will be restricted to the State per diem guidelines for lodging. If Department owned housing is used as a temporary residence for any tenant, under no circumstances will the tenant be allowed to remain in the replacement residence without going through the qualification process.

11.10.17.00 Rental Offsets

Occasionally, rental offsets may be appropriate for certain repairs or maintenance. However, such offsets should only be used as an exception and not routinely. There are other alternatives to using a rental offset that are discussed elsewhere in this section [e.g., service contracts, CAL-Card and non-credit card (Form ADM-3015) processes, etc.] and those should be considered first. Work done by rental offset should not be in conflict with existing maintenance contracts.

Rental offsets should be limited to minor repairs and maintenance, or emergency repairs for health and safety reasons. Examples of situations where offsets are not appropriate include remodeling a kitchen/bathroom, re-roofing, installing new flooring and carpeting, painting the entire house,

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and other major repairs or rehabilitation. Also inappropriate for rental offsets would be any work that may involve contact with hazardous materials.

When the tenant is performing a repair, the Department does not pay the tenant for their labor or for purchase of tools. The tenant will only be reimbursed for the actual cost of the materials.

Generally, a tenant cannot hire a contractor to do the work and receive an offset. This violates our contracting policy. However, on occasion, a tenant may need to hire a licensed contractor for emergency repair. Any contractor performing a job in which the total cost of the project, including labor and materials, is $500.00 or more, must be licensed by the Contractors State License Board in the specialty for which he or she is contracting. Even if work is less than $500.00, a licensed contractor should be used for any electrical, gas, plumbing, or other work that must be done according to code.

Rental offsets of $1,000.00 or less may be approved by the Property Management Senior. Rental offsets more than $1,000.00 must be approved by the Property Management Supervising R/W Agent or above. The reason for using a rental offset must be documented in the file. Rental offsets are subtracted from the Region/District's 058 Account for property maintenance, so sufficient funding should be available before using a rental offset.

The general procedures below apply when a rental offset is used to provide maintenance for new or existing residential tenants.

When a need for minor maintenance work is indicated, the Agent shall inspect the property and complete a cost estimate. The Agent will determine the amount of the rental offset based on prevailing prices in the area and local rental management practices. The Agent shall prepare the appropriate document as follows:

- **New Tenants** - Insert completed clause into rental agreement and obtain prospective tenant's signature(s).
- **Existing Tenants** - Prepare letter of understanding and obtain tenant's signature(s).

The Agent shall submit the signed document, along with the maintenance cost estimate and the reason a rental offset is being used, to the person authorized to approve such expenditures. Before any work commences, the Property Manager Senior or Supervising R/W Agent, depending on amount of the offset, shall approve the amount of the allowance. Upon approval, the Agent shall file the document in the rental folder, log the proposed work, and inform the tenant to proceed with the work.

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When the tenant has completed the work, a Property Management Agent shall inspect the property to verify and document satisfactory completion of the work. The Agent shall complete the proper inspection forms, take photographs of the repair, and enter diary notes concerning the repair. The tenant must provide the Agent the receipts for the materials before the tenant's account is finally credited with the amount of the rental offset. Inspection standards for maintenance work accomplished through the contract process shall also apply to work performed with offsets, except that all offset work must be inspected by the Department, no matter how small.

Regardless if the repair was completed by a vendor or the tenant, after inspection and acceptance of the work, the Agent shall procure from the tenant all receipts or vendor's itemized statements. The Agent shall complete an RWPM Adjustment Request Screen, which results in a credit to the tenant's account and posts the amount against the 058 Property Maintenance Account. Total amount spent on offsets is shown on the RWPM Contract Screen for contract number "Offsets." A copy of the rental offset paperwork, along with the receipts for materials or vendor's itemized statements, needs to be sent to Accounting before Accounting will make the Adjustment.

An offset shall be credited only to a tenant in occupancy of the property on which the maintenance work is performed. In other words, tenant "A" living in property "A" **cannot** receive an offset for work performed on property "B."

11.10.17.01 New Residential Tenants

Where a property has become run-down and certain minor repairs are required to secure a new tenant, it may be appropriate to grant a rental offset by inserting a clause in the rental agreement for materials necessary to accomplish specified work.

The clause inserted in the initial rental agreement shall be written as follows:

> *It is understood and agreed that in consideration of a rental offset of an amount not to exceed $_____, Tenant agrees to: (Describe Work to Be Done).*
>
> *Tenant shall secure paid itemized bills covering materials used for the authorized work and forward them to the Department of Transportation at _____ _____. Credit will only be allowed for the actual amount of the paid bills not to exceed the amount above. Tenant will be paid for materials only and will not be paid for his/her labor or for the purchase of tools. Tenant may not hire*

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a third party contractor to perform the authorized work unless prior written permission from the Department is obtained.

It is further agreed that said work will be completed and paid bills received by the Department of Transportation prior to _____, and that the rental credit will only be granted after inspection, by the State, of the completed work.

11.10.17.02 Existing Residential Tenants

In some instances, sound management practices dictate granting a rental offset to the tenant to achieve a degree of efficiency and economy, as well as to expedite performance of certain emergency repairs and repairs of a minor nature. The tenant and the state shall sign a letter of understanding before the tenant performs any repair work. The letter of understanding should specify that the tenant will be paid for materials only (based on paid itemized bills) and will not be paid for his/her labor or the purchase of tools. The letter shall also state that the tenant may not hire a third-party contractor to perform the authorized work unless prior written permission from the Department is obtained.

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11.11.00.00 - INSURANCE REQUIREMENTS FOR TENANTS

11.11.01.00 Policy

Tenants and lessees shall be required to obtain Commercial General Liability insurance in most leases and rental agreements where extraordinary liability features are present. Insurance shall be in an amount of at least $1,000,000 per occurrence for Bodily Injury and Property Damage Liability combined. Personal liability coverage for single-family residential properties with swimming pools may be limited to combined coverage of $500,000. These amounts may be increased for high-risk uses.

11.11.02.00 When Insurance Is Required

Refer to the table entitled "Guidelines for Personal Injury, Liability, and Property Damage Insurance" Exhibit 11-EX-11 to determine the need for insurance.

Although not required by the guidelines, insurance should also be required for specific situations with high-risk uses. For example:

- Large agricultural operations involving heavy equipment.
- Properties fronting on rivers or lakes.

In such cases, the district determines the necessity for insurance. Insurance is generally required when the property is used for purposes that involve employees, visitors, or customers who could be subject to accidents and injuries.

11.11.03.00 Family Day Care Facilities

Use of a state-owned residential unit as a family day care home, as opposed to a school, does not fall under the commercial/business lease category requiring high insurance coverage. Under Section 1597.40 of the Health and Safety Code any provision in a rental agreement forbidding or restricting the use or occupancy of the property as a family day care is void. The Department may not stop the tenant from using the property as a family day care home. The tenant must provide 30 days' written notice of their intention to use the property as a family day care home prior to commencing such use.

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A family day care home can either be considered a small family day care home or a large family day care home. For a small family day care home, the maximum number of children allowed are eight (8) children; the tenant must get the Department's approval when the number of children exceeds six (6) children. For a large family day care home, the maximum number of children allowed are fourteen (14) children; the tenant must get the Department's approval when the number of children exceeds twelve (12) children.

Section 1597.531 of the Health and Safety Code, however, does set minimum levels of mandatory liability insurance for injuries or bond coverage for family day care homes. The minimum amount of liability insurance is $100,000 per occurrence and $300,000 aggregate or a bond in the aggregate amount of $300,000. In lieu of liability insurance or bond, a day care provider may maintain a file of signed affidavits informing parents the day care home does not carry the liability insurance or bond. If the day care provider does carry liability insurance or a bond, the Agent should request that the Department is named as an additional insured as long as it does not result in the cancellation, non-renewal, or increase in the premium of the insurance or bond.

In addition, if the provider does not own the premises, the affidavits shall state that parents have been informed the property owner's liability insurance, if any, may not provide coverage for losses arising out of, or in connection with, the day care operation. In these instances, the Region/District should request the tenant to provide copies of the affidavits.

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GUIDELINES FOR PERSONAL INJURY, LIABILITY, AND PROPERTY DAMAGE INSURANCE

PUBLIC AGENCIES:

- Self-insured – Not Required (with self-insurance clause in lease)
- Not Self-insured – Required

PUBLIC UTILITIES:

- Self-insured – Not Required (with self-insurance clause in lease)
- Not Self-insured – Required

RESIDENTIAL:

- SFR – Not required
- SFR with Pool – Required
- Multi-residential – Not Required
- Multi-residential with Pool – Required
- Master Tenancy Residential Apartments and Mobile Home Park – Required

COMMERCIAL/INDUSTRIAL:

- Large Corporations with Self-insurance (Ralston Purina, etc.) – Not Required (with self-insurance clause in lease)
- Parking – Private (For Lessee employees) – Required
- Parking – Public – Required
- Sales (Retail, Wholesale) – Required
- Restaurants, Bars – Required
- Offices – All Types – Required
- Warehouses/Storage-Inside – Required
- Storage-Outside – Equipment, RVs, Boats, etc. – Required
- Service Stations – Required
- Manufacturing – Required
- Oil and Gas Subsurface Rights – Not Required
- Oil Well with Surface Rights – Required
- Drainage Ponds – Required
- Access Rights for Cafes, etc. – Not Required
- Motels – Master Tenancy – Required
- Services (Barbershops, Beauty Parlors, Cleaners, etc.) – Required
- Repairs – Auto, Appliances, etc. – Required

AGRICULTURAL:

- Grazing – Cows, Horses, Sheep, Llamas, Goats – Not Required
- Crops – Row Crops, Orchards, Vineyards, Dry Farming – Not Required
- Sales – Fruits, Vegetables, Christmas Trees, etc. – Required
- Community Gardens – Not Required

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GUIDELINES FOR PERSONAL INJURY, LIABILITY, AND PROPERTY DAMAGE INSURANCE (Continued)

SIGNBOARDS:

- On Premise – Not Required
- Off Premise – Not Required

OTHER:

- Recreational (Golf Driving Range, Tennis Clubs, Skateboard Parks, Bike Paths) – Required
- Road Approach – Not Required
- Landscaping – Not Required
- Parks – Required
- Park and Ride Lots – Required
- Porter Bill Parks – Required
- Churches – Required

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11.11.04.00 How the State Is Protected

When the Region/District determines that commercial general liability insurance protection is required for the state's benefit, the liability and property damage insurance clause (found in the Lease Agreement template, Liability and Property Damage Insurance Clause) shall be inserted in the rental or lease agreement making it mandatory for the tenant or lessee to provide the state with the specified amounts of commercial general liability insurance and naming the state as an additional insured. When the rental or lease agreement is signed, the Region/District shall give the tenant RW 11-18, Certificate of Insurance with Endorsement for Lease of State-Owned Property, for documentation of required insurance coverage. The tenant's or lessee's insurance carrier shall complete this form and return it to the state as soon as possible. It need not be returned prior to or accompany the signed rental or lease agreement, but the insurance policy **shall be in force before occupancy**. In lieu of RW 11-18, the tenant/lessee may provide the actual certificate of insurance. The Agent shall verify that the proper coverages are obtained and that the Department is named as an additional insured.

The Certificate of Liability Insurance form (naming the State of California as an additional insured) from the tenant's or lessee's insurance carrier shall be kept in the rental file with the rental agreement or lease. The Agent must keep the current policy in the file and ensure that it is renewed yearly.

11.11.05.00 Fire Insurance on State-Owned Properties

Although the Department does not normally secure fire insurance on properties acquired for future freeway use, fire insurance may be appropriate for high value, high-risk properties purchased far in advance of highway construction. Examples of high-risk properties include bars, motels, hotels, and restaurants. The amount of fire insurance placed on a property should take into account the value of the improvements only and should not be based on the appraised value of the entire property.

In addition, Government Code Section 11007.1 subdivision (a) permits the Department to authorize insurance against damage or destruction by fire when it has acquired title to the realty and leases the property to the former owner. The Government Code section, which is quoted below, requires the former owner to request this coverage, to lease back the property for more than a six-month period, and to pay the premium.

"The Department of Transportation, when it has acquired title to any real property for highway purposes and leases that property for commercial

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or business uses to the former owner for a term exceeding six months, may secure insurance against the risk of damage or destruction by fire where the former owner requests this coverage and the premium therefor is included in the rental agreed to be paid."

The loss payee of the fire insurance policy shall be the State of California. The lessee shall be responsible for furnishing the state with a certified copy of each and every policy within not more than ten days after the effective date of the policy. Exhibit 11-EX-12, Liability, Property Damage and Fire Insurance, shows approved clauses requiring the lessee to provide the state with fire insurance on the property.

11.11.06.00 Self-Insurance by Tenant or Lessee

Some large corporations and public entities regularly self-insure. If the lessee decides to provide the required insurance by self-insuring, the Property Manager should request documentation from the lessee showing that the lessee regularly self-insures and has adequate assets. In addition, the clause below must be included in the lease in place of the standard liability insurance clause in the Lease Agreement template (Liability and Property Damage Insurance Clause) and in the Agricultural Lease Agreement template (Liability and Property Damage Clause).

LIABILITY AND PROPERTY DAMAGE INSURANCE:

Lessee will self-insure during the entire term of the within tenancy and will defend, indemnify and hold harmless the Lessor, its officers, agents, and employees from all claims, suits or actions of every name, kind and description, brought forth, or on account of, injuries to or death of any person or damage to property, including any claims, suits or actions for damage to vehicles on the property which is the subject of this lease, occurring in, or about, said property.

With respect to third-party claims against the Lessee, the Lessee waives any and all rights to any type of expressed or implied indemnity against the Lessor, its officers or employees.

It is the intent of the parties that the Lessee will defend, indemnify and hold harmless the Lessor, its officers and employees from any and all claims, suits or actions as set forth above regardless of the existence or degree of fault or negligence on the part of the Lessor, the Lessee, the officers or employees of either of these, other than its officers and employees.

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Nothing in this lease is intended to make the public or any member thereof a third-party beneficiary hereunder, nor is any term or condition or other provision of the lease intended to establish a standard of care owed to the public or any member thereof.

11.11.07.00 Certificate of Insurance

The State's Standard Certificate of Insurance, RW 11-18, Certificate of Insurance with Endorsement for Lease of State-Owned Property, may be used in lieu of a certified copy of the original policy; no other form of Certificate of Insurance is acceptable.

11.11.08.00 Fire and Explosion in State-Owned Buildings

Section 13107 of the Health and Safety Code requires that all fires or explosions in or on all State-owned properties be investigated by the State Fire Marshal. All fires and explosions must be reported to the State Fire Marshal immediately following the knowledge of a fire. The number to contact the State Fire Marshal Duty Officer is (916) 323-7390. The Duty Officer will answer this number on a 24/7 basis. You need to have the following information:

1. Type of incident (fire or explosion, etc.)
2. Location of incident
3. Time of incident
4. Was Fire/Police Department dispatched
5. Information on any injury or fatality
6. Name and phone number for a call back.

Rebuilding or repairing damage caused by the fire may begin without delay whether or not an investigation is made.

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11.12.00.00 - LEASING STATE-OWNED PROPERTY

11.12.01.00 General

The following types of properties shall normally be leased:

- Commercial
- Industrial
- Agricultural
- Income residential where the state is seeking a master tenant

11.12.02.00 State Lease Forms

The state's standard lease should be used for leasing all commercial and industrial properties. For income residential properties where the state is seeking a master tenant, a Master Tenancy Lease Agreement should be used. For agricultural property use an Agricultural Lease Agreement. Please refer to the specific agreement templates on the Property Management website (internal Caltrans link).

11.12.03.00 Lease Rates

With few exceptions, lease rates shall be at Fair Market Value.

For any lease rate less than Fair Market Value, the rental file shall be fully documented as to why it is in the Department's best interest to charge a rate below Fair Market Value. For properties obtained with title 23, United States Code, funding, the PIF and written approval from FHWA shall be in the file, please refer to Manual Section 11.01.08.00. For all other properties, the justification and approval from the Property Management Office Chief or above shall be in the file

11.12.04.00 Lease Preparation

The Region/District shall prepare at least three copies of the lease. The Agent shall forward or deliver to the lessee two originals for signature. The lessee must return both originals to the Department for execution. Once the Department has executed both originals, one fully executed original will be forwarded or delivered to lessee and one will remain in the rental file.

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11.12.05.00 Lease Approval by Lessee

The lease shall be approved by the individual(s) or, if appropriate, the authorized officer(s) of the company or corporation. The lessee's title or capacity to approve the lease shall appear beneath the lessee's signature. If the lessee is a corporation that has a seal, the seal may be affixed to the lease near the signature(s) of the corporate officer(s) approving the lease.

11.12.06.00 Lease Approval by State

The DD or authorized delegate is authorized to execute all residential rental agreements and nonresidential lease agreements. Legal must approve rental agreements and leases on nonstandard forms prior to execution on the Department's behalf.

11.12.07.00 Title VI Guidelines

The Agent will inform the State's tenants about the Department's policy and procedures under Title VI of the 1964 Civil Rights Act and will deliver a "Your Rights Under Title VI & Related Laws" brochure at the time the lease is executed.

11.12.08.00 Lease Renewals

The Agent shall maintain a Region/District wide system of knowing when leases are due to expire. The Agent shall:

- Inspect the property.
- Request a new Fair Market Value to determine the new lease rate. If the Appraisals Branch is unable to return the request in a timely fashion and the market has been stable since the execution of the prior lease, the Agent may use a Consumer Price Index increase to determine the new lease rate.
- Verify if the present lessee is interested in renewing the lease at current Fair Market Value.
- Update the last inspection date, market rent, and date of value on the Property Screen in RWPM.

If the lessee does not want to renew the lease, the lead time will give Property Management an opportunity to re-rent the property with minimal loss of rental income.

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If the lessee wants to continue leasing, the lease may be renewed or modified using a Lease Renewal form. A template of the form may be found on the Property Management website (internal Caltrans link). Confirm that the most current standard language has been incorporated into the lease renewal agreement, including storm water and other provisions. Lessee's signature on the renewal shall be identical to the signature format on the original lease, and the state shall execute in the same manner as a new lease. If the original lease is older than 7 years, a new lease agreement shall be drafted to ensure that all the updated standard clauses are incorporated into the lease.

11.12.09.00 Assignment of Lease

Circumstances may occur when a lessee wishes to sell their business and the state finds it beneficial to permit the assignment of the lease. The state has the option to refuse or accept (but cannot unreasonably withhold approval) of the proposed assignee as a responsible party who is able to fulfill the lease obligations for the balance of the lease period. The Region/District shall require the proposed assignee to complete a rental application and shall investigate thoroughly to determine if the proposed assignee is acceptable.

If the proposed assignee is acceptable, the lessee and assignor shall sign the "Assignment of Lease" section of the Assignment of Lease, as Lessee and Assignor. The assignee shall sign the "Assumption of Lease" section of the form as Assignee of Lease. The state shall execute "Consent to Assignment of Lease" section of the form in the same manner as the original lease and shall process the "Assignment of Lease" in the same manner as the original lease. (See 11-EX-H, Assignment of Lease [Where State is Lessor]).

11.12.10.00 Public Notice to Bidders

It may be advantageous for the Region/District to use the public bidding process to accomplish leasing of certain types of property. The suggested format presented in the Sample Notice to Bidders template may be modified to fit any type of property being offered for lease. The property must be advertised publicly utilizing either newspaper advertisements or internet websites (such as Craigslist and LoopNet). The Agent should inform all interested parties of the advertisement. The Sample Notice to Bidders template may be found on the Property Management website (internal Caltrans link).

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11.12.11.00 Construction of Improvements to Realty by Lessee

The Region/District may consider leasing future right of way for development of improvements to the realty where such development will not result in a relocation assistance situation or obligation to the state, but will result in a net profit to the state or other public benefit.

Such leases shall include many of the clauses contained in a standard airspace development lease. (Refer to Airspace Chapter 15.) In particular, clauses for condemnation, insurance requirements, design and location controls, ownership of improvements and personal property, and rental rate adjustments based on the Consumer Price Index should be considered for inclusion in development leases. Such leases shall also include a termination clause, a performance bond and/or other provisions to ensure timely removal of improvements at no expense to the state. The security deposit shall be an amount that incorporates the potential removal cost of the improvement that may be incurred by the Department.

The lessee shall be responsible for developing complete plans and specifications and submitting all plans and specifications to the Department for conceptual approval of any proposed improvements. Additionally, the lessee shall be responsible for obtaining all required building permits from the State Fire Marshal. Furthermore, if the improvement is a building, the lessee shall obtain a certificate of occupancy from the State Fire Marshal. Prior to the Department allowing the use of a building, the lessee shall provide the Agent with a copy of the certificate of occupancy or a copy of the temporary certificate of occupancy. If a temporary certificate of occupancy is issued, the lessee must obtain the certificate of occupancy prior to the expiration of the temporary certificate of occupancy in order to continue using the building.

Prior to beginning construction, the lessee shall provide evidence of coverage to the Department that sufficient monies will be available to complete the proposed construction. The amount of coverage shall be at least equal to the total estimated construction cost. Such coverage can be in the form:

- A completion bond issued to the Department as the obligee.
- A performance bond and labor and material bond or performance bond containing the provisions of the labor and material bond supplied by the lessee's contractor, provided said bonds are issued jointly to the lessee and the Department as obligees.
- Any combination of the above.

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All bonds shall be issued by a company qualified to do business in the State of California and acceptable to the Department. All bonds shall be in a form acceptable to the Department. All work shall be completed by a contractor who is appropriately licensed and bonded.

Property Management shall submit all such leases involving construction of aboveground structures to the DD or authorized delegate for **prior** approval.

11.12.12.00 Construction of Tenant Improvements and Fixtures by Lessee

Health and Safety Code Section 13108 specifies that the State Fire Marshal shall prepare and adopt building standards, not inconsistent with existing laws or ordinances, relating to fire protection in the design and construction of the means of egress and the adequacy of exits from, and the installation and maintenance of fire alarm and fire extinguishment equipment or systems in any state-owned building and submit those building standards to the State Building Standards Commission for approval. Additionally, the State Fire Marshal shall prepare and adopt regulations other than building standards for installation and maintenance of equipment and furnishings that present unusual fire hazards in any state-owned building. Furthermore, the State Fire Marshal shall enforce the adopted regulations and building standards relating to fire and panic safety published in the California Building Standards Codes in all state-owned buildings.

When a lessee proposes to construct tenant improvements and fixtures within an existing building, the lessee must obtain written approval from the Department. The lessee shall provide the plans and specification to the Department for conceptual approval. The minimum requirements of the plans and specifications can be found in RW 11-27. If the proposed tenant improvements and fixtures are acceptable to the Department, the plans and specifications shall be submitted to the State Fire Marshal for review and approval. If the proposed tenant improvements and fixtures requires a revised Certificate of Occupancy, the lessee shall obtain the Certificate of Occupancy at their sole cost and expense. Once written approval is obtained by the State Fire Marshal, then the Department can provide written approval for the installation of the tenant improvements. The lessee shall provide copies of the written approval from the State Fire Marshal and the revised Certificate of Occupancy, if required, to the Agent for the tenancy file.

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The lease shall include, or be amended to include, clauses specifying the ownership of the tenant improvements and fixtures at the expiration, or any sooner termination, of the lease agreement. Also, the security deposit shall be an amount that incorporates the potential removal cost of the tenant improvements and fixtures that may be incurred by the Department.

11.12.13.00 Leasing Excess Land

Property Management shall obtain approval from the Excess Land Section before any excess land is committed to a lease. This is important because a lease affecting excess land may or may not be complimentary to the sale of the parcel. When excess land is leased, Property Management should forward a copy of the lease to the Excess Land Section for its files.

11.12.14.00 Leasing to Highway Contractor

Where excess vacant or improved parcels are available in the vicinity of a highway project, the district may enter into a lease with the highway contractor during the period of the project. The lease should be on the standard Lease Agreement which usually covers uses such as construction yards and haul roads. The lease rate will be the fair market rent as in other lease agreements. Absolutely no advance commitment shall be made to any bidding highway contractor, as this would tend to give that contractor an advantage over other contractors competing for the project.

To avoid violations of any necessary access control lines and to ensure safe access to and from leased property, the lease must contain provisions specifying exactly where the contractor may gain access to and from the leased property and where the contractor may **NOT** gain access to and from the leased property. Before finalizing the lease, Region/District Right of Way will obtain written approval from the Region's/District's Encroachment Permits Department. The written approval shall be placed in the rental file and should be incorporated as an exhibit in the lease agreement.

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11.12.15.00 Leasing to a City, County, or Special District Under S&H Code 104.7

S&H Code Section 104.7 requires the Department, when requested by a city, county, or special district, to provide information regarding, and shall lease the property, if the following conditions exist. The property must be:

- Unoccupied and unimproved.
- Held for future highway purposes (does not include rescinded routes or excess land held for study).
- Located within the boundaries of the city, county, or special district.

Property determined by the Department to have commercial, industrial, or residential use, as the most feasible or best use is not eligible for lease under S&H Code 104.7.

The city, county, or special district may use the leased property first for agricultural and community garden purposes, and second for recreational purposes, on terms and conditions not unreasonably inhibiting the use of the property, including, but not limited to, assumption of liability and installation and removal of improvements.

The lease shall be for one dollar ($1) per year for not less than one year and shall be renewable.

The city, county, or special district may sublease the property for agricultural or recreational purposes subject to the following constraints:

- Upon prior written notification to the Department.
- May proceed with the sublease unless disapproved by the Department within ten (10) working days after the notice is sent to the Department.
- First priority for a sublease shall be given to the owner of property contiguous to the leased land.
- The city, county, or special district may charge rental fees at least sufficient to pay its administrative costs.
- All money received under a sublease, less administrative costs, shall be transmitted to the Department for deposit in the State Highway Account.

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The City, County, or Special District Lease template shall be used for all these types of transactions. The template may be found on the Property Management website (internal Caltrans link).

11.12.16.00 Lease Recordation

Under most circumstances, leases where the state is lessor shall not be recorded. Recordation would serve to cloud title of the property and could require a quitclaim deed to clear title at a later date.

11.12.17.00 Lease Cancellation

All leases shall contain provisions that the Department shall have the right to cancel the lease upon giving specific notice without other qualifications or reasons. The standard language in the lease agreements allow either party to terminate the lease provided a certain number of days' notice, specified in the lease agreement, is provided to the other party.

11.12.17.01 Mutual Consent

Occasions may arise when it is to the mutual benefit of the Department and lessee to cancel a lease that is in force without requiring either party to provide the specified number of days' notice to the other party or if the standard termination clause has been altered to only allow the Department to terminate the lease agreement. This shall be accomplished by using Cancellation of Lease template (11-EX-I, Cancellation of Lease Agreement). The lease cancellation shall be signed by both parties and shall be processed in the same manner as the lease.

11.12.17.02 Lessee's Failure to Pay Rent

When the lessee is delinquent in rental payments, RW 11-11, 3-day Notice to Pay Rent or Quit, shall be used by the Department. Such notice shall be served upon the lessee in the manner specified in Section 11.08.04.00.

Procedures set forth in Chapter 10, Relocation Assistance, Manual Section 10.03.12.00 apply when canceling tenancy of a lessee who is eligible for relocation payments.

Money that the lessee has on deposit with the Department may be retained and applied toward the delinquency that exists. The deposit shall not be credited toward the delinquency, however, until after the lessee has vacated

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the property, leaving it in a satisfactory condition acceptable to the Department.

11.12.17.03 Based on Right of Termination

The standard lease provides for cancellation and termination of the lease by either party. When the lessee is not delinquent in rent and the Department wishes to cancel the lease, RW 11-33, Notice to Terminate Non-Residential Tenancy, shall be used.

11.12.18.00 Materials Agreement for Removal of Materials

Occasionally, the Department may find it desirable to have materials removed from state property for use as fill on a state highway project. When materials can be removed without decreasing the property value more than the estimated value of the material to be obtained, the Region/District may enter into a Materials Agreement with a contractor.

The material removed shall not create a hazard or an eyesore in the area. The finished elevations after removal of material shall blend with the remainder of the state property. To ensure desirable results are achieved, the Region's/District's Division of Environmental Analysis shall be contacted for advice and recommendation regarding the potential presence of any hazardous waste in the material prior to negotiating a Materials Agreement. Additionally, the Region's/District's Division of Engineering Services Geotechnical Services shall be contacted for advice and recommendation on how to stabilize the property in the after condition.

No Materials Agreement shall be made or proposed with any contractor until after award of the highway construction contract. An alternative would be to indicate in the contract specifications that a specified amount of material is available at a certain location so all prospective bidders have knowledge of it.

Please refer to the two sample formats of the Materials Agreement which may be found on the Property Management website (internal Caltrans link).

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11.12.19.00 Available Office Space

Right of Way should notify the District Facilities Manager when office space is available for lease. The District Facilities Manager will notify DGS, through the Departmental Facilities Manager in the Administrative Service Center, that office space is available. If DGS has other state tenants who might be interested in the space, they will notify the Department. It is not necessary to hold the property off the market for DGS during the notification period.

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11.13.00.00 - MASTER TENANCIES

11.13.01.00 General

Right of Way staff shall manage all rental properties that do not require special consideration. Use of a master tenancy lease is appropriate for managing properties under the conditions listed below:

- Motels, hotels, and rooming houses where a high level of service to tenants is required. California Code of Regulations, Section 42 of Title 25, states a manager, janitor, housekeeper, or other responsible person shall reside on the premises when there are 12 or more guest rooms.

- Certain residential, commercial, or industrial properties located in areas where management by local residents is the only effective way to obtain cooperation of individual tenants in upkeep of the property.

- Residential apartment properties (containing 16 or more apartments). California Code of Regulations, Section 42 of Title 25, states a manager, janitor, housekeeper, or other responsible person shall reside on the premises when there are 16 or more apartments.

11.13.02.00 Lease Form

The Master Tenancy Lease Agreement template will be utilized for all master tenancy leases. Please refer to the specific template on the Property Management website (internal Caltrans link). This is a standard lease template and not all clauses will apply to all situations. The Agent shall formulate a lease that will be in the best interest of the Department using all of, some of, or any additional clauses. Keep in mind any additions, deletions, revisions, and/or changes should be approved by Legal prior to use.

11.13.03.00 The Master Tenant

A master tenant is the Department's lessee of income producing residential, commercial, or industrial property capable of being sublet into two or more rental units. Master tenants are obtained through direct negotiations or by successful bids on an advertised lease for a particular property. As the lessee, the master tenant assumes complete responsibility for management, control, and maintenance of the leased property, subject to all the terms and conditions of the lease.

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11.13.04.00 Factors to Consider

The major benefit derived from a master tenancy is that the master tenant theoretically assumes all problems associated with the rental property while providing the Department with appropriate rental income from the leased property.

The determination on whether a parcel will be leased to a master tenant should be based on several factors including, but not limited to:

- Difficulty in managing a large furnished apartment, motel, or rooming house where the state does not purchase the furniture and various utilities are supplied to the units from a single meter.
- Long distance between the Region/District office and the property.
- Potential loss of income to the state due to high vacancy factors.
- Management problems such as handling of trash service, night-lights, and swimming pools.

11.13.05.00 Approval

The DD or authorized delegate is authorized to approve all master tenancy leases.

11.13.06.00 Documentation

The Agent preparing the proposed master tenancy agreement shall provide the following documentation to the DD or authorized delegate approving the lease:

- Brief description of the property, condition, and number of units.
- Reasons why a master tenancy is the best form of property management.
- A statement specifying that an interior and exterior inspection of the property has been performed, what conditions require correction, and who will perform the work.
- A statement that notices signed by individual tenants will be obtained to confirm the non-RAP eligibility of the tenancy and a statement that the building will be posted with such a notice. A system for monthly review of

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changes in tenancy and receipt of signed non-RAP eligibility statements for all new tenants must be established.

- A statement that Region/District staff will perform interior and exterior inspections semiannually and that the master tenant will correct all conditions of disrepair or the master tenancy will be terminated.

Master tenancy agreements may be written for varying lengths of time at the Region's/District's discretion. The agreements should be written for time periods that are commensurate with Region's/District's clearance schedules, which are generally controlled by Right of Way Certification dates. Property Management should consult with Right of Way Project Coordination to determine the clearance schedule dictated by the project. On occasion, the normal length of a lease (one-year) may be extended to encourage a master tenant to take over certain property. For example, extension is appropriate when the master tenant needs a longer time to recover anticipated costly expenses incurred in rehabilitating property at the lease's onset.

11.13.07.00 Minimum Acceptable Lease Rate

The Region/District should establish a minimum acceptable lease rate prior to advertising for bids for a master tenancy or prior to negotiating a master tenancy directly with a prospective master tenant. In determining the lease rate, consideration should be given to the following:

- Physical condition of the property.
- Location within the community.
- Type of tenants.
- Present or future market demands within the area for the type of rental property.

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11.13.08.00 Advertising Availability of Master Tenancy

The Region/District should maintain a list of prospective master tenants, including referrals, interested persons who have made inquiries, and past master tenants who have performed satisfactorily.

The availability of a specific master tenancy agreement should be advertised on the internet and in metropolitan newspapers, as well as local newspapers, serving the area where the property is located. The advertisement should announce:

- Availability of the lease.
- Type and number of units.
- Expected length of tenancy.
- Date the property will be available for inspection.

The advertisement should request interested parties to phone or write the Region/District for a brochure or flyer with the particulars as well as bidding requirements and procedures, if the lease will be put up for bid.

11.13.09.00 Bid Proposal Package

Bid proposal packages that are mailed to interested parties or advertised shall contain items that are compatible with the proposed lease. See the table entitled "Items Included in Bid Proposal Package" on the following page and Exhibits 11-EX-18 through 11-EX-22, along with sample template located on the intranet, for a complete bid proposal package.

11.13.10.00 Bid Opening and Award

Bid proposals shall be opened and read publicly at the time and date specified in Exhibit 11-EX-18. the "Notice to Bidders and Interested Parties."

Although the lease will normally be awarded to the highest responsible bidder, the Department reserves the right to refuse any and all bids. The Region/District shall retain the bids and deposits of the highest responsible bidder and the second highest responsible bidder until the successful high bidder has complied with all the terms and conditions contained in Exhibit 11-EX-19, the "Terms of Auction" notice. When these terms and conditions have been met to the Region's/District's satisfaction, the Region/District shall return

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the second highest bidder's deposit along with the Bid Results – Unsuccessful Bidders letter, reporting the bid results to all unsuccessful bidders. A template of the Bid-Results – Unsuccessful Bidders letter may be found on the Property Management website.

11.13.11.00 Commencement of Standard Lease Procedures

Processing and handling of the master tenancy agreement is identical to the standard leasing procedures for other state-owned property. Refer to Section 11.12.00.00 for details.

11.13.12.00 Posting of Public Notice

After final approval of the lease, the Region/District shall post Exhibit 11-EX-27, Public Notice (Sign for Master Tenancy) on all residential properties under a master tenancy agreement. The sign shall be readily visible to prospective tenants and shall advise that all persons commencing tenancy on the premises after the date indicated shall not be eligible for relocation assistance payments as provided in Government Code Sections 7260 through 7277. The date to be inserted on the sign shall be the date the state obtains legal possession of the premises. Posting of this public notice sign is mandatory and is in addition to the requirement that the lessee furnish each new tenant with a written notice with the same information.

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ITEMS INCLUDED IN BID PROPOSAL PACKAGE

- **Notice to Bidders and Interested Parties (Exhibit 11-EX-18)**
  This notice sets forth the address of the property for which the lease is being auctioned, the address of the lessor in which to send the sealed bid; the date, time, and location that all sealed bids shall be opened and read publicly; the deadline to submit a sealed bid, and makes specific remarks about allowing only one bid from any one person, corporation, or firm.

- **Terms of Auction (Exhibit 11-EX-19)**
  This details the required deposit to be submitted with the bid, the manner in which payment is to be made, where payments are to be received, the disposition of the deposit in the event that the high bidder fails to pay the balance due, the disposition of the deposit in the event the Department cancels the lease, the maintenance that is required on the property, and the amount of security deposit required as a guarantee that the required maintenance shall be performed. It also sets forth the maintenance requirements that shall be met by the successful bidder and the time limit allowed for work to be accomplished.

- **List of Tenants in Possession (Exhibit 11-EX-20)**
  This sheet lists, by address, the tenants in possession with their corresponding rental rates and bedroom count. This sheet also specifies when rents are due and the utilities for which the Master Tenant is responsible. The list of tenants in possession is actually incorporated into the lease as an Exhibit.

- **Inventory (Exhibit 11-EX-21)**
  This inventory shows by apartment or rental unit certain features or improvements for which the master tenant shall be held accountable. Such items as drapes, garbage disposals, wall-to-wall carpeting and built-in range and oven are included. The inventory should be incorporated into the lease as an Exhibit.

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ITEMS INCLUDED IN BID PROPOSAL PACKAGE (Continued)

- **Bid Proposal (Exhibit 11-EX-22)**
  The proposal form shall be fully executed by the bidder, who is responsible for completing the following:
  - Use and address of the property.
  - Monthly lease rate willing to pay.
  - Signature with printed name and date. The "Important Notice" portion sets forth how the bid is to be signed in the event the bidder is a corporation, partnership, or firm.
  - Bidder's telephone number, business address, or home address for refunding deposit to unsuccessful bidders.
  - The bid proposal shall be accompanied by the required bid deposit amount and it shall be paid in the manner set forth in Exhibit 11-EX-19, Terms of Auction. Failure to do so in the manner described is a basis for rejection of the bid.

  For a bid proposal package to be considered, the bid proposal, in proper order, shall be received at the District Office by the time specified in Exhibit 11-EX-18, Notice to Bidders and Interested Parties.

- **Rental Application (Form RW 11-5)**
  The completed rental application shall be submitted at the time the bid proposal package is submitted. The rental application is used by Property Management to determine the bidder's financial responsibility.

- **Sample Lease Agreement (Template found on the intranet)**
  This is a sample master tenancy agreement that may be modified as needed and approved by Legal.

- **Bid Proposal Mailing Envelope (Template found on the intranet)**
  This envelope shall be marked for return to Property Management and identified as a sealed bid for a particular property. The date and time of the bid opening shall also be clearly marked.

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11.14.00.00 - OUTDOOR ADVERTISING SIGNS

11.14.01.00 General

The California Outdoor Advertising Act sets forth how the State governs and regulates outdoor advertising. The statutes are contained in the California Business and Professions Code, Division 3 Chapter 2. Section 5403 of the California Business and Professions Code prohibits outdoor advertising signs within the right of way of any highway. Existing advertising structures may remain on the properties managed by Property Management since those properties do not constitute a portion of the right of way. Rental of existing outdoor advertising signs shall be handled like any other new rental account. Property Management shall receive the MOS and the R/W Contract for the sign interest on the acquired parcel.

11.14.02.00 Prohibition Against New Signs

New outdoor advertising signs shall not be permitted on state-owned properties under any circumstances, regardless of whether the properties are considered excess or are being held for future highway use.

11.14.03.00 Sign Site Rental Procedures and Rates

The R/W Contract will state whether the State is assuming the grantor's existing lease or if a new lease will be entered into. The Agent shall ensure the sign is compliant and permitted by Caltrans Traffic Operations – Outdoor Advertising office. All sign site 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. The R/W Contract shall also provide that the sign company prorates rental payments to both the state and to the state's grantor, if State is assuming grantor's existing lease. Should the sign be located partially within the right of way and partially on the remainder, and being allowed to remain until a notice to remove or relocate is given, the state's rental agreement shall reflect the portion of prorated rent payable to the state.

The billboard site rental shall be based off of the annual net revenue generated by the advertising signs for advertising and any other use of the advertising sign structure. The rent shall be paid annually, in arrears, and shall be accompanied by a financial statement certified by the billboard operator's accountant.

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The annual rental rate charged shall be a rate thirty percent (30%) of the annual net income generated by the advertising sign, which is consistent with industry standards for ground leases for billboard sites. The annual net revenue shall be the difference between the gross revenue that the tenant actually receives in a lease year and any commissions or fees that the tenant actually pays to a bona fide independent advertising agency. The amount of such a commission or fee shall not exceed sixteen and two-thirds percent (16 2/3%) of the revenue to which it relates.

In order to bill the correct amount, the Agent shall make the base rental rate in RWPM at $0.00. The Agent shall make a note that the tenancy is being billed annually in arrears. When the Agent receives the certified financial statement, the Agent shall bill the tenancy for the percentage of gross income specified in the Advertising Structure Agreement by submitting an Adjustment screen in RWPM.

11.14.04.00 Advertising Structure Agreement

The sign owner shall be required to sign an Advertising Structure Agreement, in duplicate. The agreement shall be executed on the state's behalf in accordance with Section 11.12.06.00. Please refer to the specific agreement template on the Property Management website (internal Caltrans link).

New advertising structure agreements shall not extend for more than five-year periods without prior DD or authorized delegate approval.

11.14.05.00 Sign Rent Delinquencies

Delinquencies that occur on sign rentals shall be treated the same as any other type of rental delinquency.

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11.15.00.00 - STATE AS LESSEE LEASES

11.15.01.00 General

Property Management may receive requests to rent or lease privately owned properties or facilities for state highway purposes. Properties or facilities may include, but not be limited to, real property, trailers, or portable buildings.

Streets and Highways Code Section 104, Subdivision (d), allows the Department to acquire, either in fee or in any lesser estate or interest, any real property including offices, shops, or storage yards, which it considers necessary for state highway purposes. Government Code, Section 11005, limits this authority by stating, "this section does not apply to the acquisition or hiring by the Department of Transportation of real property in fee or in any lesser estate or interest for highway purposes, **but does apply to the hiring by that department of office space in any office building**."

Should Property Management receive a request for office space located in an office building, the Agent should research the existing use in the office building. The Department's interpretation of Government Code 11005 is that if the predominate use of the office building, over 50%, is for office space then the Department cannot enter into a lease for the use of that space. If a requested building has a predominate use of office space, the request should be returned to the sender with a memorandum stating that Right of Way has no legal authority to enter into such leases and the request should be submitted to the Region/District Facilities personnel.

Any building that the Department leases office space within must adhere to the rule of having office space use being less than or equal to 50% of the building. When initially entering into a lease for office space within the building, do not include the Department's use of office space when calculating the existing percentage of office space use. Although, the Department's office space use will be incorporated into the percentage of the building's office space use at renewal.

The majority of requests for these types of facilities will come from Construction to be utilized by resident engineers and their staffs for field facilities.

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11.15.02.00 Procedures Upon Receiving Request

All requests for "state highway purpose" facilities shall be in writing and shall be signed by the Deputy District Director of the office requesting the facility. All requests shall be sent to the DDD-R/W at least 120 days prior to the required occupancy date.

Property Management's first responsibility, upon receipt of a written request for field facilities, is to verify that there are no State-owned properties that can be utilized for said purpose. State-owned property may include vacant land and/or properties with improvements. State-owned property includes all properties owned by the Department and any other State agency.

The final decision whether or not the requestor occupies state-owned facilities will be made by Property Management. If utilizing State-owned property is deemed appropriate, a Memorandum of Understanding, 11-EX-57, will need to be signed and acknowledged by the District Division. The District Division should notify Right of Way immediately when they no longer need to utilize the property. However, it is also Right of Way's responsibility to follow up with the Division annually to make sure they are still utilizing property. The project Expenditure Authorization (under which the property is being utilized) should not be closed out until the property has been returned to Right of Way. Region/District Property Management is still responsible to inspect the property annually.

If no suitable state-owned property is available, Property Management will canvass privately owned properties and/or facilities for acceptable accommodations. When rental market data on available space in the desired area has been gathered and the requesting District Division accepts Property Management's recommendation, the Agent shall begin the negotiations for lease or rental of the selected property.

11.15.03.00 Procedural Guidelines

Only Right of Way Staff shall negotiate with the owners for the lease of field facilities, provided they are for state highway purposes.

Only field employees, e.g., Construction and Surveys, assigned to the specific project will occupy the space.

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When the District enters into a rental agreement or lease for field facilities, the following guidelines must be adhered to:

- Americans with Disabilities Act
- State Fire Marshal Approval of Plans and Inspections
- Seismic Performance Requirements
- State Administrative Manual Standards for State-Occupied Space
- Facility Plans and/or Drawings
- Energy Conservation
- Hazardous Materials Certification

11.15.03.01 Americans with Disabilities

The Americans with Disabilities Act (ADA) guarantees equal opportunity for individuals with disabilities in public and private sector services and employment. Title II of ADA specifies that a public agency may not, directly or through contractual arrangements, make selections, in determining the location of facilities, that have the effect of excluding or discriminating against persons with disabilities.

Department policy is that all facilities that are occupied by State employees, whether the facility is owned, rented or leased by the State, shall be in compliance with all ADA requirements. This includes full access for disabled employees, consultants, contractor employees and the public. Field facilities shall be such, as no one will be denied the opportunity to perform work or do business at the facility. **There are no exemptions or exceptions to this policy.**

ADA standards generally include requirements pertaining to functioning of wheelchairs in relation to site grading, parking lots, walks, ramps, entrances width of doors, floors, toilet facilities, signs, and other miscellaneous requirements.

The Department has adopted the Department of General Services' *Accessibility Checklist for State-Leased Buildings and Facilities,* as the document for determining compliance with ADA. Agents are to utilize this Guide when determining if a facility is in compliance with ADA requirements.

Current regulations are found in the California Code of Regulations, Title 24, California Building Code, Volume 1 of Part 2, Chapter 11B.

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11.15.03.02 State Fire Marshal Approval of Plans and Inspections

Health and Safety Code, Section 13108, specifies that the State Fire Marshal (SFM) prepare and adopt building standards, not inconsistent with existing laws or ordinances, relating to fire protection in the design and construction of the means of egress and the adequacy of exits from, and the installation and maintenance of fire alarm and fire extinguishment equipment or systems in, any state institution or other state-owned building or in any state-occupied building and submit those building standards to the State Building Standards Commission for approval pursuant to the provisions of Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of the Health and Safety Code.

Right of Way's policy is that the SFM is required to review and approve plans, prior to the execution of any lease, when the Department of Transportation (the Department) is locating into an existing building and there **will be tenant improvements** prior to occupation. District Property Managers are responsible for ensuring that appropriate SFM review of plans and/or inspections are accomplished prior to execution of all leases and that such information is contained in Form RW 11-27, State Fire Marshal Checklist. All plan applications must be submitted through the GovMotus website for the SFM to review. Hardcopy plans must be submitted to the SFM at the following address: CAL FIRE, Office of the State Fire Marshal, Fire & Life Safety Division, 2251 Harvard Street, Suite 130, Sacramento, CA 95815. The plan review may take up to eight (8) weeks to be completed, so it is essential to get the plans uploaded into GovMotus as soon as possible. See Exhibit 11-EX-31, Memorandum from California State Fire Marshal to the Department, dated August 10, 2001, outlining the requirements for the submittal of plans to the SFM.

If tenant improvements or any type of construction are not necessary, SFM plan review is not required. However, when a plan review is not required, a field inspection will be performed by the SFM to review, among other items, the exiting systems and possible hazardous conditions.

Trailers or portable buildings, that are attached with wheels and will be used for less than 180 days, do not require the submittal of plans or an inspection. The Region/District must determine that applicable exiting requirements are met (for example, no padlocks or hasp-type fasteners are used on exit doors). Storage buildings or covered parking structures do not require a review or inspection by the SFM.

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Trailers or portable buildings that will be used for 180 days or more or do not have wheels attached are considered B Occupancies. These trailers and portable buildings will require an SFM plan review and a field inspection similar to other facilities.

11.15.03.03 Seismic Performance Requirements

Right of Way's policy is that all facilities considered for state lease must be evaluated for the ability to meet a reasonable level of seismic performance, prior to the execution of any lease.

In order to determine if a building has met a reasonable level of seismic performance, the agent must complete Form RW 11-29, Seismic Screening Checklist. If the Seismic Screening Checklist results in a score of 20 or above, a Certification of Structural Evaluation, Form RW 11-30, must be completed. An independent licensed structural engineer must complete the Certification. The prospective lessor will be responsible for hiring the independent licensed structural engineer, having the Certification of Structural Evaluation form completed, and paying for the structural evaluation at their sole cost and expense. (See Form RW 11-31, Letter to Landlord.)

11.15.03.04 Standards for State Space

Prior to initiating negotiations for field facilities, Right of Way must verify the number of State employees who are going to occupy the facility and their respective job categories. Once the number of occupants is verified, the standards for state space set forth in State Administrative Manual (SAM), Section 1321.14 (Exhibit 11-EX-42), must be adhered to.

Examples of space allocations are:

- Supervisors 96-125 sq ft
- Engineers 80-100 sq ft
- Clerical 40-75 sq ft

The allowances indicate net square feet and do not include space for circulation and special requirements outside the office/workstation space. These standards delineate the maximum space allowances and space types for each job category. These standards are general guidelines that can be modified as necessary to meet specific job requirements. Detailed documentation is required when allowance modifications are made.

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Right of Way should always avoid leasing more space than is necessary, but it should lease sufficient space to accommodate field staff, equipment, laboratory facilities, and meeting/conference rooms.

11.15.03.05 Facility Plans and/or Drawings

Facility site plans are required for all State as Lessee (SAL) leases. See Memorandum from California State Fire Marshal to the Department, dated August 10, 2001, 11-EX-31, for the specific requirements. The site plans must be attached to the lease and kept in the file.

11.15.03.06 Energy Conservation

Executive Order D-16-00 established a state sustainable building goal for all state buildings, including all leased property. The goal is "to site, design, deconstruct, construct, renovate, operate, and maintain state buildings that are models of energy, water, and materials efficiency; while providing healthy, productive and comfortable indoor environments and long-term benefits to Californians."

For specific guidelines, recommendations, and information, refer to Green Building Basics.

11.15.03.07 Hazardous Materials Certification

Asbestos material in buildings can either be friable or non-friable. Friable asbestos is defined as any material containing greater than 1% asbestos by weight that, when dry, can be crushed, pulverized or reduced to powder by hand pressure. Friable asbestos is typically found in pipe wrapping, insulation, or fireproofing.

Non-friable asbestos is defined as any material containing greater than 1% asbestos by weight that, when dry, cannot be crushed, pulverized, or reduced to powder by hand pressure. Non-friable asbestos is divided into two categories. Category 1 includes asbestos gaskets, gaskets, resilient flooring products (such as vinyl asbestos tiles) and asphalt roofing products. Category 2 are any materials that cannot be crushed with hand-strength that are not covered under Category 1.

Current state policy dictates that all buildings built before 1979 must be certified in writing to be free from hazards from Asbestos Containing Material (ACM). The certification must be provided by an Industrial Hygienist certified by the American Board of Industrial Hygiene (ABIH) or an

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Environmental Protection Agency (EPA) Asbestos Hazard Emergency Response Act (AHERA) Certified Inspector.

When referring to leased space in regard to asbestos, leased space includes common public areas, building maintenance and equipment areas, and plenums in the same heating, ventilating, and air conditioning zone and telephone closets.

Leased space with asbestos present may be considered. The lessor, however, must comply with the requirements stated above. The lease agreement must hold the lessor responsible for control of nonfriable ACM and ACM that has been enclosed or encapsulated, including an appropriate operations and maintenance program.
Current state policy dictates that all buildings built before 1979 must be certified as free of hazard from Lead Containing Materials (LCM). Paint chip samples, and samples of other suspect LCM's, must be collected by a California Department of Health Services (DHS) Lead Certified Project Designer for laboratory analysis to determine lead content. Please visit the Environmental Protection Agency's website for additional information.

If the building was constructed subsequent to 1979, a photocopy of the Occupancy Certificate issued by the city or county building department is all that is required prior to the execution of the lease.

These requirements are to be completed by the lessor prior to the lease execution by the State.

11.15.04.00 Lease Form

The renting or leasing of field facilities for the Department's use shall be accomplished as follows:

Permanent Buildings and Trailer Pads - The State as Lessee Lease Agreement template, shall be used. Please refer to the specific agreement template on the Property Management website (internal Caltrans link). Significant modifications shall be approved by Legal prior to the execution of said lease.

Relocatable Buildings or Trailers - The standard lease or rental agreement used by the relocatable building or trailer company may be used with additional clauses from the State as Lessee Lease Agreement template, when appropriate. The lease/rental agreement shall include provisions for initial setup, maintenance during the lease term, and removal at the end of the lease. If utilized, the company's lease should be reviewed by Legal prior to

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the execution of said lease. Additionally, the Modular Lease Agreement template can be utilized for these types of leases. (See 11-EX-50, Modular Lease Agreement).

A clear and complete description of the property should be included on the lease form under Description, including physical address, square footage, and type of facility (e.g., light industrial, strip mall, residential, etc.).

11.15.04.01 Lease Execution

The DD or authorized delegate is authorized to execute all SAL agreements. There will be two original copies of the lease executed by all parties. The recommendation for approval of the DDD of the requesting function shall be shown on the lease.

11.15.04.02 Lease Extension

If the building's use of office space, including the Department's use, is less than or equal to 50% at the end of the lease term, the Region/District may extend the term of the existing lease. The lease term shall not be extended past Milestone 600, Contract Acceptance, for the specific project.

If the Department's use of office space within the building results in the building having a total use of office space over 50% at the end of the lease term, then the Department may not extend the term of the lease; the requesting Division would need to contact the Department's Division of Building Operations in order to involve DGS in the leasing process.

11.15.04.03 Triple Net Leases

Triple net leases that require the State to pay for the lessor's expenses, in addition to base rent, for the leased property, such as taxes, insurance, utilities, maintenance, and debt service, shall be avoided. Prospective lessors should be advised to include such items in their proposed flat rental rate.

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11.15.05.00 Insurance

In obtaining a lease for field facilities, the Region/District may be faced with the lessor's demand that the State provide insurance coverage, either by paying a monthly fee to the lessor's insurance carrier or by purchasing its own policy. There are two types of insurance to be considered: (1) fire and hazard, and (2) liability.

The State is self-insured for all liability (including bodily injury and property damage) as well as any tort (such as fire and physical damage caused by one of our employees) affecting private property. The state's ability to insure itself is provided in Government Code, Section 11007.1-11007.8. If the owner would like written confirmation, contact Department of General Services (DGS), Office of Insurance and Risk Management, and request a letter of "Public Liability and Workers Compensation Insurance" on their letterhead. You can send an email request to the following email address, RiskManagement@dgs.ca.gov.

Although there is no need to furnish insurance policy coverage on SAL leases, there may be instances when a lessor will not accept our self-insurance status and will insist on coverage provided by an insurance policy. In those cases, the Department has the flexibility to obtain such policy coverage if it is the only way to secure the field facility. If purchase of an insurance policy is required, it may be prudent to renegotiate rental terms to account for the additional costs that will be borne by the Department.

DGS can obtain quotes for required fire and hazard coverage and secure a policy if requested. The cost of securing a policy is usually much less than paying the lessor's insurance carrier for the required coverage and may be available through a single policy. DGS' Office of Insurance and Risk Management has provided a form, Exhibit 11-EX-32, to assist in obtaining fire and hazard coverage. The form should be completed and sent to DGS for cost quotations and purchase of appropriate policy coverage.

11.15.06.00 Park and Ride Facility Leases

S&H Code, Section 147, authorizes the Department, more specifically, District 7, to enter into agreements and leases with private owners for use of existing parking facilities or to develop parking facilities for the Park and Ride program. Typical examples are shopping centers and church parking lots.

The District's Park and Ride Coordinator is responsible for the Program. Since *no rent is paid* for use of the facilities, the coordinator usually handles the

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entire transaction with a standard use agreement with no Right of Way involvement.

Legal recommends that the Department use a lease rather than an agreement if the State agrees to provide improvements such as paving, fencing, and lighting. In this case, the coordinator will request Property Management to prepare a lease. (See Lease Agreement – Park and Ride Lot on the Property Management website) (internal Caltrans link). Since the State is the lessee, the lessor may require changes in the typical lease. Region's/District's Legal must approve any changes to the standard lease agreement template.

Since there is no rent, the lease is executed at the Region/District level. Note that the Region/District Ridesharing Coordinator's approval is required on the Archive copy. The procedures in the following table should be followed when acquiring Park and Ride leases for System Operations.

PARK & RIDE PROCEDURES

Acquisition Function

- Receive an appraisal of the fair market rent.
- Prepare a Lease Agreement. Property Management should review and approve the lease, and Region's/District's Legal must approve any changes in the standard lease agreement template.
- Pay the fair market rent for the entire lease term in advance in a lump sum by R/W Contract.
- Send a short-form MOS and Claim Schedule to HQ R/W, Acquisition Branch.
- Enter parcels in ROWMIS.

Property Management Function

- Review the lease prepared by Acquisition prior to presenting it to the lessor.
- Forward a copy of the executed lease to HQ R/W, Property Management Branch.

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11.15.07.00 Documentation for File

Right of Way's file should contain the following documentation:

- A copy of the written request for field facilities.
- Right of Way's determination on the suitability of the facilities for proposed use.
- For permanent buildings or trailer pads, include comparability of the rental rate to rates for similar facilities in the immediate area. List comparables, briefly discuss the investigation, and compare major characteristics to the subject property.
- For relocatable buildings or trailers, document informal bids and the reasons the successful bidder was chosen. Documentation shall consist of such items as rental rate, company name and location, and setup, maintenance, and removal costs. The successful bidder should be chosen based on a combination of factors such as low bid, past performance, services provided, and location of the company in relation to the site.
- Parking, services, and utilities available, if any.
- Statement that no suitable state-owned facilities are available.
- The following certification by the Agent securing the lease:

  It is hereby certified that this lease is in accordance with Government Code, Section 11005, and does not constitute hiring of office space in an office building within the meaning of the code.

The procedures in this section also apply to lease amendments and renewals.

11.15.08.00 Employee Time Charging

Time spent by Right of Way sourced personnel to provide services to other district functions must be properly coded to ensure the charges are billed correctly. Specifically, when Right of Way personnel are requested to secure leases for field facilities for interdivisional use, the appropriate division must supply appropriate charging information.

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11.16.00.00 - TRANSFERRING PROPERTIES TO CLEARANCE STATUS

11.16.01.00 Scheduling Rental Termination

After determining a practical and orderly clearance schedule, Property Management shall coordinate the following activities with the RAP Unit:

- Inform the RAP Branch Senior in writing within twenty-four hours of the first knowledge of a RAP eligible tenant vacating state-owned property.
- Provide a courtesy 90-Day Information Notice for inherited occupants who are eligible and noneligible RAP tenants, in accordance with provisions of Section 11.07.19.00 and Section 10.03.10.03. Coordinate requests for a 30-Day or 60-Day notice to vacate and 3-Day notices to ensure orderly relocation of eligible occupants.
- Ensure that all noneligible RAP tenants occupying premises leased under a master tenancy are informed they are not eligible for relocation assistance payments.
- Coordinate sale of excess land or building improvements with the RAP Branch Senior to ensure that occupants are provided with required RAP notices and receive any relocation payments due.

Property Management shall request the following services from the RAP Unit as necessary:

- Service of a Letter of Intent to Vacate on each tenant eligible for relocation assistance payments. Property Management will supply the names, addresses, and other information for the affected tenants and type of notice to be served (see Exhibit 11-EX-34, Service of a Letter of Intent to Vacate). This notice will be served in accordance with RAP instructions and the status of the tenant's RAP eligibility (see Exhibit 11-EX-35, Letter of Intent to Vacate-90). A copy of the Letter of Intent to Vacate that was served shall be returned to Property Management to confirm the effective date of the notice.

- Service of a Notice to Vacate on the above tenants. A copy of the notice showing the date service was made shall be returned to Property Management as verification of service and notification of the effective date of termination (see Exhibit 11-EX-44, Notice of Termination of Tenancy and Notice to Quit).

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Depending on Region/District policy, either Property Management personnel or RAP personnel may serve the Letter of Intent to Vacate and the Notice to Vacate when tenants ineligible for relocation assistance payments are involved.

In most cases where State-owned property is voluntarily vacated and the length of time remaining before regular scheduled clearance is too short to provide a reasonable period for re-renting, the parcel shall be immediately transferred to clearance status for disposal.

11.16.02.00 Transferring Properties to Clearance Status

The Agent is responsible for thoroughly inspecting and securing the State's property as soon as it becomes vacant and shall make prior arrangements to obtain keys from the vacating tenant. If the vacant property shall not be re-rented, the Agent shall follow the procedures below after receiving the keys:

- Inspect the property, noting possible hazards, vandalism, trash, or personal property left on the premises.
- If personal property is found on the property, the Agent is directed to follow the statutory procedures that are set forth in California Code of Civil Procedure Section 1174 and Civil Code Sections 1980-1991. See Section 11.07.27.01 for further information on handling abandoned personal property. Should the Agent need further assistance in interpreting these provisions of California law, the Agent may consult with Region's/District's Legal for additional advice.
- Inventory all items purchased by the State and document the rental file.
- Determine whether or not the property should be boarded up to protect against vandalism and theft. If other properties in the area have had issues with vandalism, theft, and unlawful occupancy, the Agent should board up the property. Additionally, the Agent should post a no trespassing notice on the property and provide the local law enforcement with a trespass letter of consent providing permission to law enforcement to access the property to enforce trespassing laws.
- When necessary, submit a task order to the contracted vendor to have trash removed, improvements boarded up, or hazardous conditions abated.
- Arrange for termination or transfer of utility services into State's name. Notify Division of Accounting, Accounts Payable, Utility Section, of changes in utility billing as necessary.

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11.16.03.00 Property Management Senior Review

The Property Management shall review all improved rental properties that are transferred to clearance status and shall perform the following functions:

- Verify that entries made in RWPM are correct and complete.
- Check the parcel rental folder for accuracy of dates and type of activity from close of escrow to date of transfer to clearance status.
- Verify that improvement inventory documentation has been properly maintained and all State-owned items are accounted for.
- When fully satisfied that the improvements should be transferred to clearance status for disposition, affix initials or signature to the vacancy report to approve the transfer.
- Route the parcel rental folder to clerical staff to prepare the utility removal letter for the Agent's signature (see Exhibit 11-EX-36, Utility Removal Letter), ensuring that a copy is sent to Division of Accounting, Accounts Payable, Utility Section. After the utility removal letter has been prepared and mailed, place the parcel rental folder in a "Hold for Clearance" file.
- Route a copy of the vacancy report found in the parcel rental folder to Clearance staff to serve notice that certain improvements are now available for immediate clearance.

11.16.04.00 Advanced Transfers to Clearance Status

Occasionally, it is necessary to remove improvements prior to normal clearance scheduling because one or more of the following conditions exist:

- Retention of substandard improvements that cannot be economically rehabilitated would constitute a health or safety hazard.
- Improvements have been damaged to the point that it is no longer economically feasible to restore them to rentable standards.
- A local government agency has condemned the improvements.

In most cases, the above criteria are equally applicable to removal of improvements from rescinded routes or excess land.

A financial analysis prepared by a qualified person and approved by the DDD-R/W shall be attached to the improvement disposal report for disposal of any residential improvements. Comments and recommendations must

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indicate that the project is environmentally cleared or contain a documented statement about the emergency nature of the removal.

11.16.05.00 Direct Sale Pursuant to S&H Code Section 118.1

In accordance with S&H Code Section 118.1, under certain conditions commercial property made excess because it is on a rescinded route or downscoped project must be offered for sale first to the State's tenant at fair market value. The tenant must be leasing or renting the real property from the Department, the tenant must have used and occupied the real property, and the tenant must have made improvements of a value in excess of $5,000.00 on the real property during that time at the tenant's own expense consistent with the terms of the rental or lease agreement with the Department. Upon Excess Land's request, Property Management will identify all eligible properties. For further details, see Excess Land Chapter 16.

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11.17.00.00 - HAZARDOUS WASTE AND HAZARDOUS MATERIALS

11.17.01.00 Policy

The Department's policy is to consider fully all aspects of potential hazardous waste sites ensuring that adequate protection is afforded to employees, workers, and the community prior to, during, and after construction. Property Management must be aware of all potential and confirmed sites and any use of hazardous materials on future rights of way. The District must monitor these sites, terminate leases where required, and consider potential clearance of wastes when planning for right of way certification dates.

11.17.02.00 Definition

A material is hazardous if it poses a threat to human health or the environment. Hazardous materials may be any of a large group of the products listed below. (A partial list is contained in the California Code of Regulations, Title 22, Section 66261.126, Appendix X.)

- Ignitable
- Reactive (subject to spontaneous explosion or flammability)
- Corrosive
- Toxic
- Radioactive

The term "hazardous waste" applies to the storage, deposit, contamination, etc., of a hazardous material that has escaped or been discarded or abandoned and that may be defined in general terms as being any of the above.

11.17.03.00 General

The Department strives to identify, investigate, and cleanup sites at the earliest opportunity during the project development process. Occasionally, these activities may not be accomplished prior to Property Management involvement. Under a *normal* project development sequence, the entire process is completed in accordance with governmental hazardous waste requirements. The Division of Environmental Analysis (DEA) in coordination with Project Management is the lead unit for the identification, investigation,

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and cleanup process. Right of Way assists by obtaining necessary rights to enter for testing purposes and by negotiating cleanup agreements prior to acquisition.

On projects where the normal sequence cannot be followed, Right of Way requests DEA to review and identify potential hazardous waste sites and initiates the cleanup process for all **MINOR** hazardous waste problems not requiring a Hazardous Waste Management Plan, such as underground tanks or hazardous material businesses.

All investigative work performed by the Agent should be done in consultation with the District's Hazardous Waste Coordinator (HWC) of the Department's Hazardous Waste Management Branch of DEA. If at any time a formal Hazardous Waste Management Plan is required, the District Hazardous Waste Management Branch of DEA shall assume the lead role.

11.17.04.00 Inventory

Property Management must inventory all properties under its control that have been identified as potential hazardous waste sites, including those with underground tanks. The District HWC should maintain a tracking system for all District sites. Until the properties are cleared and the projects are certified for construction, Property Management must monitor all acquired properties, specifically any that have a potential for becoming hazardous waste sites.

11.17.05.00 Underground Storage Tanks

An underground storage tank is any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground. A tank is considered underground if at least ten percent of the volume of the tank is below the ground surface.

The State Underground Storage Tank Law is contained in Chapter 6.7, Division 20, Health and Safety Code, and Underground Tank Regulations, Chapter 16, Division 3, Title 23, California Code of Regulations. These sections include Health and Safety Code Sections 25286, 25294, 25295, 25298 and 25299.

All underground storage tanks must be covered by permits issued by the local regulatory agency, and the owner of the property is responsible for obtaining the permit. Examples of such permits are "permit to store a hazardous material" and "permit to operate a hazardous material storage tank." The

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status of underground storage tanks is also tracked at the State level. Underground Storage Tanks are registered in a State Water Resources Control Board managed database known as GeoTracker. GeoTracker monitors operational underground storage tanks and provides information related to leaking and removed underground storage tanks.

Underground storage tanks on State property should be removed as soon as possible. All inactive tanks shall be removed immediately. Active tanks shall be removed as soon as the property can be vacated. An alternative, in some cases, is to obtain a right to enter and remove the tanks and then consider continuance of the lease.

The DD or authorized delegate must approve any exceptions to the above as current regulations for monitoring underground storage tanks require a substantial expenditure by the Department to comply with installation and operation of leak detection equipment. Only new tanks, or those constructed since January 1984 and that meet all current requirements and regulations, will be considered for possible retention or installation. The lessee is responsible for permits and all costs for monitoring the system. If a new tank is allowed, a provision for removal and cleanup by lessee at expiration of lease must be included.

11.17.06.00 Tank Removal Procedures

The HWC will obtain the name of the local agency official responsible for underground storage tanks. Since the contractor must obtain the required permits for operating or closure of all existing tanks from the local permitting agency, this information must be included in the removal contract. Also, any contract for tank removal **MUST** include provisions for barricades and cleanup.

Prior to any tank removal, Right of Way must initiate an agreement with the tenant in occupancy and the owner of the property. While Project Development and the project manager have basic responsibility for removal of all tanks, those which have no or only minor leakage can be removed under contracts initiated by Right of Way. These contracts must be approved by the HWC and must contain all the clauses approved by the Division of Procurement and Contracts. Nonleaking tanks may have a minor deposit of product under the tank that can be cleaned up during a tank removal contract. If the leak is major, a Hazardous Waste Management Plan may be required and will be prepared under the direction of Project Development.

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11.17.07.00 Potential Surface Contamination

Many properties have the potential for hazardous waste contamination. Examples include service stations and bulk plants, paint companies, machine shops, plating companies, light and heavy industrial manufacturing, dry cleaning establishments, fertilizer companies, junkyards, auto wrecking yards, and muffler shops. Right of Way must notify the HWC in writing when a property may contain either hazardous waste or asbestos containing materials (ACM). Right of Way should request from the HWC:

- An opinion on whether or not hazardous materials are being used or are present on the site.
- An assessment of the risk involved if hazardous materials are present or are being used by the tenant, given the tenant's activities, equipment, handling and storage methods.
- A recommendation as to what storm water best management practices (BMPs) should be implemented to eliminate potential pollutants in storm water discharges from the property.
- A recommendation regarding what periodic inspections, if any, are necessary to ensure that use of any hazardous material does not result in a future hazardous waste problem.

The HWC will inspect each site and determine that:

- No testing is necessary and will make a statement that no hazardous waste is present; or
- Further investigation is necessary and proceed to hire a consultant to determine if hazardous waste actually exists; or
- There is no hazardous waste present, but hazardous materials are present and being used. The HWC will include recommendation on what future inspections, BMPs, and/or other controls, if any, may be required.

If no hazardous waste or material exists, the Region/District should continue tenancy with an amendment of the lease to include the hazardous waste clause.

If hazardous waste exists and the lessee's operation is causing the waste, the Region/District should notify the lessee to cease such action and terminate the lease. The Region/District should initiate further steps to determine who is responsible for cleanup and when cleanup will take place. Cooperation with the HWC, Legal, and Project Development may be required. The DD or

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authorized delegate must approve any new lease or lease renewal for a parcel confirmed to contain any hazardous waste.

If no hazardous waste exists but hazardous materials are being used, the risk of allowing the operation to continue with possible cleanup costs and project delays must be weighed against net rent, community impact, and any positive factors. Justification for continuing the lease must be documented and retained in the file.

Where there is a potential for hazardous waste and project certification date is within a three-year period, Right of Way must request the HWC to give a priority review so that any site confirmed to have a hazardous waste will not cause a delay in clearance and subsequent R/W Certification.

Removal of improvements that contain asbestos containing material (e.g., siding and insulation) and lead based paint should be coordinated with the HWC. See R/W Manual Section 12.03.03.00 for additional information.

11.17.08.00 Lease Clause for Nonresidential Properties and Information for Tenants

The standard Lease Agreement template contains a clause covering hazardous materials. This clause shall be included in all existing and future nonresidential leases and rental agreements except signboard sites and oil and gas leases, and where in the Region's/District's judgment of hazardous waste problems are extremely unlikely. This exception may include vacant land uses, agricultural uses where chemicals such as fertilizers, herbicides and insecticides are used but not stored or mixed on the property, grazing uses, recreational uses such as parks and ball fields, and some commercial uses. The Districts should take a conservative approach to these exceptions and should watch for any changes in use that could involve hazardous materials.

The hazardous waste clause should be included in revising all nonresidential leases, without waiting for renewal, for any accounts that are not excluded; i.e., properties where hazardous waste problems are extremely unlikely.

A list of hazardous materials from the California Code of Regulations, Title 22, Section 66261.126, Appendix X, is extensive and useful, but it should not be considered all inclusive. Agents may obtain a copy of this list and should refer all questions relating to classification of substances to the District HWC.

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Additional information contained in California Health and Safety Code Sections 25286, 25294, 25295, 25298, and 25299 may also be obtained from the HWC. Lessees of properties with underground storage tanks shall be provided with a copy of these sections.

Use of the hazardous waste clause and the lessee's listing of hazardous materials asked to be permitted should give the Property Manager notice of potential problems. Before any lease is entered into with a new lessee, however, the Property Manager must inquire into the specific type of use proposed and consider the risk, with advice as needed.

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11.18.00.00 - DEPARTMENT-OWNED EMPLOYEE HOUSING

11.18.01.00 Definition

California Code of Regulations (CCR), Title 2, Division 1, Chapter 3, Subchapter 1, Article 3, Section 599.644 describes state-owned housing as houses, apartments, dormitories, mobile homes, trailers, mobile home pads and trailer spaces. *Employee housing* refers to those facilities that are located at maintenance stations and are owned and maintained by the California Department of Transportation (Department).

11.18.02.00 Policy

Employee housing is considered at maintenance stations only when it is necessary for the direct support of the station. Occupancy of employee housing is limited to permanent employees, assigned to the station where the housing is located, and their immediate family.

See Deputy Directive DD-18-R1, Employee-Occupied Caltrans-Owned Housing for complete policy and procedures.

11.18.03.00 Responsibilities

DDs and Program Managers for HQ R/W and Maintenance share responsibility for employee housing in accordance with DD-18-R1.

11.18.04.00 Rental Rates

It is the policy to set rental rates and increase annual rental rates of Department-owned employee housing units to Fair Market Value (FMV) consistent with the Memorandum of Understanding between the State and its employee unions. The Department's employee housing units are occupied by the maintenance workers who work at remotely located maintenance stations. The Memorandum of Understanding that should be referred to for policies related to employee housing is Bargaining Unit 12.
Any newly created tenancy shall be charged a FMV rental rate. Any employee-tenant who is currently paying less than FMV rent will have the difference between the FMV rent and their actual rent included in their gross income. This difference in rent is reportable taxable income, which is

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reported to the IRS, as a taxable fringe benefit. This reporting is completed by HQ on a monthly basis.

11.18.04.01 Rental Rate Determinations

Rental rates must be based on a rent determination appraisal, as performed by the appraisal department. All employee housing rent determinations must be reviewed by HQ Appraisal Division. A rent survey has to be completed annually. A full rent determination appraisal must be completed every 5th year.

11.18.04.02 Rental Rate Increases

Prior to increasing the rent on an employee housing unit, certain conditions must be met. The conditions include the following:

- A FMV rent determination appraisal must be completed.
- The FMV rent determination appraisal must be submitted to the California Department of Human Resources (CalHR).
- The employee housing unit must be deemed habitable meeting the general requirements specified in California Civil Code Section 1941-1941.1. The Agent shall inspect the employee housing unit and complete CalHR Form 165, State-Owned Housing Habitability Inspector Review. CalHR Form 165 must be returned to HQ in order to forward the form to CalHR for their approval.
- CalHR must approve the proposed rental rate increase.

For any employee-tenant paying less than FMV, the Department shall increase the rent up to 25% each year up to FMV in accordance with Section 2301 of the CalHR Human Resources Manual and Article 20.7 of the Memorandum of Understanding with Bargaining Unit 12,

Once CalHR approves the rental rate increase, the Agent must provide the employee-tenant with written notice of the increase, either by delivering a copy to the employee-tenant personally or by serving a copy by mail. If the rental increase is 10% or less, the employee-tenant must be provided a 30-day notice. If the rent increase is over 10%, the employee-tenant must be provided a 90-day notice in accordance with Section 827 of the Civil Code.

The Agent must then notify Maintenance of the new rental rate and the effective date of the increase for completion and submission of Form 650 to the State Controller's Office in accordance with 11.18.07.00.

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11.18.05.00 Utilities

It is the Department's policy ***not to*** furnish utilities for employee housing. Exceptions to this policy may be considered on an individual basis and require approval of the Maintenance Program Manager.

All employee housing units should be equipped with separate tanks and/or meters for fuel and electricity. If the units are not equipped with separate tanks and/or meters, the Agent should make a recommendation to Maintenance to arrange for separate tanking/metering for each employee housing unit.

At locations where the Department is supplying utilities and the Department can substantiate the costs attributable to the specific employee housing unit, such as the costs to fill a propane tank for an individual unit, the Department shall impose such charges consistent with its costs. If separate meters have been installed, the Maintenance Supervisor will read the meters monthly and Accounting will bill the employee-tenants.

If an employee housing unit is on a common utility system, a flat monthly rate shall be charged to the employee in accordance with the California Code of Regulations, Title 2, Division 1, Chapter 3, Subchapter 1, Article 3, Section 599.642 as shown below:

Location		Water	Fuel	Electricity
Class 1	Housekeeping	$3.50	$9.00	$9.00
	Non-Housekeeping	$1.75	$4.50	$4.50
Class 2	Housekeeping	$5.50	$15.00	$15.00
	Non-Housekeeping	$2.75	$7.50	$7.50

Housekeeping *- units of 501 square feet or more that contain regular cooking facilities.*

Non-Housekeeping *- units that do not contain regular cooking facilities and all units of 500 square feet or less.*

Class 1 *- within 25 miles of and not more than 40 minutes travel time, one way, from a community with a year-round population of 2,500 or more.*

Class 2 *- all other areas.*

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The rental agreement for each unit shall specify utilities to be paid directly by the employee-tenant to commercial suppliers. If the maintenance station supplies utilities, the rental agreement shall specify the method of reimbursement by the employee-tenant.

11.18.05.01 Utility Expenses Increase

The District cannot raise utility expenses on a tenant until after:

1) The FMV has been determined for utility expenses.
2) The appraisal has been submitted to CalHR.
3) A habitability checkoff list has been completed after all habitability repairs have been made and inspected and submitted to CalHR.
4) CalHR has approved the FMV for utility expenses.

Per Article 20.7 of the Memorandum of Understanding with Bargaining Unit 12, utility charges for State-owned employee housing may be increased by the State as follows:

- Where employees are currently paying utility rates to the State, the State may raise such rates up to 8 percent of the rates effective as of July 1, 1999. CalHR has clarified this statement and has advised that the utilities may be raised up to 8 percent annually.
- Where no utilities are being charged, the State may impose such charges consistent with its costs.
- Where utilities are individually metered to State-owned housing units, the employee shall assume all responsibility for payment of such utility rates, and any increases imposed by the utility company.

Prior to increasing the utility rate on an employee housing unit, certain conditions must be met. The conditions include the following:

- The employee housing unit must be deemed habitable meeting the general requirements specified in California Civil Code Section 1941-1941.1. The Agent shall inspect the employee housing unit and complete CalHR Form 165, State-Owned Housing Habitability Inspector Review. CalHR Form 165 must be returned to HQ in order to forward the form to CalHR for their approval.
- CalHR must approve the proposed rental rate increase.

Once CalHR approves the utility rate increase, the Agent must provide the employee-tenant with a 30-day written notice of the increase, either by

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delivering a copy to the employee-tenant personally or by serving a copy by mail.
The Agent must then notify Maintenance of the new utility rate for completion and submission of Form 650 to the State Controller's Office in accordance with 11.18.07.00.

Note: Rental increase and utility increases can be appraised together in the same document. The unified document then can be reviewed, approved, and adjusted accordingly together.

11.18.06.00 Employee Housing Rental Agreement

Use of the Employee Housing Rental Agreement template is mandatory for occupancy of employee housing units. Rental agreements are not required for dormitory occupants. Please refer to the specific agreement template on the Property Management website (internal Caltrans link).

11.18.07.00 Dormitory Accommodations

California Code of Regulations, Title 2, Division 1 Chapter 3, Subchapter 1, Article 3, Section 599.643 governs dormitory accommodations for employees.

A dormitory is a housing unit which meets one of the following:

- Occupied by two or more unrelated employees.
- Which must be vacated monthly to accommodate a relief employee.
- Unsuitable for housing dependents of employees.
- Which provides sleeping accommodations for more than one employee in a single room.

The monthly rate for each available accommodation shall be:

- $18.00 per month in a Class 1 location.
- $12.00 per month in a Class 2 location.

If an employee occupies a dormitory accommodation for less than a complete pay period, then the employee shall pay $0.75 per day up to a maximum of $18.00 per month in a Class 1 location or $0.50 per day up to a maximum of $12.00 per month in a Class 2 location.

If an employee occupies a dormitory accommodation for any day, or any portion thereof, because the occupancy is a requirement of the job, then the employee shall not be required to pay any rent for that day. These

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circumstances will occur when it is necessary for the employee to be available and/or to reduce response time to maintain public safety.

11.18.08.00 Payment of Rent

Rent is payable monthly in arrears by payroll deduction in accordance with DPA rules. District Maintenance initiates Miscellaneous Deduction Change Report (Controller's Form 650) to establish a payroll deduction for a new account or to change a rental. The original is sent to the State Controller's Office with copies to Accounting, Personnel, and Right of Way. Deduction Code 011 is used for rent, and a monthly report for Deduction Code 011 is available by District from the State Controller's Office. Accounting and District Right of Way should use this report to monitor rental rates and income for employee housing.

Accounting is responsible for maintaining a list with employee's name, amount deducted for rent, and amount for utilities for each employee housing unit.

District Maintenance is responsible for notifying Accounting, Personnel, and Right of Way if there is a new occupant or an employee is leaving.

11.18.09.00 Possessory Interest Tax

Since there is a private, beneficial use of publicly-owned, non-taxable real property to the employee-tenant, a taxable possessory interest exists. The employee-tenant is responsible for any possessory interest tax that the County may impose and is responsible to the County Tax Assessor. The lien holder for the possessory interest is the employee-tenant renting the employee housing unit on January1. If the employee-tenant vacates the employee-housing unit after January 1, the employee-tenant is still responsible for the preceding 12 months.

Per the California Code of Regulations, Title 2, Division 1, Chapter 3, Subchapter 1, Article 3. Section 599.648, since employees occupying state-owned housing are not reimbursed for possessory interest taxes paid by them, the Department should consider the effect of such taxes in its periodic reviews and adjustments of rental rates with the objective of maintaining equality between state employees renting state-owned housing and individuals renting privately-owned housing. The rental rates are determined by a fair market rental rate from private rentals; private landlords customarily incorporate taxes as a component of the market rate; if the possessory interest taxes are not accounted for in the rental determinations, the

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employees are essentially being overcharged for rent since they pay the possessory interest taxes themselves.

11.18.10.00 Maintenance and Repairs

Employee housing units shall be maintained in a safe and habitable condition. The maintenance standards for Department's rental properties contained in this chapter shall apply to employee housing and procedures for inspections and maintenance contracting shall be followed. The Agent is responsible for conducting all necessary inspections (move-in, move-out, and an inspection once-every 12 months) and advising Maintenance of the deficiencies that must be remediated.

Because of the distance of some employee housing units from urban areas, it may be difficult to have repairs done by contractors. In these cases, maintenance station personnel may be able to purchase materials and perform the repair work. Rental offsets shall not be used for employee housing. Costs of work done in this manner shall be documented in the rental file.

It is the responsibility of the Division of Maintenance to obtain, authorize, and allocate funds necessary for the maintenance and repair of employee housing facilities. Maintenance is also responsible for remediating the deficiencies of employee housing units by purchasing materials and performing the repair work or hiring contractors to perform the repair work by the means of a service contract or use of a Cal-Card. It is at the District's discretion to allow the Agent to assist Maintenance in requesting and managing service contracts for repair work. The funds expended for such repair work shall not come out of Right of Way Property Management's 058 funds. Additionally, all hours spent by the Agent for all work involved to inspect and assist in repairs of employee housing shall be charged to a Maintenance project identification number. Right of Way shall contact Maintenance to obtain the correct project identification number and arrange for the Agent to be added to the Project Resource and Schedule Management (PRSM) database to allow for charging.

11.18.11.00 Carpeting for Employee Housing

The purchase of rugs or carpeting for employee housing shall be in accordance with DGS' Environmentally Preferable Purchasing Best Practices Manual. All carpet is required to be independently certified to meet the criteria of the California Gold Sustainable Carpet Standard. This applies to all carpet purchased unless it is for patching and repair of carpet within an

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existing field of carpet. In addition, purchase must be in compliance with existing procurement statutes, regulations, policies, and procedures.

11.18.12.00 Surplus Property

When employee housing is no longer required for maintenance station staff due to a change in the station's mission or availability of private housing, the housing shall be eliminated by transferring the property to District Right of Way for disposal. These houses should be vacant when they are transferred to Right of Way. If occupied, however, Maintenance shall request Right of Way to terminate tenancies. Additionally, if a housing unit is vacant for more than one year, it will be presumed that it is not needed and will be subject to disposal, unless an exception is requested and granted.

11.18.13.00 Reporting Requirements

California Code of Regulations, Title 2, Division 1, Chapter 3, Subchapter 1, Article 3, Sections 599.640-648 requires Departments with state-owned properties to 1) establish processes and procedures to annually assess the FMV of their properties and 2) report the employees' taxable income associated with employer-provided housing to the State Controller's Office.

California Code of Regulations, Title 2, Division 1, Chapter 3, Subchapter 1, Article 3, Section 599.644(c) of Title 2 states, "At the direction of the Department, and pursuant to its delegation of such statutory authority, the appointing powers shall review the monthly rental and utility rates every year and report the rates to the Department." The Department referenced to in the California Code of Regulations is CalHR. The Department of Transportation has the responsibility to submit the following information to CalHR annually:

- County Code
- Street Address
- Current Rents Name
- Occupancy Date
- Fair Market Value
- Percent of Increase from Last Survey
- If Utilities Are Included in Rent
- Property Name
- Residence Type and Residence Number
- Renters Classification
- Monthly Rent
- Date of Fair Market Value Appraisal
- Monthly Utility Rate

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HQ RWLS shall maintain a current list of all information and report to CalHR on an ongoing basis.

11.18.14.00 Storm Water Requirements

Because employee housing is located at maintenance stations, it is covered by the Department's Statewide Storm Water Permit and Storm Water Management Plan (SWMP). Storm water guidance discussed elsewhere in this chapter is applicable to employee housing.

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11.19.00.00 – STATUTE AUTHORIZED USE – HOMELESS SUPPORT

11.19.01.00 State Statutes

Occasionally the State Legislature will pass legislation authorizing certain uses, either at or below fair market rent, for Department-owned property. The State Legislature, in response to the housing crisis in California, has passed numerous pieces of legislation authorizing the use of Department-owned property for the purpose of conducting a temporary emergency shelters or feeding programs. Although the use is authorized, the Department is not mandated to allow such uses on Department-owned property. Regions/Districts must become familiar with the different statutes since some statutes specifically exclude the use of properties deemed as excess. Currently, the various statutes authorizing the use of Department-owned property for conducting a temporary emergency shelter or feeding program includes the following:

- Streets and Highways Code 104.16: San Francisco
- Streets and Highways Code 104.17: Stockton and Santa Barbara
- Streets and Highways Code 104.18: San Diego
- Streets and Highways Code 104.21: Stockton
- Streets and Highways Code 104.24: Oakland
- Streets and Highways Code 104.25: San Diego
- Streets and Highways Code 104.26: Los Angeles and San Jose
- Streets and Highways Code 104.30: Statewide

Streets and Highways Code 104.30 (SHC 104.30) was added by the passage of Senate Bill 211 in the 2019-2020 Legislative Session. SHC 104.30 makes available the Department's airspace or real property for the purpose of conducting a temporary emergency shelter or feeding program. This statute essentially makes available any real property owned by the Department as a potential temporary emergency shelter or feeding program site. Please note that SHC 104.30 remains in effect until January 1, 2029 and is repealed as of that date.

If any Local Public Agency, who implements their own transportation projects, is subject to similar legislation authorizing similar uses on property owned by the Local Public Agency, the Local Public Agency should follow guidelines outlined in this section of the Manual.

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11.19.02.00 Site Identification

Due to the complexities and potential environmental impacts of developing a temporary emergency shelter or feeding program, site suitability and allowable uses of the site shall be determined through a Region/District "Round Robin" review process, which shall include, at a minimum, the Region's/District's Legislative Affairs Division and Division of Environmental Analysis. On sites that are being held for future right of way, the Division of Transportation Planning must be included in the "Round Robin" review process.

Any improvements constructed or modified on the site pursuant to SHC 104.30 do not require approval from the State Fire Marshal since the local authority in which the property is located has jurisdiction over the enforcement of building code standards. Additionally, subdivision (d) of SHC authorizes the local authority that has jurisdiction over the enforcement of building code standards to enforce the building codes for temporary emergency shelters or feeding programs for any lease executed for the purpose of a temporary emergency shelter or feeding program by statute. Subdivision (d) of SHC 104.30 essentially removes the State Fire Marshal from enforcing building standards, issuing building permits, and issuing certificates of occupancy from January 1, 2020, until January 1, 2029.

Considerations of a suitable site must include access, geography, seismic activity, traffic patterns, etc. Local agencies must be encouraged to engage the community for possible solutions, needs, and wants.

When developing a site, the Department shall approve any improvements or construction on the site; said improvements or construction shall be erected or modified in compliance with the minimum standards adopted pursuant to Chapter 7.8 (commencing with Section 8698) of Division 1 of Title 2 of the Government Code, if the local agency has such authority, or the minimum standards provided in the 2019 California Building Code Appendix O, the 2019 California Residential Code Appendix X, and any future standards adopted by the Department of Housing and Community Development related to emergency housing or emergency housing facilities.

Pursuant to Chapter 7.8 (commencing with Section 8698) of Division 1 of Title 2 of the Government Code, some political subdivisions have the authority to adopt by ordinance reasonable local standards and procedures for the design, site development, and operation of shelters and the structures and facilities therein in lieu of compliance with local building approval procedures or state housing, health, habitability, planning and zoning, or safety standards,

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procedures, and law. In order to do so, there must be a declaration of a shelter crisis by the political subdivision and the political subdivision's draft ordinance must be approved by the Department of Housing and Community Development to ensure it addresses minimum health and safety standards.

11.19.03.00 Rental Rates

The rental rates for the use of Department-owned property is specified in the various statutes. At this time, all of the aforementioned Streets and Highways Codes called out in Section 11.19.01.00 have a specified rental rate of $1.00 per month.

In addition to the rental rates, the various statutes also specify the administrative fees that the Department may charge local agencies to cover the support costs expended by the Department in developing and administering the lease.

The administrative fee specified in the various statutes range from $500.00 per year to $5,000.00 per year, unless the Department determines that a higher administrative fee is necessary to cover the Department's costs. Of all the Streets and Highways Codes called out in Section 11.19.01.00, only SHC 104.30 caps the annual administrative fee, irrespective of the Department's determination of the administrative fee necessary to cover the Department's costs, not to exceed $15,000.00. At this time, the Department's policy is to charge the local agency $500.00 for administrative fees, unless the lease is allowed pursuant to SHC 104.30 in which case the administrative fee will be $5,000.00, while tracking time with a special designation in order to more accurately estimate what the actual support costs are for these leases. This information may be considered for future administrative fees charged for lease developments.

In order to closely monitor and track the Department's actual expenses associated with developing and maintaining these types of leases, all work associated with these leases must be charged to a specific "Special Designation" as instructed below.

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Requesting a Special Designation: Complete form FA-1036 (REV 06/2018) and email the completed form. Reporting Codes must be assigned for **each** separate homeless lease account. For the following three sections, please complete the form in the following manner:

- **Reporting (10 characters maximum):** The reporting code should be constructed as "HOMEL", followed by the two-digit District number, followed by a unique 3-digit number the District assigns (it is imperative that this number does not conflict with any Airspace tenancy numbers). For example – "HOMEL04001" would be a potential reporting code for a District 4 homeless lease.
- **Short name (15 characters maximum):** Short name should be the complete tenancy number.
- **Reporting Code Name (60 characters maximum):** This name should be "Homeless Lease", including the space between the two words, and the full tenancy number including the pertinent dashes. For example – "HOMELESS LEASE 04-123456-0001-01" would be a potential reporting code for a District 4 homeless lease.

11.19.04.00 FHWA Approval

If the site identified was acquired with title 23, United States Code, funding, FHWA approval must be obtained for leasing the site at less than fair market value. As discussed in Manual Section 11.01.10.00, the Region/District shall submit a written Public Interest Finding (PIF) to HQ R/W for submission to FHWA for the approval of the statutory less than fair market rental rate.

11.19.05.00 Rental Agreement

Please refer to the specific lease template on the Property Management website (internal Caltrans link). If any Local Public Agency, who implements their own transportation projects and may be subject to be a lessor for any such homeless support use, requires access to the lease template on the Division of Right of Way and Land Surveys, Real Property Services intranet website may contact an HQ R/W liaison for further assistance. The HQ R/W liaison contact information may be found on the Property Management website (internal Caltrans link). The lease template will, for consistency, closely mirror the Airspace Right of Way Use Agreement templates specifically designed homeless uses. Any changes to the templates, excluding information pertaining to site specific developments, must be approved by HQ and the District's legal office. Please send all proposed changes to your H/Q liaison.

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11.19.06.00 Term

Temporary homeless support leases shall be for a maximum of three years, unless the lease is pursuant to a statute that specifically dictates the term of the lease agreement. Additionally, the Region/District shall not execute any leases after the sunset date specified in the specific statute. Furthermore, the Region/District shall not allow the term of any lease to extend beyond the sunset date specified in the specific statute. The intent of such statutes authorizing the use of Department-owned properties for homeless support sites is not to permanently shelter people but to erect these facilities as an emergency measure. Should a local agency wish to extend a lease term beyond three years, or renew the lease after three years, the Region/District shall obtain approval by HQ R/W. Please send all requests for extended terms or renewals to your HQ R/W liaison.

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11.20.00.00 – DELEGATIONS

11.20.01.00 Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Property Management 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.

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Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	**RW Manual Section**	**Responsibility**	**Delegation**	**Lowest Level of Sub-Delegation**
	11.01.04.00	No Re-Rent Policy on Residential Units: • Exception to Establishment of a No Re-Rent Policy, if Project is in the STIP or SHOPP and has Programmed Funds For R/W Activities, Requires a Rental and Clearance Plan Approved by the DD or Authorized Delegate • Separate Written Approval from the DD Is Required to Institute No Re-Rent Policy in the R/W Stage RAP Study • Separate Written Approvals from the DD and R/W Are Required to Institute No Re-Rent Policy Submitted Separately From R/W Stage RAP Study	District	RW Manager
	11.01.04.01	No Re-Rent Policy on Nonresidential Units: • Justification and Approval Required are the Same as For Residential Units (Section 11.01.04.00)	District	RW Manager
	11.02.06.00	Establishing New Accounts Upon Approval of Rental Agreement	District	Associated Governmental Program Analyst (AGPA)

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Reference (Statutory, WBS, Director's Policy Deputy Directive, etc.)	**RW Manual Section**	**Responsibility**	**Delegation**	**Lowest Level of Sub-Delegation**
	11.02.06.00	Modify Standard Forms to Comply with Actual Conditions or When Special Situations Arise. Legal Must Approve Any Rental Agreements or Leases on Nonstandard Forms Prior to Execution by the Department (11.12.06.00)	District	Supervising RW Agent
	11.03.03.00	Approval to Dispose of a Property at Variance with the IDA Previously Approved by the DD or Authorized Delegate (12.01.08.00)	District	Supervising RW Agent
	11.03.08.00	Approval to Pay Mutual Water Company Stock Assessment. If the State Holds Water Stock, it is Subject to Assessments by the Mutual Water Company. Prior approval From the DD or Authorized Delegate Must be Obtained Before Such Assessments Can be Paid.	District	Senior RW Agent
	11.04.01.00	Granting Grantors and Inherited Tenants Longer Free-Occupancy Period	District	RW Manager
	11.04.03.00	Approval for a Flat Rate for Commercial and Industrial Leases in a Stable Market	District	Supervising RW Agent
	11.07.10.00	Approval of All Residential and Nonresidential Rental Agreements Per Appraisal or R/W Contract and Standard Form	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**
	11.12.06.00	Modification of Standard Clauses of Rental Agreement for Vacant Land or Land with Improvements Retained by Grantor. Legal Must Approve Rental Agreements and Leases on Nonstandard Forms Prior to Execution by the Department.	District	Senior RW Agent
	11.10.17.00	Approval of Rental Offsets	District	Up to $1,000.00: Senior RW Agent Above $1,000.00: Supervising 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**
	11.10.03.02	Maintenance Expenditures on Rented State-Owned Property May Be Allowed When It Would Be in the State's Best Interest as Follows: • Authorization of Major Repairs on Commercial or Industrial Leases • Authorization to Make Improvements or Repairs on Properties Under Master Tenancy Agreement • Authorization to Make Improvements or Repairs on Properties Under Agricultural Lease • When They Are Not the Obligation of the Tenant	District	Senior RW Agent
State Contract Act, DPAC Policy	11.10.10.04	Rehabilitation of Properties – Contract Proposals over $100K Must be Approved by DD or DDD Before Such Proposals are Submitted to DPAC Package Presented to DD or DDD Must Include Description of Work, Estimate of Cost & Economic Justification for Each Rehab Contract Over $100,000.	District	Supervising 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**
	11.12.06.00	Lease Approval by State: Standard Residential Rental Agreements and Nonresidential Leases at Fair Market Rent. Rental Agreements and Leases on Nonstandard Forms Must be Approved by Legal Prior to Execution by the Department.	District	Senior RW Agent
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	11.12.15.00	Approval of Notice of Cancellation for More Than 90 Days of Interim Lease to a City or County Under S&H Code 104.7	District	Senior RW Agent
	11.13.05.00	Approval of Master Tenancy Agreements (). Use of Any Nonstandard Form for the Agreement Must be Approved by Legal Prior to Execution by the Department (11.12.06.00).	District	Supervising RW Agent
	11.14.04.00	New Outdoor Advertising Structure Agreements for More Than 5 Years. Use of Any Nonstandard Form for the Agreement Must be Approved by Legal Prior to Execution by the Department (11.12.06.00).	District	Supervising 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**
GOV §11007.1-§11007.8	11.15.05.00	Review the Fire and Hazard Insurance Required by Lessor on State's Temporary Facilities Leases	District	AGPA
	11.15.04.01	Execution of Standard State-as-Lessee Lease Agreements. Significant Modifications to the Standard Clauses Shall be Approved by Legal Prior to Execution by the Department.	District	Supervising RW Agent
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	11.16.04.00	Approval of Financial Analysis on Advance Transfer to Clearance Status	District	RW Manager
California Administrative Health and Safety Codes 25286, 25294. 25295, 25298, and 25299 CCR Title 23 Div. 3, Ch 16	11.17.05.00	Exception to Requirements to Remove Underground Tanks	District	Supervising 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**
	11.17.07.00	Approval of New Lease and Lease Renewal for a Parcel Confirmed to Contain Hazardous Waste	District	Supervising RW Agent
Deputy Directive #18 R-1	11.18.03.00	Employee-Occupied Caltrans-Owned Housing. Responsibility for Employee Housing as Follows: • Develop Statewide Procedures and Criteria for Disposal and/or Occupancy of Caltrans-Owned Housing • Assist District Directors in Determining Fair Market Rental Rates, Conducting Housing Availability Studies, and Disposal of Unnecessary Employee Housing.	District	Senior RW Agent

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Exhibits are located online:

- External Exhibits site
- Internal Exhibits site (internal Caltrans link)

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(REV 1/2019)

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Forms are located online:

- External Forms site
- Internal Forms site (internal Caltrans link)

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12.00.00.00 - CLEARANCE AND DEMOLITION

12.01.00.00 - CLEARANCE AND DEMOLITION - GENERAL

12.01.01.00 Purpose

The District Clearance function is responsible for the orderly clearance of property with minimum detrimental effect on the community. Clearance & Demolition as a function refers to the act of demolishing, selling or transferring State-owned improvements or personal property, which includes discarding of improvements or personal property of negligible value or unsellable. All improvements and personal property are carefully inspected to determine whether the improvements should be demolished or sold. Major factors governing the demolition or sale decision are:

- Structural condition and functional utility of the improvements.
- Area in which items/structures are located.
- Local ordinances affecting movement and rehabilitation of improvements.
- Presence of hazardous materials such as lead or asbestos on or within improvements.

The District should remove improvements through the demolition process unless prescribed elsewhere in this chapter. If, for example, an improvement is determined to be historically significant and demolition of the improvement is not an approved clearance option; then the removal of that improvement may occur through sale or transfer.

The District's Right of Way staff member who performs Clearance and Demolition activities is referred to as the Clearance Agent. This could be a dedicated role, or one of multiple duties of a Right of Way Agent. The Right of Way Agent undertaking the role of Clearance Agent will also likely assume the role of Caltrans Contract Manager (CCM) for all Clearance and Demolition contracts.

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12.01.02.00 Approval Authority

Approval is in accordance with the delegations discussed in Chapter 2, Policy, and shown on the delegation matrix located at the end of this chapter. Any approvals not specifically delegated are retained by HQ, within the Division of Right of Way and Land Surveys.

12.01.03.00 Federal Participation in Revenue and Expenses

Federal funds may be used to cover costs for the clearance of improvements and disposal, maintenance, and protection of real property, per 23 CFR Section 710.203(b)(4). Right of Way must provide Accounting with information to identify and charge Federal participating revenue and expenses accurately. Instructions for completing accounting documents are included on the documents. District Planning and Management (P&M) staff can provide additional information.

12.01.04.00 Other Applicable Federal Regulations

Policies and procedures for the management of real property acquired in connection with a Federal-aid transportation project are contained in 23 CFR Subpart D – Real Property Management 710.401 through 710.409. The policies are applicable to all State and political subdivisions that manage real property acquired for transportation projects in which Federal funds are used for any right of way costs.

12.01.05.00 File Content

As part of the District's permanent parcel file, the District Clearance Agent maintains a list with the following information for each improved property:

- **Inventory** of all improvements and personal property acquired as a part of the right of way. (See 12.01.11.00)
- **Accounting** of any sale or transfer of such improvements and personal property and the recovery payments received.
- **Methods** used to clear acquired right of way improvements and personal property through sale, salvage, owner retention, demolition, or other means.

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Where multiple improved properties (e.g. multiple separate occupying businesses) exist within a single State parcel, a separate list for each improved property is required.

In addition to the District's permanent parcel file, the District Clearance Agent shall create and maintain a separate Clearance file on each parcel requiring clearance or demolition. A complete copy of the Clearance file shall be retained by the District for 5 years from the date of last payment on any contract for demolition on that parcel; the file retention period shall be extended to 7 years if the demolition contract was audited by another agency or entity, was subject to a California Public Records Act (CPRA) request or part of a lawsuit during those first 5 years. For parcels without demolition contracts administered by the District Clearance Agent or other Right of Way Agent, the initial Clearance file retention period is 5 years from the date of acquisition of the parcel. The file shall contain all Clearance related information regarding the acquired State parcel including, but not limited to:

- Copy of Lead / Asbestos surveys.
- Inventory Disposal Record (IDR) and related Inventory Disposal Authorization (IDA).
- Stormwater plan (WPCP/SWPPP), related inspections, and photos of installed BMPs.
- Any relevant communication between the Clearance agent and other departments within Caltrans, consultants or other agencies/governmental entities.
- All-clear reports/ recycling reports, and debris and hazmat disposal manifests.
- A copy of any permits obtained from the contractor.
- A copy of the "Letter of Disconnect" for electrical and gas service removal.
- Aerial maps and any documents that identify the parcel/project site.
- Invoices.

The Clearance Agent shall keep secure all vendor certified payroll records for any managed contract involving work on the parcel for 5 years after the date of the last payment under the contract; that retention period shall be extended to 7 years for contracts audited by another agency or entity, subject to a California Public Records Act (CPRA) request or part of a lawsuit during those first 5 years. For contracts managed by another District Right of Way Agent, payroll records involving Clearance work may be secured with the District's other contracts, subject to the above retention rules.

On a regular basis, the Clearance Agent shall furnish the Right of Way Property Manager with a copy of pertinent documents contained with the parcel

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Clearance file to ensure the parcel's data is retained within the District's permanent parcel file.

12.01.06.00 Right of Way vs. Construction Item

Clearing acquired improvements is considered a right of way item when performed separately from the construction contract per 23 CFR 710.307(a). Clearing is a construction item when performed as part of the project construction contract.

12.01.07.00 Inventory Disposal Record

The Acquisition Agent provides all the information required by the Inventory Disposal Record (IDR), Form RW 12-1, as part of the Memorandum of Settlement (MOS) on properties that include the purchase of improvements or personal property. The IDR 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. The IDR is prepared by the Acquisition Agent and a Register Number is assigned when the MOS is prepared. (See Acquisition manual section 8.50.03.00 and Property Management manual section 11.03.02.00.) Once acquisition is complete, maintenance of the IDR becomes the responsibility of the Clearance Agent until clearance is complete, then this responsibility passes on to the District Property Manager until the property is sold or turned over to Construction.

12.01.08.00 Improvement Disposal Authorization

The Improvement Disposal Authorization (IDA), Form RW 12-2, is a formal document used to convey the authority to dispose of State-owned improvements or State-owned personal property. Approval of the IDA is authority to proceed with disposition of the improvements as specified. No improvements or personal property shall be disposed of in a manner at variance with the approved IDA without prior approval of a Senior Right of Way Agent with the responsibility for managing the Property Management or Clearance and Demolition unit.

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12.01.09.00 Preparing the IDA

As a Best Business Practice, it is recommended that the IDA document be prepared by either the Clearance staff or Property Management staff. The author who drafts the IDA includes an explanation and reason for sale or demolition. Typical examples are:

A. To clear for construction (specifying proposed project certification date).

B. Not rentable due to poor condition and not warranting repair.

C. To prevent theft and acts of vandalism or to uphold public health & safety.

D. Moving is not feasible or legally permissible.

For requested demolition of State-owned property under example B, *not rentable due to poor condition and not warranting repair*; a financial analysis, prepared by a qualified person and approved by a Senior Right of Way Agent, must be attached to the IDA for any disposal of improvements. Under example B, the financial analysis could contain a bid for rehabilitation and a bid for demolition, along with supportive rationale; this could be illustrated with equations or drafting commentary as to why demolition was the chosen alternative over rehabilitation. Under examples C & D, documentation must be included with the IDA as to why demolition or moving was the chosen alternative. Appropriate documentation to attach to an IDA would include, but not be limited to, police reports, diaries documenting theft/vandalism/degradation of improvements, contractor proposals, photos and any public complaints received by the Department. Comments and recommendations must indicate whether the project has been environmentally cleared.

Recommended minimum acceptable bid must be included in IDAs requesting disposal of items such as buildings, furniture, and equipment by public sale. The minimum bid amount is also set out as a designated percentage of the estimated market value of the improvements or personal property listed in the IDA. Estimated market value of improvements and listed personal property may be developed and provided by Appraisal or Acquisition Agents as part of the parcel Acquisition process. Any large difference between the estimated market value and the recommended minimum bid amount must be explained in writing attached to the IDA when the value of the minimum bid is set any lower than 25% of the estimated market value.

A Senior Right of Way Agent responsible for managing the Property Management or Clearance and Demolition unit approves the IDA.

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12.01.10.00 Improvement and Personal Property Definition

For purposes of this inventory procedure, "improvements and personal property" means those structures, improvements, or personal property (such as fixtures and furniture) whose disposal requires an IDA. Miscellaneous items purchased as part of the real estate, such as air coolers, carpets, gasoline pumps, compressors, weigh scales, and underground tanks, are listed on the IDA. This applies whether the items are to be sold, demolished, or transferred to another department or agency. Improvements such as landscaping and driveways that normally are cleared with Right of Way contracts or by the road contractor as part of clearing and grubbing need not be listed.

12.01.11.00 Improvement and Personal Property Inventory

The Clearance Agent specifies the reason and recommended manner of disposal on the IDA.

The IDR, Form 12-1, and the Register, Form 12-3, collectively record the disposition of improvements and personal property and provide accountability during State's ownership. The demolition, sale, or loss of State-owned improvements or personal property should be documented by updating the IDR in both the Clearance and the District permanent parcel file as those events occur.

12.01.12.00 Numbering of IDAs and IDRs

IDAs and IDRs carry the Parcel Number, Improvement Register Number (generated by the District's Acquisitions Unit), Project ID number, Co. Rte. and KP/PM, and Federal-aid Project Number. District filing is by Parcel Number.

12.01.13.00 Active Inventory of Improvements File

The District shall maintain a file of active IDRs. A copy of the newly approved IDA for a parcel is placed in this file along with the IDR document. When all improvements have been cleared in accordance with the IDA and the "Disposal Record" section (back) of the IDR has been completed, these two documents are transferred to the District's permanent parcel file.

When multiple IDAs are required to dispose of improvement items carried under one Register Number, the disposal information may be transcribed from

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the multiple reports to the original IDR form. The original IDAs are filed in the permanent District parcel file.

12.01.14.00 Security Incident Reporting Procedures for Lost or Stolen Property

Government Code (GOV) Section 14613.7 requires each State agency to be protected by the California Highway Patrol (CHP). The CHP personnel shall document all crimes, miscellaneous law enforcement-related incidents, or services provided on State-owned or State-leased property for statistical record keeping purposes. All notifications of an incident and/or crime shall be expeditiously directed to the Department's Statewide Operations Security (SOS) Office via email or fax no later than the third working day following the discovery of an incident and/or crime; this same notification shall also be delivered to the District Security Coordinator.

Incidents/crimes involving injury or death of individuals or property losses totaling over $500 shall be reported no later than the first working day following the discovery or notification.

A STD. 99 form, which is used to "Report Crime or Criminally Caused Property Damage on State Property," shall be prepared for all crimes or incidents occurring on state-owned or state-leased property and sent to:

Caltrans - Statewide Operations Security Office
1120 N Street, Mail Station 55
Sacramento, CA 95814

For additional information on the security protocol, see the Statewide Operations Security Manual (internal Caltrans link).

12.01.15.00 California Highway Patrol – STD. 99 Reporting Form

Whenever CHP personnel respond, the STD. 99 form shall be requested by the Right of Way agent to be prepared by the CHP officer responding to the crime/incident. The STD. 99 shall be forwarded by the SOS or District Security Coordinator (SC) to the CHP area office having jurisdiction of where the incident occurred, so it can be entered into the State Crimes Automated Reporting System (SCARS) within ten (10) days of the date of incident. The District SC will provide a copy to SOS. The SOS will forward a copy to the State Auditor and the California Department of Finance.

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For incidents on State-owned or State-leased property resulting in no law enforcement contact, or if a law enforcement agency other than the CHP responds, the STD. 99 must still be completed and submitted by the person reporting the crime/incident and forwarded by the District SC to the local CHP area office having jurisdiction where the incident occurred. The Form should be forwarded within ten (10) business days of the date of the incident. The District SC will forward a copy to the State Auditor and the California Department of Finance.

The STD. 99 is NOT required for lost, stolen or damaged property that was lost, stolen or damaged at a location not owned or leased by the State.

The Clearance Agent shall update the IDR to reflect lost or stolen property; a copy of the STD. 99 should be placed in both the Clearance and permanent District parcel file.

For additional information regarding the California Highway Patrol and the STD. 99 reporting form, please visit the Crime Incident Reporting System.

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12.02.00.00 – PRE-CLEARANCE CONSIDERATIONS

12.02.01.00 General

All property held for future projects shall be rented and cleared of improvements in such a manner that the State receives maximum economic return. The retention of improvements is generally controlled by the date the property is needed; or other considerations outlined in section 12.01.09. Disruption of a community shall be minimized by scheduling clearance in an orderly manner. The Clearance Agent shall be present daily on active clearance sites to ensure order during the work. The Clearance Agent shall ensure that improvements are tested for Lead, Asbestos and other miscellaneous toxic materials covered in Section 12.05.00.00 of this chapter, prior to clearance work.

12.02.02.00 Advanced Transfers to Clearance Status

Occasionally it is necessary to remove improvements prior to normal clearance scheduling when the improvements are:

- Run-down or dilapidated.
- On rescinded routes.
- On excess land.

Advanced clearance of improvements shall be approved by a Senior R/W Agent signing a completed IDA form, as outlined in section 12.01.09.00, with the appropriate level of documentation attached to the completed IDA.

The underlying Department project must be environmentally cleared by the Division of Environmental Analysis (DEA) prior to commencement of the clearance work; see the following section (12.02.03.00) for further information relating to the DEA.

12.02.03.00 Division of Environmental Analysis

The Division of Environmental Analysis (DEA) is responsible for the implementation of Caltrans policies, programs, and procedures concerning environmental considerations, analysis, and compliance with environmental

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laws and regulations under California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) as well as other state and federal regulations.

The Clearance Agent shall work closely with staff from DEA throughout the clearance process; DEA provides evaluations, guidance and formal recommendations in regard to cultural, biological, historical and hazardous materials on Right of Way Clearance and Demolition projects. See the Division of Environmental Analysis for more information.

12.02.04.00 50+ Year Old Structures

All Department-owned historic structures are subject to the provisions of Public Resources Code 5024; structures 50 years and older require an environmental evaluation to ensure they are not historically significant; such structures deemed historically significant may not be demolished. DEA is the responsible party for completing that evaluation and will provide acceptable alternatives to demolition when demolition is not permissible. No demolition, sale or transfer of a 50+ year old structure shall occur until a formal evaluation is completed and such action is approved by DEA. If the Department purchased a property with improvements that were built less than 50 years prior to the acquisition, but the improvement(s) have aged to 50 years or older during the Department's ownership period; that improvement shall be re-evaluated by DEA. The District Clearance Agent should ensure project parcels have already been cleared by DEA prior to requesting a formal evaluation.

Prior to right of way clearance of a 50+ year old structure, the Clearance Agent annotates the Clearance file with the appropriate language and supporting documentation as follows:

- The historic structure was evaluated for compliance with Federal and State regulations relative to its sale, transfer, or demolition; and if necessary, all required mitigation work has been completed. A copy of the evaluation document and record of the completed mitigation work shall be included in the Clearance file.
- The sale or transfer is pursuant to the terms of a historic preservation compliance agreement. A copy of or reference to such agreement shall be included in the Clearance file.
- The historic structure was not previously cleared on a project basis; the concurrence of the State Historic Preservation Officer shall be sought prior

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to clearance. A copy of the memorandum of concurrence from the State Historic Preservation Officer shall be included in the Clearance file.

12.02.05.00 Rodent Control

To prepare the structure for clearance, the Clearance Agent shall note and document any evidence of rodent infestation on the applicable Property Management Inspection form. Eradication of rodent infestation shall be performed prior to clearance work if there is a risk of the rodent population spreading to adjacent properties.

12.02.06.00 Utility Service Disconnect

Prior to the delivery of a parcel to the demolition contractor or release of a parcel to the winning bidder for the sale of an improvement, it is the responsibility of the Clearance Agent to ensure the disconnection of all utility services. As a prudent measure, electrical and gas services should be removed to the property line, ensuring the improvements can be demolished or moved off-site safely. Water and other supply services should also be terminated, and facilities removed to provide safe access during removal of hazardous materials and demolition. Destruction of wells, storage tanks, and supply and drain lines should be in compliance with the clearance specifications.

The Clearance Agent shall obtain a "Letter of Disconnect" or similarly named document from the utility provider or the contractor (if the contract scope of work requires the contractor to coordinate utility disconnection). This letter formally documents that utilities were terminated and facilities removed.

12.02.07.00 California DOT Stormwater Management Program (SWMP)

The California Department of Transportation Stormwater Management Program (SWMP) administered by DEA ensures compliance with National Pollutant Discharge Elimination System (NPDES) Statewide Storm Water Permit Waste Discharge Requirements Order Number 2012-0011-DWQ, (As amended by Orders WQ 2014-0006-EXEC, WQ 2014-0077-DWQ, WQ 2015-0046-EXEC, and WQ 2017-0026-EXEC), NPDES Number CAS000003. The DEA provides statewide policy direction, technical and regulatory information, guidance documents, specifications, and funding to integrate appropriate stormwater control activities. The DEA also provides water quality monitoring, Best

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Management Practices (BMPs) along with implementing compliance guidance and tools.

The Caltrans Permit, which is described later in section 12.02.07.02, directs Caltrans to implement and maintain an effective SWMP. The SWMP is the document that describes how Caltrans plans to implement the Permit requirements. The SWMP describes Caltrans' program and addresses stormwater pollution control related to various activities, including planning, design, construction, maintenance, and operation of roadways and facilities, and presents key implementation responsibilities and schedules. The SWMP was updated in July 2016.

The Clearance Agent is ultimately responsible for project compliance with the Caltrans Stormwater Management Program. The Clearance Agent shall consider the impacts of a proposed clearance project regarding the Department's Statewide Stormwater Permit. Good planning and communication with the District NPDES unit within the DEA is required for an efficient and compliant project.

Additional resources are available at the Storm Water website.

12.02.07.01 Federal Stormwater Regulations

Federal regulations for controlling discharges of pollutants from Municipal Separate Storm Sewer Systems (MS4s), construction sites, and industrial activities were incorporated into the National Pollutant Discharge Elimination System (NPDES) permit process by the 1987 amendments to the Clean Water Act (CWA) and by the subsequent 1990 promulgation of federal stormwater regulations issued by the U.S. Environmental Protection Agency (EPA). The EPA regulations require municipal, construction and industrial stormwater discharges to comply with an NPDES permit. In California, the EPA delegated its authority to issue NPDES permits to the State Water Resources Control Board (SWRCB).

12.02.07.02 Caltrans NPDES Statewide Stormwater Permit

The SWRCB issued an NPDES Statewide Stormwater Permit (known as the "Caltrans Permit") to the Department to regulate stormwater and non-stormwater discharges from State-owned properties and facilities, and discharges associated with operation and maintenance of the State highway system.

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The Caltrans Permit contains three basic requirements:

1. The Department must comply with the requirements of the Construction General Permit (CGP);

2. The Department must implement a year-round program in all parts of the State to effectively control stormwater and non-stormwater discharges; and

3. The Department's stormwater discharges must meet water quality standards through implementation of permanent and temporary Best Management Practices (BMPs) and other measures.

The Caltrans Permit regulates stormwater discharges from the Department's Right of Way during and after construction, as well as from all other State-owned property under the control of the Department. The Caltrans Permit gives the SWRCB the option to specify additional requirements it may consider necessary to meet water quality standards. Copies of the Caltrans Permit can be downloaded from the SWRCB website.

Discharges from the Department's properties that are not composed entirely of stormwater are prohibited unless the non-stormwater discharges are from a source authorized under the SWMP. Therefore, appropriate BMPs must be installed to remove pollutants to the Maximum Extent Practicable (MEP). The permit states: "Discharge of material other than storm water, or discharge that is not composed entirely of storm water, to waters of the United States or another permitted MS4 is prohibited, except as conditionally exempted under... [the Caltrans Permit] or authorized by a separate NPDES permit."

12.02.07.03 Construction General Permit (CGP)

The SWRCB elected to adopt a single statewide general permit for construction activities that applies to all stormwater discharges from land when clearing, grading, and excavation result in soil disturbance of at least one (1) acre or more. Construction activity that results in soil disturbance of less than one (1) acre is subject to this CGP if there is the potential for significant water quality impairment resulting from the activity as determined by the SWRCB; permit criteria dictates that the owner of the land where such impacts occur must develop and implement a Stormwater Pollution Prevention Plan (SWPPP). Additional information is available at the Construction Stormwater Program website.

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Other CGPs that may apply, but are less common, include the EPA CGP that applies to tribal and federal lands, and the Tahoe CGP that applies to the Lake Tahoe Hydrologic Unit (i.e., watershed).

12.02.07.04 Stormwater Pollution Prevention Plan (SWPPP)

The CGP outlines the required contents of a SWPPP. A SWPPP is a document that addresses water pollution controls for a specific project during construction and demolition work. The CGP requires that all stormwater discharges associated with construction activities that result in soil disturbance of at least one (1) acre of total land area must comply with the provisions specified in the CGP, including development and implementation of an effective SWPPP.

The SWPPP is prepared by a Qualified SWPPP Developer (QSD), who is typically hired or employed by the demolition contractor. The Clearance Agent shall have the plan reviewed and approved by the Districts NPDES unit within DEA prior to commencement of soil-disturbing activities. Prior to the start of construction, authorized District stormwater staff will enter a Notice of Intent (NOI) and supporting documents to the State Water Resource Control Board's *Stormwater Multiple Application and Report Tracking System* (SMARTS). The Clearance Agent will work with their district Environmental NPDES Staff to ensure all required documents are uploaded into SMARTS throughout the project. When construction is complete, and the construction site is stabilized, the authorized District staff responsible for SMARTS submissions will submit a Notice of Termination (NOT). The Clearance Agent is required to include pertinent SWPPP related information in both the Clearance and the District permanent parcel file.

SWPPPs shall be prepared by a qualified vendor using the most recent SWPPP template found on the Caltrans Construction Stormwater webpage.

12.02.07.05 Water Pollution Control Program (WPCP)

Generally, construction projects with a disturbed soil area of less than one (1) acre are not covered under the CGP and do not require a SWPPP. For all projects that do not require preparation of a SWPPP, the Department requires that a Water Pollution Control Program (WPCP) be prepared. The WPCP is typically prepared by a consultant hired by or an employee of the demolition contractor. The Clearance Agent shall have the plan reviewed and approved by the Districts NPDES unit within the DEA prior to commencement of soil-disturbing activities.

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Details on the preparation of the SWPPP or WPCP are found in the supplementary Stormwater Quality Handbook, Stormwater Pollution Prevention Plan (SWPPP) and Water Pollution Control Program (WPCP) Preparation Manual.

WPCPs shall be prepared by a qualified vendor using the most recent WPCP template found on the Caltrans Construction Stormwater webpage.

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12.03.00.00 - CLEARANCE PROCEDURE

12.03.01.00 Initial Clearance Procedures

Prior to environmental clearance, improvements must not be removed except due to:

"a sudden, unexpected occurrence that poses a clear and imminent danger requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services" as defined within the Public Contract Code Section 1102.

After environmental clearance, a no re-rent policy is established on vacant units when the project's funds for normal right of way activities have been programmed; vacated improvements on such projects are immediately cleared. Refer to section 12.01.09.00 for guidance on when clearing of improvements should occur earlier than the project schedule calls for.

The Department's "no re-rent" policy and its exceptions are discussed in Property Management Sections 11.01.04.00 to 11.01.04.01.

Factors the District should analyze in determining clearance schedules are:

- **Loss of Revenue** - to local governmental agencies if rental income to the Department of Transportation (Department) ceases and the local 24% share of such income ceases.
- **Increased Costs** - for debris pickup and weed abatement as improvements are removed.
- **Attractive Nuisance** - increased exposure to personal injury liability as neighborhood children, the homeless, and other individuals are attracted to cleared right of way. (Consider fencing the site, hiring security or boarding up the structure.)
- **Temporary Use Requests** - increased requests by local agencies and others to use cleared right of way temporarily for gardens, parks, and other quasi-public purposes that might result in complications when the Department prepares to construct the project.
- **Rental Income Balanced Against the Cost of Upkeep of the Rental Units** - such items as roof, sewer, plumbing, and heater repairs and management costs such as rent collections and delinquencies are to be considered.

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In addition, the District shall issue Notices to Relocate to residential tenants in an orderly manner so the private housing market is not overwhelmed by a large number of households seeking replacement housing at the same time. An orderly relocation of households is imperative to avoid court-mandated replacement or replenishment housing programs.

When a parcel is transferred to clearance status for removal of acquired improvements and/or personal property, the Clearance Agent shall immediately schedule and process the items for clearance by preparing an IDA.

12.03.02.00 50+ Year Old Structures

Prior to demolition, sale or transfer, the Clearance Agent shall ensure that any structure more than 50 years was formally evaluated and approved for such clearance action by the Division of Environmental Analysis (DEA), as outlined in section 12.02.04.00 of this manual.

12.03.03.00 Lead and Asbestos

All improvements shall be inspected for the presence of Asbestos Containing Materials (ACM) and Lead Based Paint (LBP); a copy of the lead and asbestos survey shall be placed in both the Clearance file and the District's permanent parcel file. District Clearance staff coordinates lead and asbestos inspections and removal activities with the District's Hazardous Waste Coordinator (HWC) within DEA. All activities must comply with the Environmental Protection Agency regulations and all State and local government laws, rules, statutes, and regulation (see 40 CFR Section 61.145).

If improvements were not inspected at the appraisal or acquisition stage, the Clearance Agent must ensure that a licensed person completes an inspection prior to sale or demolition of a parcel. Sale for relocation is considered the same as demolition and also requires prior testing.

The Clearance Agent ensures that any improvements containing lead or asbestos are abated prior to demolition, sale or transfer in accordance with applicable laws, regulations, and ordinances and the recommendations of the hazardous materials inspector; refer to section 12.05.00.00 for guidance on Clearance work regarding Hazardous Waste and Hazardous Materials. Section 12.05.09.00 specifically addresses Asbestos, while section 12.05.10.00 addresses Lead.

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12.03.04.00 Rodent Control

As noted previously in section 12.02.05.00, to prepare for clearance, eradication of rodents shall be performed prior to clearance work if there is a risk of the rodent population spreading to adjacent properties.

12.03.05.00 Authorization to Dispose of Improvements

The Clearance Agent shall ensure clearance work is supported by an IDA approved by a Senior Right of Way Agent; refer to section 12.01.09.00 on proper procedures regarding the IDA.

12.03.06.00 Sale of Tools and Machinery to the Office of Equipment

Right of Way should advise the Office of Equipment of the proposed sale of any usable tools and shop equipment that is reasonably new or is repairable. Of particular interest are lathes, drill presses, milling machines, metal brakes, metal shears, and automotive tools such as wheel balancers, brake drum lathes, tire truers, and lubrication equipment.

Such items are to be listed by a special IDR and IDA. The Clearance Agent limits the IDR to items of possible interest and includes a statement that the items qualify for transfer to the Office of Equipment. A duplicate copy of the IDR is sent to the Office of Equipment with a statement that the IDA will be approved and the items disposed of by usual procedures unless a response requesting reservation of an item is received within two weeks.

It is not necessary for the District to consult the various shop superintendents. The decision to accept or reject tools and equipment lies exclusively with the Office of Equipment. Should it wish to acquire any items, the Office of Equipment will notify the District.

Transfers are documented as shown on the table entitled "Documentation of Transfer." If coding is required, the Clearance Agent should check with P&M for correct coding.

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DOCUMENTATION OF TRANSFER

Funding	Documents	Value	Process
Federal Participation	• A memo to Accounting detailing the transaction • A Shipping Record (Form ADM-0245) prepared by R/W • A Receiving Record (Form FA1226A) prepared by Office of Equipment	Dollar amount is established by the minimum acceptable bid amount.	Accounting performs the transaction and returns copies along with the TRAMS posting tag to be placed in the Inventory Disposal File in R/W for audit purposes.
State Only Funds	• A memo to Accounting detailing the transaction if a fund transfer is made • A Shipping Record prepared by R/W • A Receiving Record prepared by Office of Equipment • These records need not be coded for Accounting if no fund transfer takes place.	It is at District R/W's discretion whether to charge for transfer of equipment. Consideration can be given to current market value of equipment versus salvage value and to clearance schedule. (For salvage value definition, see 7.08.05.00.) Whether or not fund transfer occurs, the transaction must be detailed in the Inventory Disposal File for audit purposes.	Accounting performs the transaction and returns copies along with the TRAMS posting tag to be placed in the Inventory Disposal File in R/W for audit purposes.

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12.03.07.00 Sale of Personal Property

State-owned personal property may be disposed of separately or in conjunction with real estate improvements. If a stripping sale of fixtures is held on a major improvement that must be demolished, the Clearance Agent should take care to assign each fixture, or group of fixtures, an item number on the IDR. A separate list may be prepared, attached, and referenced on Form RW 12-1.

The Clearance Agent should consider the potential cost of auctioning State-owned personal property against the potential income produced from that sale. Sections 7.08.05.00 of the Right of Way Manual addresses the concept of salvage value. The Clearance Agent should consult the District's appraisal unit, or another qualified person to explore the salvage value of State-owned personal property prior to expending time or monies scheduling the sale.

12.03.08.00 Public Notification of Proposed Sale

The Agent prepares a Notice of Sale describing the state-owned property to be sold; either real estate improvements or personal property. The Notice of Sale shall contain the time, place, and manner of sale. Copies are sent to anyone expressing interest in the sale. An electronic copy of this notice should be placed online and be emailed to potential buyers. Copies should also be mailed to local agencies with a request that they be posted in places commonly used for posting legal notices. Posting of the Notice of Sale on each improvement to be sold should also be considered. Take note that the sale of state-owned real estate improvements is rare and generally the result of the inability to demolish a structure due to historical significance.

12.03.09.00 Content of the Notice of Sale

The Notice of Sale is prepared as shown on Forms RW 12-4, RW 12-5, and RW 12-6. Proposal Form RW 12-7 is attached to the Notice for sealed bids. P&M must approve the Proposal Form prior to distribution to verify it has been coded properly. (See Exhibit 12-EX-02 for coding instructions.)

In the event a District is required to sell or transfer a real estate improvement; a surety bond equal to the value of clearing the structure via Right of Way clearance contract shall be required of the buyer to ensure the successful removal of that improvement from the Right of Way. The Notice of Sale must provide that a surety bond is required and state the amount and duration thereof.

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12.03.10.00 Advertising the Sale

Sales are advertised as appropriate. The amount spent for advertising should reflect sound business judgment and be in relation to the value of the property. Use of internet marketing should also be considered to more efficiently reach potential buyers.

12.03.11.00 Upholstered Furniture and Bedding

Upholstered furniture and bedding should not be resold; instead, it should be removed from the site by the demolition or other contractor. The scope of work for such a clearance contract shall account for the disposal of upholstered furniture and bedding from the improvements.

12.03.12.00 Post-Sale Field Inspections

Clearance staff must inspect all properties sold to verify the buyer has removed the purchased improvements and conformed with all contractual obligations in the Notice of Sale and the executed proposal or bid form. The Clearance Agent shall inform purchasers in writing that they must immediately correct any unfulfilled contractual obligations. This will ensure that no difficulties arise in clearing the right of way and no dangerous conditions exist that could result in accidents. Special care should be exercised to avoid creating any hazardous conditions to neighborhood children, other individuals, or pets and other animals.

12.03.13.00 Annual Purge of Mailing Lists

The District must perform an annual review of mailing lists per Government Code Section 14911 to determine if current recipients wish to continue receiving notices. A return-addressed verification card should be attached to the material mailed. The card should provide a space on which the recipient can affix postage when returning the card to indicate a desire to remain on the mailing list.

The card should contain a statement similar to the following that states the mailing list is reviewed annually in accordance with State law:

> "Your name is on our mailing list to receive notices for public sales of property. If you wish to continue receiving these notices, please sign and return this card. If this card is not returned by (specify date), your name will be removed from our list. This notice is required annually by

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Section 14911, Government Code. Please correct the address shown, if necessary; be sure to include zip code."

The District should perform an annual review of email lists to determine if current recipients wish to continue receiving electronics correspondence. An email should be send out to all contacts on the District's email list annually; those who fail to respond within 30 days or who indicate they no longer wish to receive electronic correspondence should be purged from the District's list.

12.03.14.00 Conduct of Sale - Sale by Sealed Bid

Representatives of Accounting and Right of Way open the bids at the District Office at the time prescribed in the Notice in the presence of the bidders. The Right of Way representative shall tabulate all bids and shall immediately turn over bidder's deposits to the Accounting representative.

The Accounting representative must have accurate information (Parcel No., Project ID, Federal Aid Project No., and Object Code) to ensure proper coding of all documents. P&M must verify all coding information before it is given to Accounting.
If the highest bidder defaults in a sealed bid sale, the District may sell to the second highest bidder at the second highest bidder's bid amount.

12.03.15.00 Conduct of Sale - Sale by Public Auction

A public auction to dispose of property is conducted on the premises whenever possible. Representatives of Accounting and Right of Way, or a minimum of two representatives of Right of Way, shall attend the auction. A Right of Way representative is the lead for coordination of the auction.

Improvements to be sold should be opened for general public inspection immediately prior to the auction. The person conducting the auction should have enough copies of the Notice of Sale for people attending the auction. The auctioneer reads all the terms and conduct of the sale, including the minimum bid acceptable, preceding each sale. Adequate time is allowed for bidding before closing the sale.

The Right of Way representative must secure all necessary signatures on Proposal Form RW 12-7. The successful bidder signs the original proposal sheet and fills in their address and telephone number fields. The Accounting representative accepts the deposit in cash, cashier's check, money order, or certified check and delivers a receipt and a duplicate proposal sheet to the buyer. Accounting retains a copy of the proposal sheet to ensure the

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Department accounts for the revenue properly. Funds are placed in the special deposit account. In the absence of an Accounting representative, a Right of Way representative shall accept the deposit and deliver a receipt and a duplicate proposal sheet to the buyer; the Right of Way representative shall tender the deposit to Accounting on the same day with a covering field collection sheet.

If the highest bidder is not prepared at the auction to furnish the required deposit in the manner prescribed by the Notice, the bidding may immediately be reopened and the property sold to the subsequent highest bidder. Alternatively, the sale may be rescheduled at the discretion of the Right of Way representative.

12.03.16.00 Deposits

The following deposits are required for sealed bid or auction sales. The deposits shall be based on an estimate of the market value of the items offered for sale, developed by a qualified agent, not on the minimum bid recommended in the IDR.

- **Under $1,200.00 Market Value** - $300.00 or full amount of the bid if less than $300.00

- **Over $1,200.00 Market Value** - 25% of stated market value

12.03.17.00 Deposit Return - Unsuccessful Bidders - Sealed Bid

Immediately after the bid opening and upon written request of Right of Way, Accounting returns unsuccessful bidders' deposits by certified mail, return receipt requested. Except, the deposit furnished by the second highest bidder shall not be returned until the highest bidder has paid the total amount due the State; in case the second bidder elects to purchase in the event of high-bidder defaults. If an unsuccessful bidder is present when the deposits are released, the check may be delivered to the bidder and a receipt obtained.

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12.03.18.00 Bill of Sale

The Bill of Sale must reflect the item number and description shown on the IDR. A Senior Right of Way Agent shall execute the Bill of Sale (Exhibit 12-EX-03) after the purchaser has paid the total amount due.

The purchaser SHALL NOT REMOVE ANY SALE ITEMS until the District has received full payment.

12.03.19.00 Breach of Contract

The Notice of Sale and Terms of Sale contain provisions whereby the State shall retain all money paid to it up to the time the purchaser breaches the contract to offset actual damages sustained by the State as a direct result of the breach. Ordinarily, actual damages are determined by resale of the property that is subject to default. Sections 12.03.20.00 through 12.03.24.00 are based on the premise that, in the absence of proof to the contrary, the original sale price represented market value at the time of the breach of contract. The actual damages sustained are, therefore, the difference between the first and second sale prices, plus expenses.

The procedures detailed below are not applied to those cases where the bidder, after completing payment and furnishing surety bond, does not complete improvement removal in accordance with the agreed-upon obligations stated in Paragraph (1) of Forms RW 12-4, 12-5, or 12-6 or in the performance of any other agreed-upon obligation. In these cases, the State completes the work and bills the bonding company for the additional cost of completing the bidder's work. No refunds are made to the bidder.

12.03.20.00 Defaults Not Fault of Bidder

If the successful bidder defaults because of State's inability to convey title or any other cause not the fault of the bidder, the bidder's money shall be refunded pursuant to Division of Accounting instructions.

12.03.21.00 Refunds

The Senior Right of Way Agent who oversees the responsibilities of Property Management or Clearance and Demolition notifies the Accounting Office by memorandum to prepare refund documents, fully itemizing the transaction per Section 12.03.23.00.

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12.03.22.00 Notification to Defaulted Bidder

If there is a breach of contract, the Clearance function must immediately notify the defaulted bidder in writing, including the following information:

- **Nature of Breach of Contract** - e.g., failure to pay the balance due or provide the required bond.

- **Determination of Damages** - the bidder's money is retained pending determination of actual damages sustained by the State as a result of the breach.

- **Refundable Balance** - any refundable balance after deduction of actual damages sustained is remitted with an accounting of said money.

No money is to be returned to the defaulted bidder, whether the money is the required deposit only or the entire purchase price, except as provided in Section 12.03.24.00.

12.03.23.00 Resales to Determine Damages Sustained

The Clearance function schedules a resale of the personal property or real estate improvements as promptly as practicable after the breach of contract. Timeliness is necessary to demonstrate good faith and to avoid any undue hardship a delay might cause a bidder whose money cannot yet be released. Actual damages are determined as follows:

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ACTUAL DAMAGES

Condition	Amount
Property sells for less than the original sales price	Difference between the two sales prices, plus all expenses for resale (actual receipts/invoices required)
Property sells for an amount equal to or more than original sales price plus expenses	Zero
Building cannot be resold, due to lack of interested bidders or impending project certification date	The demolition cost or the actual expenses for initial sale; whichever is less
Highest bidder defaults on sale by sealed bid and the District sells to the second highest bidder	Difference between the two bids
Demolition to be done by the State's highway contractor at a later date	An estimate of cost may be used to determine actual damages sustained by the State. If demolition is in the near future, Right of Way asks the resident engineer to document the actual cost.

12.03.24.00 Statement of Damages Sustained

After determining actual damages, the District provides the defaulted bidder with an accounting statement showing:

- Total amount paid to State on purchase of the property.
- Deduction for actual damages, if any.
- Refundable balance, if any.

If the actual damages sustained exceed the money on deposit, the District retains the entire amount and furnishes an accounting statement to the defaulted bidder.

The defaulted bidder is not billed for losses exceeding moneys paid up to the time of breach unless State has performed, or caused to be performed, work under Section 12.03.19.00. Then, all costs are to be recovered.

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The Accounting Office schedules payment to the defaulted bidder when a refund is due.

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12.04.00.00 - CLEARANCE CONTRACTS

12.04.01.00 General

Where the State is obligated under Right of Way Contract to move, relocate, reconstruct, or remove improvements (including Asbestos Containing Materials) to clear proposed right of way, the work may be done by right of way clearance contract. The authority for Caltrans to enter into contracts comes from two primary sources:

1. Delegated Authority from the Department of General Services (DGS)
2. Statutory authority from various state laws, such as:
    - California Constitution, Article XXII
    - Public Contract Code (PCC) §10351 and 10295
    - Government Code (GC) §11256 and 19130 (b)
    - Streets and Highway Codes (S&HC) §135, 136, 136.1

A clearance contract provides for the demolition or relocation of improvements, as well as for the removal of Lead, Asbestos and other Miscellaneous Toxic Material from State-owned property.

The relocation or sale of improvements shall be avoided statewide, with the exception of historically significant improvements that are ineligible for demolition. There are significant costs, legal risks, regulations and potential time delays associated with the relocation or sale of improvements.

The two types of right of way clearance contracts are demolition clearance contracts and relocation clearance contracts. Information on service contracts, including relocation and demolition contracts, can be found on the DPAC website.

12.04.02.00 Proper Use of Clearance Contracts

Clearance contracts are not used for repairing houses, constructing new fences, renting equipment, or performing work within the right of way limits. Clearance contracts are used only for demolishing or moving improvements or obstructions. It would also be an appropriate use of clearance contracts to abate Lead, Asbestos or miscellaneous toxic materials prior to moving or selling an improvement.

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12.04.03.00 Contract Request

For either a demolition contract or a relocation contract, the Clearance Agent starts their contract request using the ADM 360 document, which is approved by the District's budgets office, prior to submission to the Department of Procurement and Contracts (DPAC). Right of Way Planning and Management staff can assist the Clearance Agent with coding funding data on the ADM 360 document. The Clearance Agent will become the Caltrans Contract Manager and will administer the contract that is bid and awarded by DPAC.

12.04.04.00 Labor Compliance

State Prevailing Wages are governed by the California Labor Code; Federal Prevailing Wages are governed by the Code of Federal Regulations, Title 29, Part 5 (29 CFR 5 et seq.). Additionally, labor compliance is also governed by regulations of the Federal Highway Administration (FHWA) and the U.S. Department of Labor; and the California Code of Regulations. Collectively, the entities provide the basis for contract administration protocol and the statutory authority to enforce labor compliance contract provisions.

State and Federal law require contractors working on public works contracts to pay prevailing wages to their employees. Prevailing wages are predetermined hourly rates for each craft that are set by both the California Department of Industrial Relations and the U.S. Department of Labor. In addition, these laws set guidelines for the following:

- Overtime,
- Length of shifts or workdays,
- Substantiation of wages,
- Fringe benefits paid; and
- Covered work (work done under control and paid for in whole or in part out of public funds, thus requiring the payment of prevailing wages) and non-covered work.

Each district within Caltrans has a District Labor Compliance Officer (LCO) (internal Caltrans link) who may assist in determining if Prevailing Wages apply to the Scope of Work of Clearance contract's or in enforcing Prevailing Wage requirements in the contract. See the Department's Division of Construction Labor Compliance resources.)

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Some categories of work that require State Prevailing Wage rates include:

- Construction or demolition work
- Maintenance/repairs performed on state-owned real property
- Repairs of installed equipment (affixed to state-owned real property)
- Land Surveying (e.g. survey party chief, roadman/chainman, flagger)
- Materials sampling and testing (e.g. personnel operating drilling rigs/cranes, pile drivers, or testing
  materials such as concrete/asphalt testing
- Construction and/or materials inspection on or off the project site

The California Labor Code (LC) governs the payment of state prevailing wages. The LC requires that contracts exceeding $25,000 for a public works construction project; or $15,000 for alteration, demolition, repair, or maintenance and installation, shall provide that all workers be paid not less than the predetermined general prevailing wage rate (GPWR), including the GPWR for holiday and overtime work. The prevailing wage rate (PWR) is based upon the worker's actual working classifications for the county in which the work is performed, regardless of the type of contract or the working title of the employee.

In addition to the Division of Construction's Labor Compliance intranet site and the District LCO, the Clearance Agent should refer to the Department's Division of Construction Manual that covers Labor Compliance; Chapter 8, Section 1.

12.04.05.00 Daily Site Inspection

A Clearance Agent shall make a daily site visit during any active project, documenting that visit in a diary entry.

Included in the diary entry shall be:

- Date/time Agent was onsite,
- First and Last names of all contractor personnel onsite that day,
- The duty that each worker is performing (laborer using hand tools, operator piloting an excavator, driver operating a water truck, etc. etc.)
- Documentation of any complaints or issues noted on the site.

The Clearance Agent shall compare daily diary entries to the contract invoices to verify that certified payrolls match the names of the contractor personnel that the Agent noted in their diary.

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12.04.06.00 Contract Manager Training

Public Contract Codes sections 10348.5 and 10351 requires designated Contract Managers be trained and have knowledge of legal contractual arrangements. Caltrans Deputy Directive DD-112 Contract Manager Responsibilities mandates that Contract Managers receive annual Contract Manager training.

DPAC is responsible for training Contract Managers (internal Caltrans link); the Caltrans Contract Manager shall take this training annually and provide DPAC analysts with a copy of a current certificate upon request.

- Handbook for Contract Management (internal Caltrans link)

The Clearance Agent should also take the Contract Manager Training for Service Contracts class. This is a two-day class that is presented by the Department's Labor Compliance Division for any staff who manages a Public Works Contract.

12.04.07.00 Scope of Work

Few aspects of Clearance and Demolition contracts are as critical as the Scope of Work (SOW): the directive language within a contract that explains what the contractor is to do, and to what level of quality. Bid values and project outcome are 100% dependent on a clear and detailed scope of work. DPAC provides standardized service contracts and can assist with modifying contract language as directed by the Clearance Agent and/or the Caltrans Contract Manager; if those roles are not shared by one agent. The Clearance Agent must ensure the contract's SOW addresses the particular clearance work appropriately; therefore, the Caltrans Contract Manager shall work with the DPAC analyst and the Department's Legal to modify any clauses in the SOW to meet the District's Clearance needs.

12.04.08.00 Demolition Clearance Contracts

Demolition clearance contracts are used for the removal of improvements; the two types of demolition contracts are site specific contracts and on-call contracts. Site-specific contracts are written for the sole purpose of clearing improvements at the locations identified in the site-specific contract. An on-call demolition contract typically covers a period of up to two years and is written to handle the expected volume of clearance work over that period. Where possible, clearance of improvements should be grouped by proximity or

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other common factors so demolition is accomplished in the most efficient manner.

The Clearance Agent and/or the Caltrans Contract Manager will work with a DPAC contract analyst to draft an appropriate scope of work that DPAC will incorporate into the contract bid package. The DPAC contract analyst will ultimately be responsible for verifying all received bids and awarding the contract to the qualified bidder with the lowest responsive bid.

Demolition contractors must be licensed in accordance with the California Department of Consumer Affairs, Contractors State License Board. The license requirement shall be included in the bid documents drafted by the DPAC contract analyst. For additional information on contractor licenses, visit the California Contractors State License Board.

12.04.09.00 Relocation Clearance Contracts

Relocation clearance contracts are used for moving, severing, reconstructing, or relocating structures to clear proposed right of way. Minor amounts of incidental new construction may be included. This type of contract is necessitated by a R/W Contract obligation. Refer to section 12.03.08.00 regarding moving or transferring structures, which should only occur when mandated due to the structure being historically significant.
The Clearance Agent would work with DPAC to obtain a relocation clearance contract, starting with the ADM 360 document.

12.04.10.00 Unforeseen Work

Certain conditions may arise during a clearance project that were not anticipated or called for in the original plans. When this work is essential to fulfillment of the State's obligations, such work is classed as extra work and payment is made in accordance with contract provisions. The need for extra work shall be fully documented and approved by a Clearance Agent.

Where unforeseen work exceeding any contingency costs reserves in a contract emerges, the Clearance Agent must submit a revised ADM 360 to DPAC to prepare an amendment to the original contract to cover the extra work. The amendment should define the unforeseen work and the agreed-upon price and set forth any time extension required because of the additional work. Beware that a service contract can only be amended for time or money; up-to either one additional years' time or 30% additional funds; but not both.

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12.04.11.00 Relocation Clearance Contract Work

The Clearance Agent should pay careful attention to the extent of the State's obligation and responsibility for the work to be done on any particular project. Legally, the extent of the State's obligation is set forth in the Right of Way Contract. Since it is not practical to embody lengthy and detailed specifications in that document, the Agent must exercise great care in interpreting the Right of Way Contract clauses; prior to Clearance work, care should be taken to ensure the SOW for the Clearance contract aligns with the Right of Way Contract.

In general, the owner's improvements to be relocated or reconstructed shall be left in as good a condition as found and all facilities previously enjoyed shall be replaced or compensated for. The State shall not repair or correct damage or impaired conditions in existence prior to work on the property by the State that are not changed or aggravated by the relocation work. Although some repair work is unavoidable, it should be kept to a minimum. Also, the State cannot assume costs of betterment in relocation of owner's improvements. The Agent must exercise careful judgment to avoid involving the State in costly and unjustified expenditures.

12.04.12.00 Inventory of Impaired Conditions

Before the contractor undertakes any work, the Clearance Agent shall thoroughly inspect, with the owner present, all improvements to be relocated or reconstructed to determine existing conditions. The Agent shall make appropriate written notes of existing conditions and call them to the owner's attention. This will avoid later misunderstanding about responsibility for correcting such conditions. Photographs are useful in documenting conditions prior to, during and after work is completed.

12.04.13.00 Liability for Correcting Structure Deficiencies

Any new work incidental to the relocation or reconstruction of an improvement, such as laying new foundations and utility extensions and connections, shall be done in accordance with applicable building, safety, and health ordinances. Such obligation shall not be construed to impose on the State any liability for correcting an existing condition of an improvement in nonconformity to local building ordinances when such condition is not caused, affected, or aggravated by the proposed work.

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When a relocation project involves an improvement (that falls within the local building department's purview) having nonconforming conditions, the Clearance Agent shall explain that the proposed relocation work is being done with public funds to clear an area for a public improvement; and consult with the local building department and the Department's Legal, if the scope of the project warrants it.

Although not attempting to avoid legal responsibility for replacing privately-owned improvements in as good condition as found, the State shall not be placed in the position of spending public funds unnecessarily to improve private property. Such would be the case if the State attempted to correct existing nonconforming conditions not caused by the proposed relocation operations.

Hazardous nonconforming conditions may exist that will be impossible for the local building department to overlook. It is important to note that the local building department has authority at any time to condemn and demand correction by a property owner, who has actual liability, and that correction could be required whether or not the State proposes to relocate the improvements. In such cases, the local building department may require correction made at the owner's expense at the time of, or immediately after, the State's relocation work. The local building department should clearly set forth the above-mentioned facts to limit future misunderstandings.

12.04.14.00 Letters of Acceptance from Property Owners

The Clearance Agent shall obtain a letter of acceptance from the owner after completion of the work performed. In some cases, the owner may make unreasonable demands for work over and above that to which legally entitled. To avoid these types of misunderstandings, the agent must maintain a careful check to ensure the work performed conforms with the understanding reached with the owner at the time of the Acquisition.

12.04.15.00 Notice of Completion

In rare circumstances, the District may file and record a Notice of Completion on clearance contracts within 10 days after completion only if it has cause to believe a contractor is in financial difficulty and there is a possibility of claims being made or liens filed. This reduces the time limit for filing liens or claims. Documents should be letter-size to facilitate filing.

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If more than one unit (work on one property) is included in a contract, a separate Notice for each unit should be filed and recorded within 10 days after completion of work, even though work on other items under the same contract may still be in progress.

If requested by the Accounting Office at the time a receiver document under the approved clearance contract is submitted, a copy of the filed Notice of Completion and transmittal letter to the County Recorder shall be forwarded to Accounting.

12.04.16.00 Certificate of Completion and Final Report

The Clearance Agent, Contract Manager or other Department personnel assigned to field inspection of clearance contracts certifies in a final report that the items of work have been completed. The report includes, but is not limited to, the following:

- Performance by the contractor as to compliance with the contract requirements.
- Adequacy and condition of equipment and/or materials used.
- Conformance with State and Federal requirements for payment of minimum wages, nondiscrimination practices, and any other applicable regulations or ordinances.

The report is submitted to the Accounting Office with the bill for final payment.

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12.05.00.00 - HAZARDOUS WASTE AND HAZARDOUS MATERIALS

12.05.01.00 Policy

The Department's policy is to consider fully all aspects of potential hazardous waste sites ensuring that adequate protection is afforded to employees, workers, and the community prior to, during, and after construction. District Property Management staff must be aware of all such potential and confirmed sites and any use of hazardous materials on properties held for future projects and excess lands. The District must monitor these sites, terminate leases where required, and consider potential clearance of wastes when planning for right of way certification dates.

This chapter regards demolition only, so references to activities only needed for acquisition and/or property management have been omitted. However, there is a great deal of overlap, as many of the same environmental laws, regulations and issues must be considered by those people involved in acquisition, property management or clearance and demolition activities.

12.05.02.00 Definition

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

- Flammable;
- Reactive (subject to spontaneous explosion or flammability);
- Corrosive;
- Toxic; and,
- Radio-active.

12.05.03.00 General

The Department strives to identify, investigate, and cleanup sites at the earliest opportunity during the project development process. Occasionally these activities may not be accomplished prior to Property Management involvement. Under a normal project development sequence, the entire process is completed in accordance with governmental hazardous waste requirements. The Division of Environmental Analysis (DEA), in coordination with Project Management is the lead unit for the identification, investigation,

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and cleanup process. Right of Way assists by obtaining necessary rights to enter for testing purposes and by negotiating cleanup agreements prior to acquisition.

On projects where the normal sequence cannot be followed, Right of Way requests DEA to review and identify potential hazardous waste sites and initiates the cleanup process for all **MINOR** hazardous waste problems not requiring a Hazardous Waste Management Plan, such as underground tanks or hazardous material businesses.

All investigative work performed by the Right of Way Clearance Agent should be in consultation with the District's Hazardous Waste Coordinator (HWC) of the Department's Hazardous Waste Management Branch, of the DEA. If at any time a formal Hazardous Waste Management Plan is required, the District's Hazardous Waste Management Branch, of DEA shall assume the lead role.

12.05.04.00 Hazardous Waste Coordinator (HWC)

Generally, the Right of Way Clearance Agent works directly with the District's Hazardous Waste Coordinator (HWC) as the point of contact for the Division of Environmental Analysis.

The DEA is responsible for implementing the Department's Hazardous Waste Management program, which provides statewide assistance to districts in managing contaminants and wastes encountered on highway projects and Caltrans properties.
DEA will engage technical experts (biological - cultural - historical - hazardous waste) based upon what specific site conditions require. The Clearance Agent should engage DEA as early as possible to address any potential environmental concerns on a project. Other activities conducted by DEA staff include, but are not limited to: ensuring that the hazardous waste sections of environmental documents prepared for CEQA and NEPA compliance are complete and that contract specifications addressing hazardous waste and substances prepared for construction activities are accurate.

As a Best Business Practice, when Right of Way contracts directly with private sector environmental consultants, copies of those consultant's hazardous waste surveys should be provided to the HWC to ensure awareness of the work, and to ensure such work will not be repeated by environmental staff.

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For additional information on DEA, specifically regarding hazardous waste, visit Hazardous Waste.

12.05.05.00 Estimating for Hazardous Waste

There are numerous laws and regulatory organizations at the federal, state and local level, and all the relevant laws and regulations must be considered. For example, the appropriate management of lead-based materials is regulated by:

- The federal Environmental Protection Agency;
- The federal Department of Housing and Urban Development;
- The federal Occupational Safety and Health Administration of the Department of Labor;
- The California Department of Public Health;
- The California Department of Toxic Substances Control; and,
- Local Municipalities.

Complex hazardous waste and environmental compliance issues should be identified as early as possible during project development. Support costs necessary to perform, or contract for, technical Hazardous Waste expertise should be included in Right of Way estimates to address complex issues.

12.05.06.00 Inspection of Inventory

All buildings should be inspected for asbestos, lead; and other miscellaneous toxic materials including universal wastes such as oils, refrigerants, solvents, polychlorinated biphenyls (PCBs), radioactive materials, and mercury should be tested for if there is evidence of, or an increased probability of those materials being present on the site. Copies of those inspections shall be provided to the demolition contractor – preferably as part of the demolition contract bid materials - so that they can provide an accurate abatement plan and cost analysis; DEA shall also receive a copy of hazardous materials surveys when Right of Way contracts with the inspecting consultant directly.

12.05.07.00 Underground Tanks – Removal Procedures

Underground tanks on State property should be removed as soon as possible, as they could leak or have previously leaked, contaminating soil and/or groundwater. While the Hazardous Waste Management Branch of the DEA has basic responsibility for removal of all underground storage tanks, those which have no, or only minor leakage can be removed under a contract initiated by Right of Way. Request for Proposal or service - Scope of Work

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documents for any clearance or demolition contract that will be used for underground tank removal should be reviewed by the District's HWC before the Right of Way Clearance Agent works with Department of Procurement and Contracts (DPAC) to bid that contract.

The contractor who performs the removal work must obtain the required permits for removing all existing underground storage tanks on-site. Any contract for underground storage tank removal must include provisions for barricades and clean- up. If any significant leak is discovered, the Hazardous Waste Management Branch of the DEA shall be notified of the leak and shall take over control of the clean-up work.
The DEA HWC will obtain the name of the local permitting agency responsible for underground tanks. Since the contractor must obtain the required permits for operating or closing all existing tanks from the local permitting agency, this information should be included in the removal contract bid documents.

A Phase I Environmental Investigation will indicate the potential or known presence of such tanks, but it is possible that unknown tanks could be encountered. A Phase II Environmental Investigation is normally performed to determine the extent of any suspected leakage. Prior to any tank removal, Right of Way must execute an agreement regarding the allocation of liability with the tenant in occupancy and the owner of the property.

Removal of underground storage tanks and associated piping shall be documented with good quality photographs showing the major tasks performed, including images of the bottoms of the excavations.

Underground storage tanks on State property should be removed as soon as possible. Non-leaking underground storage tanks may have a minor deposit of product under the tank that can be cleaned-up as part of the tank removal contract, if this is included in the contract's scope of work.

12.05.08.00 Solvents

Solvents used for parts cleaning, dry cleaning and other commercial and industrial activities could contaminate soil and/or groundwater. Usages which may have been legal in the past may now be prohibited. A Phase I Environmental Investigation will indicate the potential or known usage of solvents and any signs of improper disposal, but unknown usage may have occurred.

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12.05.09.00 Asbestos

Asbestos is a group of heat resistant and nonconducting minerals, used in many common building materials; referred to generally as Asbestos Containing Materials (ACM), with usage peaking in the 1970s, and tapering to almost nothing by 1990. However, some ACM are still legal, such as vinyl floor tile (still legal to make with asbestos) and drywall joint compound. Naturally Occurring Asbestos (NOA) is typically present in rock and aggregate; particularly in concrete and asphalt made with NOA. In areas with known NOA, or where it is reasonable to believe that NOA could have been used to make concrete or asphalt, sampling the concrete and asphalt on parcels shall occur.

An asbestos testing consultant, whenever possible, should be financially independent of and unrelated to the contractor who physically performs the abatement of asbestos to prevent a conflict of interest.

Asbestos is regulated by numerous federal, state and local government organizations. The main regulations for people working with demolition projects are:

- The federal Environmental Protection Agency (EPA) Asbestos National Emission Standard for Hazardous Air Pollutant (NESHAP), found at 40 CFR Part 61, Subpart M (amended several times);

- The Asbestos Hazard Emergency Response Act (AHERA) which created the Asbestos in Schools Rules at 40CFR Part 763, Subpart E which specify training requirements for asbestos removal personnel and the main sampling protocols;

- The federal Asbestos School Hazard Abatement Reauthorization Act of 1990 (ASHARA) which extended the scope of training requirements of AHERA to public and commercial buildings;

- Federal OSHA asbestos regulations for the construction industry contained in 29CFR1926.1101 (summarized in publication OSHA3096, revised in 2002, and available online), and its published interpretation letters;

- California Code of Regulations, Title 8 - Industrial Relations, Division 1- Industrial Relations, Chapter 4 - Division of Industrial Safety, Sub-chapter 4 - Construction Safety Orders, Article 4 - Dusts, Mists, Fumes, Vapors, and Gases, §§1529 Asbestos;

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- Chapter 3.2. California Occupational Safety and Health Regulations (CAL/OSHA) Subchapter 2. Regulations of the Division of Occupational Safety and Health Article 2.6. Asbestos Consultants and Site Surveillance Technicians;

- California Code of Regulations, Title 8, Chapter 3.2. California Occupational Safety and Health Regulations (DOSH or CAL/OSHA), Subchapter 2. Regulations of the Division of Occupational Safety and Health, Article 2.5. Registration – Asbestos-Related Work, Sub-section 341.6. Registration Requirements, which defines an Asbestos Containing Construction Material (ACCM) as any manufactured construction material which contains more than 1/10th of 1% (0.1%) asbestos by weight; and,

- AQMD and APCD regulations, such as the SCAQMD Rule 1403 and the BAAQMD Regulation 11.

California has many Air Pollution Control Districts (APCDs) and Air Quality Management Districts (AQMDs). Note that the AQMDs are empowered to develop their own asbestos regulations which add to the other existing regulations.

The Right of Way Clearance Agent should work with a Hazardous Materials Testing consultant who is not only properly licensed to perform the work, but has a thorough working knowledge of local regulations to ensure complete compliance. DPAC and DEA can assist the Clearance Agent in drafting contract language to properly address asbestos in their contracts.

All improvements shall be inspected for the presence of Asbestos Containing Materials, and a copy of the report placed in the District permanent parcel file.

If improvements were not inspected at the appraisal or acquisition stage, the Clearance Agent must ensure that a licensed person completes an ACM inspection prior to sale or demolition.

The Clearance Agent ensures that any improvements containing ACM have the ACM abated prior to demolition in accordance with applicable laws, regulations, and ordinances.

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12.05.10.00 Lead

The Clearance Agent shall ensure that all improvements are tested by a qualified consultant for the presence of lead; a survey provided by the inspecting consultant to the Clearance Agent is ultimately furnished to the demolition or clearance contractor. The Clearance Agent shall consult with DEA to ensure complete compliance with local, state and federal law pertaining to lead.

Lead paint was widely used prior to the 1960's, especially on exterior wood and metal materials, interior wood work, and walls in kitchens and bathrooms. The paint chalks as it ages, producing fine lead-containing dust, not just the large chips or flakes which are common when paint has failed. Lead was also widely used in ceramic tile glazes, so demolition of such tiles may release large amounts of lead dust; these tiles were often used in kitchens and bathrooms. Lead was added to older plastic mini-blinds, and the blinds produce lead dust as they deteriorated in the sun. The Consumer Products Safety Commission reduced the allowable amount of lead in residential paints to a trivial level in 1979. Lead use continued in industrial paints for many more years.

Three federal agencies regulate lead paint under Title X of the Housing and Community Development Act of 1992: The Environmental Protection Agency (EPA), the Department of Housing and Urban Development (HUD), and the Occupational Safety and Health Administration (OSHA). The federal lead regulations for construction work are found in 29 CFR 1926.62, the corresponding California regulations at 8 CCR 8 Section 1532.1 add further requirements.

In California, accreditation, certification, and work practices for lead-based paint and lead hazards are regulated by:

- 17, CCR 36000 et seq., generally;
- H&S Code Section 17920.10 on lead hazards;
- H&S Code Section 17961 on local enforcement of regulations; and,
- H&S Code Section 105251-105256 on local enforcement of contractor-created lead hazards.

In California, lead abatement work must be performed by California Department of Public Health accredited (licensed) supervisors and workers.

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Hazardous wastes must be disposed of at a hazardous waste landfill and must be hauled under a proper manifest by a licensed hazardous waste transporter.

Whenever possible, a lead testing consultant should always be financially independent of and legally unrelated to the contractor who physically performs the abatement of lead to avoid a conflict of interest.

12.05.11.00 Waste Hauling and Disposal

Owners of properties from which asbestos, lead, and other hazardous wastes are hauled need to obtain a generator identification number. Such numbers are site (generally one address or facility) specific. The California Department of Toxic Substances Control (DTSC) issues ID numbers to generators, transporters, and disposal facilities. This includes federal EPA ID numbers, and State ID numbers for non-RCRA hazardous waste. Temporary ID numbers are issued to people or businesses who do not typically generate hazardous waste. These ID numbers are valid for 90 days and cannot be extended past 90 days. A permanent ID number is needed for longer periods. Permanent ID numbers are issued to people or businesses who routinely generate hazardous wastes.

The Clearance Agent should contact the District HWC in DEA to provide assistance in obtaining this temporary EPA ID and State ID numbers from DTSC.

There is no fee to obtain an ID number. Processing of EPA ID and State ID numbers may take up to 15 working days from the date DTSC verifies the application is complete.

There are numerous regulations for transporting and disposing hazardous wastes; experienced and properly licensed remediation contractors are familiar with them. In all cases, hazardous wastes are hauled under a manifest. Generally, the Clearance Agent signs such manifests as the Department's (Generator's) representative, retaining the Generator's/Shipper's initial copy of the manifest once it is countersigned by the transporter. The transporter should send the Clearance Agent a copy of the Designated Facility Generator sheet of the manifest once the material is delivered to the facility, and the Clearance Agent should forward a copy of this sheet to the HWC for compilation of DEA's annual generator report.

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12.05.12.00 Potential Surface Contamination

Many properties have the potential for hazardous waste contamination. Examples include service stations and bulk plants, paint companies, machine shops, plating companies, light and heavy industrial manufacturing, dry cleaning establishments, fertilizer companies, junkyards, auto wrecking yards, and muffler shops.

Right of Way must notify the District HWC in writing when a property containing either identified hazardous waste or asbestos containing materials is to be cleared and should coordinate clearance with the HWC. Special clauses are required in the clearance contract to address surface/soil contamination, and the contractor or subcontractor must have the proper licenses to handle such materials. It is important for the Clearance Agent to consider surface contamination when drafting RFP/SOW documents with DPAC to obtain a demolition contract. DPAC and DEA can assist the Clearance Agent in writing clauses that specifically deal with their project's environmental concerns.

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12.06.00.00 – DELEGATIONS

12.06.01.00 Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Clearance and Demolition 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**
	12.01.08.00 12.01.09.00 12.03.05.00	Approval of Improvement Disposal Authorization (IDA)	District	Senior R/W Agent
	12.02.02.00	Approval of Advance Transfers to Clearance Status	District	Senior R/W Agent
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Exhibits are located online:

- External Exhibits site
- Internal Exhibits site (internal Caltrans link)

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Forms are located online:

- External Forms site
- Internal Forms site (internal Caltrans link)

(REV 8/2018)

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13.00.00.00 - UTILITY RELOCATIONS

13.01.00.00 - INTRODUCTION

13.01.01.00 General

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

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

Separate "Utility Reference File" memorandums supplement this chapter and provide background or guidance on subjects that occur less frequently. (See Section 13.01.01.03.)

13.01.01.01 District Utility Coordinator Responsibilities

The District Director is responsible for relocation or removal of utility facilities that are either in physical conflict or in violation of the Department's utility accommodation policy for transportation projects. This responsibility shall be delegated to the District Division Chief-R/W, who will authorize the District Utility Coordinator(s) to implement the Department's policies, including the following specific directions:

- Establish files that document actions taken or recommended during the life of a project. (Section 13.01.01.04)

- Prepare route estimates based on possible relocations. Update and revise the estimates, when necessary. These estimates are used for capital and support budgeting needs for current and future fiscal years. (Sections 13.02.04.00, 13.02.04.01, and 13.02.04.02)

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- Act as the Department's primary point of contact with Utility Owners for identifying and verifying all utility facilities lying within existing and proposed rights of way of planned construction projects. (Section 13.03.02.00)

- Coordinate positive location requirements for all High Priority Utility Facilities within the project limits. (Section 13.03.03.00)

- Coordinate with P&M on preparing the FHWA Authorization to Proceed (E-76) for projects that will be federally funded. (Section 13.14.03.00)

- Coordinate "avoidance" of utility facilities and/or transmit identified conflicts to Utility Owners. (Sections 13.03.01.03 and 13.03.04.00 through 13.03.04.04)

- Actively participate on Project Development Teams. (Section 02.02.02.00)

- Obtain and analyze data to allocate cost between Owner and State for all required utility adjustment work and to clearly document, support and, in cases where the State has cost liability, set forth the basis of this finding in a Report of Investigation. (Section 13.05.00.00)

- Assist in preparing and/or reviewing (1) encroachment exception requests and (2) High Priority Policy exceptions. (Section 13.01.04.00)
- Review utility consultant design agreements when required for utility relocation. (Section 13.03.01.06)

- Prepare and approve FHWA Specific Authorization and FHWA Approval of Utility Agreement for federally funded utility work in accordance with delegated authority. (Sections 13.14.02.00, 13.14.04.00, and 13.14.08.00)

- Prepare and issue Notices to Owner, Utility Agreements, and Encroachment Permits in accordance with delegated authority. (Sections 13.06.00.00 and 13.07.00.00)

- Coordinate with P&M on preparing a R/W Certification for proposed construction projects. (Section 13.08.00.00)

- Verify Owner's relocation bills and process for payment when acceptable. (Section 13.10.00.00)

- Coordinate preparation of and review necessary property right conveyances for Owners. (Section 13.11.00.00)

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- Provide oversight activities to LPAs and consultants on State highway projects funded by others. (Section 13.12.00.00)

- Provide stewardship role to Local Public Agencies on federally funded Local Streets and Roads projects. (Section 13.12.00.00)

- Coordinate billing and refunding of LPA funds relating to utility costs pursuant to Cooperative Agreement provisions. (Sections 13.12.05.02 and 13.12.05.03)

- Coordinate with the Department's offices, divisions, and branches and external organizations, both public and private, to ensure the above directions are implemented.

- Coordinate with the Department's Encroachment Permits Section regarding review of permits for wireless facilities on conventional highways.

13.01.01.02 Definitions

The following definitions are for purposes of the Utility Relocations Chapter and the Department's R/W utility relocations only.

- **FACILITY** - Facility is synonymous with utility facility. A facility is any pole, pole line, pipe, pipeline, conduit, cable, aqueduct, or other structure or appurtenance used for public or privately-owned utility services, or used by any mutual organization supplying water or telephone service to its members.

- **OWNER** - Owner is synonymous with Utility Owner. An Owner is any private entity or public body (including city, county, public corporation, or public district) that owns and/or operates a utility facility which directly or indirectly serves the public for a fee.

- **LIABILITY** (COST LIABILITY) - A financial obligation or responsibility to pay for relocation of utility facilities affected by the State's project.

- **POSITIVE LOCATION** (POS-LOC) - Positively determining the existence, location and identification of a utility facility to within 0.5 feet both horizontally and vertically through the use of vacuum excavation, potholing, probing, electronic detection, or a combination thereof as deemed acceptable by the Project Engineer. Refer to the Policy on High Priority Underground Facilities within Highway Rights of Way for specific

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requirements. For a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual.

13.01.01.03 Utility Relocations Reference Materials

The Reference File System has been established by Right of Way as a tool to supplement the R/W Manual in order to provide guidance on infrequently occurring situations, more extensive background information, policy interpretations, and instructional material impractical to include within the basic Manual. The "Utility Reference File" (URF) memorandum has been established as the vehicle to supplement the Utilities Chapter of the R/W Manual.

The District Utility Coordinator is responsible for maintaining a complete set of the "Utility Reference File" memorandums (URFs). To provide a basis for uniform and equitable service to all Utility Owners (Owners), this file is to be made available to all Utility Coordinators. In addition, URFs can be found on the HQ R/W Utility Relocations Intranet site (internal Caltrans link).

All Regions/Districts should also assemble and maintain a library of pertinent, supplemental Utility Relocations reference material to assist the Utility Coordinators in doing their jobs. To help the Districts compile a library, a listing of selected manuals, guidelines, and other references is listed in Exhibit 13-EX-1. It is up to the region/district to obtain the materials.

13.01.01.04 Utility File and Diary

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

A separate utility file should be established for each involvement on a project. An "involvement" is defined as the issuance of a Notice to Owner for a specific utility facility on one project (EA). For example, if a project has relocations for PG&E-Gas Transmission, PG&E-Gas Distribution, and PG&E-Electric Distribution, it would equal three (3) involvements.

Each District Utility Coordinator should consider the needs and methods of their district and initiate a district procedure for a utility file diary. Each file

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shall contain all of the mandatory components and shall be organized in a uniform fashion throughout the district.

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

- Diary notes.
- Copies of the supporting liability documentation.
- Report of Investigation.
- A copy of the Notice to Owner.
- A fully executed wet-ink original of the Utility Agreement.
- A copy of the relocation plans.
- Copies of the E-76.
- Copies of the FHWA Approval of the Utility Agreement and Specific Authorization.
- Any correspondence with Project Engineers, the Resident Engineer, and with other Departmental divisions.
- Any correspondence with Utility Owner.
- Any discussion, meeting, or review of importance that does not generate a document for the file must be recorded in the diary or in a memorandum to the file.

In every instance, the author shall date and sign (or initial) all diary entries and notations in the file. A sample diary is shown in Exhibit 13-EX-2.

13.01.02.00 Applicable Utility Laws and Policies

The following is a selected list of laws, regulations, and policies that shall be uniformly applied.

13.01.02.01 Delegation of Authority

Regions/Districts are authorized to approve all Reports of Investigation (Form RW 13-3), including liability determination, Notices to Owner, FHWA Specific Authorization to Relocate Utilities (Form RW 13-15), Utility Agreements and FHWA Approval of Utility Agreement (also on Form RW 13-15) for all utility relocations and positive locations, in accordance with the policies set forth in this Manual, and appropriate memoranda, with the exception of "liability in dispute." (Section 13.04.09.00 et seq.) See the Delegation Matrix on the HQ R/W Intranet Web site for any changes to the delegations.

The Department's agreement with FHWA requires that a Senior Right of Way Agent fully versed in Utility Relocations must make the Region/District

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approvals. Further delegation to an Associate Right of Way Agent is not authorized under any circumstances.

Region/District approval shall only be granted when all documentation is complete and in the file. Knowledge that documentation is "pending" is not sufficient to place the Region/District in a position to make an approval.

All Region/District approvals will require compliance with current pre-award evaluation criteria. (Section 13.05.02.02 and URF 02-2)

As a condition of the delegation to the Region/District, the Report of Investigation Approval Guide (Form RW 13-16) must be completed by the delegated Senior R/W Agent at the time of approval and retained in the utility file. An approved E-76, meeting the criteria specified in Section 13.14.02.00, must be received prior to the approval of any FHWA Specific Authorization.

Additionally, as part of our agreement with FHWA under the Alternate Procedure, the delegated Senior R/W Agent must complete form FHWA Guide for Review of Utility Agreements (Form RW 13-17) for every relocation where Federal aid funding will be sought.

Delegated Senior R/W Agents are to fully review and familiarize themselves with the FHWA publication Program Guide: Utility Adjustments and Accommodation on Federal-Aid Highway Projects and 23 CFR 645.

If it is discovered that Federal procedure or delegation authorization has not been followed, the Region/District will be responsible for ensuring that Federal reimbursement is not sought. Should the error be discovered after Federal vouchering, the Region/District will be responsible for refunding the incorrectly vouchered funding. The delegated Senior Utility Agent or Utility Coordinator should contact Planning and Management to determine the process for correcting the vouchering errors.

13.01.02.02 Incorporation of City Streets or County Roads into the State Highway System

City streets or county roads that become part of the State highway right of way shall be considered incorporated into the State highway system on the date of the CTC resolution or, if later, the date specified for taking actual physical possession of the road. (See S&H Code Sections 81, 82, and 83.)

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13.01.02.03 Encroachments Within Conventional Highways

All utility encroachments within State highway rights of way shall be installed and maintained so as to minimize traffic disruption and other hazards to highway users. Facilities shall be located as close to the edge of the highway right of way line as reasonably practicable. Facilities shall be installed to minimize interference with highway maintenance and operation and to prevent impairment of the stability of the highway or its appurtenances to the maximum extent practicable.

13.01.02.04 Encroachments Within Freeways and Expressways

The Department allows encroachments within access control right-of-way in accordance with Federal and State regulations and Departmental policies. Utility crossings are permitted where supporting structures or manholes are located outside access control lines. Encroachment exceptions are permitted only where space is available, facilities may be safely installed and maintained, and no other reasonable alternative is available. The Division of Design, Office of Project Support, must approve all exceptions to the policy.

NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, Encroachments and Utilities - Project Development Procedures Manual for exception requirements.

13.01.02.05 Hazardous Waste Impacted by Facility Relocations

State ordered utility relocation work to be done within the highway project limits is a necessary part of the highway project construction. Any hazardous waste (HW) encountered within the project limits as a result of State ordered utility work is handled in the same manner as HW encountered by any other part of the highway project construction. Immediately inform the Project Engineer of all potential utility adjustments that may affect identified HW sites so the remediation work is identified as part of the project remediation requirements.

HW encountered outside the project limits, such as on the grantor's remaining property, other private property, or on local streets and roads beyond the limits of the State highway project, is not the Department's remediation responsibility. Any extraordinary costs associated with remediation or unusual

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work requirements due to HW encountered outside the highway right of way are considered part of the Owner's necessary relocation effort. The Department may pay its proportionate share of these costs as part of normal relocation reimbursement in accordance with the usual liability determination process.

See the Freeway Master Contract for details of handling hazardous materials and their associated costs on freeway projects for those Owners who have signed a new Freeway Master Contract.

All exceptions to this policy shall be processed through Headquarters R/W for approval.

See Section 13.02.05.03 for Hazardous Waste Exceptions.

13.01.02.06 Work Before Environmental Approval

Pursuant to California Public Resources Code Sections 21102 and 21150, environmental approval shall be received prior to any expenditure of capital funds for detailed design or relocation of utility facilities. This does not preclude an expenditure of funds for the Owner's preliminary engineering or State's positive location work in support of the environmental document.

The Department has established a process to order an Owner to commence design activities prior to the approval of the environmental document but after the selection of the preferred alternative.

If, at any time during the project, an environmental reevaluation is required, no work other than studies or positive location work should proceed outside of the "area of potential effect" (APE) evaluated and approved in the original environmental document until the reevaluation is completed.

13.01.02.07 Verification of Utility Facilities

Pursuant to Government Code Section 4215, governmental agencies shall make every reasonable effort to locate all existing utility facilities within the right of way of a proposed construction project and to identify the facilities on construction contract plans. Failure to identify utility facilities on plans may make the State liable for damages to the facilities resulting from planned construction.

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13.01.02.08 Policy on High Priority Underground Facilities Within Highway Rights of Way

The Department is responsible to provide a safe environment for employees of the Department and its contractors, as well as the traveling public. An important element of the safe environment is providing a clear and safe right of way through the proper placement, protection, relocation, or removal of utility facilities that may pose a safety risk to the highway worker or user when the utility is excavated, cut, or penetrated. Toward this end, the Department shall establish and enforce mandatory standards and procedures for the placement and protection of underground utility facilities within highway rights of way and for the safety of highway workers involved in maintenance or construction operations in proximity to underground utility facilities. These mandatory standards and procedures are known as the Policy on High Priority Underground Facilities Within Highway Rights of Way. For a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual.

13.01.02.09 Advancing Cost of Relocation to Owner

Streets and Highways (S&H) Code Section 706 provides criteria for the advancement of funds for utility relocations.

Subject to S&H Code Section 706, the Owner's pro rata share of the relocation costs can only be advanced after it has been conclusively shown that the owner is financially unable to bear the cost of relocation and is unable to secure other financing for the work. To meet this test, the Owner shall provide a signed statement to that effect and provide documentation that they have attempted to secure other financing and have been denied.

When an advancement of the Owner's pro rata share of the relocation costs is made in accordance with Section 706, interest shall be charged at the rate of earnings of the Surplus Money Investment Fund (SMIF) and must be repaid within ten (10) years. See Region/District P&M or the State Controller's Office for current SMIF rates.

Funds shall not be advanced to cover any Owner requested betterments to the facility.

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13.01.02.10 Advance Deposit for State Contract Performed Work

State administrative rules require that an advance deposit must be made to the State for the estimated cost of work to be done by the State on behalf of another entity (Owner). An exception is authorized for any Owner possessing a Master Agreement or Freeway Master Contract with the State.

13.01.02.11 Inspection of Relocation Work

The Department's Construction Manual, Chapter 3, General Provisions, Section 3-809 Utility and Non-Highway Facilities, provides that whenever work is underway on any relocation being done to clear the right of way for construction, an engineer must be assigned to inspect and accept the work. Depending on the state of development of the project, the engineer may be a Project Engineer (PE) or a Resident Engineer (RE). If no engineer has been assigned, the Utility Coordinator shall contact the Project Manager or Construction Senior to ensure an engineer is assigned. Without an assigned engineer to inspect the work, the utility relocation should not proceed.

The PE or RE, or his/her delegate, shall inspect all utility relocation work. The inspection must be documented in Inspector's diary notes. Copies of these notes should be sent to the Utility Coordinator on a regular basis and placed in the Utility File.

As soon as an RE is formally assigned to a project, the RE assumes primary responsibility for coordinating all construction activities. However, all communications with the Owners, including modification of the scope of work or the need to have utility work performed on premium or overtime shall be the responsibility of the Utility Coordinator and shall be done in writing. All decisions relating to utility relocation work, including additional or supplemental liability determinations, shall be made by the Region/District Utility Coordinator or HQ R/W, as applicable. Under no circumstances is Construction allowed to make liability determinations. Significant changes shall be covered by an amended Notice to Owner and Utility Agreement issued by the Utility Coordinator.

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13.01.02.12 Application of Master Agreements/Freeway Master Contracts to Special Funded Projects

The Department has entered into Master Agreements or Freeway Master Contracts with several Owners for the apportionment of relocation costs on freeway projects. (Section 13.04.03.00) These agreements, authorized by S&H Code 707.5, shall be applied in lieu of otherwise applicable S&H Code sections and shall be applicable to all freeway projects on State highways that are part of the California Freeway and Expressway System no matter what the source of project funds or agency responsibility for project design. The only exception is when the freeway or expressway improvement project is the result of a private development mitigation requirement, in which case the private developer is responsible for all utility relocation costs in accordance with applicable law. (Section 13.12.04.00)

13.01.02.13 Utility Facilities Within State Highways

State law allows the use of State highway rights of way for public utility facilities owned by public agencies or by private companies recognized by the California Public Utilities Commission as a provider of a public utility service, when such use does not interfere with the primary purpose of the State highway. (S&H Code 117)

All utility facilities and other encroachments located within State highway rights of way must be covered by an Encroachment Permit and placed in accordance with the Department's standards. All exceptions to applicable requirements as set forth in the Department's "Encroachment Permits Manual" must have Division of Design, Office of Project Support, prior approval.

NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, Encroachments and Utilities - Project Development Procedures Manual for exception requirements.

13.01.02.14 Greenhouse Gases

In 2017 the California Legislature passed, and the Governor signed AB 262 – Buy Clean California Act. This law enacted new requirements for State Agencies to meet when executing public works contracts. Specifically, the law requires the Department of General Services (DGS) to publish in the State Contract Manual (CSM) a maximum acceptable level of Global Warming

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Potential (GWP) for each category of required materials. The categories of required materials are:

1. Carbon Steel Rebar
2. Flat Glass
3. Mineral Wool Board Insulation
4. Structural Steel

Typically, utility relocations completed as a result of the Department's projects are done with the Owners forces and are not considered public works contracts and therefore do not fall under this law/statute. However, there are some exceptions where the law might apply, if the utility is unable to complete the relocation with its own forces and bids out the work then the law would apply. The contractor is required by law certify the qualify materials by signing an Environmental Product Declaration EPD) prior to the start of work. The utility Owner will be required to ensure contractors compliance by retaining a copy of the EPD for a minimum of three years.

13.01.03.00 Private Utility Facility Relocations

Relocation of all private utility facilities shall be by the usual appraisal/acquisition process rather than by the public utility relocation process.

A private utility facility is one that provides a utility service for the exclusive use of a privately-owned business, farm operation, etc., or provides an exclusive service to improvements and occupants of an individually owned property. Examples of this type of utility facility are:

- Facilities located on a military base, school grounds, manufacturing complex, etc., owned and maintained by the property owner for their exclusive use.

- A facility interconnecting individually owned but dispersed operating sites providing an exclusive and private service to the site owners.

Separation of the private utility facility from the public utility facility occurs at the point where the privately owned and maintained facility connects to the public facility.

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13.01.03.01 Private Facilities in State Highways

Private transverse crossings shall not be unreasonably denied as long as they meet the Department's standards.

However, the longitudinal placement of private utility facilities within the State highway right of way is generally prohibited by law, as the free use of public property by private entities is tantamount to a "gift of public funds." Any exception request must have Division of Design, Office of Project Support, prior approval.

Private longitudinal installations within State highways may be allowed only under the following circumstances:

A. The private use is based on a retained property right.

B. Oil company facilities that were placed within the right of way of a city or county road under a local agency issued franchise agreement before the road became a State highway may remain within the State highway for the duration of its useful life or until physically impacted by a highway improvement project, at which time it shall be relocated outside the highway right of way. If the oil company facility is claimed and proven to be a "common carrier," it should be handled in the same manner as a public utility facility.

C. Cogeneration plants' transporting lines that transport electricity to a public utility may be treated as public utilities and their transporting lines allowed as encroachments within the State highway subject to the usual utility accommodation requirements. The electrical generator portion of the operation, if impacted by the highway project, should be treated as any other business operation subject to the acquisition process.

13.01.04.00 Encroachment Exceptions

The Division of Design, Office of Project Support, is responsible for review and approval of specific requests for exceptions to established standards and policies governing encroachments within State highway rights of way. Requests for encroachment exceptions must be prepared by the Project Engineer, in writing, and sent to the Division of Design, Office of Project Support. A copy of all utility relocation exception requests should be forwarded to Headquarters R/W for concurrent review.

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NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, Encroachments and Utilities- Project Development Procedures Manual for exception requirements.

13.01.05.00 Right of Way Utility Management System (RUMS)

The RUMS computer system is used to track the progress of projects that involve utilities. This system identifies a project by district and EA. Within a project, utility information is further broken down for each Owner involvement. Each Owner's involvement is identified by a unique file number.

RUMS is an on-line, mainframe (legacy) system, which means you interact directly with the system through your PC using ERICOM software to input and update the data. Owner data for a project and/or utility file number is displayed along with some project data pulled from PMCS.

Relocation milestones for each Owner on the project are viewed and updated directly in the system. Reports can also be produced from RUMS. Always be sure to check for computer messages at the bottom of the screen if problems are encountered.

The District Utility Coordinator is responsible for ensuring the information in the RUMS system is up to date and accurate. Headquarters R/W can provide training and assistance if needed.

13.01.06.00 Charging Practices

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

Before any work is performed on any project, the Utility Coordinator will verify with P&M that a valid EA has been established. Actual work performed or costs incurred must always be charged to the correct EA and Work Breakdown Structure (WBS) code. See also the R/W Time Charging Manual, a copy of which must be maintained in the Utility Relocations library.

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13.01.06.01 EA Phases

PHASE 0 (PA&ED)

- Charge very early preliminary engineering to Phase 0 (e.g., PID review).

PHASE 1 (Design - PS&E)

- Charge preliminary engineering to Phase 1 (e.g., route adoption studies, data sheet, field review).

PHASE 2 (Right of Way Operations)

- Charge Capital Outlay Support charges to Phase 2 (i.e., staff/time charges for completing all R/W utility work after PA&ED is complete).

- In some cases, where no other R/W work is required and no Notices to Owner will be written, Phase 2 may not be established.

PHASE 4 (Major Construction Contract)

- Charge capital outlay for utility relocation work performed by the State's highway contractor to Phase 4. Only Construction can encumber and charge Phase 4.

- No Right of Way capital support/outlay charges should be made to Phase 4.

PHASE 9 (Right of Way Capital Outlay)

- Charge the actual cost of the relocation work to Phase 9 (i.e., utility company billing for State's share of the relocation costs).

- Charge payment of all positive location billings to Phase 9.

- No Utilities Capital Support charges should be made to Phase 9.

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13.01.06.02 EA Splits, Combines and Revisions

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

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13.02.00.00 - PLANNING PHASE

13.02.01.00 General

Duties relating to this phase of the project are normally performed prior to Environmental Clearance and Project Report approval. Activities generally consist of:

- Corridor/Route Preservation.
- Route Estimating.
- R/W Data Sheet preparation.
- Draft Project Report review.
- Draft Environmental Document review.

13.02.01.01 Preliminary Engineering in Support of the Environmental Document

Public Resources Code Sections 21102 and 21150 state that environmental clearance must be received prior to any expenditure of capital funds for a project (Phase 9 funds). This does not preclude expenditure of (Phase 9) funds covering Owner performed work critical for inclusion in the environmental document. This work is sometimes referred to as "preliminary engineering" and includes such items as:

- Facility verification effort, including necessary positive location work.
- Owner effort required to determine and identify new utility facility rights of way and resultant environmental impacts.
- Preparation of Plans in Support of the Environmental Document (ED).

FHWA must approve an E-76 prior to authorization of preliminary engineering so that Owner's preliminary engineering costs may be federally reimbursed. The approved E-76 does not provide FHWA Specific Authorization. FHWA Specific Authorization must be obtained separately before the actual relocation work is started. See Section 13.14.00.00 for more discussion on federal-aid procedures.

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13.02.01.02 Future Project Coordination

Utility Owners, like the State, require lead time to develop budgets and plan work required for ordered relocations. Additional lead time may be required to order long lead time materials, to schedule work during non-peak demand periods when utility facilities may be removed from service, to comply with PUC General Orders, and to comply with Buy America requirements. Streets and Highways Code (S&H Code) Section 680 requires "the department shall specify in the demand a reasonable time within which the work of relocation shall commence …" The district must, therefore, provide timely planning information to ensure that our relocation notices withstand challenge.

It is critical that the District Utility Relocation staff establish early and continuing coordination with all Owners being affected by proposed projects. Many local agencies hold periodic coordination meetings with Owners within their jurisdictions to discuss planned public works projects in general. District Utility Coordinators are encouraged to discuss State projects at these meetings or to conduct their own liaison meetings.

13.02.02.00 Work Before Environmental Approval

California Public Resources Code Sections 21102 and 21150 do not preclude an expenditure of funds for the Owner's preliminary engineering or State's positive location work in support of the environmental document.

If, at any time during the project, an environmental reevaluation is required, no work other than studies, preliminary engineering or positive location work should proceed outside of the "area of potential effect" (APE) evaluated and approved in the original environmental document until the reevaluation is completed.

13.02.02.01 Corridor/Route Preservation

At times and in an area of development, Owners may plan extensions or additions to their utility facilities within State highway right of way under the terms of their franchise agreements. (See Section 13.04.04.08 for additional information on franchises.) Planned or proposed highway construction may affect these new utility facility installations. The District Utility Coordinator, where feasible, may notify the Owner of all planned highway improvement projects within the district to enable the Owner to make an informed decision about placement of utility facilities within the highway right of way.

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If an Owner decides to go ahead with new facility construction and the installation is in a local street or road underlying the State's proposed highway project, the additional cost incurred to install their facilities clear of the State's future construction shall be paid by the Owner.

Although there is no requirement for the Owner to install their facilities to clear State's future construction, it will eliminate the possible relocation, at Owner's expense, of these new facilities in the near future, providing less disruption to their services, less cost to their ratepayers and more efficient project delivery for the Department.

If the Owner decides to go ahead with the new facility construction and the installation is in a location where the Owner has a right that is superior to the State's, the additional cost incurred to install their facilities clear of the State's future construction shall be paid by the State. A special Utility Agreement may be entered into with the Owner to cover the extra cost of the installation. (See Section 13.07.00.00 for additional information on Utility Agreement preparation.)

13.02.02.02 Preliminary Engineering Prior to Environmental Approval

In certain circumstances and to ensure R/W's timely project delivery, it may be necessary to begin design activities prior to Environmental Approval. R/W has established this process that allows for Preliminary Engineering Design Work before Environmental Document to proceed in a timely manner. The decision to use this process will be made on a project-by-project basis by the District Utility Coordinator. This process may work well on some projects and not others. In making the decision on whether to use this process, the District Utility Coordinator should consider the following:

- At what point after Project Initiation Document (PID) to initiate this process.
- When to obtain facility mapping and verify existing utilities.
- Determine the route alignment/easement needs for utilities.
- Define the Footprint, that is the "Area of Potential Effect" (APE) for the Environmental Document, as it affects utilities.
- The possibility of wasted work.
- The feasibility of the project actually going forward.
- Federal funding will be lost for any physical relocation work prior to Environmental Document.

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The following factors should be considered before initiating Preliminary Engineering prior to the Environmental Document:

- Owner's Preliminary Engineering cannot commence until the preferred alternate route has been selected.
- Evaluate the Environmental Document as follows:

    - If Environmental issues arise, such as an Environmental Sensitive Area (ESA), biological, archeological, or water quality sites, what areas are then available for route alignment and future relocation activities?

    - Obtain a time estimate from the Environmental section as to how long it will take to complete the Environmental Document and mitigate any issues.

- Evaluate schedule milestone dates to determine a reasonable starting time for Engineering to begin.
- Determine when to request facility mapping and start the conflict determination stage.
- Determine when to send conflict mapping to the Utility Owner.
- Positive Location (Potholing) is allowed during Preliminary Engineering.

Process for Implementing Owner's Preliminary Engineering prior to approval of the Environmental Document:

- Prepare the Data Sheet to reflect funding for Utility Owner's Preliminary Engineering so the Project Manager can properly fund at this early phase.
- Prepare the liability package once the final alternative has been selected following all liability determinations shown in 13.04.00.00 of this manual.
- Prepare a Report of Investigation, Notice to Owner, and Utility Agreement for encumbrance of funds. (NOTE: New standard clauses have been developed and approved by Legal for this process - Refer to Section 13.07.00.00.)
- Use Phase 9 Capital funding.

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13.02.03.00 Utilities on Donated or Dedicated Future Right of Way

Donated right of way is property for which the owner was entitled to receive just compensation, but for personal reasons waived that right and deeded to a public agency without compensation. If the donated right of way location is satisfactory to the State's needs, the property may be acceptable even though encumbered with utility facilities. This is based on the premise that even if the State had purchased the right of way, the State may have been liable for any necessary adjustment or relocation of the utility facilities occupying private property.

Dedicated right of way is property that the owner is obligated to convey to public ownership as a condition prior to the granting of a permit, license, or zoning variance for a planned property development. The State must not accept dedicated right of way if it is encumbered with existing or planned utility facilities that are in conflict with the State's accommodation policy. Since the property owner is obligated to provide the right of way without compensation, this obligation extends to conveying it free and clear of all conflicting encumbrances that would otherwise have to be removed through payment of public funds. All conflicting utility encumbrances must be cleared by the property owner prior to conveyance to the public agency or prior to acceptance by the State.

13.02.04.00 Utility Estimates

R/W Estimating usually requests the project utility relocation estimate. These estimates are used for the Project Study Report (PSR). The PSR is an engineering report used to document agreement on scope, schedule, and estimated cost of the project so it can be included in a future STIP or other programming document.

Since accurate estimates are crucial to both scheduling and ultimate delivery of any given project, utility estimates must be as accurate as possible. Accuracy of any estimate, however, is subject to the quality of plans received and the lead time given. If the plans or lead time are inadequate, the Utility Coordinator shall inform R/W Estimating and/or P&M of such when submitting the estimate. Significant cost contingencies should be specifically identified in the estimate. For example, a potential conflict with a major facility where the project's impact cannot yet be fully determined.

Estimates should always be based on the most probable "worst case" and "highest cost" assumptions. A frequently overlooked cost is that of relocating

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a facility currently located within an existing freeway as an exception to the Department's utility accommodation policy. Policy requires all utility facilities located within project limits in violation of current utility accommodation requirements be adjusted to meet current requirements. If the facility is located in the project limits subject to a previous encroachment exception and the Utility Coordinator feels the facility may safely remain, it must be reevaluated and resubmitted to the Division of Design, Encroachment Exceptions Section, for approval. (See Section 13.01.04.00.) Therefore, for estimating purposes, the Utility Coordinator should assume an exception will not be granted and include estimated costs for a relocation.

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

The Utility Coordinator should take the following steps in preparing the utility estimate:

- Field review all proposed project route alternatives.

- Identify each Owner and type of utility and prepare a relocation cost estimate for each. The relocation cost estimate may be based on past experiences with relocation costs, unit costs, broad gauge estimates, consultation with utility owners or other method suitable to the facility to be relocated.

- Prepare a total relocation cost estimate for the project, including updating escalation rates when appropriate. Escalation rates can be measured by identifying industry-wide rates in increases in labor, products, and materials. These increases can be estimated by comparing current labor rates, accessing industry Web sites for information, reviewing current utility owner invoices and consulting with the Utility Owners.

- Identify the Owner's requirement to complete an environmental study for the proposed utility work or to order long lead time materials for the project and estimate additional lead time necessary for completion.

- Consult with the Project Engineer to identify possible modification of right of way lines or early design changes to avoid potential conflicts, when appropriate.

- Provide workload estimates for all utility related WBS codes. The Utility Coordinator can use past experiences, previous support charges for

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production of utility documents or workload estimating norms created at the district level.

- Prepare data for the R/W Data Sheet(s) for the project discussing the items above and submit to R/W Estimating.

Use of Exhibit 13-EX-6 is recommended for preparing estimates for all route reviews.

13.02.04.01 Right of Way Data Sheet

The R/W Data Sheet is used to provide cost data to be included in the PSR. It is critical that the Utility Coordinator review all proposed projects to ensure any and all possible utility relocation costs are included. This data becomes the basis for R/W project programming in the STIP and SHOPP, which establishes the project's capital and support budgets. Accurate and up-to-date data on project costs and work units are critical.

Workload data from the R/W Data Sheet is entered into PRSM and cost data from the R/W Data Sheet is entered into the COST RW1-10 screens and PRSM. PMCS (Project Management Control System) is the Department's Project Database. PYPSCAN (Person Year, Project Scheduling and Cost ANalysis System) is a computerized project estimating and scheduling system within PMCS. This computerized system shows, among other things, project workload (support), monies needed for project expenditures (capital) and lead times needed for project delivery. PYPSCAN is used as a starting place for the development of the project workplans and as a check of resources that are generated by XPM. XPM is a computerized scheduling tool that uses Project Workplan information to determine the required hours by WBS code to complete a particular project. (See Section 3.03.00.00 for more information about PMCS and XPM calculations.)

The District Utility Coordinator is responsible for ensuring that all utility relocations' capital and support needs are up to date at all times and are input into PRSM (or other resource estimating database) via the R/W Data Sheet. The Estimating Chapter (Chapter 4.00.00.00) requires the R/W Data Sheet be updated whenever there is significant change or at least annually. The Utility Coordinator must be sure the Utility Estimate conforms to this same requirement. If the information is not up to date, the Utility Coordinator shall inform P&M by memorandum or revised by R/W Data Sheet.

For instructions and explanations on filling out the utilities portion of the R/W Data Sheet, see Exhibit 13-EX-6.

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On federal-aid projects, the E-76 can be prepared and transmitted to P&M for processing after all known conflicts have been identified. See Section 13.14.00.00 for more discussion on federal-aid procedures.

13.02.04.02 Project Study Report (PSR) Review

The draft PSR incorporates the R/W Data Sheet or includes information from it. The draft is circulated through District R/W for review and concurrence. It is imperative that a thorough review of all aspects of the project-impacted facilities takes place prior to approval of the PSR. The review should ensure that all facilities to remain within the project area either meet the Department's accommodation policy or that estimated relocation costs are included.

If discrepancies are found in the draft PSR, a revised R/W Data Sheet shall be prepared. The revised R/W Data Sheet, along with a thorough explanation of the discrepancies and/or changes, must be sent to P&M for submittal to the preparer of the draft PSR.

The approved PSR should be circulated through District R/W, with a copy included in R/W's project files.

NOTE: Occasionally, if there are no required R/W acquisitions, utilities may be overlooked. The District Utility Coordinator must proactively identify planned projects to ensure that all draft PSRs are reviewed and R/W Data Sheets are prepared for all projects.

13.02.05.00 Environmental Document Review

The District Utility Coordinator must review the draft environmental document to ensure that utility relocation impacts are addressed. These typically occur, for instance, where an underground facility will be relocated across an environmentally sensitive area, such as a wetland, or where new utility rights of way are to be acquired. The Utility Coordinator must ensure the "area of potential effect" identified in the environmental document covers any parcels identified as potential replacement easements for utility relocations.

Potential Hazardous Waste (HW) impacts resulting from the highway project are usually addressed in the environmental document. If HW is a potential problem on the project, the Utility Coordinator must ensure that the requirements of Section 13.01.02.05 are addressed in the document.

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It is also critical to ensure the environmental document does not propose utility-related mitigation commitments that may be in conflict with existing laws or current Departmental policies. Conflicting commitments must have Headquarters R/W prior approval. For example, it is incorrect to propose undergrounding for aesthetic purposes or to require underground utility crossings to be placed as part of the highway construction to mitigate future needs since these commitments may constitute "a gift of public funds."

If utility facility relocations are addressed in the document, then the following suggested wording should be used, but not placed in the "Mitigation Section":

> "All public utility facilities impacted by the proposed transportation project will be relocated and/or accommodated in accordance with State law and regulations and the Department's policies concerning utility encroachments within State highway rights of way."

13.02.05.01 Special Environmental Reviews for 50KV Electric Facilities

Major electric facilities involving substations and/or power lines operating in excess of 50KV may require special permits and environmental review per PUC General Order 131-D. Potential relocations of this type require early coordination with PUC regulated electric Utility Owners to determine General Order applicability. If an environmental review is necessary, including the potential utility relocation in the State's environmental document may substantially reduce lead time requirements for the utility relocation. Questions concerning applicability of this Order to a particular relocation must be resolved between the Owner and the PUC.

13.02.05.02 Draft Environmental Document to Owners

The Utility Coordinator must alert all Owners impacted by a proposed highway project when the draft environmental document is circulated for review. This allows Owners to recommend inclusion of utility relocation needs and thus minimize risk for later project delay resulting from unanticipated relocation environmental problems.

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13.02.05.03 Hazardous Waste Exceptions

The Department's hazardous waste policy specifies that remediation of project-related contamination should be completed prior to construction activities. In cases where cleanup prior to construction is not feasible and remediation is proposed during project construction, an exception to this policy must be requested. This policy applies to State ordered utility relocation work within highway project limits (see Section 13.01.02.05).

The Project Manager, working in coordination with the District Project Development functional manager and the Utility Coordinator, shall prepare an exception request for the Regional or District Director's approval. The exception request must be reviewed by the Hazardous Waste Management Office, Headquarters Environmental Program, prior to submission for the Regional or District Director's signature.

Exception requests shall, as a minimum, address the following:

1. A summary of the project and how the project will impact the contamination area;

2. The type and extent of hazardous waste (summary of the hazardous waste investigation), including source and responsible party, if known;

3. The estimated cost to the Department for remediation, including an assessment of future liability if the Department assumes responsibility for remediation;

4. Why it is not practical to defer the project or to modify the project to avoid the contaminated property(ies);

5. The type of remediation proposed, including whether the Department has approval from the appropriate regulatory agencies;

6. Why the property owner or other responsible parties have not assumed responsibility for cleanup;

7. The steps that have been or will be taken to recover cleanup costs and an evaluation from the Legal Division regarding the chance of success; and,

8. The draft special provisions for the remediation items of work.

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13.03.00.00 - DESIGN PHASE

13.03.01.00 General

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

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

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

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

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13.03.01.01 Commencement of Design If Preliminary Engineering Is Used

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

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

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

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

13.03.01.02 Identification and Protection of Utility Facilities

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

Government Code Section 4216 states that the State's Highway contractor is required to take reasonable and prudent steps to ascertain the exact location of underground facilities. If the contractor has done so but still

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damages a facility not shown on the plans, the State may be responsible for damages to the facility and all resulting protection requirements and/or project delays.

13.03.01.03 Utility Facility Avoidance

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

13.03.01.04 Design of Utility Facility Relocations

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

13.03.01.05 Replacement Right of Way for Utility Facilities

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

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

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the proposed replacement right of way has been included in the Environmental Document.

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

13.03.01.06 Utility Consultant Design Requirements

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

13.03.02.00 Utility Verifications

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

- To identify all potential utility/project conflicts so they may be cleared before project construction commences, either through avoidance or relocation.

- To meet the requirements of California Government Code Section 4215, which states in part that all utility facilities shall be identified on the State's project plans and if not so identified, the State may be liable for all resulting damages to the facilities. The cost of such damages to the facilities is not Federal-aid reimbursable.

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13.03.02.01 Preparation of Verification Maps

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

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

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

13.03.02.02 Utility Verification Request to Owner

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

13.03.02.03 Owner's Verification of Facilities

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

- Transmit Owner's verified facility locations to the Project Engineer or Utility Engineering Workgroup (UEW) for review and inclusion on project plans.
- Assist the Project Engineer or UEW in identifying existing utility facilities in conflict with the State's accommodation policy.
- Assist the Project Engineer or UEW in identifying high priority facilities.

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

13.03.03.00 Positive Location of Underground Facilities

To accurately determine the type and location of all potentially impacted utility facilities, it is frequently in the State's and Owner's mutual interest to provide positive location of underground facilities. The process of obtaining this information may require that an excavation hole be made to expose the facility and allow the precise location to be surveyed to the State's datum. The excavation to expose the facility is frequently referred to as "potholing." Other methods of determining the positive location of an underground facility include probing, electronic detection, etc. Refer to the Department's encroachments and utilities policies for policy specifics. For a copy of these policies, refer to Chapter 17 of the Project Development Procedures Manual.

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

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

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

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

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13.03.03.01 Positive Location Agreements (PLAs)

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

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

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

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

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

13.03.03.02 Positive Location (Pos-Loc) Contracts

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

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

13.03.03.03 Positive Location Task Orders

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

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

13.03.03.04 Positive Location Requirements for High Priority Utility Facilities

All existing underground high priority utility facilities within the construction area of a project shall be positively located in accordance with the Department's encroachments and utilities policies. For a copy of this policy, refer to Chapter 17 of the Project Development Procedures Manual. The Project Engineer or Utility Engineering Workgroup (UEW) is responsible to ensure the policy requirements have been met and to provide a certification to that effect as part of the PS&E.

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

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

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

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

13.03.03.05 Liability for Ordered Positive Locations

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

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

13.03.03.06 Prevailing Wage Requirements for Positive Location Contracts

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

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

California Law requires the Department to have an orderly system of auditing contractor payrolls. The Positive Location contract requires the contractor submit a certified copy of all payroll records for verification by the Department's Contract Manager and/or Designee with each invoice. When progress

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payments are called for, the Contractor shall submit a certified copy of all payroll records for verification for the work completed to date with each invoice. Delinquent or inadequate certified payrolls or other required documents will result in the withholding of payment until such documents are submitted by the Contractor. If payment is withheld, Invoice Dispute Notification, Form STD. 209, must be filled out in order to suspend the Prompt Payment Act. The Contract Manager will review and maintain the certified copy of the payroll.

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

13.03.03.07 Contract Manager's Working File

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

- Copy of Service Contract Request Form (ADM 360) with all the supporting documentation
- Copy of the executed contract
- Copy of all Certificates of Insurance, if applicable
- Copies of Payment and Performance Bonds, if applicable
- Copy of each executed contract amendment, if applicable
- Log or diary of all contract activity
- Correspondence to Contractor or other correspondence relating to the contract, including the "kickoff" meeting or pre-job conference documentation
- Copy of each invoice, backup documentation and approval documentation
- Spreadsheet of contract funds and expenses
- Spreadsheet indicating DVBE/DBE usage, if applicable
- Evaluation of the Contractor/Consultant, if applicable
- Copy of CMIST certification - (see Section 13.03.03.08)

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

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

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

13.03.03.09 Utility Coordinator Responsibilities

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

- Request/prepare Positive Location Task Orders and NTO based on the maps.
- Follow up to ensure the positive location work will be done by the date specified in the Notice to Owner and/or in the Positive Location Task Order.
- Confirm necessary inspections with the applicable office/branch.
- Coordinate with Surveys to obtain required horizontal and vertical location data for utility facilities. See high priority utility facility positive location requirements in Chapter 17 "Encroachments and Utilities" of the Project Development Procedures Manual.
- Ensure that survey information is transmitted to the Project Engineer or UEW for inclusion in the contract plans.
- Assist in identifying longitudinal utility facilities not meeting the encroachments and/or utilities policies.
- Process Pos-Loc Contractor's invoices for payment, subject to the Prompt Payment Act.

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13.03.03.10 Project Engineer or Utility Engineering Workgroup Responsibilities

Pursuant to the Plans Preparation Manual Section 2-2.13, the Project Development Procedures Manual, and this manual, the Project Engineer (PE)or Utility Engineering Workgroup (UEW) is responsible to:

- Plot survey information on the contract plans.
- Identify "physical" and "policy" conflicts.
- Prepare utility conflict maps
- Prepare a Utility Conflict Matrix (UCM)/Utility Management Matrix (UMM) for the Owner to prepare relocation plans.
- Recommend all existing or new Encroachment and/or Utility policy exceptions to Division of Design, Office of Project Support, for approval.

NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, Encroachments and Utilities Policies of the Project Development Procedures Manual for exception requirements.

13.03.04.00 Utility Conflicts Identified

The PE is responsible to review all existing utility locations for conflicts, determine which facilities need to be relocated, and make a written request to the Utility Coordinator to obtain affected Owner's relocation plans. The PE or Utility Engineering Workgroup (UEW) will provide the Utility Coordinator with conflict maps (see Section 13.03.04.03) and a UCM/UMM the Utility Coordinator will send both to the Owner to accompany a request for relocation plans, the Owner's claim of liability, and estimate of cost. (See Section 13.03.04.04.)

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

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

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

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

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

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

13.03.04.01 Encroachment and Utility Policies for Freeways and Exceptions to the Policy

The Department's basic accommodation policy for utilities within freeways is available in Chapter 17, "Encroachments and Utilities," of the Project Development Procedures Manual. Utility facilities within the project limits of planned freeway projects that are in violation of this policy must be relocated to clear the project. Division of Design, Office of Project Support, must approve exceptions to this policy prior to R/W Certification.

NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, "Encroachments and Utilities," Project Development Procedures Manual for a discussion of prohibited encroachments and exception requirements.

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New longitudinal installations are not allowed within the State's access control right-of-way. Existing longitudinal installations or support facilities for crossings must be relocated to outside of the State right of way. If that is not feasible, they may only be allowed to remain within the State's access-control right of way with an approved exception to the Encroachment and/or Utility policy by the Division of Design, Office of Project Support. The following restrictions apply to existing facilities:

A. The facility must be a public utility facility.

B. The facility must not adversely affect highway safety, maintenance, and traffic operations.

C. The facility should be installed outside the desired clear recovery zone where reasonable. (See Section 13.03.04.02 for a description of "clear recovery zones.")

D. Relocation of the facility would be inordinately difficult or unreasonably costly.

E. Access for construction and maintenance of a facility located within the access-controlled area must not be from the traveled way of the freeway or ramps. Construction or maintenance activity access must be from adjoining frontage roads or nearby streets or trails.

F. Utility service connections to adjacent properties shall not be permitted.

G. All high priority facilities shall meet the Department's policy and procedures set forth in Chapter 17, "Encroachments and Utilities," of the Project Development Procedures Manual.

13.03.04.02 Identify CURE/CRZ Conflicts

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

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found in the Department's Highway Design Manual, Chapter 300, "Geometric Cross Section," Topic 309, "Clearances."

13.03.04.03 Conflict Maps

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

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

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

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

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

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

Upon receiving the Owner's relocation plans, the Utility Coordinator routes the plans to the Project Engineer or Utility Engineering Workgroup for review and approval, comparison with other Owners' plans for compatibility, and review for compliance with the Department's Encroachments and Utilities Policies in Chapter 17 of the Project Development Procedures Manual.

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NOTE: See Section 300, Exceptions to Policy - Encroachment Permit Manual and Chapter 17, "Encroachments and Utilities," of the Project Development Procedures Manual for exception requirements.

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

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

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

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

13.03.05.00 Utilities on Structures

The Department's policy for utilities on structures can be found in Chapter 17, "Encroachments and Utilities," of the Project Development Procedures Manual, Section 2 "Encroachments," Article 2 "Encroachment Policies," sub-heading "Encroachments within the Right-of-Way on a Access Controlled Highway." If the policy cannot be met, an exception to the Encroachment Policy must be approved by the Division of Design, Office of Project Support to allow accommodation of a utility on a structure.

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13.03.05.01 Coordination Requirements

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

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

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

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

13.03.05.02 Guidelines for Utilities on Structures

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

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GUIDELINES FOR UTILITIES ON STRUCTURES

Size

The maximum allowable utility size depends on structural constraints. When the utility depth, including its casing, exceeds one-third the bridge structure depth, accommodating the utility is difficult. Any utility or its casing over 20 inches may not be acceptable, and Structures Design or Structures Maintenance must be consulted. The maximum diameter conduit allowed in sidewalks is 4 inches.

Type

1. Electrical - The maximum voltage allowed in an electrical line is 69kv. High voltage installations in the sidewalk portions of the structure are strongly discouraged. Installing high voltage lines in box girder cells or between girders is preferable. Exceptions to this policy should be directed to Structures Design or Structures Maintenance.

2. High-Pressure Water and Sewer - The maximum diameter carrier pipe or casing allowed is 20 inches. The maximum operating pressure of a 20-inch carrier line is 100 psi. Full-length casing is required for all installations, but exceptions may be allowed for facilities in box girder bridges.

3. Volatile Gas - Installation must conform to Structures "Guidelines For Natural Gas Pipelines On Caltrans Bridges."

Combinations of Utilities

Volatile fluids, gases, or high voltage lines shall not occupy the same cell or area between girders with any other utility or with each other.

Seismic Design Requirements

Owners of facilities carrying volatile fluids, gases, or high-pressure fluids must be provided with the following options to be used when designing their facilities for expected seismic movement within the structure.

1. For existing structures, design for an expected minimum horizontal and/or vertical displacement of 2.5 inches. For new structures, design the facilities for an expected movement of 2.5 inches.

2. Provide an event-actuated device that will automatically shut off the utility line.

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Seismic Design Requirements (Continued)

3. Provide a device that will detect a break in the utility line (and casing) and automatically shut off the utility line.

4. Locate the utility line off the bridge.

13.03.06.00 Utility Acquisitions

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

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

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

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

13.03.06.01 Uniform Acquisition Act Requirements

When the State or LPA acquires replacement right of way, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended (42 U.S.C 4601 et seq.) (Uniform Act)."

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

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13.03.06.02 Acquisition from the Utility Owner

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

Generally, most fee-owned property is for substations or pumping plants, although some Owners have fee-owned corridors for transmission purposes.

ACQUISITION FROM THE UTILITY OWNER

Fee-owned

All fee-owned property is acquired by R/W Acquisition via R/W Contract and Deed. Terms of the R/W Contract depend on whether the property in question is vacant or improved, and whether it is a site or a corridor. In all cases, the Utility Coordinator should consult with Acquisition to reach a full understanding about what the property is and how it may be used, now and in the future. Things to look for include:

1. Vacant Site - The Owner may be holding the site for future use in conjunction with an existing facility, such as a substation expansion.

2. Vacant Corridor - Although treatment is similar to a vacant site, the possibility of easement acquisition on the Owner's behalf or JUA/CCUA should be explored.

3. Utility Facility Improved Site - Replacement of the site is usually necessary. If done, Acquisition may handle via a R/W Contract. Relocation or rearrangement of utility facilities shall be handled by the Utility Coordinator via Utility Agreement in coordination with Acquisition.

4. Utility Facility Improved Corridor - Same as for an improved site; however, the possibility of replacing fee with easement or JUA/CCUA should be explored. Access to the replacement corridor must be considered.

5. Nonutility Occupied - Acquire via normal appraisal/acquisition procedures.

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Easement-owned

1. Utility Occupied - Occupied easements are usually for transmission or distribution of the Owner's product. Where a replacement right of way is needed, the State or the Owner may acquire an easement. Usually the Owner's existing easement interest is quitclaimed to the State in exchange for the new location by executing a JUA/CCUA as a part of the utility relocation.

2. Nonutility Occupied - Acquisition is responsible for clearance of vacant easements.

Franchise/Permit Privileges

Except as noted below, the State is not obligated to provide a replacement right of way for utility facilities installed under a franchise or permit. In some cases, the State may need to make the method of installation for safety or other good reason a requirement for occupancy under an Encroachment Permit. For instance, the most common requirement is that the facility cannot continue to be installed within the right of way as an aerial facility. If the Owner does not meet our requirements for relocation within the new right of way, the Owner is responsible to provide any needed easement at their own expense.

The exception is for facilities located within a freeway that will be relocated under S&H Code Section 702. Under Section 702, the State is obligated to provide a replacement easement if one is needed. Section 702 does not apply to Owners with master contracts that contain language superseding Section 702.

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

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

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State may acquire the replacement right of way by one of the following methods (in order of preference):

- Acquired in the name of the Owner, preferably on the Owner's own deed form.

- Acquired in the name of the State by deed and subsequently conveyed to the Owner by Director's Deed.

- Use of State-owned (or to be acquired) excess land. Care must be exercised in making any commitments regarding acquisition of excess land. Liaison with Excess Land should be maintained so easements are reserved in excess land conveyances.

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

13.03.06.04 Consent to Condemnation for Exchange Purposes from the Owner

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

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

- **Pacific Gas and Electric Company** (Exhibit 13-EX-15A) - The State can condemn for PG&E without additional authorization, except that easement needs and location must have PG&E's prior acceptance.

- **Southern California Edison Company** (Exhibit 13-EX-15B) - SCE requires the Company's written approval of both the complaint form and easement location.

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- **AT&T California** (formerly SBC, Pacific Bell Telephone Company and Pacific Telephone and Telegraph Company) (Exhibit 13-EX-15C) - AT&T California requires the Company's written approval of the easement location.
- **Southern California Gas Company** (Exhibit 13-EX-15D)

- **General Telephone Company** (Exhibit 13-EX-15E)

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

13.03.06.05 Utility Easements on Federal Lands

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

The Utility Coordinator's responsibilities include:

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

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13.04.00.00 – LIABILITY DETERMINATION PHASE

13.04.01.00 General

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

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

13.04.01.01 Determining Superior Rights

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

13.04.01.02 Liability Calculation

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

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LIABILITY DETERMINATION FACTORS

- **What is the legal basis, if any, under which the utility facility is occupying the property?**

  Property rights are the primary determinant of the superior right of occupancy and will be based on one of the following:

  1. Fee Ownership
  2. Easement (recorded or unrecorded)
  3. Implied/Secondary Easement
  4. Joint Use and/or Consent to Common Use Agreements
  5. Perfected Prescriptive Claim
  6. Lease
  7. License
  8. Franchise
  9. Encroachment Permit
  10. Trespass

  Normally, Items 1 through 5 establish prior rights, and the State is probably liable for relocation costs, unless the documents involved contain clauses that reserved to the original grantor the right to order one or more relocations at the grantee's expense. Occupancy item 5 is a claim that is established by a court proceeding against the record owner.

  Occupancy under Items 6 through 10 usually requires that relocations be at the Owner's expense on conventional highways.

  Item 8 is addressed in S&H Code Section 680 for conventional highways. Item 9 is addressed in S&H Code Section 673. Item 7 is generally like a permit and can be canceled by the fee owner of the property; therefore, the State must be the fee owner of the property to exercise any contractual rights that were originally reserved by the grantors. Item 10 is generally treated as a highway encroachment permit.

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LIABILITY DETERMINATION FACTORS (Continued)

- **Is there a Freeway Master Contract between the Owner and State?**

  The State has entered into Freeway Master Contracts with several Owners. When the terms of a Freeway Master Contract address any specific S&H Code section or right, the terms of the Contract supersede the requirements of the applicable statute.

- **When was the route adopted by formal action of the CTC as a State Highway?**

  This date establishes the order of priority for the State and Owners for superior rights.

- **When was the adopted route declared by formal action of the CTC to be a freeway or expressway?**

  After the date of formal action, freeway statutes and Freeway Master Contracts apply.

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

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

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METHODS OF CALCULATING PRORATION OF COST

- **Pole Count**

  Usage:
  Pole count is the normal method used for aerial facilities.

  Explanation:
  The calculation is based exclusively on the number of impacted poles located within the project limits where the Owner has the superior right, divided by the total number of impacted poles within the project limits. This calculation produces the State's share of the total relocation cost. Equal weight is normally given to each impacted pole within the project limits regardless of ancillary equipment or attachments such as guys, transformers, and switches. The impacted poles must be otherwise similar, as wood pole relocation costs are greatly different than special designed steel poles or other supporting structures. If impacted poles are of a mixed type, separate costing may be necessary for the dissimilar poles. See "Dollar Weighted" method below.

- **Facility Length**

  Usage:
  Measurement of the length of the impacted facilities is normally used for underground facilities, such as gas, sewer, and water, or for cables either directly buried or within conduits and for facilities on the surface, such as ditches or conduits.

  Explanation:
  The calculation to prorate liability is similar to the pole count method above and is based on the Owner's superior right length of the impacted facility lying within the project limits divided by the total impacted length within the project limits.

  The measured lengths must be of the same or similar size and type of facility, irrespective of ancillary equipment or features such as valves, manholes, switches, and transformers.

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- **Dollar Weighted**

  Usage:
  This method is used where mixed facilities are to be prorated.

  Explanation:
  This approach requires considerably more effort and documentation, as it is necessary to establish and support an installed replacement cost new for the existing facilities. The simple cost of the materials is not sufficient to establish this proration. The calculation is based on the installed replacement cost new of the existing facilities located within the project limits where the Owner has the superior right, divided by the total of the installed replacement cost new for all of the impacted existing facilities within the project limits. This calculation produces the State's share of the total relocation cost.

13.04.01.03 Report of Investigation (ROI) Plan

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

13.04.02.00 Conventional Highway or Freeway

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

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13.04.02.01 Conventional Highway Relocations

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

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

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

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

13.04.02.02 Freeway Relocations

Liability for the cost of relocating facilities to provide for construction of a State freeway or expressway is determined by a combination of occupancy rights, statutes (S&H Code Sections 700 through 707.5), and applicable Master Contracts.

Extension or reconstruction of city streets or county roads done in accordance with a Freeway Agreement that provides for closure of streets or roads for freeway construction is considered part of the freeway project for the purpose of determining liability.

Facilities installed in a road prior to a CTC resolution adopting the road as a State highway shall be considered as originally installed before the road became a State highway for application of S&H Code Sections 700, et seq. All

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new facilities, including additional equipment and cables installed in existing facilities, placed within the State freeway after the CTC resolution shall be relocated at the Owner's expense.

13.04.02.03 Bicycle Path Construction

S&H Code Section 156, et seq., provides that the Department may enter into an agreement with another agency for construction of bicycle paths or other nonmotorized transportation facilities along State highway rights of way. The Department's contribution, if any, toward the construction cost shall be based upon a finding that the facility will result in increased traffic safety or highway capacity. If construction of a new freeway will cause the severance or destruction of an existing nonmotorized transportation facility, the Department is to provide a reasonable alternative routing for the facility.

The Department's cost liability for relocation of utility facilities impacted by construction of bicycle paths is dependent on a number of factors and is determined in accordance with the rules entitled "Liability for Bikeways."

LIABILITY FOR BIKEWAYS

- **Freeway construction where there is no increase in highway safety or capacity due to the bikeway construction.**

  Rule:
  1. Use of State highway funds for utility relocation is not authorized for a bikeway construction project when there is no increase in traffic safety or capacity.
  2. If freeway construction severs or destroys an existing improved nonmotorized transportation route, Department shall pay the cost of utility relocation to provide a reasonable alternate route.
  3. In designing freeways, Department shall consider local agencies' master plans for nonmotorized transportation, but the cost of construction other than design cost is the responsibility of the local agency or others.

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- **Freeway construction with a supportable determination of increased highway safety or capacity due to the bikeway construction.**

  Rule:
  1. If the nonmotorized transportation facility is designed and built within the freeway right of way and in connection with the freeway construction project, liability for utility relocation is pursuant to S&H Code Section 700, et seq., or the Freeway Master Contracts where applicable.
  2. If construction of a nonmotorized transportation facility is outside the freeway right of way but within a frontage road, either State-owned or relinquished to a local agency, liability is based on common law priority of rights except when a Freeway Master Contract is involved. In the latter situation, the Contract will control.

- **Conventional State highway construction where there is no increase in highway safety or capacity due to the bikeway construction.**

  Rule:
  Use of State highway funds for utility relocation is not authorized for a bikeway construction project when there is no increase in traffic safety or capacity.

- **Conventional State highway construction with a supportable determination of increased highway safety or capacity due to the bikeway construction.**

- **Rule:**
  Cost of facility relocation is based on common law priority of rights. If the Utility Owner has prior and superior rights, payment for utility relocations may be paid from State highway funds.

13.04.03.00 Master Contracts

Following enactment of the Collier-Burns Act in 1947 (which includes most of S&H Code Sections 700-711), the accumulation of disputed claims was of such magnitude as to threaten delay of the newly enacted freeway program. To meet the problem, the Legislature in 1951 enacted S&H Code Section 707.5, which authorizes the Department to enter into contracts with

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Utility Owners that supersede the provisions of the S&H Code identified in such contracts and govern exclusively the apportionment of relocation costs.

Section 707.5 has been interpreted to allow the Department to apportion liability under these contracts so as to achieve the result that would have been obtained over a period of time in the absence of such contracts. Thus, the determination of the apportionment provisions, as well as other terms, has been based on examination of past experience and evaluation of liability in the future. These contracts, while involving compromise, reflect as nearly as the Department can predict the overall liability that would exist without them.

Freeway Master Contracts (FMC) govern apportionment of the cost of rearranging facilities in connection with freeway projects in lieu of the provisions of S&H Code Section 700, et seq. In other words, under FMCs, the provisions of the S&H Code and other laws have no application to the rearrangement of the facilities on freeway projects and are replaced by the terms of the FMC. The contracts do not affect relocations on conventional highways.

13.04.03.01 Interpretation of Master Contracts

The FMC liability determinations apply to all State freeway projects regardless of who funds the project or does the work; therefore, consistent statewide interpretations are mandatory. (See Section 13.12.02.00 for more information.) However, the Master Contracts do not apply to any private-developer-initiated and privately funded project. In accordance with statutory and judicial law, the developer shall pay for all utility adjustments required to accommodate a private-developer-sponsored project. (See Section 13.12.04.00.)

There are several FMCs in place with different utility companies. A list can be found on HQ Right of Way Utility Relocations Web site. Although the current FMCs are much simpler than previous Master Agreements, careful interpretation is crucial.

Application of FMC to relocations on adjunct, ancillary or nonhighway use parcels/projects must be carefully considered and the HQ R/W Utility Liaison should be contacted for discussion.

Any question or conflict concerning interpretation of any terms or scope of a Master Contract may be submitted to Headquarters R/W if the district cannot resolve. FMCs can be found on the HQ Right of Way Utility Relocations Website.

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13.04.03.02 Application of Master Contracts

FMCs apply to freeway projects as defined in the FMC on highways that are part of the California Freeway and Expressway system. See S&H Code Section 250, et seq., as a guide for a listing of applicable highway routes. A guide for each highway can be found via the Highway System Information and Performance page.

The project is not considered a freeway project unless access rights to adjoining property have been previously acquired or are being acquired as part of the immediate project.

FMCs apply to utility facilities within the freeway rights of way and any other frontage or local road being reconstructed as a direct part of the freeway project. The FMC terms should not be applied to other ancillary highway improvement projects, such as park-and-ride lots and acquisition of replacement property sites, unless such sites are acquired as part of a freeway project.

Note: When a co-operative Agreement (Co-op) is in use, the FMC applies to the entire freeway project, as applicable.

13.04.04.00 Property Rights

The Owner may submit one or more superior right claims for a facility. Each prior right claim the Owner submits must be fully documented and supported. The documentation must be referenced in, and attached to, the Report of Investigation (ROI) (see Section 13.05.00.00). The types of property rights in the following sections are applicable to both conventional highways and freeways. They generally indicate how each superior right should be documented and the extent to which the Utility Coordinator should investigate the validity of the Owner's claim. (See also Section 13.03.06.02, "Acquisition from the Utility Owner.")

NOTE: When reviewing a superior rights claim, the Utility Coordinator must determine if there is a Master Contract with the Owner that may modify or supersede normal occupancy rights or statutes and establish the basis of the Owner's claim.

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13.04.04.01 Fee Ownership

The State is liable for relocation costs any time the facility is on property where the Owner has fee title. The Utility Coordinator shall review title reports and right of way maps to verify Ownership.

All fee-owned property must be acquired by R/W Acquisition via R/W Contract and Deed. Relocation or rearrangement of utility facilities shall be handled by the Utility Coordinator via Utility Agreement in coordination with Acquisition. The Utility Coordinator must ensure the R/W Contract and/or Utility Agreement covering relocation does not set up a double payment for property rights.

13.04.04.02 Easement

In most cases, when the facility is located within an easement, recorded or unrecorded, the State is liable for relocation costs. When the Owner claims a superior right pursuant to a prior easement, the Utility Coordinator must verify the location of the easement, that the easement is valid and that the Owner's rights are prior and superior to the State's.

Any Owner's relocation obligation or other limitation clauses within the easement document may be passed to the State upon acquisition of the underlying fee and must be investigated to determine if they are in conflict with the Owner's claim. State's liability for relocation costs under a valid easement extends to subsequent additions to those facilities originally installed as long as the additions are not inconsistent with the terms of the easement.

13.04.04.03 Implied/Secondary Easement

All city-owned facilities located in city streets and county-owned facilities located in county roads that were installed in the street or road within the city or county jurisdictional limits prior to their becoming a State highway are considered to be installed in the Owner's implied easement reservation. All facilities so located are relocated at State expense. The Utility Coordinator should check permits, "as-built" drawings, and the Owner's records to confirm the facilities were installed prior to the date the CTC adopted the route.

After the date the CTC adopted the route, the local agency may maintain or even improve their facilities as long as the improved facility remains in substantially the same location. The local agency may not, however, expand

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upon their existing system by installing new parallel facilities except under the usual encroachment permit requirement.

Facilities not under the city's or county's direct ownership and control, such as regional sanitation or fire districts, are not subject to the implied/secondary easement liability rule.

13.04.04.04 Joint Use and Consent to Common Use Agreements

In most cases, the State will bear relocation costs for facilities installed within a JUA or CCUA area. The Utility Coordinator must determine that the JUA/CCUA existing facility is, in fact, in the area of the JUA/CCUA by comparing the facility location with the JUA/CCUA description. The document must also be reviewed for any conditions that may change or limit the Owner's rights such as:

- A JUA/CCUA based on perfected prescriptive claims where the existing facility is different than the facility covered in the JUA/CCUA, e.g., rights for a buried 4-inch gas line but the facility to be relocated is a 16-inch gas line.
- A JUA/CCUA has an expiration date for the Owner's rights.
- A JUA/CCUA shall be used only on the State Highway System (SHS).
- Local Public Agencies shall use an easement on their local streets or roads to replace prior rights.

An Owner has the legal right to expand their facilities to the extent allowed by the terms and conditions of an easement deed. This right extends to a JUA and CCUA granted in recognition of existing easement deeds but does not extend to prescriptive claims. Regardless of Owner's prior rights or existing JUA/CCUA, any expansion of Owner's facilities within the highway right of way must be in accordance with encroachment permit requirements. (See Section 13.11.00.00 for more information on JUA/CCUAs.)

13.04.04.05 Perfected Prescriptive Claim

Relocation costs for facilities installed under a right of occupancy established by a perfected prescriptive claim may become the State's liability if the occupancy condition meets statutory requirements. The occupancy right must have been established by a court proceeding against the record owner.

Prescriptive claims cannot be established on publicly owned property.

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13.04.04.06 Lease

A lease is similar to an easement; however, it is restricted to a specific time period written into the lease. The Utility Coordinator should investigate the validity of the lease in the same manner as for easements, e.g., the ownership and description. Any Utility Owner's relocation obligations or other limitation clauses contained in the lease may be passed to the State upon acquisition of the underlying fee and must be investigated to determine if they conflict with the Utility Owner's claim. If the Utility Owner has a valid lease and there are no provisions for Owners to pay for the relocation, the cost is usually the burden of the State.

13.04.04.07 License

A license is permission from a property owner for another person to use land. A license differs from an easement or a lease in that it is only between the two parties and cannot be transferred unless it is specifically written into the license. Normally, when an Owner has a license and the State acquires the property on which the facility exists, the license is no longer valid and the State can require the Owner to relocate at their own expense.
The Utility Coordinator must read the license to determine if the above requirements, such as successors or assigns, are mentioned in the license.

When evaluating a license, the Utility Coordinator must take into account the level of title the State has already acquired at the time of issuance of the Notice to Owner because only the fee owner of property can enforce conditions reserved in the license.

NOTE: When the Owner has placed substantial improvements within the license area, a review by Legal is necessary before determining liability.

13.04.04.08 Franchise

Utility facilities that are placed in public rights of way pursuant to a franchise privilege from a city or county, or pursuant to State Law do not convey any property rights and Utility Owners are to relocate at their own expense whenever requested to do so for a legitimate or proper governmental purpose by State or local authorities. Required relocations for construction of maintenance stations, highway drainage, truck inspection facilities, accommodation of other relocated utility facilities, functional replacement acquisition sites, etc., are covered under "proper governmental purpose." However, circumstances of each utility relocation, with respect to provisions

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of the specific franchise involved, must be carefully reviewed. See also Section 13.04.05.02.

13.04.04.09 Encroachment Permit

An Encroachment Permit is a form of license that provides permission to the Owner to install a facility but does not convey any property rights. The permit also imposes certain restrictions on the Owner. The permit contains a relocation clause that states the Owner must relocate their facilities upon request at the Owner's own expense. See also Section 13.04.05.01.

13.04.04.10 Joint Pole Agreement Cost Liability Determination

The California Public Utilities Commission has authorized the joint sharing of poles by different Utility Owners, through a Joint Pole Agreement (JPA) as a means of providing more cost-effective service and to reduce "utility pole blight." The JPA rarely, if ever, will convey property rights to the joint pole user. The Lead Pole Owner's (Owner of the Pole) rights must be reviewed to determine joint pole user's rights. As with any claim of property right, the Owner making such a claim must submit all necessary documents to support that claim.

On joint pole facilities, when multiple Owners are found sharing the pole, each joint pole user must submit all necessary documents to support their claim whether or not the JPA covers such use. The joint pole user may have a valid cost liability claim even though they occupy the pole under a lease, license, or permit with the Lead Pole Owner.

If the Utility Owner has a Freeway Master Contract, liability for the JPA will be determined pursuant to the Freeway Master Contract.
If the Region/District is unclear as to liability at this point, Headquarters' Right of Way and Legal should be consulted.

13.04.05.00 Streets and Highways Code

The provisions of S&H Code Sections 673 and 680 authorize the State to issue a written notice to the Owner to remove, relocate, positively locate, etc., facilities installed under permit or franchise privilege at the Owner's expense (see Sections 13.04.04.08 and 13.04.04.09).

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Sections 700 through 711 pertain only to utility facilities in access-controlled freeways or expressways. Where the Owner has a valid superior right and is also entitled to reimbursement under one of the 700 series of the Code, the basis for the State's liability must be the Owner's superior right (unless modified by a Master Contract). This allows the State to perpetuate the Owner's superior right within the freeway right of way.

Liability for the cost of relocating facilities to provide for improvement of State freeways is generally based on the superior occupancy right in the same manner as previously discussed for conventional highways. However, S&H Code Sections 702 through 707.5 modify this basis for freeway projects and must therefore be carefully reviewed and applied. In addition, Master Contracts modify and/or supersede S&H Code Sections 702 through 707.

Following is a description of each section within the S&H Code that applies to the relocation of utility facilities.

NOTE: As used in the following S&H Code Sections, "lawfully maintained" means "A utility facility that has a legal basis/right to be in its present location and, therefore, is not in trespass." An Encroachment Permit satisfies the requirement of "lawfully maintained."

13.04.05.01 Section 673 - Relocation or Removal of Encroachment

This section applies to publicly owned facilities, such as counties, cities, public corporations, or political subdivisions (governmental agencies), where the governmental agency has been issued an Encroachment Permit by the Department to install facilities within a conventional highway. When the facility requires relocation for improvement of the highway, the governmental agency must relocate at their own expense. See also Section 13.04.04.09.

13.04.05.02 Section 680 - Franchises in State Highways; Temporary Relocations

This section applies to Owners who have installed their facilities within a conventional highway by a franchise privilege guarded by a governmental agency. When the facility requires relocation for a highway improvement, the Department can enforce provisions of the franchise and require the facility to be relocated at Owner's expense. An Owner may occasionally claim relocation is at State's expense pursuant to provisions of their franchise.

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In these situations, the Utility Coordinator must review the franchise to ensure the provisions apply. See also Section 13.04.04.08.

Relocation for temporary purposes has historically been interpreted to mean a utility relocation that results from a temporary move of the highway (a detour). Thus, any utility adjustment resulting from a temporary move of the highway (a detour) is at State's expense.

Utility relocations necessary to permit the safe construction of the highway project, such as utility "shooflies," are not considered to be relocations for temporary purposes under the law. In this situation, the Owner has the option to temporarily relocate to clear construction or to permanently relocate to another location rather than to go back to their original location. In this situation, the Notice must not refer to a temporary relocation as it is entirely the Owner's option as to whether they wish to return to the original location.

Liability for temporary relocations that are requested by the highway contractor as a means of convenience for construction shall be the highway contractor's responsibility. The Project or Resident Engineer, as appropriate, shall determine construction necessity versus contractor's convenience.

13.04.05.03 Section 702 - Relocation Outside Freeway

This section applies in situations where the Owner is required to remove and relocate their existing lawfully maintained facility to a location entirely outside the freeway right of way. The State must pay the reasonable and necessary cost of such removal, relocation, and reinstallation into the new location.

This section does not apply to relocation of the facility from one location within the freeway to another location within the freeway, nor does it apply to relocations into a service road or outer highway because these are considered part of the freeway.

Essentially, this section only applies if a utility easement is required to accomplish the relocation of the Owner's facilities entirely outside the State's or other public road right of way.

13.04.05.04 Section 703 – Relocation Within Freeway

This section applies to situations where the State requires the Owner to relocate their existing facilities from one location within a freeway right of way to another location within the freeway right of way. Several different types of

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facilities are covered as shown in "S&H Code 703 - Relocations Within Freeways - Types of Facilities."

S&H CODE 703 - RELOCATIONS WITHIN FREEWAYS - TYPES OF FACILITIES

Publicly owned utility facilities other than sewers, fire hydrants, and street lights:

Whenever relocation of such facilities is required, the State shall pay the cost of relocation, provided the facility was lawfully maintained and originally installed in its existing location prior to the public roadway becoming part of a State highway.

NOTE: An important critical control date for determining liability is the CTC freeway adoption date. The State highway alignment, including the local streets and roads within its boundaries, shall be considered a part of the State freeway from the CTC freeway adoption date forward.

Privately owned water facilities:
Whenever relocation of such facilities used solely to supply water is required, the State shall pay the cost of relocation, provided the water facility was lawfully maintained and originally installed in its existing location prior to the local street or road becoming a State highway.

Privately owned utility facilities other than water:

Whenever relocation of such facilities is required, the State must pay the cost of relocation provided:

1. The facility was lawfully maintained and originally installed in its existing location prior to the local street or road becoming part of a State highway.
2. The facility, as established by the Owner, is not under an express contractual obligation to relocate at the Owner's expense.

NOTE: The term "express contractual obligation" means a written obligation. Franchises dated after 1937 were generally written to comply with the State Franchise Act, which does spell out the obligation in writing.

Sewers, fire hydrants, and street lights:

Publicly owned sewers, publicly or privately-owned fire hydrants, and publicly or privately-owned street lighting structures that are required to relocate shall be relocated at State expense, regardless of maintenance or original date of installation in the local street or road.

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13.04.05.05 Section 704 – Subsequent Relocation

If the State requires an Owner to relocate any of their facilities within the freeway right of way more than once within a period of ten years, the State shall pay the cost of the second relocation and any subsequent relocation within the ten-year period. The ten-year period is interpreted as the date between completion of the original relocation to the beginning of construction on the subsequent relocation. Each time a new relocation is accomplished, the ten-year period starts anew.

13.04.05.06 Section 705 - Allowable Credit on Relocation

In any case in which the State is required under the provisions of the S&H Code to pay the cost of rearranging, removing or relocating any facility, the State shall be entitled to credits as shown in "S&H Code Section 705 - Allowable Credits."

S&H CODE SECTION 705 - ALLOWABLE CREDITS

Betterment Credit

The State should only pay for a functional equivalent replacement of the impacted utility facility. Any increase in the size or capacity of the facility that is for the Owner's benefit is considered the Owner's betterment. The State shall receive a credit for the difference between the cost of the functional replacement of the original facility and the cost of the facility as constructed.

There are exceptions to the general rule. However, any betterments that result in increased capacity or more desirable placement that the Owner may claim to be at State's expense must be carefully reviewed. In the following instances, betterment may, at the State's discretion, be accepted as part of the State's liability:

1. Required by the highway project.
2. Replacement devices or materials that are of equivalent standards although not identical.
3. Replacement of devices or materials no longer regularly manufactured with next higher grade or size.
4. Required by State or Federal law or regulation.
5. Required by current design practices regularly followed by the Owner in their own work, but only if there is a direct benefit to the highway project.

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Betterment Credit (Continued)

The Utility Coordinator is responsible to determine the overall scope of the betterment, and Audits is responsible to verify accuracy of the Owner's calculation. Usually, betterment issues must be discussed with Headquarters R/W before final resolution.

Betterment is normally measured by an increase in size or capacity such as a larger pipe, a greater number of telephone circuits, additional conduits, or a higher capacity power line. A betterment credit is not limited to the cost of materials but must include all increased costs of engineering and installing the betterment facilities. Examples of some extra costs may be additional engineering, special construction methods, and increased overhead.

Salvage Credit

When relocation is required, the State shall be given credit for the value of any materials from the old facility that the Owner removes and/or retains from the construction project. Generally, such material is either reconditioned and returned to stock or sold as scrap. Under PUC accounting regulations, Utility Owners shall provide a credit based on the original cost.

The State is entitled to a credit for each item of material returned to stock at its current inventory price less depreciation and less cost of reconditioning. The State is also entitled to a credit in the amount of the sales price or, if not sold at the time of billing, the estimated value for materials sold or to be sold as scrap or junk.

The amount of credit the State is entitled to is directly related to the percentage of liability the State pays on the Utility Agreement. (i.e., If the liability percentage is 100% State, State will receive full salvage credit. If the liability percentage is 50% State, State will receive 50% of the salvage credit.)

The Owner must be made aware that the State will not participate in the cost of removing a facility where the cost is greater than its salvage value unless it has to be removed for safety or aesthetic reasons. See Section 13.04.07.09 for additional discussions of removal of hazardous material.

Accrued Depreciation Credit

The State shall receive credit for accrued depreciation on the old facilities whenever the relocation of a facility is required. Where there are no replacement facilities, such as for abandoned facilities, credit for depreciation shall not be taken.

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Accrued Depreciation Credit (Continued)

Accrued depreciation credit is an allowance for the value of expired service life. Expired service life is that portion of a facility's useful life for which the Owner has received a return on their investment or benefit of service.

The credit given shall be based on straight line depreciation computed on original installed cost, age of facility and normal expected life as reflected in the Owner's books or calculated by industry standards. For example:

$$\text{Credit} = \frac{\text{Age of Facility}}{\text{Normal Expected Life}} \text{ (Original Cost)}$$

The amount of credit the State is entitled to is directly related to the percentage of liability the State pays on the Utility Agreement. (i.e., If the liability percentage is 100% State, State will receive full accrued depreciation credit. If the liability percentage is 50% State, State will receive 50% of the accrued depreciation credit.)

Following are special conditions for handling accrued depreciation credits for publicly owned sewers and private oil company facilities:

1. Publicly owned sewers - The State is not entitled to receive a credit for accrued depreciation on relocations of publicly owned sewers.
2. Private oil companies - The State is to receive a credit for depreciation on noncommon carrier (nonpublic utility) longitudinal facilities owned by oil companies. The State has historically calculated accrued depreciation credit on the following basis:
   - Straight-line depreciation, as with other Utility Owners, except the normal expected life will always be 40 years, as previously agreed to by the State and the oil companies. In other words, only for the purpose of calculating accrued depreciation credits, the subject oil facility will always have a normal expected life of 40 years.
   - Credit is not to exceed 70 percent of the original installation cost.
   - When no accrued depreciation credit is provided, or the credit supplied is zero, the Owner must supply proof of the remaining service life of the facility and a written certificate from the Owner's comptroller or chief accountant stating that no part of the replacement facility will be capitalized or depreciated. (See Section 13.07.06.02.)

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13.04.05.07 Section 707.5 - Contracts with Utilities; Freeway Master Contracts

Statutes provide that the State and any Owner, as defined in S&H Code Section 700, may enter into a contract providing for pro rata liability for the costs for affected utility facilities.

(See Section 13.04.03.00 for further information on Master Contracts.)

13.04.06.00 Water Codes

Water Code Sections 7034 and 7035 were enacted to cover liability for existing bridges and water conduits lying within the existing right of way for crossings of either freeways or conventional highways. Conduits include canals, ditches, culverts, pipelines, flumes, or other facilities for conducting water. "Bridge" means a structure constructed to allow the conducting of water underneath by canal, ditch, flume or other uncovered facility for conducting water.

If a conduit is relocated or replaced pursuant to Section 7034 or 7035, the State is not entitled to credit for depreciation, but will be entitled to credits for betterments and salvage. The State shall only be responsible for replacement in kind, e.g., same size and type.

Application of Section 7034 or 7035 is not to be considered where the conduit is located longitudinally in the highway. Where the facts of a situation fall within both sections, Section 7034 will be applied. Sections 7034 and 7035 are not to be used if the Owner of the facility has some form of property right, such as fee title or easement.

When the Utility Company cannot provide information showing the facility predated the highway, the Utility Coordinator may have to make some additional verification efforts. The Utility Coordinator should refer to old Departmental as-builts, old subdivision maps, old title reports, or old aerial or other historical photographs. The Utility Coordinator should also discuss the existing facility with District Maintenance to determine if the Department has ever performed maintenance acts that may tie the Department to liability for the relocation.

The determination of liability under the Water Code requires the completion of Form RW 13-19.

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13.04.06.01 Section 7034

Section 7034 provides that the bridge or conduit will become the sole responsibility of the county (or the State where the county road has subsequently become a State highway) where it has been or will be placed across county roads, if:

- The facility has been constructed in a permanent manner and constructed or brought up to county standards.

- The facility has been accepted either formally or informally by the county.

Acceptance is defined as:

- **Formal acceptance** - Formal acceptance means the County Board of Supervisors has taken appropriate action, usually in the form of a motion or resolution.

- **Informal acceptance** - While the meaning of informal acceptance (action) is not free from doubt, evidence of the act or acts by the county exercising jurisdiction over the conduit or bridge and indicating an intent on the part of the county to take over the facility, such as periodic acts of maintenance or substantial repairs or replacement, represent informal acceptance of the facility.

If both of the above requirements are fulfilled, the bridge or conduit becomes the sole responsibility of the county or the State if the county road has subsequently become a State highway. The State is obligated to structurally maintain, repair, improve for the benefit of the county or the State, reconstruct, or replace such bridge or conduit. The Owner shall be responsible for keeping the conduit clean and free from obstruction and debris to ensure the free passage of water in the conduit. (See Utility Clause V-10 in Section 13.07.03.05 for specific utility clause language.)

In a relocation under Section 7034, a JUA or CCUA should not be issued to the Owner as this implies the Owner had prior rights. The Utility Owner would remain under an encroachment permit.

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13.04.06.02 Section 7035

The effect of Section 7035 is to establish responsibility for relocation costs when an existing conduit (but not a bridge) crosses the highway without evidence of prior rights and the State's records of its right of way do not establish a superior right. Section 7035, where applicable, establishes a conclusive presumption of prior rights in the conduit Owner. Use Section 7035 only if some other form of prior rights cannot be established. This law also requires the replaced or reconstructed conduit resulting from a State-initiated project to become the State's responsibility for future repairs, relocation, replacement and structural maintenance similar to that required by Section 7034. This applies only to the conduit portion of Owner's facilities that lie within the State highway right of way and does not apply if such repair or replacement is necessary by negligent or wrongful acts of the Owner.

In addition, the Owner shall be responsible for keeping the conduit clean and free from obstructions and debris to ensure the free passage of water in the conduit. (See Utility Clause V-10 in Section 13.07.03.05 for specific utility clause language.) In no event is the State to accept responsibility for maintenance of the conduit, such as cleaning out dirt or silt.

The issuance of a JUA or CCUA is appropriate for a relocation under Water Code Section 7035.

Special clauses in the JUA/CCUA may be appropriate (see Sections 13.07.03.05 and 13.11.05.01).

13.04.07.00 Special Liability Issues

There are numerous types of miscellaneous costs for which the Owner may or may not be reimbursed that do not directly relate to a single authorizing statute. Liability for reimbursement of such costs is determined by previous legal interpretation or judicial ruling of existing utility relocation law and from nonutility related statutes. Unique costs must be cleared with Headquarters R/W before entering into an agreement requiring State reimbursement of such unique costs.

13.04.07.01 Interest During Construction

State utility regulations permit Utility Owners to be reimbursed for interest expenses on funds used or borrowed for use during construction as a cost of construction (also known as Allowance on Funds Used During Construction or

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AFUDC). The California PUC has accepted these regulations as being applicable to State-ordered relocation work. Final reimbursement of interest charges is conditioned on Audit approval. In general, interest is allowed only where unreimbursed completed work is substantial, the facility has not yet been put back into service, and the Owner is using monthly or quarterly progress billing to minimize outstanding reimbursable costs. These interest expenses are not Federal-aid reimbursable. (See also Sections 13.07.03.04 IV-3 and 13.14.08.01.)

13.04.07.02 Contributions in Aid of Construction (CIAC)/ Income Tax Component of Contributions and Advances (ITCCA)

Utility billings for reimbursement of relocation expenses pursuant to a Utility Agreement are not subject to CIAC/ITCCA and will not be paid. This also includes Local Public Agency (LPA) projects, but not private developer initiated, or privately funded projects.

In December of 2017 Congress passed a new tax bill, known as the House of Representatives (H.R.)1 Tax Cuts and Jobs Act of 2017. It is the responsibility of the Internal Revenue Service (IRS) to provide guidance on tax law. As of this publishing the IRS has not issued guidance via a Bulletin on H.R. 1 Tax Cuts and Jobs Act of 2017. The Department will continue to follow the guidance provided in Bulletin 1987-51.

Furthermore, the California Public Utilities Commission (CPUC) has issued a letter in January 2019, that provides guidance on this tax issue to a California utility company. In summary, the letter states that a governmental agency is exempt from the tax because it is a benefit of the public at large.

In addition, the Federal Highway Administration (FHWA) has provided guidance that in summary, the federal income tax that was paid by the utility is not eligible for federal reimbursement with Federal-aid Highway funds; i.e. Federal funds may not be used to reimburse CICA/ITCCA.

If the Utility Coordinator receives an estimate or bill including this charge, immediately dispute, return it to the Owner and direct them to remove it and resubmit the bill.

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13.04.07.03 Clearance of Highway Adjunct Properties

On occasion, the State acquires separate properties for the purpose of fulfilling a highway construction or operational need, such as roadside rests, park-and-ride lots, weigh stations, and mitigation parcels. Relocation of utility facilities on these properties follows the same laws and rules applicable to the highway project for which these adjunct sites were acquired. This means that a park-and-ride lot in support of a freeway follows laws and rules applicable to freeways. See Section 13.04.03.02, Application of Master Contracts.

13.04.07.04 Extraordinary Relocation Costs

The State normally pays its pro rata share of all reasonable and necessary utility relocation costs. The State generally does not accept total responsibility for a unique item of cost merely on the basis that the Owner would not have incurred the extra cost except for the State-ordered relocation. Some of the more frequent examples are discussed below. Other less frequently occurring examples may be found in the Utility Reference File.

- **Clearing and grubbing of new right of way** - Where possible, utility relocations are coordinated with the highway construction project so the utility relocation may take place after the highway contractor has cleared the new right of way. If this delayed relocation is not feasible, the utility work may have to proceed in advance. The State is not liable for the additional cost beyond its usual pro rata share.

- **Owner's overtime costs** - If the State fails to provide a reasonable time frame for the Owner to complete necessary relocation activities without incurring highway construction contractor delay costs, the State may be liable for the additional expense. The District Utility Coordinator may authorize State-paid labor overtime upon approval by the HQ Utility Liaison. The authorization should be made a part of the Notice and clearly state the necessity for such extraordinary costs. Whether or not the State is responsible for a pro rata portion of the relocation costs, the State's specific liability for the cost of overtime is limited to the difference between the premium wage and the regular wage. The District Utility Coordinator should not request HQ's approval for payment of labor overtime simply because of the Owner's lack of planning or scheduling. This additional cost is not Federal-aid reimbursable.

- **Wasted work** - Sometimes as a result of a change in design or construction change order, completed relocation work has to be redone. The State is liable for all such wasted relocation work regardless of the initial liability

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proration (see Section 13.09.04.00). The cost of such wasted relocation work is not Federal-aid reimbursable.

- **Hazardous waste costs** - Should the Owner incur extra costs due to the removal or disposal of hazardous waste, the State, at a minimum, pays its pro rata share of the extra costs. If hazardous waste is encountered within the project limits, the spoils and associated handling costs are dealt with in the same manner and liability as project construction hazardous waste costs. The extra costs incurred for hazardous waste found outside the project right of way, such as on local streets beyond project construction, are reimbursed in accordance with the State's pro rata liability in the same manner as for any other type of extraordinary construction costs associated with utility relocations. (See Section 13.01.02.05.) (Refer to the Freeway Master Contract for details of handling hazardous materials and their associated costs on freeway projects for those Owners who have a current Freeway Master Contract.) The cost of hazardous waste removal is Federal-aid reimbursable.

13.04.07.05 Delayed or Canceled Projects

Owners are required by law to relocate their facilities in compliance with an issued Notice. If such a required relocation is completed in part or totally at the Owner's expense, and the project is subsequently canceled by the CTC's official action, the Owner shall be entitled to reimbursement of their wasted work costs. A utility agreement shall be executed for the reimbursement. If the project is merely delayed, even for what appears to be an indefinite period of time, reimbursement is not required so long as the project remains on the State's program for future construction. Headquarters R/W prior approval shall be obtained before obligating the State to any reimbursement of this type. If HQ R/W approves the State's reimbursement of these costs, the Utility Coordinator must ensure the costs are not billed to FHWA, as they are not Federal-aid reimbursable.

13.04.07.06 Future Maintenance of Water Conduits

The State shall not accept liability to maintain the interior of a water conduit, such as silt removal, on the basis of a claim that the conversion or extension of an existing open ditch to a conduit has increased the Owner's operating costs. Even though the State may have placed the conduit and is thus becoming the owner of it, the water provider shall be responsible for all maintenance associated with the product conveyance.

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On the basis of a factual, non-speculative showing that there are additional real costs arising out of the State-caused relocation, the State may be liable for some of the additional new costs. Compensation must be based on the present worth of the future labor and equipment costs that are shown to substantially exceed current maintenance costs for open ditch maintenance. This same premise may be applied to other similar situations that may cause increased costs associated with a major change to an existing facility, such as the addition of a sewer lift pump. HQ R/W prior approval should be obtained before entering into any Utility Agreement obligating the State to these types of costs.

13.04.07.07 Loss of Plant, Investment, or Business

The State is required by law to physically replace the utility facility in the same functionally equivalent state of operation in the after condition as it was before. Relocation costs, therefore, do not include the cost of abandoned property, loss of income resulting from loss of customers, loss of revenue due to temporary shutdowns, or for any other form of consequential damages.

13.04.07.08 Undergrounding

When a project conflict exists, and the State must relocate an existing aerial utility facility, the State cannot pay any portion of the undergrounding costs unless the undergrounding is based on an engineering need for the State's project or is the most cost effective as determined by the Project Development Team (PDT). Undergrounding requirements as established by local government for aesthetic purposes (Rule 20) are not binding upon the State. **The State does not participate in Rule 20.** The State is only obligated to pay for replacement of the functional utility that previously existed. If the State determines undergrounding is necessary for engineering reasons or is the most cost-effective option for relocation, only then are these costs Federal-aid reimbursable.

When the State/Local Public Agency (LPA) requires undergrounding per the requirements above, clause II-13 must be used.

When a Local Agency chooses to pay for undergrounding not necessary for the project, clause II-14 must be used.

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Example:

Overhead costs for relocation = $100,000.00
Liability split is 50/50 (State pays $50,000.00 and Utility Company pays $50,000.00)

Undergrounding cost = $200,000.00
State pays $150,000.00 and Utility Company pays $50,000.00

NOTE: *The Utility Company is still liable for the cost that would have incurred if the facilities were relocated above ground. It is important to remember the proration of cost is directly dependent on the liability, and liability is determined by the property rights of the Utility Companies at the time of the original installation. The $50,000.00 would show up on the invoice as an Allowance for Conversion (AFC). Salvage credit will be addressed in Section IV Payment for Work clauses, if applicable.*

13.04.07.09 Abandonment or Removal Costs

Costs for removal or abandonment of existing utility facilities are reimbursable provided the removal or abandonment is necessitated by the highway project, required for aesthetic or safety reasons, or contains hazardous material that cannot safely remain. In many cases, it may be feasible to abandon the existing utility facilities in place if the existing facilities will not conflict with the proposed highway project. Abandonment of underground facilities containing hazardous material, e.g., asbestos and lead, should be discussed with Region/District Environmental. If removal is required, the State will reimburse Owner for normal pro rata costs for removal effort only.

In cases where there is no need to remove the existing utility facilities but the Owner elects to proceed with the removal, the State shall not pay any removal costs above the salvage value of recovered materials credited to the project.

NOTE: The vacancy or demolition/removal of an improvement with a gas meter is not a utility relocation as this is a Service line. The removal date must be coordinated with RW Real Property Services.

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13.04.07.10 Additional Spare Ducts for Underground Conversion of Aerial Telephone Facilities

A long-term understanding with telephone Owners provides that the State will reimburse additional duct costs for State-ordered conversion of non-fiber-optic aerial facilities to underground. This was based on the premise that typical aerial installation was constructed to provide for a minimum capability to install four cables even if fewer were initially installed. Therefore, whenever non-fiber-optic aerial facilities are ordered to be converted to a like-form underground installation, the following table is used as a basis for allowed State reimbursement.

Number of Existing Cables	Number of Replacement Ducts
1	4
2	4
3	4
4	6
5	7
6	8
7	9
8	10

If the existing facilities to be placed underground are fiber-optic, the State will only reimburse for duct installations on the basis of the number of ducts needed to replace the existing telephone capability plus one spare duct.

NOTE: FHWA will only reimburse on the basis of providing one spare duct regardless of the type of existing facility.

13.04.07.11 Disruption of Service Facilities

Service facilities that are located on the property being served are usually there by permission of the property owner as a requirement for receiving utility service. The State in acquiring the property being served may, as the new property owner, revoke the owner's permission for occupancy and thus require the service facilities to be removed or abandoned.

If some portion of the impacted property remains in private ownership with a continuing need for utility service or provides current service to other remaining properties, the State is liable for whatever facility adjustments may be necessary. Other than removal of portions of the severed facilities for safety reasons, which is handled by Notice and Agreement, all other utility

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adjustment costs are treated as cost-to-cure damages in the acquisition of the impacted parcel.

13.04.07.12 Storage Fees

Material storage fees are reimbursable per 23 CFR 645.117 - "Cost development and reimbursement. (e)Material and supply costs (4)."

13.04.08.00 Liability in Dispute

Unlike right of way acquisition, there is no administrative settlement process to resolve disputes in utility relocations because liability issues are largely based on a factual determination of what is required to produce a functional replacement for the impacted facility and who has the superior right.

The preferred method of resolution is to mutually agree on how to handle a particular situation and what the liability should be. As the Owner's areas of operation may encompass other districts or the situation may reoccur with another Owner, a statewide resolution of the problem is essential. This may require Legal, as well as Headquarters R/W, work with the district toward its resolution.

Litigation is normally used where a large cost is involved, or a significant legal premise is at stake. The decision to proceed to litigation depends heavily on Legal's input as well as Right of Way functional needs.

A compromise settlement should only be used for a low-cost situation or a very specialized issue that, in the district's opinion with Headquarters R/W concurrence, is not apt to reoccur or set a bad precedent. The Utility Coordinator, with the concurrence of the DDC-R/W, develops a proposed settlement and sends it to Headquarters R/W for approval. HQ R/W will obtain concurrence by Legal, when necessary, and will return the settlement to the District Utility Coordinator with a letter of approval or denial.

13.04.08.01 Agreement to Disagree

The resolution of the dispute may be too time consuming to be accomplished and still meet project dates. The Utility Coordinator should attempt an "agree-to-disagree" understanding with Owner. With the Owner's concurrence, the Notice may be issued using "liability in dispute" as the liability statement in the Notice. All Agreements issued in this manner require HQ R/W approval prior to issuance.

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If the Owner does not concur with the issuance of a Notice on this basis, the provision of S&H Code 706 must be enforced. This requires the State to advance a deposit to cover the disputed cost of the work, and, when so advanced, the Owner is obligated to complete the utility relocation as ordered. State's deposit shall not include the cost of any Owner-initiated betterments. A special agreement is required (see Exhibit 13-EX-17) to cover the advanced funds. Advanced funds require specific handling requirements and special accounting coding. See Sections 13.01.02.10, 13.07.03.04 (IV-4), and 13.10.03.00. When funds are advanced, the Utility Coordinator must work proactively to ensure an accurate accounting for work progress and continue to work toward ultimate resolution of the dispute.

13.04.08.02 Liability in Dispute - Master Contract

On Freeway projects where there is a Master Contract between the Owner and the State and liability is in dispute, the liability statement on the Notice to owner should state "Liability per Freeway Master Contract, dated _____, is in dispute."

13.04.09.00 Processing Approved Liability Package

Once liability is approved, either by Headquarters R/W or the authorized district representative, the Utility Coordinator prepares a cover letter to the Owner transmitting the Notice to Owner, Encroachment Permit, and Utility Agreement (if required). See Exhibit 13-EX-13 for elements of the transmittal letter.

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13.05.00.00 - REPORT OF INVESTIGATION

13.05.01.00 General

The Report of Investigation (Form RW 13-3) documents facts and circumstances that support the liability determination. All information, documentation, and analysis supporting the liability determination for the required relocation must be included in the Report. The Report of Investigation (ROI) must be prepared and approved before the district obligates the State for the cost of relocation. An ROI is not required for a relocation that is 100% Owner liability if the Utility Coordinator has a claim letter from the Owner acknowledging 100% liability. The Report of Investigation package (sometimes referred to as the "Liability Package") includes the following mandatory items. Additional supporting documentation may be included as deemed necessary by the Utility Reviewer to support the determination.

A. Original, signed Report of Investigation (Form RW 13-3).

B. Owner's estimate of cost of work to be done.

C. Color-coded ROI plan showing work to be done, or a copy of the Approved Relocation Plan.

D. Copy of the Owner's claim letter.

E. Copy of the Owner's documents that support their prior and/or superior rights claim.

F. Copy of the proposed Notice to Owner.

G. Copy of the proposed Utility Agreement.

H. Copy of the E-76, if federal reimbursement will be used.

I. The Request for FHWA Specific Authorization, if federal reimbursement will be used.

J. Proposed special provisions, if applicable.

Instructions for filling out the Report of Investigation are included with Form RW 13-3.

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13.05.02.00 Owner's Estimate of Cost

The Owner's estimate of cost serves the following purposes:

- The estimate details, along with the proposed utility relocation plan, allow a preconstruction determination of reasonableness of the planned functional replacement for the impacted utility facility.
- It provides support for FHWA Specific Authorization.
- It provides an amount to be used for encumbering capital dollars for utility work.
- It becomes a contract pay amount for lump-sum agreements.

13.05.02.01 Standard Estimate Format

The standard estimate format (Exhibit 13-EX-21) must contain the following elements:

A. Cost of labor.

B. Cost of materials (include a list of major items).

C. Cost of transportation and equipment.

D. Cost of contracted out work.

E. Cost of overhead (include a list of major components).

F. Cost of new right of way (if required).

G. Credits due the State shown separately for betterment, depreciation, and salvage.

H. Percentage and dollar amount of the State's liability.

Each item above must be shown on the estimate. If an item does not apply, it still must be listed with a zero in the cost column. The same format is used for lump-sum estimates, except all costs must be itemized and detailed by category, e.g., labor by number of hours and dollars, materials by quantity and dollars, etc.

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The cost estimate for work to be performed or paid for by the Owner must come from the Owner. If the Owner uses broad-gauge units in their estimates, e.g., a per-pole or per-meter cost factor, the broad-gauge units may be substituted for the cost of labor, material, and transportation and equipment (Items A, B, and C above). The Owner must provide a statement about the methodology used in arriving at the broad-gauge unit cost, e.g., "based on costs incurred at a recently completed similarly scoped project." Right of way costs, credits, and the State's liability must still be listed separately.

If for timing reasons it is not possible to obtain an adequate estimate from the Owner, the Utility Coordinator may prepare an estimate based on the Owner's plan using the Owner's current cost data from similar utility relocation work. Justification for district-prepared estimates must be in the file. District-prepared estimates shall not be used as a basis for lump-sum agreements. The Utility Coordinator should ensure an Owner's prepared estimate is received as soon as possible, normally within 30-45 days of issuing a District-prepared estimate.

13.05.02.02 Preaward Evaluation

Audits no longer requires preaward evaluations. However, the Region/District may request a preaward evaluation if there is a high priority utility owner.

The Region/District is responsible to carefully review the estimate to ensure it is fully detailed, is reasonable, contains all of the elements required in Section 13.05.02.01, and complies with Departmental policy.

13.05.03.00 ROI Plan

The ROI plan is crucial not only to liability determination, but also to the engineer's ability to determine that the relocation clears project construction. It shows who owns what and shows the before and after location of improvements and property rights. The plan also provides a visual picture of what the estimate is based on, thus allowing a quick check of the reasonableness of various measurements and quantities listed in the estimate.

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13.05.03.01 ROI Plan Requirements

A color-coded or an Approved Relocation Plan shall be included with every liability package. The plan must accurately and clearly plot the following elements:

A. Existing and proposed right of way lines.

B. Existing and proposed access control lines (if applicable).

C. Existing and proposed highway centerline.

D. Existing and proposed utility facility features: location, subsurface depth (if applicable), type, size, length, access points, and encasement (if applicable).

E. Owner's easements or other claimed prior right areas.

F. Proposed property rights the State is to supply (if applicable).

G. Highway geometric features, if the relocation is related to them.

H. Legend and title block.

13.05.04.00 Lump-Sum Utility Agreements

To reduce the Owner's administrative and record keeping costs associated with documenting payment for completed work and to reduce postconstruction audits, the Department has adopted a federal provision (23 CFR 645.113) that allows lump-sum (also called flat-sum) payments for utility relocations. This procedure provides for reimbursement of relocation costs based on an Approved Relocation Plan and a detailed preconstruction estimate and should only be used where the utility adjustment can be clearly and accurately defined. If actual costs should vary from the accepted estimate, neither the Owner nor the State can adjust the agreed upon lump-sum payment amount. Savings to either party could be quickly offset by inaccuracies in the cost estimating process.

Lump-sum payments over $100,000 require review and approval by HQ R/W Utilities and require a preaward audit.

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The use of the lump-sum payment process shall only be authorized where:

- A detailed and itemized estimate has been provided by the Owner and the Utility Coordinator has verified the costs are complete, comprehensive, reasonable and in sufficient detail to give a clear picture of the work involved and the cost of individual items. (See Section 13.05.02.00.)

- A utility relocation plan is developed per requirements of Section 13.05.03.00 that clearly correlates with the detailed estimate.

- The lump-sum payment Utility Agreement, not to exceed $100,000, has the District Utility Coordinator's approval before it is transmitted to the Owner for execution.

An additional provision must be added to Clauses IV-8 and IV-9 when the lump-sum payment will exceed $25,000. (See Section 13.07.03.04.) This provision allows the State to perform an informal post audit of the Owner's costs to ascertain the reasonableness of lump-sum payments and thus judge the continued effectiveness of this type of reimbursement.

13.05.04.01 Lump-Sum Payments for Completing Positive Location Work

Where no positive location agreement exists with the Owner, and as an exception to the general requirement that a preconstruction estimate be obtained and approved before authorizing the work, the district is delegated authority to enter into a lump-sum agreement with an Owner for doing positive relocation work, without a preliminary detailed cost estimate from the Owner when:

- The preconstruction estimate of cost indicates it will not exceed $25,000 for the State's liability as documented in the district's files. (See Section 13.06.03.04 for additional expediting procedures.)

and

- A specific plan, approved by the Project Engineer or Utility Engineering Workgroup, is issued with the Notice showing the location of necessary positive location work.

and

- The district performs a review during the positive location operation to document the number of workers and pieces of equipment and the approximate on-the-job time for comparison with the bill when received.

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A lump-sum Utility Agreement for positive location work may also be necessary if the Owner has signed a Positive Location Agreement and requests to conduct their own positive location work. If their cost exceeds the per-hole cost of the current Positive Location Contract, the State will pay a lump sum per-hole rate at the Contract rate in effect at the time of issuance of the NTO. (See Section 13.03.03.01 for additional information.)

Owner's positive location work costs anticipated to exceed $25,000 for the State's liability shall be processed as directed in Section 13.05.04.00.

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13.06.00.00 - NOTICE TO OWNER

13.06.01.00 General

S&H Code Sections 673, 680, and 720 require that Owners be given formal notice to relocate, remove, abandon, protect, pothole, etc., their utility facilities to accommodate proposed State transportation projects. This Notice to Owner (Form RW 13-4) also sets forth a schedule for performing proposed utility relocation work and a statement of liability for the cost of relocation.

It is essential that the Notice reflects a true "meeting of the minds" between the Department and the Owner regarding the location and type of facility, the work that is being ordered, the schedule to accomplish it, and the liability for the cost of work. A "meeting of the minds" is necessary to prevent subsequent disagreements about the need for the work, scheduling, liability, etc., that may arise and delay the project. Since issuance of the Notice may obligate the State to pay for all or a portion of the cost of relocation, there must be a specific understanding of the required work to which the State is obligating itself.

A Notice is required when the State's contractor is doing facility adjustment and an executed Utility Agreement with the Owner has been obtained prior to R/W Certification. An Encroachment Permit is not required. See Sections 13.08.03.00 and 13.08.04.00.

13.06.01.01 Joint Facility Relocations

When two or more Utility Owners occupy or are relocating to joint poles or joint trenches, the relocation work normally cannot be performed concurrently. It must instead be performed sequentially. If, after the first Owner's work is completed, the last Owner to move does not have sufficient remaining time to perform work as ordered by the Notice, it would be very difficult to hold them responsible for right of way delays if the Department did not adequately coordinate the work of all Owners.

To be fair to all Owners involved and to ensure timely utility clearance of the project, the Utility Coordinator must establish the overall relocation time frame and the sequence of operations for each Owner involved in the joint relocation. The completion dates set out in each Notice must be specific to each Owner and be based on the overall coordinated schedules necessary to complete all work within the project clearance schedule.

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13.06.02.00 Preparation

The Utility Coordinator is responsible for preparing the Notice to Owner in accordance with the following guidelines:

- The Notice will be prepared only after the Utility Coordinator has received relocation plans and the Owner's estimate of cost and has determined liability. (See Sections 13.04.08.00 and 13.04.09.00, etc., for exceptions.)

- The Notice will be prepared and issued to the Owner with sufficient lead time to allow a reasonable relocation schedule. S&H Code Section 680 states, "The department shall specify in the demand a reasonable time within which the work of relocation shall be commenced." Failure to provide reasonable notice may jeopardize timely project certification or result in the State becoming liable for contractor delay caused by unresolved utility conflicts.

- The Notice should never state how the Owner is to perform the relocation work, such as: "Owner shall underground the relocated facility" or "Owner shall temporarily relocate their facilities." The details of the method and conduct of the relocation must be left to the Owner's discretion. Including requirements of this type in the Notice may obligate the State to reimburse the Owner for any additional costs associated with the work.

- A single Notice should be used covering each Owner's involvement on each project to the extent possible. Instructions for completing the Notice are included with Form RW 13-4.

  NOTE: An "involvement" is defined as the issuance of a Notice to Owner for a specific utility type on one project (EA). Multiple Notices are issued when an Owner operates multiple utility types, e.g., if a project has relocations for PG&E-Gas Transmission, PG&E-Gas Distribution and PG&E-Electric Distribution, on a single project (EA) it would require three (3) Notices to Owner, equaling three (3) involvements. Involvement also includes providing a separate Notice for positive location work.

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13.06.02.01 Storm Water Plans

Work within the State highway right of way shall be conducted in compliance with all applicable requirements of the National Pollutant Discharge Elimination System (NPDES) permit issued to the Department to govern the discharge of storm water and non-storm water from its properties. The permit requires the preparation, submission and approval of a Storm Water Pollution Prevention Plan (SWPPP) or a Water Pollution Control Program (WPCP) prior to the start of any work. (Information on these requirements may be reviewed at Construction's Storm Water site.

13.06.03.00 Processing

All Notices to Owner must be submitted with the Report of Investigation package (see Section 13.05.00.00). Upon approval of the Report of Investigation package, the Notice can be transmitted to the Owner.

When a Utility Agreement is needed for the required relocation work, it shall be transmitted to the Owner along with the Notice. Because the Notice may obligate the State to pay for portions of the work to be done, a completely prepared and encumbered Utility Agreement must also accompany the Notice.

An Encroachment Permit is required before the Owner can start work within the right of way. Owners are not to be charged permit fees for any State-ordered relocation work or for any work an Owner undertakes in a prior right area. The procedure for obtaining an encroachment permit is covered in the Encroachment Permits Manual, Section 621.

The letter transmitting the Notice, Encroachment Permit, and Utility Agreement (if required) must include the elements shown in Exhibit 13-EX-13.

To ensure all parties concerned with a utility relocation are notified, the Utility Coordinator must distribute copies as specified on the Notice form, along with any necessary plans and specifications.

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13.06.03.01 Utility Coordinator Responsibilities

The Utility Coordinator is responsible to coordinate all activities required to support the Notice to Owner. Duties performed generally consist of the following:

- Obtain an approved Encroachment Permit with the Notice for required work within the right of way.
- Follow up to ensure relocation is done by the date specified in the Notice.
- Coordinate with Construction for inspection of the Owner's relocation work.
- Coordinate preconstruction meetings with the project Resident Engineer, the Owner's representative, and the highway contractor on utility adjustments planned to take place after award of the highway contract.
- Resolve conflicts with newly discovered facilities in coordination with the project Resident Engineer.
- Obtain approval for all change-in-scope relocation work resulting from project changes and issue Revised Notices to Owner, when necessary.

13.06.03.02 Owner Responsibilities

The Owner is responsible for completing all work as specified in the Notice to Owner, Encroachment Permit, and Utility Agreement (if required). Upon receipt of Notice to Owner, the Owner shall have a minimum of 60 days to complete Owner's facilities rearrangement, unless the Owner agrees to a shorter time frame. If the Owner agrees to a shorter time frame, this agreement must be documented in the Utility File/Diary. Failure to comply with terms of the Notice may potentially subject the Owner to payments for resulting construction delays.

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13.06.03.03 Construction Responsibilities

District Construction is responsible for monitoring the Owner's relocation of their facilities to ensure compliance with approved relocation plans. This is normally accomplished through assignment of a Resident Engineer to inspect the Owner's work. The inspector will monitor all utility relocation work and keep records for State reimbursed work in accordance with the Department's Construction Manual, Chapter 3, General Provisions, Section 3-809 Utility and Non-Highway Facilities.

The inspection has two major objectives:

- To ensure that all utility facility conflicts within the project limits are resolved.

- To observe and record the amount of labor, equipment, and materials used to accomplish State reimbursed work and to provide an estimate of the amount of materials removed for salvage. This is necessary to provide reasonable verification of the Owner's bills.

NOTE: Under no circumstances is Construction authorized to deviate from the approved plan of work as ordered in the Notice. Construction must have the District Utility Coordinator's authorization to proceed with any changes as any alterations in the Owner's work may change the State's liability obligation. See Sections 13.06.03.05 and 13.09.03.05 for information on revisions to/changes in planned work. If Construction authorizes a change and it improperly increases the State's liability, it could be considered a "gift of public funds."

13.06.03.04 Expedited Procedures for Positive Location Notices

To expedite Design requests for positive location of potentially impacted utility facilities, the district is authorized to issue the Notice to Owner without the usual requirements of first obtaining an estimate of cost and determining liability for these costs. This procedure should only be used where project scheduling is extremely tight and the Owner concurs with issuance of the Notice without an accompanying Utility Agreement. (See Section 13.05.04.02.)

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13.06.03.05 Revised Notices

The Notice to Owner is a legally binding order on the receiving Owner to adjust their facilities in a prescribed manner and time. As such, the issued Notice in effect must always agree with the latest plan for adjustment and ordered completion time. The standard Utility Agreement clauses provide that a revised Notice to Owner (Form RW 13-4R) shall be issued whenever there is a deviation from the agreed plan for adjustment of the facility or whenever the completion date is changed. It may also be necessary to issue a revised Utility Agreement. These changes are comparable to construction change orders and are crucial to establishing a legally binding understanding with the Owner.

To ensure federal participation in the additional expenditures, a supplemental FHWA Specific Authorization (Form RW 13-15) will be required and the E-76 estimate of cost may have to be increased. (See Section 13.14.00.00.)

13.06.03.06 Notices Issued with Liability in Dispute

A Notice issued with liability in dispute requires HQ R/W approval prior to being sent to the Owner. See Sections 13.04.09.00, 13.04.09.01 and 13.04.09.02 for additional information.

When a Notice is issued for a freeway project with liability in dispute (pursuant to Section 13.04.09.00), there are two liability statements that can be used in the Notice. They are:

- Liability is in dispute.
- Liability per Freeway Master Contract, dated xx/xx/xxxx, is in dispute.

The latter liability statement is used in lieu of "Liability is in dispute" as liability for Owners with Master Contracts is normally resolved based on one or more sections of the Contract.

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13.07.00.00 - UTILITY AGREEMENTS

13.07.01.00 General

Pursuant to State Administrative Manual 8300, et seq., and S&H Code Division 1, Chapter 1, Article 3, Section 94, the State and the Utility Owner must enter into a Utility Agreement (Form RW 13-5) whenever the State is paying or receiving payment for all or a portion of the cost of relocation of a utility facility, regardless of who performs the work. The number assigned to each Utility Agreement shall be the same number assigned to the corresponding Notice to Owner covering the same facilities. Each Utility Agreement must be submitted with the Report of Investigation package (see Section 13.05.01.00).

13.07.02.00 Circumstances Requiring a Utility Agreement

The State must prepare a Utility Agreement for each facility being relocated or adjusted by the Utility Owner or its contractor with State reimbursement of the cost or being relocated or adjusted by the State's contractor, regardless of who is responsible for the cost. The Utility Coordinator is responsible for preparing the Utility Agreement.

A single Agreement is used for each Owner's involvement on a single construction project to the extent possible. Separate Agreements may be necessary for individual purposes such as design, advance of funds, or physical relocation(s).

Instructions for completing the Utility Agreement are found with Form RW 13-5.

NOTE: An "involvement" is defined as the issuance of a Notice to Owner to a Utility Owner for a specific utility type on one project (EA). For example, if a project has relocations for PG&E-Gas Transmission, PG&E-Gas Distribution, and PG&E-Electric Distribution, it would require three (3) Notices to Owner, equaling three (3) involvements. An involvement also includes a Notice for Positive Location (potholing) for each specific utility type.

13.07.03.00 Standard Clauses

The clauses in the following sections have been standardized and shall be used whenever possible. Use of these standard clauses will reduce errors and omissions as well as save preparation, review, and approval time as the clauses have been reviewed and approved by most major Utility Owners and

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Department's Headquarters Legal Division. The following standard clauses are numbered for ease of reference. The Utility Coordinator preparing the Utility Agreement selects the appropriate clause(s) to be used.

On projects where, Federal reimbursement will be sought, additional information is necessary on the FHWA Specific Authorization (Form RW 13-15). See Section 13.14.04.00 for specific wording requirements.

From time to time, it may be necessary to change the standard clauses to fit a specific Project, Owner, or Local Public Agency need. To ensure compliance with Federal Regulations, State Statutes, and Departmental Policies, approval of any non-standard clause is to be approved by Headquarters Division of Right of Way Office of Utility Relocations and Headquarters Legal Division. When seeking such approval please submit the request as directed by the memo dated July 11, 2019 titled "Process to Gain Approval of Non-Standard Utility Agreement Clauses". All Local Agencies shall send the request to the District Utility Coordinator for processing. Please allow up to 45 working days for review and approval.

13.07.03.01 Section I. Work to Be Done:

I-1. Work Performed by Owner per Owner's Plan:

"In accordance with Notice to Owner No. _____ dated _____, OWNER shall _____. All work shall be performed substantially in accordance with OWNER's Plan No. _____ dated _____ consisting of _____ sheets, a copy of which is on file in the District office of the Department of Transportation at _____. Deviations from the OWNER's plan described above initiated by either the STATE or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the STATE and agreed to/acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner."

NOTE: Significant changes in previously approved plans and estimates require a revised FHWA Specific Authorization (Form RW 13-15).

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I-2. Work Performed by State's Contractor per State's Plans:

"In accordance with Notice to Owner No. _____ dated _____, STATE shall relocate OWNER's _____ as shown on STATE's contract plans for the improvement of State Route _____, EA _____ which by this reference are made a part hereof. OWNER hereby acknowledges review of STATE's plans for work and agrees to the construction in the manner proposed. Deviations from the plan described above initiated by either the STATE or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the STATE and agreed to/acknowledged by the OWNER, will constitute an approved revision of the plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner. OWNER shall have the right to inspect the work during construction. Upon completion of the work by STATE, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to STATE ownership of the replaced facilities, except in the case of liability determined pursuant to Water Code 7034 or 7035."

NOTES:

(1) In the event the Owner wants to retain ownership of their old facilities removed by the State's highway construction contractor, a clause stating this fact must be included in the "Special Provisions" portion of the State's highway construction contract. Otherwise, the "Standard Specifications" of the contract will award all salvaged material to the State's contractor. If the Owner wants to retain ownership of the replaced facility, the Clause above must be modified to delete "and relinquishes to STATE ownership of the replaced facility."

(2) Whenever liability is determined pursuant to Water Code Section 7034 or 7035, Standard Clauses V-10a or V-10b shall then be added to the Utility Agreement.

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I-3. Work Performed by State's Contractor per Owner's Plan:

"In accordance with Notice to Owner No. _____ dated _____, STATE shall relocate OWNER's _____ as shown on OWNER's Plan No. _____ dated _____, which plans are included in STATE's Contract Plans for the improvement of State Route _____, EA _____ which, by this reference, are made a part hereof. Deviations from the OWNER's plan described above initiated by either the STATE or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the STATE and agreed to/acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner. OWNER shall have the right to inspect the work by STATE's contractor during construction. Upon completion of the work by STATE, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to STATE ownership of the replaced facilities, except in the case of liability determined pursuant to Water Code 7034 or 7035."

NOTE: See NOTES under Clause I-2.

I-4. Work Performed by Both Owner and State's Contractor per Owner's Plan:

"In accordance with Notice to Owner No. _____ dated _____, OWNER shall _____. All work shall be performed substantially in accordance with OWNER's Plan No. _____ dated _____ consisting of _____ sheets, a copy of which is on file in the District office of the Department of Transportation at _____."

"Deviations from the OWNER's plan described above initiated by either the STATE or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the STATE and agreed to/acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by the OWNER of

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the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner."

"It is mutually agreed that the STATE will include the work of _____ as part of the STATE's highway construction contract. OWNER shall have access to all phases of the work to be performed by the STATE for the purpose of inspection to ensure that the work being performed for the OWNER is in accordance with the specifications contained in the highway contract. Upon completion of the work performed by STATE, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to STATE ownership of the replaced facilities, except in the case of liability determined pursuant to Water Code 7034 or 7035."

NOTE: See NOTES under Clause I-2.

I-5. Preliminary Engineering by Utility Owner:

"In accordance with Notice to Owner No. _____ dated _____, OWNER shall prepare their relocation plans. Any revision to the OWNER's plan described above, after approval by the STATE, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the STATE and 13.07 - 2 (REV 7/2005) agreed to/acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No redesign or additional engineering, after approval by the STATE, shall commence prior to written execution by the OWNER of the Revised Notice to Owner and may require an amendment to this Agreement in addition to the revised Notice to Owner."

13.07.03.02 Section II. Liability for Work:

II-1. State's Expense - S&HC Section 702 or 703:

"The existing facilities are lawfully maintained in their present location and qualify for relocation at STATE expense under the provisions of Section (702) (703) of the Streets and Highways Code."

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II-2. State's Expense - S&HC 704:

"This is a second or subsequent relocation of existing facilities within a period of ten years; therefore, relocation is at STATE expense under the provisions of Section 704 of the Streets and Highways Code."

II-3. State's Expense - Superior Rights:

"Existing facilities are located in their present position pursuant to rights superior to those of the STATE and will be relocated at STATE expense."

II-4. State's Expense - Service Line on Private Property:

"The facilities are services installed and maintained on private property required for highway purposes and will be relocated at STATE expense."

II-5. State's Expense – Prescriptive Claims:

"The existing facilities are located in their present position pursuant to prescriptive claims prior and superior to those of the STATE and will be relocated at STATE expense."

II-6. Owner's Expense - Encroachment Permit:

"The existing facilities are located within the STATE's right of way under permit and will be relocated at OWNER's expense under the provisions of Section (673) (680) of the Streets and Highways Code."

II-7. Owner's Expense - Trespass:

"The existing facilities are located within the STATE's right of way in trespass and will be relocated at OWNER's expense."

II-8. State or Prorated Expense - Right of Way Contract:

"The existing facilities described in Section I above will be relocated (at STATE expense) (at _____% STATE expense and _____% OWNER expense) as set forth in Right of Way Contract No. _____ dated _____."

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II-9. State or Prorated Expense - Master Contract:

"The existing facilities described in Section I above will be relocated (at STATE expense) (at _____% STATE expense and _____% OWNER expense) in accordance with (Section _____ of the Master Contract dated _____.) (Sections _____ of the Master Contract dated _____ in accordance with the following proration: _____.)"

NOTE: Where liability for portions of the utility facility to be relocated will be based on different sections of the Master Contract, insert the equation used to develop the overall percentage of liability in the Utility Agreement in the space following the word "proration:."

II-10. Prorated Expense - No Master Contract:

"The existing facilities described in Section I above will be relocated at _____% STATE expense and _____% OWNER expense in accordance with the following proration: _____."

NOTE: Where liability for portions of the utility facility to be relocated will be based on different sections of the S&H Code or other government code, insert the equation used to develop the overall percentage of liability for the relocation in the space following the word "proration:."

II-11. PG&E Master Agreement - Potholing:

This section has been superseded by the Agreement for the Positive Location of Underground Facilities executed by PG&E dated January 3, 2002.

II-12. Liability in Dispute - Deposit is Not a Waiver of Rights:

"Ordered work described as _____ is in dispute under Section _____ of the Streets and Highways Code. That in signing this Agreement neither STATE nor OWNER shall diminish their position nor waive any of their rights nor does either party accept liability for the disputed work. STATE and OWNER reserve the right to have liability resolved by future negotiations or by an action in a court of competent jurisdiction."

NOTE: The appropriate Payment for Work clause (IV-1, 2, 8 or 9) must also be modified by inclusion of "after final liability determination and" immediately following "45 days."

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II-13 State/Local Public Agency (LPA) Requests Undergrounding - Engineering or Cost-Effective Option:

"The State has determined the best engineering and/or most cost-effective solution as determined by the Project Development Team (PDT) is to underground the existing utility facilities. Since undergrounding is at State's request, State will pay 100% of underground relocation cost less the percentage Owner would be responsible for under an aerial relocation in accordance with the liability determination."

II-14 Local Public Agency (LPA) Requests Undergrounding:

"LPA chooses to have the utility company relocate their facilities underground, unrelated to engineering necessity or documented cost effectiveness. The underground relocation work is not federally eligible for reimbursement, however, federal reimbursement will be allowed and limited to the cost of overhead relocation."

NOTE: When a Local Agency chooses to pay for undergrounding not necessary for the project, clause II-14 must be used.

13.07.03.03 Section III. Performance of Work:

III-1. Owner's Forces or Continuing Contractor Performs Work:

"OWNER agrees to perform the herein described work with its own forces or to cause the herein described work to be performed by the OWNER's contractor, employed by written contract on a continuing basis to perform work of this type, and to provide and furnish all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion."

III-2. Owner Performs Work by Competitive Bid Process:

"OWNER agrees to cause the herein described work to be performed by a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure, and to furnish or cause to be furnished all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion."

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III-3. State's Contractor Performs All or a Portion of Work:

"OWNER shall have access to all phases of the relocation work to be performed by STATE, as described in Section I above, for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the Highway Construction Contract; however, all questions regarding the work being performed will be directed to STATE's Resident Engineer for their evaluation and final disposition."

III-4. Owner to Hire Consulting Engineer:

"Engineering services for locating, making of surveys, preparation of plans, specifications, estimates, supervision, inspection, _____ (delete or add services as established by the Owner's Agreement with the consultant) are to be furnished by the consulting engineering firm of _____ on a fee basis previously approved by STATE. Cost principles for determining the reasonableness and allowability of consultant costs shall be determined in accordance with 48 CFR, Chapter 1, Subpart E, Part 31; 23 CFR, Chapter 1, Part 645; and 18 CFR, Chapter 1, Parts 101, 201 and OMB Circular A-87, as applicable."

NOTE:

(1) If the Utility Owner is not regulated by the Federal Energy Regulatory Commission (FERC), you may delete reference to 18 CFR.

(2) OMB Circular A-87 applies to local agencies and local governments.

III-5. Owner and State's Contractor Performs Work:

"OWNER agrees to perform the herein described work, excepting that work being performed by the STATE's highway contractor, with its own forces and to provide and furnish all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion."

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III-6. Travel Expenses and Per Diem: (Has been made as part of the mandatory language of the agreement)

"Use of personnel requiring lodging and meal 'per diem' expenses shall not exceed the per diem expense amounts allowed under the California Department of Human Resources travel expense guidelines. Accounting Form FA-1301 is to be completed and submitted for all non-State personnel travel per diem. Owner shall also include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed."

III-7. Prevailing Wage Requirements:

(a) "Work performed by OWNER's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements.

(b) Work performed directly by Owner's employees falls within the exception of Labor Code Section 1720(a)(1) and does not constitute a public work under Section 1720(a)(2) and is not subject to prevailing wages. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above."

III-8. Owner to Prepare Preliminary Engineering Plans:

"Engineering services for locating, making of surveys, preparation of plans, specifications, estimates, supervision, inspection, _____ (delete or add services as established with the Utility Owner) are to be furnished by the Utility Owner and approved by the STATE. Cost principles for determining the reasonableness and allowability of OWNER's costs shall be determined in accordance with 48 CFR, Chapter 1, Subpart E, Part 31; 23 CFR, Chapter 1, Part 645; and 18 CFR, Chapter 1, Parts 101, 201 and OMB Circular A-87, as applicable."

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13.07.03.04 Section IV. Payment for Work:

IV-1. Owner Operates Under PUC, FERC or FCC Rules:

"The STATE shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt of OWNER's itemized bill, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual and necessary cost and expense incurred and charged or allocated to said work in accordance with the uniform system of accounts prescribed for OWNER by the California Public Utilities Commission, Federal Energy Regulatory Commission or Federal Communications Commission, whichever is applicable.

It is understood and agreed that the STATE will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the STATE for the accrued depreciation of the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER."

NOTES:

(1) When a lump-sum payment method is to be used, substitute Clause IV-8 or IV-9 as appropriate for Clause IV-1 or IV-2 and IV-3.

(2) See Clause IV-10 for work being done by State's contractor.

(3) Accrued depreciation refers to the period of economic usefulness in a particular owner's operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the owner or the industry.

(4) See Section 13.07.06.02 for depreciation clause for Oil Companies.

(5) For "Liability in Dispute" Utility Agreements, add the wording "after final liability determination and" immediately following "45 days" on IV-1, 2, 8 or 9. See Note II-12 for cross reference.

IV-2. Owner Does Not Operate Under PUC, FERC or FCC Rules:

"The STATE shall pay its share of the actual and necessary cost of the herein described work within 45 days after receipt of OWNER's itemized bill, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual and necessary cost and expense. The OWNER shall maintain records of the actual costs incurred and charged or allocated to the project in accordance with recognized accounting principles.

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It is understood and agreed that the STATE will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the STATE for the accrued depreciation of the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER."

NOTES:

(1) Section 705 of the S&H Code states that "A credit allowance for age shall not be applied to publicly owned sewers." In these cases, the following words "... for the accrued depreciation of the replaced facilities and" shall be eliminated from the second paragraph above.

(2) See NOTES under Clause IV-1.

IV-3. For All Owners - Progress/Final Bills: (Has been made as part of the mandatory language of the agreement)

"Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit detailed itemized progress bills for costs incurred not to exceed OWNER's recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by STATE of documentation supporting the cost increase **and** after an Amendment to this Agreement has been executed by the parties to this Agreement."

"The OWNER shall submit a final bill to the STATE within 360 days after the completion of the work described in Section I above. If the STATE has not received a final bill within 360 days after notification of completion of OWNER's work described in Section I of this Agreement, and STATE has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements for OWNER's facilities (if required), STATE will provide written notification to OWNER of its intent to close its file within 30 days. OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If the STATE processes a final bill for payment more than 360 days after notification of completion of OWNER's work, payment of the late bill may be subject to allocation and/or approval by the California Transportation Commission."

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"The final billing shall be in the form of a detailed itemized statement of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the STATE shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER and approval of documentation by STATE. Except, if the final bill exceeds the OWNER's estimated costs solely as the result of a revised Notice to Owner as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation. In either case, payment of the amount over the estimated cost of this Agreement may be subject to allocation and/or approval by the California Transportation Commission."

"In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an Amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNER'S final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement shall have the prior concurrence of STATE."

"Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audit by State and/or Federal auditors. In performing work under this Agreement, OWNER agrees to comply with the Uniform System of Accounts for Public Utilities found at 18 CFR, Parts 101, 201, et al., to the extent they are applicable to OWNER doing work on the project that is the subject of this agreement, the contract cost principles and procedures as set forth in 48 CFR, Chapter 1, Subpart E, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and 2 CFR, Part 200, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse AGENCY upon receipt of AGENCY billing. If OWNER is subject to repayment due to failure by State/Local Public Agency (LPA) to comply with applicable laws, regulations, and ordinances, then State/LPA will ensure that OWNER is compensated for actual cost in performing work under this agreement."

NOTES:

(1) See NOTES under Clause IV-1.

(2) Contract Cost Principles and Procedures of 48 CFR, Federal Acquisition Regulations Systems, Chapter 1, Subpart E, Part 31 have been accepted as the State's standards for all projects including State-only funded projects.

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(3) See Manual Sections 13.04.07.01 and 13.10.02.03 for additional information.

(4) If Utility Owner is not regulated by FERC, modify above clause by deleting reference to "and/or 18 CFR, Chapter 1, Parts 101, 201, et al."

IV-4. Advance of Funds - State Liability:

"OWNER, at the present time, does not have sufficient funds available to proceed with the relocation of OWNER's facilities provided for herein. It is estimated that the cost of the work provided for by this Agreement and, as hereinafter set forth, is the sum of $_____. STATE agrees to advance to OWNER the sum of $_____ to apply to the cost of the work to be undertaken as provided hereinabove. Said sum of $_____ will be deposited by the STATE with OWNER within 45 days after execution of the Agreement by the parties hereto and upon receipt of an OWNER's bill for the advance."

"It is further agreed that upon receipt of the monies agreed upon to be advanced by STATE herein, OWNER will deposit said monies in a separate interest-bearing account or trust fund in state or national banks in California having the legal custody of said monies in accordance with and subject to the applicable provisions of Section 53630, et seq., of the Government Code; and all interest earned by said monies advanced by STATE shall be remitted to STATE quarterly, via a separate check, even when the cost of relocation exceeds the advance amount."

"When the work is completed, OWNER shall send the STATE a Final Bill for reconciliation of the advance. In the event actual and necessary relocation costs as established herein are less than the sum of money advanced by STATE to OWNER, OWNER hereby agrees to refund to STATE the difference between said actual and necessary cost and the sum of money that was advanced. The remittance check for the balance of advanced funds will be separate from the remittance check for the earned interest. In the event that the actual and necessary cost of relocation exceeds the amount of money advanced to OWNER, in accordance with the provisions of this Agreement, STATE will reimburse OWNER said excess costs upon receipt of an itemized bill as set forth herein."

NOTE: Advance of funds should not exceed 90% of the Utility Agreement amount due to possible credits for depreciation, salvage, etc. No funds are to be advanced to cover owner-initiated

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betterments. Per 2010 Accounting procedural requirements, two separate checks are required for remittance of: a) advanced funds and b) interest on advanced funds.

IV-5. Loan of Funds - Owner Liability:

"OWNER recognizes its legal obligation to relocate its facility at its own cost, but, at the present time does not have sufficient funds available to proceed with the relocation of OWNER's facilities provided for herein. It is estimated that the cost of the work provided for by this Agreement and, as hereinafter set forth, is the sum of $_____. STATE agrees to advance to OWNER the sum of $_____, in accordance with Section 706 of the Streets and Highways Code, to apply to the cost of the work to be undertaken as provided hereinabove. Said sum of $_____ will be deposited by the STATE with OWNER within 45 days after execution of the Agreement by the parties hereto and upon receipt of an OWNER's bill for the advance."

"It is understood that OWNER shall pay interest upon receipt of said advance. The rate of interest shall be the rate of earnings of the Surplus Money Investment Fund and computation shall be in accordance with Section 1268.350 of the Code of Civil Procedure. The total loan will be repaid to the Department within a period of time not to exceed 10 years."

NOTE: See State Controller's Office website for the Surplus Money Investment Fund rate chart.

IV-6. Agreement for Identified Betterments:

"It is understood that the relocation as herein contemplated includes betterment to OWNER's facilities by reason of increased capacity in the estimated amount of $_____ (which represents _____% of the estimate dated _____. Said _____% shall be applied to the actual and necessary cost of work done), and OWNER shall credit the STATE for the actual and necessary cost of said betterment, all of the accrued depreciation and the salvage value of any materials or parts salvaged and retained by OWNER."

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IV-7. State Performs Work - Owner Requested Betterments:

"The STATE shall perform the work under Section I above at no expense to OWNER except as hereinafter provided."

"It is understood that the relocation as herein contemplated includes betterment to OWNER's facilities by reason of increased capacity in the estimated amount of $_____, said amount to be deposited upon demand in the _____ Office of the Department of Transportation, prior to the time that the subject freeway/highway contract bid is opened by the STATE. The final betterment payment shall be calculated based upon the actual quantities installed as determined by the STATE's engineer, and the current cost data as determined from the records of the OWNER. In addition, the OWNER shall credit the STATE at the time of the final billing for all the accrued depreciation and the salvage value of any material or parts salvaged and retained by the OWNER."

NOTE: A memorandum must be sent to Accounting requesting the Owner be billed for the amount of betterment.

IV-8. Lump-Sum/Flat-Sum Billing Utility Agreements (Excluding Pac Bell/SBC):

"Upon completion of the work, and within 45 days after receipt of OWNER's bill, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead, STATE will pay OWNER the lump-sum amount of $_____. The above lump-sum amount has been agreed upon between the STATE and the OWNER and includes any credits due the STATE for betterment, depreciation and salvage."

NOTE: For lump-sum amounts in excess of $25,000, the following clause should be added.

"STATE and OWNER further agree that for lump-sum payments in excess of $25,000, that STATE shall have the option of performing an informal audit of OWNER's detailed records from which the billing is compiled. The purpose of STATE's audit shall be to establish the continued acceptability of using lump-sum payments for high cost relocations and shall not in any way affect the amount or acceptability of the lump-sum amount herein agreed to. OWNER shall keep supporting detailed records available for STATE review for a period of one year following OWNER's submittal of final bill."

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NOTE:

(1) Lump-sum Utility Agreements should be used for all utility involvements where the STATE's cost is estimated to be $100,000 or less, and the conditions of Section 13.05.04.00 can be met.

(2) See Clause IV-9 for Pac Bell/SBC lump-sum Utility Agreements.

IV-9. Lump-Sum/Flat-Sum Pac Bell/SBC Billing Utility Agreements:

"Upon completion of the potholing and relocation work, and within 45 days after receipt of OWNER's bill, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead, STATE will pay OWNER the lump-sum amount of $_____. The above lump-sum amount, for the physical relocation work, has been agreed upon between the STATE and the OWNER and includes any credits due the STATE for betterment, depreciation and salvage."

NOTE: Although most positive location will be done pursuant to the Positive Location Agreement, if Pac Bell/SBC will be conducting their own potholing, the following clause should be added.

"In addition to the amount specified above, the STATE will pay the OWNER an additional amount of $_____ for each pothole location requested by the STATE in order to determine the location of the OWNER's facilities. It is estimated that _____ pothole locations will be required. The final cost for potholing will be the lump-sum amount of $_____ per pothole location times the actual number of pothole locations."

NOTE: For lump-sum amounts in excess of $25,000, the following clause should be added.

"STATE and OWNER further agree that for lump-sum payments in excess of $25,000, that STATE shall have the option of performing an informal audit of OWNER's detailed records from which the billing is compiled. The purpose of STATE's audit shall be to establish the continued acceptability of using lump-sum payments for high cost relocations and shall not in any way affect the amount or acceptability of the lump-sum amount herein agreed to. OWNER shall keep supporting detailed records available for STATE review for a period of one year following OWNER's submittal of final bill."

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NOTE:

(1) Lump-sum Utility Agreements should be used for all utility involvements where the STATE's cost is estimated to be $100,000 or less and the conditions of Section 13.05.04.00 can be met.

IV-9a. Lump-Sum/Flat-Sum AT&T Billing Utility Agreements:

"Upon completion of the Preliminary Engineering, and within 45 days after receipt of OWNER's bill, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead, STATE will pay OWNER the lump-sum amount of $_____. The above lump-sum amount, for the preliminary engineering design work, has been agreed upon between the STATE and the OWNER."

IV-10. State's Contractor Performs Portion of Work-Owner Liability:

NOTE:

(1) Insert the following Clause after Clause IV-1 or IV-2, unless the Owner is liable. As soon as the Utility Agreement is executed, a memorandum shall be sent to Accounting requesting the OWNER be billed.

(2) Use only this Clause if a Phase 4 or Phase 5 Utility Agreement where the Owner is liable.

"The OWNER shall pay its share of the actual cost of said work included in the STATE's highway construction contract within 45 days after receipt of STATE's bill, compiled on the basis of the actual bid price of said contract. The estimated cost to OWNER for the work being performed by the STATE's highway contractor is $_____."

"In the event actual final relocation costs as established herein are less than the sum of money advanced by OWNER to STATE, STATE hereby agrees to refund to OWNER the difference between said actual cost and the sum of money so advanced. In the event that the actual cost of relocation exceeds the amount of money advanced to STATE, in accordance with the provisions of this Agreement, OWNER hereby agrees to reimburse STATE said deficient costs upon receipt of an itemized bill as set forth herein."

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13.07.03.05 Section V. General Conditions:

V-1. State Liable for Review and Design Costs, Project Cancellation Procedures and Utility Agreement Subject to State Funding Clauses - FOR ALL OWNERS:

"All costs accrued by OWNER as a result of STATE's request of ___(date)____ to review, study and/or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement."

"If STATE's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, STATE will notify OWNER in writing and STATE reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement."

"All obligations of STATE and/or LPA under the terms of this Agreement are subject to the acceptance of the Agreement by LPA Board of Directors or the Delegated Authority (as applicable), the passage of the annual Budget Act by the State Legislature, and the allocation of those funds by the California Transportation Commission."

V-2. Notice of Completion - FOR ALL OWNERS:

"OWNER shall submit a Notice of Completion to the STATE within 30 days of the completion of the work described herein."

V-3. Owner to Acquire New Rights of Way with STATE Liable for a Portion of Costs:

"Total consideration for rights of way to be acquired by OWNER for this relocation shall not exceed $_____(e.g., $2,500) unless prior approval is given by the STATE. Said property shall be appraised and acquired in accordance with lawful acquisition procedures."

NOTE: A reasonable easement cost limitation must be stated to preclude excessive acquisition cost.

V-4. State to Provide New Rights of Way Over State Lands:

"Such Director's Easement Deeds as deemed necessary by the STATE will be delivered to OWNER, conveying new rights of way for portions of the

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facilities relocated under this Agreement, over available STATE owned property outside the limits of the highway right of way."

"STATE's liability for the new rights of way will be at the proration shown for the relocation work involved under this Agreement."

NOTE: New rights of way shall mean a right of way described in the same language as found in the OWNER's document by which it is acquired, or held, in its original right of way.

V-5. State to Provide New Rights of Way Over Private Lands:

"STATE will acquire new rights of way in the name of either the STATE or OWNER through negotiation or condemnation and when acquired in STATE's name, shall convey same to OWNER by Director's Easement Deed. STATE's liability for such rights of way will be at the proration shown for relocation work involved under this Agreement. OWNER shall reimburse the STATE all costs for the easement."

NOTE: New rights of way shall mean a right of way described in the same language as found in the OWNER's document by which it is acquired, or held, in its original right of way. In those cases where the OWNER requests acquisition be made in their name, it will be permissible to negotiate or condemn in their name, providing the OWNER has the power to condemn and the State has OWNER's consent for condemnation on OWNER's behalf. The above paragraph should be revised accordingly.

V-6. State to Issue a JUA or CCUA:

"Where OWNER has prior rights in areas which will be within the highway right of way and where OWNER's facilities will remain on or be relocated on STATE highway right of way, a Joint Use Agreement or Consent to Common Use Agreement shall be executed by the parties."

V-7. Master Contract Specifies Equal Replacement Rights:

"Upon completion of the work to be done by STATE in accordance with the above-mentioned plans and specifications, the new facilities shall become the property of OWNER, and OWNER shall have the same rights in the new location that it had in the old location."

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V-8a. Federal Aid Clause - No Master Contract:

"It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement."

V-8b. Federal Aid Clause - No Master Contract and NEPA Document on a Project:

"It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement."

"In addition, the provisions of 23 CFR 635.410, Buy America, are also incorporated into this agreement. The Buy America requirements are further specified in Moving Ahead for Progress in the 21st Century (MAP-21), section 1518; 23 CFR 635.410 requires that all manufacturing processes have occurred in the United States for steel and iron products (including the application of coatings) installed on a project receiving funding from the FHWA."

V-9a. Federal Aid Clause - Master Contract:

"It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement by reference; provided, however, that the provisions of any agreements entered into between the STATE and the OWNER pursuant to State law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable Federal or State regulatory body and approved by the Federal Highway Administration, shall govern in lieu of the requirements of said 23 CFR 645."

NOTE: The FHWA allows liability to be determined in accordance with the terms of Master Contracts in lieu of otherwise applicable S&H Code sections.

V-9b. Federal Aid Clause - Master Contract and NEPA Document on Project:

"It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement by reference; provided, however, that the provisions of any agreements entered into between the STATE and the OWNER pursuant to State law for apportioning the obligations and costs to be borne by

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each, or the use of accounting procedures prescribed by the applicable Federal or State regulatory body and approved by the Federal Highway Administration, shall govern in lieu of the requirements of said 23 CFR 645."

"In addition, the provisions of 23 CFR 635.410, Buy America, are also incorporated into this agreement. The Buy America requirements are further specified in Moving Ahead for Progress in the 21st Century (MAP-21), section 1518; 23 CFR 635.410 requires that all manufacturing processes have occurred in the United States for steel and iron products (including the application of coatings) installed on a project receiving funding from the FHWA."

V-10a. Facilities Replaced per Liability Determination Under Water Code Section 7034:

"Inasmuch as Water Code Section 7034 requires STATE to be responsible for the structural maintenance of the conduit portion of OWNER's facilities which transports water under the highway at Engineer's Station _____, STATE will repair or replace the conduit portion of OWNER's facilities which lies within the STATE highway right of way when such becomes necessary. In no event shall STATE be liable for any betterments, changes or alterations in said facility made by or at the request of the OWNER for its benefit."

V-10b. Facilities Replaced per Liability Determination Under Water Code Section 7035:

"Inasmuch as Water Code Section 7035 requires STATE to be responsible for the structural maintenance of the conduit portion of OWNER's facilities which transports water under the highway at Engineer's Station _____, STATE will repair or replace the conduit portion of OWNER's facilities which lies within the STATE highway right of way when such becomes necessary unless such repair or replacement is made necessary by negligent or wrongful acts of the OWNER, its agents, contractors or employees; provided that the OWNER shall keep the conduit clean and free from obstruction, debris, and other substances so as to ensure the free passage of water in said conduit. In no event shall STATE be liable for any betterments, changes or alterations in said facility made by or at the request of the OWNER for its benefit."

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NOTES:

(1) Use of Clause V-10 is dependent upon the delegated approval of the Water Code Checklist (Form RW 13-19).

(2) See NOTE under Clause I-2.

V-11 Certification of Materials for Buy America

(Select V-11a or V-11b)

V-11a. Utility Owner Self Certification Method:

"OWNER understands and acknowledges that this project is subject to the requirements of the Buy America law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance. OWNER hereby certifies that in the performance of this Agreement, for products where Buy America requirements apply, it shall use only such products for which it has received a certification from its supplier, or provider of construction services that procures the product certifying Buy America compliance. This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions or excluded material cited in the Department's guidelines for the implementation of Buy America requirements for utility relocations issued on December 3, 2013."

NOTE:

i. Utility Owner will source materials that comply with Buy America requirements.

ii. Utility Owner will certify compliance via a contract provision in the Utility Agreement above.

iii. Utility Owner will not be required to provide copies of supplier certifications or other utility owner-signed certifications as part of this Agreement or with the final invoice.

iv. Supplier Certification will be maintained in project files and made available to CT/FHWA upon request.

v. More detail on FHWA guidance.

V-11b. Vendor/Manufacturer Certification Method:

"OWNER understands and acknowledges that this project is subject to the requirements of the Buy America law (23 U.S.C., Section 313) and

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applicable regulations, including 23 CFR 635.410 and FHWA guidance, and will demonstrate Buy America compliance by collecting written certification(s) from the vendor(s) or by collecting written certification(s) from the manufacturer(s) mill test report (MTR). Certification(s) should state, "All manufacturing processes for these steel and iron materials, including the application of coatings have occurred in the United States. All manufacturing processes means melting of the steel through final manufacturing of steel components."

"All documents obtained to demonstrate Buy America compliance will be held by the OWNER for a period of three (3) years from the date of final payment to the OWNER and will be made available to STATE or FHWA upon request."

"One set of copies of all documents obtained to demonstrate Buy America compliance will be attached to, and submitted with, the final invoice."

"This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions or excluded material cited in the Department's guidelines for the implementation of Buy America requirements for utility relocations issued on December 3, 2013."

NOTE:

i. Supplier Certification will be maintained in project files and made available to CT/FHWA upon request.

V-12. Utility Agreement Not Subject to Buy America:

"STATE represents and warrants that this Utility Agreement is not subject to 23 CFR 635.410, the Buy America provisions."

V-13. De Minimis:

"It is understood that said highway is a Federal aid highway and, accordingly, 23 CFR 645 and 23 U.S.C. 313, as applicable, is hereby incorporated into this Agreement by reference. However, OWNER represents and warrants that the non-domestic iron and steel materials used on this relocation do not exceed one-tenth of one percent (<0.1%) of this Utility Agreement amount, or $2,500, whichever is greater."

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NOTE:

i. The De Minimis equation is calculated according to the following formula:

$$\frac{\textbf{Combined Cost of Only those Materials that are Subject to Buy America and are Non-Compliant (limited to the individual UA)}}{\textbf{Total Utility Relocation Cost (cited in the individual UA)}}$$

ii. Applies only to non-domestic iron and steel materials used in this relocation.

V-14a. Acknowledgments:

"If, in connection with OWNER's performance of the Work hereunder, STATE provides to OWNER any materials that are subject to the Buy America Rule, STATE acknowledges and agrees that STATE shall be solely responsible for satisfying any and all requirements relative to the Buy America Rule concerning the materials thus provided (including, but not limited to, ensuring and certifying that said materials comply with the requirements of the Buy America Rule)."

NOTE:
Clause is used when the STATE is supplying any material that falls within the Buy America Rule to the OWNER.

V-14b. Acknowledgments: (Mandatory Language FOR ALL OWNERS)

"STATE further acknowledges that OWNER, in complying with the Buy America Rule, is expressly relying upon the instructions and guidance (collectively, "Guidance") issued by Caltrans and its representatives concerning the Buy America Rule requirements for utility relocations within the State of California. Notwithstanding any provision herein to the contrary, OWNER shall not be deemed in breach of this Agreement for any violations of the Buy America Rule if OWNER's actions are in compliance with the Guidance."

V-15 Greenhouse Gases – For Owner's Contractor

"AB 262 – Buy Clean California Act of 2017 requires as of January 1, 2019 that the Department of General Services (DGS) is to publish in the State Contracting Manual (SCM) a maximum acceptable level of global warming potential (GWP) for each category of required materials. The

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categories of eligible materials are, carbon steel rebar, flat glass, mineral wool board insulation and structural steel. A statement of Environmental Product Declaration (EDP) is required prior to beginning of relocation work, to the extent required by law."

Note:
Insert/use this clause when the Owner cannot complete the work with its own forces and must bid out the worker to a contractor.

13.07.03.06 Section VI. Oil Company Clauses (Only):

VI-1. Replacement Right of Way:

"STATE will be responsible for granting OWNER, at STATE's sole cost and expense, all appropriate and necessary replacement easements and rights- of-way for the relocated Pipeline Facilities, equivalent to and with the same priority and permanence as OWNER's existing rights-of-way under the same terms and conditions as provided under easement and deed agreements. The replacement right-of way shall include any area where the new Pipeline Facilities are relocated outside the present easements and shall enable OWNER to timely complete the work contemplated herein and in Exhibit A hereto. OWNER shall not be required to proceed with any of the work described in Section 1 until acquisition and assignment of STATE's Orders of Possession for the entire replacement easement and rights-of-way required for relocation of the Pipeline Facilities has been provided to OWNER by STATE. STATE's obligations with respect to the replacement rights-of-way shall not be complete until, final recordable easement rights have been obtained by STATE and assigned in writing to OWNER."

VI-2. Indemnity:

"STATE shall to the extent allowed by State law, indemnify and hold harmless OWNER from any and all claims, damages or liability arising from or in connection with OWNER's performance under this Agreement. Claims, damages or liability for bodily injury and/or death and damage to property assessed against the STATE will be determined in accordance with the provisions of the California Tort Claims Act."

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VI-3. Choice of Law:

"The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with laws of the State of California without regard to its choice of law rules."

VI-4. Force Majeure:

"In the event that the performance required under the terms of this Agreement by OWNER or STATE is delayed or prevented by fire, explosion act of God, breakdown of machinery or equipment, riots, strikes, labor disputes, any order, regulation, request or recommendation by a governmental authority, or similar cause which is reasonably outside the control of the parties, such required performance shall be excused for that period of time the force majeure prevents performance. In the event the delay due to force majeure occurs or is anticipated, the affected party shall promptly notify the other party of such delay and the cause and estimated duration of such delay. The affected party shall exercise due diligence to shorten, avoid and mitigate the effects of the delay and shall keep the other party advised as to the affected party's efforts and its estimate of the continuance of the delay. In no event shall STATE be entitled to damages of any kind, including without limitation direct, consequential or otherwise, whether based in contract tort (including negligence and strict liability) or otherwise or to any adjustment to the compensation payable hereunder because of any delay due to force majeure."

VI-5. Entire Agreement:

"This Agreement and all exhibits and attachments hereto constitute the entire Agreement between the parties and supersedes all previous oral and written communications, including specifically, and without limitation, the provisions of any bid, quote, proposal or request therefore unless and only to the extent such provision is expressly contained herein. No amendment shall be effective unless in writing, specifically referencing this Agreement, and signed by all parties."

Note:
These clauses are to be used when executing Utility Agreements with oil companies.

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13.07.04.00 Processing

All Utility Agreements must be submitted for approval, along with the Report of Investigation, either to Headquarters R/W or to the authorized Region/District representative.

Each Region/District may have its own internal procedures for processing the Utility Agreement for approval. Following are the minimum requirements:

- Prepare four originals of the Utility Agreement. All four originals will become fully executed "wet-ink" originals.

- Process the four original Utility Agreements through P&M for EA setup and funding verification. P&M shall "wet-ink" sign all four original Utility Agreements. P&M shall then forward the four originals to R/W Accounting for certification of funds. R/W Accounting shall "wet-ink" sign all four originals. All Utility Agreements where work is done by the Utility Owner/Owner's contractor will be encumbered with R/W ("Phase 9") funds.

- Construction ("Phase 4") funds will be needed for any utility relocation work done by the State's contractor. Construction funds are normally not encumbered by R/W; therefore, P&M must coordinate with District Construction before encumbrance of "Phase 4" funds can be accomplished.

- The funding block on the last page of the Utility Agreement must reflect all project phases funding the specific Utility Agreement.

- Accounting will "wet-ink" sign all four originals of the Utility Agreement to show funds have been certified (encumbered) and will return all four originals to R/W.

- The Utility Coordinator will transmit all four original Utility Agreements, along with the Notice and Permit as required, to the Owner for execution. See Exhibit 13-EX-13 for elements of the transmittal letter. The letter should instruct the Owner to make a copy of an executed Utility Agreement for the interim for their files.

NOTE: There is no State requirement that the Owner execute the Utility Agreements first. With some Owners, it may be more expedient for the State to execute first and then forward to the Owner for execution.

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NOTE: One of the restrictions of Legislative Budgeting is the State can only pay bills the owner presents within four fiscal years following the fiscal year in which funds were encumbered. If payment is necessary after the five fiscal years, the Utility Agreement may need to be encumbered again, or an Amended Utility Agreement may be needed. P&M receives an annual report of Utility Agreements about to expire and will notify Utilities.

NOTE: Utility Agreements encumbered during the fiscal year should be fully executed prior to the end of the same fiscal year, or shortly thereafter. HQ Accounting has been instructed to disencumber any encumbered Utility Agreements not fully executed by the end of the fiscal year. If the Utility Agreement remains partially executed/unexecuted, the Utility Coordinator shall coordinate with P&M and/or Accounting to determine how to proceed.

As soon as the Owner returns the Utility Agreement:

- Check for four "wet-ink" signed originals. Be sure the Owner's signature complies with their bylaws or charter. Check for a copy of their resolution, if one is required. The person or official signing the agreements should have the proper authority delegated to him/her by the Utility Company/Owner to sign the agreements.

- If the Utility Agreements are not dated, date them to match the Owner's transmittal date.

- Obtain State execution of the four original Utility Agreements as required. Make one machine copy of the Utility Agreement.

- Distribute the fully executed original Utility Agreements as follows:

  - Send ONE original document to the Utility Owner with instructions to replace and destroy the interim copy in their files. The transmittal letter must include the elements shown in Exhibit 13-EX-23.

  - Retain ONE original document in the Region/District's file. The fully executed, wet-ink original Utility Agreement shall never be removed from the file, unless required in response to a written request from HQ Legal or in compliance with a court order.

  - Send TWO originals to R/W Accounting. One original is for R/W Accounting's files; One original is for transmittal to the State Controller's Office at the time of the first payment request.

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13.07.04.01 Processing a Phase 4 or Phase 5 Utility Agreement Where the State's Contractor Will Be Handling All or a Portion of the Utility Relocation for the Owner

The primary purpose of a Phase 4 Utility Agreement is to correctly allocate the Liability for the work per relocation plans and estimate the amount of construction funds that the State will need to complete the utility relocation when the State's contractor performs the work. Per Section 13.07.02.00, a Utility Agreement is needed for work completed by the State's Contractor, regardless of the extent of State liability.

The Utility Agreement will be prepared with specific attention to the paragraphs which show the work, part or all, the State's Contractor will perform. The "Funding Type" block (generally on the last page) will use a Phase 4 Expense Authorization under Construction Funds and show the estimated amount. P&M must coordinate with District Construction per 13.07.04.00, processing of Utility Agreements.

If the Liability is 100% State

- The Utility Agreement will be sent to the Owner for signature and then signed by authorized Region/District Representative (13.07.04.00) and retained in the Utility File. The Utility Coordinator will show the estimated amount on the "Funding Type" block and No Routing to Headquarters "Accounts Receivable" is required. The relocation is processed as a bid item in the contract. This agreement is primarily prepared for the purpose of Paragraph I to have the Owner agree to the relocation plans being used, and Paragraph III-3 to specify that the Resident Engineer has the final disposition.

If the Liability is Prorated

- The Department's estimated portion of the liability will be shown on the "Funding Type" block of the Utility Agreement. A fully executed copy of the Utility Agreement will be forwarded to Headquarters "Accounts Receivable" (see 13-EX-29) where an invoice will be prepared and sent to the Owner. Headquarters Accounting will place the Owner's funds in the Construction Contract and the Resident Engineer will handle them in the same manner as other construction funds. The State's portion of liability for the relocation is processed as a bid item in the contract. An actual cost Utility Agreement is preferred when the relocation costs are

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significant. Headquarters Accounting will reconcile the final cost by creating a refund of excess amounts paid by the Owner or a billing for underestimated amounts.

If the liability is 100% Owner

- A fully executed copy of the Utility Agreement will be forwarded to Headquarters "Accounts Receivable" (see 13-EX-29) where an invoice will be prepared and sent to the Owner for their portion. The remaining procedure is the same as shown in "Prorated" above.

In all circumstances, the Utility Coordinator should prepare an ROI package (13.05.01.00) and verify that the work is listed as a bid item on the utility portion of the Right of Way Certification. A fully executed copy of the Utility Agreement must be sent to the Utility Owner in all circumstances.

On a Minor B Project where the State's Contractor will relocate the Owner's facilities (i.e., adjustment of manhole or value covers to grade), use a Phase 5 Expense Authorization on the Utility Agreement and process as above. Headquarters Accounting and 03.02.02.00 require this.

13.07.04.02 Processing a Phase 4 or Phase 5 Construction Funds and a Phase 9 Capital Right of Way Funds as One Utility Agreement

Section 13.07.02.00 indicates that the Utility Coordinator should process a single agreement to the extent possible for each involvement. Although you can process a single utility agreement for Phase 4 Construction Funds and Phase 9 Capital Right of Way together on one agreement form, there are situations where this may not be practical. Although this issue does not arise frequently, the District Utility Coordinator should evaluate each situation to determine if a single agreement versus two separate agreements for a single involvement is the best choice. In evaluating each situation, the following are some of the factors to be considered:

- The funding for a Phase 4 Construction and a Phase 9 Capital Right of Way Utility Agreement is routed to different Accounting Departments.

- To prevent confusion by third parties, such as Utility Owners, Headquarters Accounting, and Resident Engineers as to Right of Way's internal funding process.

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- Whether there is an increased overall efficiency of a single agreement as opposed to two separate agreements.

If the decision is to issue two separate utility agreements, each agreement should have a different Utility File number.

For Minor B Projects

- Use a Phase 5 Expense Authorization and process the same as a Phase 4.

13.07.05.00 Amendments to Utility Agreements

Whenever portions, but not all, of a Utility Agreement must be changed, the change shall be accomplished through an "Amendment to Utility Agreement" following the format shown in Exhibit 13-EX-24.

In most cases, Amended Utility Agreements are processed the same as Utility Agreements. However, Amendments that do not have a change in the dollar amount do not need to go to R/W Accounting.

13.07.05.01 Amendments for Payments in Excess of Original Utility Agreement

Normal State Controller procedures do not allow payments in excess of contractual amounts. The State Controller has granted an exception for Utility Agreements whereby they will process **final payment** requests for reimbursement of relocation costs not exceeding 125% of the estimated amount as stated in the original Utility Agreement.

The basis for this exception is the State has obligated itself to participate in the actual and necessary cost of State-ordered relocation of the Utility Owner's facilities at an estimated cost to the State. Since the cost amount shown in the Utility Agreement is an estimate and not a fixed contractual amount, the State Controller allows for reasonable adjustments to the estimate.

Progress bills in excess of 100% of the original Utility Agreement estimate must be covered by an Amended Utility Agreement before payment is requested. In addition, before an Amended Utility Agreement or a bill exceeding 100% of the estimated amount of the original Utility Agreement can be processed, the Utility Coordinator must receive **and approve** written documentation of the reasons and identification of the basis for the increase. (See Section 13.07.03.04, Clause IV-3.)

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Amended Utility Agreements are not required whenever the total billing is less than the original Utility Agreement amount except as described in Section 13.07.05.02.

NOTE: This section does not apply to lump-sum/flat-sum Utility Agreements.

13.07.05.02 Amendments for Change in Scope of Work

Any significant change to the originally planned and agreed-upon work must be covered by an Amended Utility Agreement, a Revised Notice to Owner (RW 13-4R), and a Supplemental FHWA Specific Authorization before work on the proposed changes commences. (See Sections 13.06.03.05 and 13.14.05.00.)

Preparing an Amended Utility Agreement and Revised Notice for a change in scope is necessary to:

- Comply with Federal requirements for preapproval of relocation plans.
- Provide for any needed change in the proration of liability.
- Provide for necessary modification to the previously ordered plan of relocation.

13.07.06.00 Special Utility Agreements

Occasionally, a Special Utility Agreement is needed for a variety of reasons, e.g., liability disputes, engineering or construction reimbursement for a project that has been canceled, or where a Utility Agreement does not exist. The "WHEREAS AND NOW THEREFORE" type of Utility Agreement is usually adaptable and is acceptable. A sample Special Utility Agreement is shown in Exhibit 13-EX-25.

13.07.06.01 Utility Agreement to Cover Advance Engineering Effort

Occasionally, an Owner will expend considerable engineering effort on a planned relocation long before the usual Utility Agreement is executed. Upon request, a Special Utility Agreement may be completed and used as a basis for reimbursing the Owner's costs. The usual ROI is required to support the State's liability to pay. Upon issuance of the Notice for actual physical relocation, the Special Utility Agreement should be amended to cover the remaining items pertinent to relocation work.

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13.07.06.02 Utility Agreements with Oil Companies

The relocation of oil company facilities to accommodate construction has historically been done under the terms of a modified Utility Agreement even though oil companies are privately owned, are not a public utility, and are not under the PUC's purview. Relocation is completed in the normal manner: preliminary letter, Report of Investigation, Notice, Utility Agreement and Joint Use Agreement, as required.

Oil Company clauses are mandatory language to be used when a utility agreement is necessary with an oil company as referred to in Section 13.07.03.06 Oil Company Clauses.

Special depreciation clauses are used in utility agreements with oil companies.

- No depreciation is required for a crossing relocation. The Utility Agreement should so state.
- The depreciation clause for longitudinal relocations is:

"State shall be entitled to a depreciation credit, based on the straight-line method and a total estimated service life of 40 years for the replaced facilities, such credit not to exceed 70% of the original installed cost of such facilities, unless owner shall claim no credit is due because the remaining service life of the replaced facility is as great as the anticipated service life of the replacement facility, and in support of such claim supplies:

(a) proof of the remaining service life of the replaced facility, the sufficiency of which to substantiate such claim shall be determined in the sole discretion of State, and

(b) a written certification by owner's controller or chief accounting officer that it is not Owner's normal accounting procedure to capitalize and depreciate portions of its facilities which are relocated, and that no part of the replacement facility will be capitalized and depreciated."

Invoices for Utility Agreements covering longitudinal relocations that do not reflect a credit for depreciation must be accompanied by written certification of the oil company's controller or chief accounting officer and by a statement signed by a State Engineer, that in the opinion of the Engineer:

- The remaining service life of the replaced facility is as great as the anticipated service life of the replacement facility, and

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- The evidence submitted by the oil company (which must be described in the statement) fully supports the oil company's claim to that effect.

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13.08.00.00 - CERTIFICATION PHASE

13.08.01.00 General

Activities performed in this phase of the project generally consist of:

- Reviewing the PS&E.
- Ensuring the Owner is billed for work the State's contractor performs.
- Preparing the R/W Utilities Certification.

13.08.02.00 PS&E Review

The Project Engineer's PS&E is to be completed prior to R/W Certification. The Utility Coordinator is responsible for reviewing the PS&E to verify:

- Plans show all underground utility facilities remaining within the right of way limits of the project in accordance with Government Code Section 4215.
- Special provisions have been included concerning coordination requirements for all utility work that will be done in coordination with the State's contractor.
- Construction estimates (Basic Engineering Estimating System - BEES) include "Phase 4" utility relocation costs that will be used for billing purposes when the State's contractor performs work for the Owner and the Owner is responsible for the expense.

13.08.02.01 Work Performed by State Contractor

When the State's contractor performs the work for the Owner and the Owner is liable for all or a portion of the costs, the Utility Coordinator obtains funds from the Owner prior to award of the State's construction contract, using the following procedure:

- Obtain an estimate for the work from the PS&E or request an estimate from the Utility Owner after consulting with the Project Engineer.
- Prepare a Phase 4 Utility Agreement. (Refer to Sections 13.07.04.01 and 13.07.04.02.)

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13.08.03.00 Right of Way Utilities Certification

The R/W Utilities Certification is a written statement to P&M summarizing the status of all utility facilities located within the limits of the proposed construction project. The certification identifies all utility facilities found to be within the project area and documents if they are impacted and, if so, whether they have been or will be relocated, removed, or protected as required for the construction, operation, and maintenance of the proposed project. R/W Utilities shall certify all projects where a PS&E is prepared, or federal funds are involved, prior to the district advertising and awarding a construction contract.

In accordance with 23 CFR 635.309(b), utility work should be accomplished during construction only when it is not feasible or practical to complete the work prior to construction due to economic or special coordination features. Utility work that cannot be completed in advance of construction contract award shall have special provisions in the standard specifications portion of the PS&E identifying the utility work and details of the coordination involved. All facilities not cleared from the project limits before construction commences shall be shown in the project plans to provide the necessary coordination. (Refer to Section 13.09.01.00.)

In order for the project to be certified, all Utility Agreements must be signed and executed by the appropriate Utility Owners, and Notice to Owners must also be issued. When the Utility Coordinator satisfies the utility requirements of the R/W Certification, e.g., "Status of Required Utility Relocations," the project can be certified from a R/W Utilities standpoint. (Refer to Section 14.03.07.00.)

When the State will be performing all or a portion of the utility relocation work under the highway contract on the Owner's behalf, this work will need to be listed as a "Bid Item" on the Utilities Certification portion of the Right of Way Certification.

The Utility Coordinator shall update and recertify any certification of a project over one year old where the project has not been listed for advertising and any certified project where there was a subsequent design change.

Refer to Manual Chapter 14, Right of Way Certification, for further discussion on certifications and Exhibit 13-EX-26 for the suggested format of R/W Utilities Certification with instructions.

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13.08.03.01 Utility Certification for Design/Build Projects

Until project design is completed, it is impossible to determine possible impact on utility facilities. A Utility Certification must be delayed, therefore, until design is completed, but before construction commences. (Refer to Section 14.01.11.00.)

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13.09.00.00 - CONSTRUCTION PHASE

13.09.01.00 General

Utility Coordinator activities performed during the construction phase of the project generally consist of:

- Coordinating with Construction and Owner on compliance with Notice to Owner requirements.
- Handling utility relocations discovered during construction.
- Resolving utility relocation work that becomes wasted work.
- Monitoring district Construction review and documentation activities for State reimbursed utility relocation work.

By the time a project reaches the construction phase, the Utility Coordinator should already have sent copies of all Notices to Owner and approved relocation plans to Construction. Ideally, all utility relocation work will be finished before project construction commences. However, since this is not always possible, coordinated utility work may be necessary. Coordinated work must be addressed in the "Special Provisions/Obstructions" portion of State's PS&E. (Refer to Section 13.03.04.06.)

13.09.01.01 Pre-Construction Notification/Meeting

Each Owner of impacted facilities remaining within the project construction limits shall be notified in writing of the bid opening date, the contract award date, and the name and address of the selected highway contractor. Arrangements should also be made for a joint field meeting of the Owner's representatives, the project Resident Engineer, the utility inspector and the highway contractor to work out construction schedules.

13.09.01.02 Positive Location Work During Construction

Standard special provisions require the highway contractor to contact a regional notification center (Government Code Section 4216.2) before conducting any excavation on the project, as well as to exercise due diligence in working in areas of possible underground facilities. If the utility verification and positive location processes were properly completed during design, any additional positive location demands the State's contractor

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places upon the Owner should be at the contractor's sole expense. If additional positive location work was planned by the Utility Coordinator to be done during construction, this work should be included in the original Notice.

13.09.02.00 Inspection of Utility Relocation Work

The Utility Coordinator is responsible for ensuring that relocation and positive location work is inspected as required and that adequate records are maintained for State reimbursed work. The Utility Coordinator is responsible to notify district Construction of planned relocation and positive location work requiring inspection and the Resident Engineer is responsible for inspection of such work and maintaining diaries to document such work. (Refer to the Construction Manual, Section 3-809.) Inspection has three major objectives:

- Ensure Owner's work complies with design, construction, and traffic requirements within, or in the vicinity of, the roadway.

- Ensure proper placement of utilities to clear project construction in accordance with the Notice to Owner, Encroachment Permit, and Utility Agreement.

- Observe and record the labor, equipment, and materials used to accomplish the work, as well as materials removed for salvage when any work is to be performed at State expense. By reviewing the inspector's diaries, the Utilities Coordinator can make a reasonable verification of the Owner's bills.

NOTE: Proper construction for utility companies regulated by the California Public Utilities Commission (CPUC) is controlled by PUC issued General Orders. Under no circumstances is the Utility Coordinator, the Project Engineer, the Utility Engineering Workgroup (UEW), or the Resident Engineer to review the engineering adequacy of utility facilities except for those features that may adversely affect highway integrity or safety.

13.09.03.00 Discovered Work and Emergencies

Discovered work includes additional unanticipated utility facility adjustments that are required as a result of newly identified facilities, incomplete or inaccurate verification of known facilities, or the discovery of previously unidentified project conflicts. Emergencies are usually a result of storm damage.

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The Resident Engineer (RE) should immediately notify the Utility Coordinator, the district Utility Engineering Workgroup (UEW) and the Project Manager (PM) when there is a newly discovered conflict or emergency requirement. In turn, the Utility Coordinator must immediately notify the Owner of this new conflict. The RE should follow up, in writing, providing the location, type, and all known information of the discovered facility to the Utility Coordinator and UEW. If able, the RE should include a suggested plan for conflict resolution to avoid contractor delays. UEW, Utility Coordinator and Owner are responsible for determining/designing a constructible solution to the conflict. Although the RE is normally already aware of this responsibility, the Utility Coordinator should request the RE to investigate other work that the State's highway contractor can do to avoid potential contractor delays.

The Utility Coordinator must expedite liability determination and preparation of a new or revised Notice to Owner and Utility Agreement along with any new Encroachment Permit required for the new work. In addition, the Utility Coordinator must ensure that any additional or unanticipated utility work takes place within the original environmental "footprint" described in the environmental document. If environmental reevaluation in the new area is necessary, no work other than studies or positive location should proceed.

If conditions merit verbal approval, it must then be documented in the Utility File in a memo or a diary entry. The District Utility Coordinator should evaluate the following Reasons for special expedited authorization and consequences of delay:

- Name of the Owner of the facility.
- Type of facility.
- Best available cost estimate.
- Is the Owner listed on the Utility E-76?
- Identification of who will do the work. If the Owner's contractor is to do the work, indicate how the contractor was selected.

If federal aid funding is involved on the project, FHWA Specific Authorization must be prepared prior to authorizing the work. The Owner and type of utility must already be listed on the approved E-76 or the discovered work cannot be approved for Federal-aid reimbursement. (Refer to Section 13.14.05.00.)

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After the District Utility Coordinator has provided verbal approval of liability and prepared FHWA Specific Authorization (as applicable) and the Owner has agreed to the scope of and liability for the work, the Utility Coordinator should verbally authorize commencement of relocation work to minimize contractor delays. A written Notice to Owner (Form RW 13-4) or Revised Notice to Owner (Form RW 13-4R) should immediately be sent to the Owner. Formal liability approval should be completed within 30 days following issuance of verbal authorization, as well as the Utility Agreement if necessary, based on the liability determination.

13.09.03.01 Changes to Planned Relocation Work

The Utility Coordinator must issue a Revised Notice to Owner (Form RW 13-4R) under the terms of the Utility Agreement when it is discovered that a planned relocation needs to be changed. The Owner must agree to/acknowledge the change as provided for on the Revised Notice Form. Work on the change may not be started until the Revised Notice has been agreed to/acknowledged by the Owner. Changes in the scope of the work will also require an amendment to the Utility Agreement.

13.09.04.00 Wasted Work

Wasted work occurs when the Owner has relocated their facilities in accordance with a Notice to Owner and the State subsequently determines that all or a portion of the newly relocated facility must be adjusted again to avoid conflict with planned construction. Some Master Contracts address wasted work relocations and payments on freeway projects.

The procedures for handling wasted work are similar to discovered work (refer to Section 13.09.03.00) except that the State is liable for the cost of all completed relocation work deemed to be wasted as a result of a change in construction plans. The Resident Engineer must verify the wasted work resulted from plan changes rather than improper contractor work procedures.

The Revised Notice to Owner shall identify what work in the original Notice was wasted and what new work is to be done. The Revised Notice must also state that liability for wasted work is State expense. Cost of all new work is based on liability as set forth in the current Agreement or as determined by usual liability procedures.

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13.09.04.01 Payment for Wasted Work

The Owner is responsible to submit a bill identifying the wasted work. The Utility Coordinator is responsible for verifying the Owner's bill. (Refer to Section 13.10.00.00 for processing procedures.) Verifying the cost of wasted work may require the Utility Coordinator to review the bill in greater detail as the wasted work effort must be singled out from costs of other remaining work performed. State's costs for wasted work are not Federal-aid reimbursable.

13.09.04.02 Payment for Betterment Portion of Wasted Work

Normally, the Owner is responsible for all betterment costs except where the betterment is caused by or necessitated by the project. However, when Owner initiated betterment is considered "wasted work" due to a post-relocation construction change, the State is liable to pay for that portion of completed betterment work rendered wasted by the State's action. All reinstallation of the Owner initiated betterment following the change in construction plans shall be at the Owner's expense.

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13.10.00.00 - PAYMENT PHASE

13.10.01.00 General

Activities performed during this phase generally consist of:

- Obtaining bills from Owners.
- Checking and verifying bills.
- Processing bills for payment.
- Verifying transactions entered into TRAMS.
- Billing or refunding local agencies pursuant to Cooperative Agreements.

13.10.02.00 Processing Bills from Owners

It is essential to the efficient operation of the State's transportation program that funds encumbered for Utility Agreements be paid as soon as possible. The Utility Agreement billing clause requires Owners to bill the State at least quarterly but not more than monthly, during relocation of their facilities. Immediately after completion of the Owner's work, for which reimbursement is due and a bill has not been received, the Utility Coordinator should make a written request to the Owner requesting submittal of the final bill within 90 days of the date of the letter.

The Utility Coordinator should follow up with a letter to the Owner every 60 days if the bill has not been received. The Utility Coordinator must give the Owner a 30-day notice before closing the file.

13.10.02.01 Prompt Payment of Bills

The State's Prompt Payment Act requires that bills be paid within 45 days after the date specified in the contract; and if not specified, the date the invoice is stamped received by the Department. All invoices must be date stamped. This includes the time for the invoice to be reviewed against inspector's diaries, preparation of the payment request package, transmittal to HQ Accounting, submission to State Controller's Office (SCO)and processing of the check. If invoices are not paid within the required time frame, SCO will pay late payment penalty funds to the Owner, which could be substantial. These penalty funds are not Federally reimbursable.

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If, after a review of the invoice (using the invoice checklist), the Utility Coordinator has concerns or questions about the validity of any part of the invoice, the Utility Coordinator **must** send an official invoice dispute form back to the Owner (Form STD. 209) via United States Postal Service (mail). An Invoice Dispute must be sent immediately. This has the effect of "resetting" the Prompt Payment Act "clock." An example of an Invoice Dispute form and letter are available to view under the "Guidance Section." The Utility Coordinator should monitor payment of received bills using AMS Advantage to ensure the applicable payment date is met.

13.10.02.02 Review of Owner's Bill

When the bill is received, the Utility Coordinator shall check to see if it is a partial or final bill. Since consistent format will facilitate review, the bill should be in a format similar to that used for the original estimate of cost (Exhibit 13-EX-27). The Utility Coordinator is responsible to check the bill for consistency with the Utility Agreement and the Owner's previously submitted and approved relocation plan and estimate of cost and to ensure credit for previously identified betterments has been received. The bill must be on the Owner's letterhead with the vendor's full address and contain the date of service, the invoice date, and an itemized description of the services. If the bill is not the original invoice, it must be signed by the appropriate Owner representative. All bills must be addressed to the Department of Transportation, or the Controller will not pay the bill, and must contain the Utility Agreement number. If the Owner's invoice does not contain the Utility Agreement number, the Coordinator must imprint the Utility Agreement number on the invoice or bill. When the Coordinator completes the Utility Payment Request (Form RW 13-6), the number(s) of the Owner's invoice(s) to be paid must be listed on the form. Coordination between Right of Way, Construction, and Accounting is essential to adequately verify the bill.

IRS requires that all payments to vendors be recorded under the recipient's Tax Identification Number (TIN). Accounting maintains a TIN file for all Owners with whom the State normally does business. If the TIN is not on file, Accounting will advise the Utility Coordinator. The Utility Coordinator then sends the Owner Form STD. 204, "Payee Data Record," for them to complete and sign, and forwards the completed form to Accounting.

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13.10.02.03 Bill Discrepancies

If discrepancies are discovered in the Owner's bill, the Utility Coordinator must return the bill to the Owner within 15 days of receipt with a request for correction. The Utility Coordinator completes Form STD. 209 identifying the type of discrepancy or deficiency in the bill and sends the original bill with the completed form back to the Owner. The Utility Coordinator must keep a copy of the bill and the form in the Utility File for documentation.
If the Owner's response is not acceptable, the Utility Coordinator should forward the bill to HQ R/W with a request for Audits' assistance. However, it is important for the Utility Coordinator to make every effort to resolve discrepancies before requesting Audits' help.

Some of the more usual discrepancies include:

- Failure to provide credits for betterments, salvage, or depreciation associated with the relocated facilities (see Section 13.04.05.06).

- Interest beyond the date the utility facility is put back into service (Section 13.04.07.01).

- Partial/progress billings that exceed the Agreement amount (see following sections).

13.10.02.04 Partial Billings

Partial bills are usually paid routinely, if the total of the partial bills does not exceed the amount encumbered under the Utility Agreement. All partial bills must show an itemization of the charges. A review of partial bills is essential where the State is due an unusually large credit, e.g., large betterments, or where billing exceeds work actually completed. The procedure for payment is the same as for final bills as described in Steps 5-10 in "Processing Final Bills."

13.10.02.05 Payment for Engineering Effort

Occasionally, an Owner will expend considerable engineering effort for a required relocation in advance of executing the Utility Agreement. If the Owner requests to be paid for these efforts as they progress, a separate Utility Agreement must be entered to cover this portion of the overall relocation. This payment is sometimes referred to as a progress payment and is processed the same as for a partial billing.

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13.10.02.06 Final Bills

The process for paying final bills is shown in "Processing Final Bills." Final bills must contain detailed charges in a format similar to that in the original estimate and must contain all information listed in Section 13.10.02.02. (If partial bills contained detailed charges, the details in the final bill could cover only the final portion of work.) The final bill must also contain the "start date" of the physical relocation work. The Utility Coordinator must check the start date against the FHWA Specific Authorization date, if applicable, to ensure proper Federal reimbursement. Based on an agreement with the State Controller's Office, payment of a final bill may be made up to 125% of the Utility Agreement amount without an amendment.

PROCESSING FINAL BILLS

1. Utility Coordinator reviews the bill against the Utility Agreement (UA), the Owner's approved relocation plans, and the Owner's estimate of cost. Utility Coordinator ensures that the Owner has submitted the required notice of completion.
2. Utility Coordinator checks total cost billed to State against amount encumbered by the UA. If final bill exceeds encumbrance by more than 25%, an amended UA must be processed before payment is requested (see Section 13.07.05.00).
3. Utility Coordinator sends a copy of the bill to Construction requesting them to review the bill and return it with a copy of the utility inspector's daily diary pursuant to the Construction Manual, Chapter 3, Section 3-809, General Provisions.
4. Utility Coordinator reviews the bill against the inspector's diary, paying particular attention to items of credit to which the State is entitled. Credits for betterment, salvage, and depreciation are to be checked to ensure that they appear reasonable in the bill (see Section 13.04.05.06).
5. Utility Coordinator prepares the Utility Payment Request (RW 13-6). Refer to Section 13.14.00.00 for federal aid procedures.
6. Utility Coordinator prepares the Checklist for Final Utility Invoice (RW 13-7).
7. Utility Coordinator sends the original invoice, the Utility Payment Request (RW 13-6), and a copy of the UA signature page to HQ Accounting.

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PROCESSING FINAL BILLS (Continued)

8. Region/District P&M complete unshaded coding boxes on the Utility Payment Request (RW 13-6). Region/District P&M route package to R/W Accounting for payment.
9. R/W Accounting schedules the bill for payment through the State Controller. (Check is mailed directly to Owner.)
10. Utility Coordinator verifies the transaction against the following week's 1A report, electronically issued by R/W Accounting and forwarded by Region/District P&M.
11. Utility Coordinator sends the following package to Audits for review. Copies of:
    a. Final billing invoice and RW 13-6. (Include partial billings and related RW 13-6s if they contain details of the charges.)
    b. Executed Utility Agreement, with amendments if applicable.
    c. Notice to Owner, with Revised Notices to Owner if applicable.
    d. Approved E-76, if applicable.
    e. R/W Accounting's weekly 1A report(s).
    f. Identification of specific concerns in need of Audit review.
12. At their discretion, Audits will perform an audit of the Owner's bill and prepare the Audit Report, requesting that District R/W initiate the process to collect funds from the owner.
13. If funds are to be collected from the Owner, Utility Coordinator prepares an Accounts Receivable memorandum requesting preparation of a bill. A copy of the Audit Report must be included with the memorandum for forwarding to the Owner with the bill. Utility Coordinator forwards both documents to Accounting - Accounts Receivable.
14. If a Cooperative Agreement with an LPA involves cost sharing, Utility Coordinator ensures the LPA is billed (or refunded) for their share of relocation costs for all owners. See Section 13.12.00.00 for procedures in dealing with Cooperative Agreement projects.

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13.10.02.07 Payment Request Form

Payments for both partial and final bills are requested on the Utility Payment Request, Form RW 13-6. The form is fairly self-explanatory. However, the Utility Coordinator must take special care when more complex relocations are being handled. If there are costs that are not Federally reimbursable, these costs must be separated out and coded appropriately. Costs of this type most often include wasted work, discovered work, spare duct charges, costs incurred prior to Federal authorization and interest during construction.

In the case of an advance of funds to the Owner, the advance payment request is originally coded with an "FAE" code of "8" to suspend the funds. As invoices are received for actual work completed, even though no actual "payment" occurs, the Utility Coordinator must process the RW 13-6 and note in the "Other" category that the request is to "transfer" funds from FAE 8 to FAE 6 (federally reimbursable) or FAE 7 (State only funds).

13.10.02.08 Audit of Owner's Bill

Audits will no longer be performing audits on every Utility Agreement. However, Audits reserves the right to audit any Utility Agreement at their discretion. Once all payments have been made, the Utility Coordinator must send a copy of the final Utility Payment Request (Form RW 13-6) with Planning and Management coding, and a copy of the final RUMS screen, to HQ R/W. At the end of each fiscal year, Audits will determine which Utility Agreements are to be audited. Audits will issue an Audit Report identifying any discrepancies discovered during the audit. For money due the State on final bills, Audits sends the Audit Report to the Utility Coordinator with instructions to initiate billing the Owner for reimbursement of the discrepancy amount cited. Usually, the auditor will have reached an agreement with the Owner on any identified discrepancies. If the auditor cannot resolve the discrepancy with the Owner, the auditor notifies the District Utility Coordinator, who shall take necessary steps to resolve it.

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13.10.03.00 Advance Payments to Owners

If the Owner does not have sufficient funds available to proceed with the relocation of their facilities, the State may choose to advance the State's portion of the relocation costs. The Utility Coordinator may advance up to 90% of the State's total portion (to allow for credits for salvage, depreciation, etc.). Once the Utility Coordinator receives an executed Utility Agreement and the Owner's bill for the advance, the Utility Coordinator shall process a Request for Payment (Form RW 13-6) within 45 days. The funds advanced by the State must be deposited into a separate interest-bearing account or trust fund in a California state or national bank. (See California Government Code Section 53630, et seq.) Any interest earned on the funds must be credited to the State. [See Section 13.07.03.04 (IV-4) for specific clauses relating to advance payments to Owner.]

If the actual and necessary relocation costs are less than the amount advanced, the Owner must refund the overpayment. If the actual and necessary relocation costs are more than the amount advanced, the Owner must process a final bill and the payment will be processed as in "Processing Final Bills."

NOTE: No funds are to be advanced to cover Owner betterments.

13.10.03.01 Loan to Owner

If the Owner recognizes their obligation to relocate their facility at the Owner's cost but does not have sufficient funds available to proceed with the relocation, the State may agree to advance the funds to the Owner in accordance with S&H Code Section 706. Once the Utility Coordinator receives an executed Utility Agreement and the Owner's bill for the advance, the Utility Coordinator shall process the payment within 45 days. The Owner must pay interest on the funds advanced by the State at the rate of earnings of the Surplus Money Investment Fund and the funds must be repaid within 10 years. (See Section 13.07.03.04 IV-4 for specific Utility Agreement clause.)

NOTE: See State Controller's Web site for the Surplus Money Investment Fund rate chart.

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13.10.04.00 Verification of Transactions

The Utility Coordinator is responsible to review the R/W Accounting 1A Report to ensure all codes and amounts for each transaction were correctly entered into TRAMS. The 1A Report lists all transactions entered into TRAMS for the previous week. R/W Accounting sends the 1A report electronically to P&M every Monday, and P&M shall make a copy of the pertinent page of the weekly 1A report to the Utility Coordinator for review.

13.10.05.00 Delay Charges to Utility Owner

The process for charging Owners for delay charges incurred for utility relocations not being performed as coordinated with the Utility Coordinator are outlined below.

1. Utility Coordinator prepares a delay letter to utility owner.
2. Utility Coordinator receives a copy of delay charges from Construction RE, for example i.e. copy of delay letter from contractor to Caltrans, or a copy of Construction's Change Order.
3. Utility Coordinator ensures the charges for utility owner are clear. (Reviews dates, delay charges, ensures information matches).
4. Utility Coordinator prepares Invoice Request to Account's Receivables (Form ADM-4025).
5. Utility Coordinator sends two copies of the following as a packet to Division of Accounting – Office of Receivable, Services & Administration Abatement & Reimbursement Unit:
    a. Invoice Request to Accounts Receivable form (ADM 4025)
    b. Copy of delay letter or Construction's Change Order
    c. Copy of Notice to Owner showing relocation deadline completion date
6. Utility Coordinator obtains Unit Code and Object Code from Construction (used when coding invoices or paperwork).
7. Utility Coordinator follows-up with Accounting to ensure the following:
    a. 30 days – Accounting issued invoice to utility owner
    b. 90 days – Status of invoice? Paid or Amount Outstanding
    c. 180 days – Is invoice still outstanding, or has it been sent to collections?

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13.11.00.00 - PROPERTY RIGHTS CONVEYANCES

13.11.01.00 General

This section explains usage, preparation, and processing of Joint Use Agreements (JUA), Consent to Common Use Agreements (CCUA), and easement (replacement right of way) conveyances to the utility owner.

The Utility Coordinator is responsible for preparing JUA and CCUA on Form RW 13-1 and Form RW 13-2 respectively, except for Southern California Edison Company's JUA and CCUA, which are prepared on Form RW 13-8 and Form RW 13-9 respectively.

13.11.02.00 Requirements for JUA/CCUA

JUA and CCUA are documents that replace (JUA) or perpetuate (CCUA) the Owner's rights of way that are within the State's highway right of way. Both documents place limiting restrictions on the Owner's use to ensure the Owner's utility use is compatible with highway traffic safety. In the case of a JUA, if the Owner possessed prior rights, the Owner will obtain new rights that replace the prior rights. In the case of a CCUA, the Owner retains their original easement use rights. The fact that the State is obligated to pay the cost of relocating the utility facility with prior rights does not, in itself, entitle the Owner to such an agreement. The documents may be entered into only where the Owner's original easement:

- Possessed prior rights in the right of way acquired by the State.
- Did not contain termination or relocation clauses that were enforceable by the State.

These documents are used only for the portion of the Owner's utility easement that is within the State's highway right of way. These documents cannot be used for any property that is outside the State's highway right of way or that is owned by a third party (such as a Local Public agency or a private party), and the Department shall not enter into a JUA or CCUA for any property that is outside the State's highway right of way nor condition, limit or reference such property in a JUA or CCUA. The State may own the right of way either in fee (JUA or CCUA) or in easement (CCUA only).

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When a Local Public Agency (LPA) owns parcels or acquiring parcels which are expected to be incorporated into the State's right of way, and where a JUA/CCUA are needed, the following steps are needed:

1. Prepare the JUA/CCUA
2. Complete the land transfer from the LPA to the State
3. Once the state owns the property, the JUA/CCUA may be processed
4. The JUA/CCUA must be dated after the land transfer is complete

In the case of an easement, the Owner's prior rights must be carefully checked for unusual conditions. For example:

- The Owner may have an easement that requires relocation at the Owner's expense but obligates the landowner (State) to issue a new easement (JUA or CCUA) for the newly relocated facilities.

- The Owner's easement may have been granted for a specific time period, in which case the JUA or CCUA must be written to terminate on the specified date. Following termination, the utility facility is considered as being under an Encroachment Permit.

NOTE: A JUA cannot be used where the State only possesses an easement right of way. The State as an easement holder has no legal right to grant a utility easement in a new location.

13.11.02.01 Joint Use Agreements

A JUA (Form RW 13-1 or RW 13-8) is used when the Owner's facility will remain on lands used for highway purposes but will be relocated to a position outside, or partly outside, the Owner's existing right of way where the Owner had prior rights. It is also used where the Owner's right of way is not occupied by any existing utility facilities but the Owner will not quitclaim the easement because of an unknown future use.

When existing facilities have been relocated to a new location both within the highway right of way and outside the right of way on a newly acquired utility easement, the JUA describes only the new location of the facilities within the highway right of way (and cannot be used for any property that is outside the State's highway right of way or that is owned by a third party, such as a Local Public Agency or a private party). The easement area outside the highway is covered by acquisition on the Owner's easement form or conveyed by State Director's Easement Deed (DED) if acquired in the State's name.

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13.11.02.02 Consent to Common Use Agreements

A CCUA (Form RW 13-2 or RW 13-9) is used when all of the Owner's facilities, whether rearranged or not, will remain within the highway area covered by the Owner's existing easement area.

13.11.02.03 Water Code 7034 and 7035

Water Code Sections 7034 and 7035 specify the rights and obligations of each party regarding water facilities that fall under these statutes. A JUA or CCUA will be issued only for Section 7035. No JUA/CCUA shall be issued for Section 7034.

13.11.02.04 Local Agency Owned Facilities Within Highways and Frontage Roads

A JUA/CCUA is not required for facilities relocated to frontage roads to be relinquished to the local agency, as the local agency will be vested with all the title the State previously held.

In those cases where the local agency's facilities remain within the highway right of way and not in a frontage road and the facilities were installed in local agency streets prior to inclusion in the highway system, the practice is to enter into a JUA/CCUA only if the local agency so demands.

If the local agency's facilities exist upon a recorded easement, a JUA/CCUA with the local agency covering these facilities is in order.

13.11.02.05 Prescriptive Rights

The Department will perpetuate the Owner's Prescriptive Rights with a JUA/CCUA if the prescription has been perfected by a court proceeding against the record owner. A prescriptive claim cannot be established over land owned by any governmental entity.

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13.11.03.00 JUA/CCUA Preparation

Following are guidelines for preparing JUA/CCUAs:

- The State normally prepares JUA/CCUA, and coordination between the Utility Coordinator and R/W Engineering is essential.

- To the extent practicable, a single JUA/CCUA document is used covering each location or related series of the Owner's easements for either a conventional highway or freeway transaction.

- Since the document must be returned to the State to allow for documenting the recording information on State Record Maps, the State's return address must be shown in the upper left-hand corner of the document.

- The document shall have the same number as the Utility Agreement with another numerical digit after the Utility Agreement number, e.g., Utility Agreement No. 01-UT-1234 corresponds to JUA/CCUA Document No. 1234-1.

13.11.03.01 Description of Owner's Rights

The "Owner's easement" portion of the JUA/CCUA document is described by reference to the document and recording information, if any, by which the Owner acquired the utility easement. If the document is unrecorded, language shall be inserted in the JUA/CCUA description stating that a copy of the unrecorded document is attached and made a part of the JUA/CCUA. (The unrecorded document is then attached.) In the case of Pacific Gas and Electric Company, a copy of the unrecorded document should not be attached to the JUA/CCUA to be recorded. A copy is retained and attached to the R/W Utilities file copy only.

When the Owner's easement rights have been acquired by prescription, or in any other manner that does not exactly describe the specific location or rights acquired, the "Owner's easement" must be described in precise terms using one of the following clauses as appropriate:

A. "The easement for a (voltage) electric distribution line consisting of a single line of poles with (number) conductors suspended therefrom and appurtenant thereto, together with a right of way along said pole line, acquired by (occupancy, etc., as appropriate to the circumstances)."

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NOTE: If a telephone facility is involved, this clause should be modified to describe the number of circuits instead of voltage. It should also include the number of poles erected within the area being described.

B. "The easement for a (size) inches or feet (gas, water, steam, oil, etc.) pipeline with valves and other appurtenances, fittings and connections thereto, together with a right of way along said pipeline acquired by (occupancy, etc., as appropriate to the circumstances)."

C. "The easement for a canal or ditch and pertinent structures within a strip of land (number) feet in width, together with a right of way along said strip acquired by (occupancy, etc., as appropriate to the circumstances)."

13.11.03.02 Vicinity Description

The "highway right of way" portion of the JUA/CCUA document is described by reference to the vicinity of a city, town, or other commonly recognized locality, the county, and the State Route.

13.11.03.03 Location Description

R/W Engineering prepares the description of the "new location" or "area of common use." The description is included in the JUA/CCUA in accordance with the following requirements:

A. In some instances, the Owner's existing facility will be located partially within an easement and partially under permit or other lesser right. In those cases, the "new location" or "area of common use" must be apportioned so the Owner has the same ratio of ownership and rights in the new location as were held in the old location. The Owner must not receive a betterment by a grant of an easement for the portion that was previously held under permit or lesser right.

B. The foregoing rule applies notwithstanding the fact that the existing facilities may leave the highway right of way for a portion of their length, so there is in effect more than one crossing of the highway or right of way line.

C. The description preferably should be by attached map, provided the map can be reduced to the size of a recordable document without being illegible.

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D. For the purpose of the referenced apportionments, distances are determined by measurement on a scaled map that is an accurate horizontal plan of the affected easements. To the extent possible, the new easement location is described as a continuous strip even though the original easement locations may not have been continuous and abutting. The description for a new longitudinal location generally commences opposite the lowest highway engineer's station and is measured in the direction of increasing stations. In the case of perpendicular crossings, it commences at the right of way line, right or left of the highway station.

E. If two or more of the Owner's original easements are being combined into a single JUA, the following statement is added to the end of the description of the "new location":

   "For the purpose of determining the position and length of each of Owner's easements in the new location, said easements shall be deemed to be located in the same sequence as is set forth above, and the length of each easement in the new location shall bear the same proportion to the entire length of the new location as the length of such easement in the old location within the right of way of the highway bore to the entire said length, all lengths to be measured on a scaled map which is an accurate horizontal plan of the affected easements."

F. Where practical, more than one crossing of the highway right of way may be covered in a single JUA/CCUA.

G. When the Owner's rights have been acquired by prescription, or in any other manner that does not exactly describe the specific location or rights acquired, "Owner's easement" must be described in precise terms in the form as shown in Section 13.11.03.01.

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13.11.03.04 Access Control Clauses

The JUA or CCUA specifies any limitations on the Owner's right to cross access control lines or fences erected across the new location of the Owner's easement or the area of common use. If the highway is not a freeway, the words "conventional highway, not applicable" are inserted as Paragraph 4 of the JUA or Paragraph 3 of the CCUA. If the Owner's facilities in the new location or area of common use do not cross a freeway access control line or fence, the following provision is inserted:

> "State's access control line does not intersect Owner's easement; not applicable."

If the State highway involved is a freeway and the Owner's facilities in the new location or area of common use will cross the freeway access control line or fence, the parties must enter into a specific understanding on how the Owner will access their right of way along the easement portions at each crossing of the freeway fence. Usually, the JUA/CCUA uses one of the clauses in "Clauses - Access Control Across Freeway Fence," for the situations presented. If none of the clauses fits the situation, the parties will agree upon the manner in which the Owner is to exercise their rights. The clause negotiated shall be subject to Headquarters R/W, Design and Legal review and approval.

CLAUSES - ACCESS CONTROL ACROSS FREEWAY FENCE

- **The Owner needs (a) gate(s) in the freeway fence, and the State accepts the need.**

  NOTE: This situation also requires approval from the Division of Design and/or FHWA.

  Clause:

  "Owner shall exercise its rights of way solely by use of the gate installed in the freeway fence (right or left) of Engineer's Stations _____ (Insert as necessary: "together with the road approach thereto constructed within the freeway"). Said gate (and road approach) shall not be used for any purpose other than construction, reconstruction, operation, inspection, repair or maintenance of Owner's facilities now or hereafter installed pursuant to Owner's easement. Owner shall close and lock said gate after each use thereof by Owner."

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CLAUSES - ACCESS CONTROL ACROSS FREEWAY FENCE (Continued)

- **The Owner agrees that it can adequately maintain the facilities installed on their easement by traveling over city streets, county roads, or State highways that are not planned to be closed, or a private easement owned by the utility.**

  Clause:

  "Owner shall not, in the exercise of its rights under its easement, pass through or over the freeway fence(s) constructed by State across Owner's easement (right or left) of Engineer's Station _____ except in emergencies or when necessary to permit the construction, reconstruction or replacement of Owner's facilities."

- **If neither previous clause is applicable, the State shall provide a substitute route (or means) for the Owner's use for accessing the easement areas at each crossing of a freeway fence or access control line. In each case, the substitute route (or means) shall be fully described in the document.**

  Clause:

  "So long as Owner shall have a right to exercise its right of way along its easement by the means hereinafter described, or a reasonable substitute therefore, provided by State, Owner shall not pass through or over the freeway fence constructed by State across Owner's easement except in emergencies or when necessary to permit the construction, reconstruction or replacement of Owner's facilities. Said route (or means) is described as follows:

  (Provide description of route or means.)"

- **The Owner's easement does not cross the freeway access control line, or the Owner can only adequately reach their facilities from the freeway.**

  NOTE: This situation also requires Division of Design encroachment exception approval.

  Clause:

  "Owner shall enter and leave said (new location or area of common use) only by way of said freeway."

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CLAUSES - ACCESS CONTROL ACROSS FREEWAY FENCE (Continued)

- **The Owner's facilities in the new location are entirely outside of the freeway fence and the Owner can adequately reach their facilities without crossing the fence.**

  Clause:

  "Owner's facilities in the new location are located entirely outside the freeway fence. This paragraph is therefore not applicable."

  Or

  Clauses in the four sections above, as applicable, plus:

  "The foregoing is not applicable to that portion of the new location within a frontage road outside of the freeway in which the Owner's rights can be exercised by entry from such frontage road."

13.11.04.00 JUA/CCUA Processing

The Utility Coordinator processes the JUA/CCUA as shown below.

JUA/CCUA PROCESS

1. Request R/W Engineering to prepare the necessary maps and legal descriptions for the JUA/CCUA.
2. Review the JUA/CCUA for accuracy and compliance with policy.
3. Transmit the original, one counterpart, and one copy of the JUA/CCUA to Owner with the following instructions:
   - Request Owner to sign, notarize, and return the original and the counterpart. The copy is for the Owner's records.
   - Request Owner to provide full organizational names and titles of the signing officers with their signatures acknowledged on the JUA/CCUA.
   - Advise that a fully executed and recorded original will be returned to Owner following State's processing.
4. Upon receipt from the Owner, review the documents to ensure they have been properly executed and acknowledged and sign both the original and the counterpart under "Recommended for Approval."

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5. Forward the documents to the district person who is appointed as the Department's Attorney in Fact to sign and notarize both the original and the counterpart of the JUA/CCUA on the State's behalf.
6. Record the executed original JUA/CCUA. The State's return address must be shown in the upper left-hand corner of the document.
7. Upon return of the recorded JUA/CCUA, the district will:
    - Send the original recorded JUA/CCUA to the Owner with reference to County, Route, Post, EA, Utility Agreement No., Owner's file reference, and any other information pertinent to the project and file.
    - Send a copy of the recorded JUA/CCUA to R/W Engineering for entering on the District's Record Maps.
    - Retain the original, counterpart, and the copy of the recorded JUA/CCUA in the Utility File.

13.11.04.01 Recording JUA/CCUA Prior to Relinquishment of Frontage Roads

Occasionally, an Owner's prior rights easement will impact both a State freeway and a frontage road that will be relinquished to a local agency. To protect the Owner's prior rights, the JUA/CCUA must be recorded in advance of the relinquishment resolution.

13.11.05.00 Special Clauses

Where the Owner is in a prior right status to the State highway and is requesting a special clause in the JUA/CCUA, one of the following standard clauses may be used as appropriate to cover the Owner's needs. Use of these clauses requires written approval from Headquarters R/W. The circumstances warranting use of these clauses shall be included in the transmittal memo to HQ R/W. Under no circumstances are these clauses to be modified without Legal's prior approval.

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13.11.05.01 Conversion of Open Ditch to Conduit When Owner Has Prior Rights

Where an open ditch exists under a granted easement, the highway is on a new alignment, and the State is changing the facility to a closed conduit within the highway right of way, the following clause may be added to the JUA/CCUA:

> "Inasmuch as Water Code Section (7034) (7035) requires STATE to be responsible for the structural maintenance of the conduit portion of OWNER's facilities which transports water under the highway at Engineer's Station _____, STATE will repair or replace the conduit portion of OWNER's facilities which lies within the STATE highway right of way when such becomes necessary unless such repair or replacement is made necessary by negligent or wrongful acts of the OWNER, its agents, contractors or employees; provided that the OWNER shall keep the conduit clean and free from obstruction, debris, and other substances so as to ensure the free passage of water in said conduit. In no event shall STATE be liable for any betterments, changes or alterations in said facility made by or at the request of the OWNER for its benefit."

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13.11.05.02 Special Clause for Public Agencies

Sometimes the standard form of JUA/CCUA cannot be used when dealing with another public agency, such as the federal government. To establish equal and concurrent rights to a common use area to be jointly used with the State, conveyances to another public agency may include the following clause with Headquarters R/W prior approval:

> "This grant is subject to all valid and existing encumbrances of record, and is subject to the continuing right of the grantor and its successor to use the said land hereof, in common with the grantee and its successors, with the understanding that after completion of the highway construction work presently contemplated, whenever either party alters or improves its facilities within such common area, such party shall assume the actual and necessary costs, exclusive of betterments, of accommodating the other's facilities located in such common use area and necessarily affected by the proposed alteration or improvement, and that neither party will undertake any such alterations or improvements without first submitting to and obtaining the written approval by the other of the plans and specifications thereof, which approval shall not be unreasonably withheld."

This clause is readily adaptable where the State is either the grantor or the grantee. Inasmuch as the party initiating the work of altering their own facility within the common use area is liable for the cost of reconstruction and relocation of the other public facility, it is important to carefully consider respective rights of the parties before consenting to use of this clause, and then only after Headquarters R/W review and approval.

13.11.06.00 Agreements with Public Agencies

The Bureau of Reclamation and the Department of Water Resources have special agreements with the Department that provide instructions for preparation of a JUA/CCUA going to them.

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13.11.06.01 Bureau of Reclamation Agreements

The State and the Bureau of Reclamation have entered into master contracts as shown below:

- **Bureau of Reclamation Contract No. 14-06-200-6020 (CVP) dated October 12, 1956**

  Coverage:

  Joint use areas of State highways and facilities of the Central Valley Project.

  Explanation:

  Provides for perpetual joint use in common areas by either party on lands of the other party by means of a one-page form labeled "Exhibit 'C'" of the contract (Form RW 13-10). Each joint use is subject to the terms and conditions in the master contract.

- **Bureau of Reclamation Contract No. 14-06-200-503-A (Non-CVP) dated October 9, 1963**

  Coverage:

  Joint use of State highways and Bureau of Reclamation facilities, other than those of the Central Valley Project (Contract No. 14-06-200-6020).

  Explanation:

  Provides for the form of "JUA" to be used when the State or the Bureau proposes construction on the other's property. The forms of "JUA" are:

  1. "Exhibit 'B'" (Form RW 13-11) of the master contract provides for the form of JUA to be issued by the State when the Bureau proposes transverse construction on the State's property.
  2. "Exhibit 'C'" (Form RW 13-12) of the master contract provides for the form of JUA to be issued by the Bureau when the State proposes construction on the Bureau's property.

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13.11.06.02 Department of Water Resources Agreement

The Department and the Department of Water Resources entered into an agreement dated December 13, 1961 covering, among other things, the form of "Certificate of Common Use" to be used when the Department or the Department of Water Resources proposes construction on the other's property. The forms of "Certificate of Common Uses" are:

- Exhibit 'A' (Form RW 13-13) of the master contract is used when the Department proposes construction on the Department of Water Resources' property.

- Exhibit 'B' (Form RW 13-14) of the master contract is used when the Department of Water Resources proposes construction on the Department's property. Transverse crossings by the Department of Water Resources are the only permitted crossings under this agreement.

13.11.07.00 Easement Conveyance Processing

Conveyance of easements to Owners is by deed. To initiate this procedure, the Utility Coordinator must include a clause/clauses in the Utility Agreement for property rights to be conveyed and the form of conveyance. Clause(s) should also include credit to the State for the Owner's share of the cost or market value of easements conveyed, as applicable. The cost of State acquired utility easements is part of the cost of relocation and must be apportioned between the State and the Owner in accordance with the Utility Agreement. See Section 13.07.00.00 for standard Utility Agreement clauses.

NOTE: Easements to be conveyed across excess lands or developable airspace parcels must be located so as to minimize possible adverse conflicts to site development. Requests for easements across airspace or excess lands not originating as a result of a Utility Agreement obligation should be handled in accordance with usual excess or airspace procedures.

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13.11.07.01 Easement Billing Process with R/W Contract (No Utility Agreement)

This process is used when there is no Utility Agreement because liability is 100% Owner expense, easements have been purchased for the Utility Owner with State funds through a R/W Contract, and the deed has been recorded. The Utility Owner must reimburse the State for this cost.

When Acquisition has acquired the easement(s), the Utility Coordinator is responsible to:

- Document the Owner's request for the State to purchase easements in the Utility Diary.
- Obtain a copy of the R/W Contract and Memorandum of Settlement (RW 8-12 or RW 8-13) from Acquisition.
- Highlight the easement description and settlement cost in Paragraph 8 of the Memorandum of Settlement.
- Verify with Planning and Management (P&M) that the payment has been made to the grantor of the property and the project EA is open. *

* If the project EA is not open, request P&M to supplement the EA for the purpose of processing the invoice for the easement.

13.11.07.02 Acquired in Owner's Name

Acquisition of easements in the Owner's name using their deed form is the preferred method since the procedure for transferring this easement deed is the simplest. When Acquisition has acquired the easement in the Owner's name, the Utility Coordinator is responsible to:

- Obtain the Owner's approval of the description in advance of execution.
- Collect money due the State from the Owner for their share of the easement costs, if applicable.
- Ensure the easement deed is recorded.
- Retain a copy of the easement deed along with a copy of the recording request to the County Recorder.

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13.11.07.03 Acquired in State's Name

The process for conveying an easement acquired in the State's name is slightly more difficult than conveying an easement in the Owner's name. When Acquisition has acquired the easement in the State's name, the Utility Coordinator is responsible to:

- Transmit necessary maps and/or legal descriptions (taken from the State's Grant Deed) to Excess Lands with a request for Director's Easement Deed (DED) preparation.

- Review the prepared DED for accuracy and transmit a copy of the DED to the Owner for review and approval. Any money due the State should be requested pursuant to the Utility Agreement.

- Upon Owner approval and receipt of money due State, request Excess Land to process the DED as provided for in Section 16.07.00.00.

- Ensure receipt of a copy of the DED for the District's Utility files and follow up to make sure the DED was recorded and sent to the Owner.

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13.12.00.00 - LOCAL PUBLIC AGENCY PROJECTS

13.12.01.00 General

This section covers oversight requirements for utility involvements on the following three types of projects:

- Local Public Agency (LPA) Funded State Highway Projects.
- Federal Aid Local Streets and Roads Projects.
- Private Developer Funded State Highway Improvement Projects.

This section also covers review of Cooperative Agreements.

13.12.01.01 Preliminary Engineering Allowed for Local Programs

The use of Preliminary Engineering by Local Agencies is allowed prior to and in support of the Environmental Document. The Local Agencies are to follow the procedures outlined in 13.02.02.02 and other sections of this Manual.

13.12.02.00 Locally Funded State Highway Projects

Locally funded State highway projects are those projects on the State highway system that are locally sponsored through use of LPA and/or private funding. They typically are not CTC initiated STIP projects, but are included in the STIP for project identification and approval. These projects do not include federal aided local projects that are included in the Local Streets and Roads Program. The more common types of Special Funded projects are:

- Tax Measure Projects
- "$1" Projects
- Interchange Cost Sharing Projects
- Cooperative State/Local Projects
- Toll Road Projects

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13.12.02.01 Oversight of Locally Funded State Highway Projects

The Utility Coordinator provides oversight on locally funded State Highway projects. Oversight includes the activity of monitoring as well as the effort of assisting, guiding, and advising the LPA to ensure that all utility adjustments and encroachments are accomplished in accordance with the Department's policies, procedures, standards, practices, statutes, contracts, and agreements. Within this context, use of State mandated forms shall be required of all LPAs and/or their consultants.

Where protection, relocation, or removal of facilities is required, the work shall be performed and liability determined in accordance with:

- State law, policy, procedure, contracts, and agreements for those facilities located within the project limits providing improvements to the State highway.

- Local agency policy and procedures for those facilities located outside the project limits of the State highway.

This requires the local agency to adhere to all requirements of the State's Master Contracts for work related to the State freeway portion of the locally funded project.

The S&H Code authorizes the State to issue Notices for ordered relocations on the State highway system. This authorization can be specifically delegated to an LPA. If the impacted Owner of facilities refuses to accept an LPA issued Notice, the Utility Coordinator may issue the Notice after appropriate review.

13.12.02.02 Use of Scopes of Work

To ensure the State's policies and practices are followed whenever work is performed by consultants on State highways, work products and services should be performed as described in Exhibit 13-EX-28, Utilities Scope of Work (SOW). The recommended SOW establishes requirements necessary for consultants to complete the required service or product and establishes minimum acceptable standards. To ensure minimum standards are followed, districts shall monitor LPAs in accordance with procedures outlined in the Local Programs Chapter of this manual. As stated therein, district functional units have responsibility to provide input, review, supervision, and contract administration.

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13.12.02.03 Use of State Forms

The Department's standard forms shall be used as a consistent approach with all Owners in the utility relocation process. In addition, Owners have become familiar with the forms and understand and accept their usage. It is mandatory, therefore, that all outside entities performing work on State highways use these standard forms.

For local streets and roads projects, the Forms and Exhibits are intended to be guides and may be used by the LPA as desired. Approved local forms are available in Chapter 14 of the Local Assistance Procedures Manual.

13.12.02.04 Project Completion

The LPA shall transfer all project and utility files to the Utility Coordinator upon completion of their work or their consultant's work and not later than overall completion of the construction project. The information in the files should include at a minimum:

- Completed Utility Diary.
- All correspondence between the LPA, Owners, design engineers, consultants, and the State.
- All documents executed between the LPA, Owners, design engineers, consultants, and the State.
- All project design plans and survey data.
- Utility facility As-Builts, where available.

All files are to be in a neat and orderly condition upon the Utility Coordinator's acceptance.

13.12.03.00 Federal Aid Local Streets and Roads Projects

FHWA places overall responsibility on the State for all right of way work performed on federal aid projects. Federal regulations allow the State to use an LPA for R/W work performed. The State must monitor the LPA's activity for compliance with State and federal laws and regulations. In addition, the State is responsible to fully inform LPAs of their responsibilities in connection with federal aid projects. The State must ensure every LPA receives all current regulations and procedural instructions affecting R/W activity and must provide guidance and advice on R/W matters. Each district should have a R/W LPA Coordinator or a Utility Coordinator who is responsible for liaison and consultation with the LPA and for providing the FHWA Specific Authorization

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on R/W Utility matters on behalf of FHWA. See the Local Programs Chapter of this Manual for procedures on dealing with local streets and roads projects.

13.12.03.01 Review Procedures

Most utility facilities within local streets and roads are located under a franchise agreement that requires all facility adjustments caused by the project to be accomplished at the Owner's expense. As a result, there are limited utility relocation costs to be reimbursed, and FHWA's primary concern lies with ensuring that required utility adjustments are properly planned and coordinated with construction. This requires timely issuance of a Notice that clearly states how the utilities will be adjusted to allow conflict-free construction.

If the Owner possesses a right superior or prior to that of the LPA, the normal rules of liability determination with appropriate agreements and audits shall apply. (See Section 13.04.00.00.)

The Utility Coordinator is responsible to perform a full review of the LPA utility reimbursement in the same manner as the District Utility Reviewer now uses on district federal-aid projects.

13.12.04.00 Private Developer Funded State Highway Improvement Projects

The Utility Coordinator's responsibility for private developer funded State Highway Improvement Projects is to ensure standard clauses are used in the Highway Improvement Agreement and to review and recommend approval of the developer's Encroachment Permit application.

This type of project uses the State's Encroachment Permit for projects under $1 million and the Highway Improvement Agreement on permit projects of $1 million or more that are funded entirely from private sources. These Highway Improvement Agreements are similar to Cooperative Agreements in form, context, and legal commitment. District Encroachment Permits initiates the Agreements with input from R/W. For standard clauses to be used in the Highway Improvement Agreement, see the Local Programs Chapter of this Manual.

Often, these projects require the developer to acquire additional right of way that is subsequently conveyed to the State to become part of the State highway system. For this reason, it is important that the Utility Coordinator ensures that all utility adjustments meet the State's requirements.

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Since no governmental funding is involved in these projects, the Federal Uniform Act and the State Eminent Domain Law do not apply to any private-developer-initiated and privately funded project. In accordance with statutory and judicial law, the developer shall pay for all utility adjustments required to accommodate a private-developer-sponsored project.

13.12.05.00 Cooperative Agreement Reviews

Project Development, Traffic, etc., may enter into Cooperative Agreements with LPAs for a variety of projects, and these Cooperative Agreements must circulate through R/W Utilities for review and comment. Cooperative projects often involve cost sharing that benefits both parties. The Utility Coordinator must review each Cooperative Agreement for disposition of utility relocations. Some critical items to be covered are:

- The terms of the Cooperative Agreement shall establish the LPA's responsibility for the cost of protection, relocation, or removal of utility facilities located within the State highway right of way. Only those facilities that meet State's encroachment policy shall be allowed to remain.

- The LPA responsible for project design shall assume responsibility for identification and location of all utility facilities within the area of project construction and shall assume responsibility for payment of identification and location costs pursuant to applicable Positive Location Agreements with Utility Owners. All utility facilities not relocated or removed in advance of construction shall be identified on the project plans and specifications.

- All underground high and low risk utility facilities shall be handled in accordance with the State's "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way." (For a copy of this policy, refer to Appendix LL of the Project Development Procedures Manual.)

- HQ Legal has determined that a specific delegation must be made to the LPA in order to authorize them to execute the Notice to Owner. In the absence of the delegation, the Utility Coordinator must execute it. The benefit to the district of retaining execution authority is that this facilitates the oversight process.

For standard clauses to be used for Cooperative Agreements, see the Local Programs Chapter of this Manual.

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13.12.05.01 Work Under Cooperative Agreement

When reviewing the Cooperative Agreement for right of way activities, regardless if the LPA or the State performs the work, all Federal and State laws and regulations, policies, practices, agreements, and procedures shall be followed. If the State performs the work, the LPA shall be advised immediately of any cost changes that may be significantly higher than earlier project estimates or result from amended Utility Agreements.

13.12.05.02 Cooperative Agreement Billings

When utility relocation cost sharing is involved, the Utility Coordinator shall take steps necessary to ensure the LPA is billed for their share of the estimated costs, as stipulated in the Cooperative Agreement. The LPA shall be billed when all known relocations have been determined, but prior to R/W Certification. The State must receive all funds for the LPA's share of the estimated relocation costs prior to award of the State's construction contract.

Procedures for billing LPAs are as follows:

- Determine the estimate of cost for utility relocation work.
- Send a memorandum to Accounting requesting billing of the LPA. (13-EX-30)
- Retain a copy of the memorandum in the R/W Utility File.

13.12.05.03 Cooperative Agreement Final Bills

The Utility Coordinator is responsible to ensure that LPAs are billed for their share of utility relocation costs pursuant to the Cooperative Agreement. A final accounting should take place as soon as all relocations are complete and all costs have been determined. The LPA's share shall be calculated from the final billings obtained from the Owners. If the LPA owes more than the amount previously billed, the LPA shall be billed the difference. If the LPA was overbilled, the LPA shall be refunded the difference immediately.

The Utility Coordinator shall send a memorandum to Accounting requesting billing or refund. The memorandum to Accounting must show previous amounts billed and collected.

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13.13.00.00 - NON-PROJECT RELATED RESPONSIBILITIES

13.13.01.00 General

The Utility Coordinator is responsible for taking appropriate action on policies emanating from within Right of Way and other Department programs, offices, and branches that involve utilities.

13.13.02.00 Excess Land

The purpose of the R/W Utilities review of a proposed excess land sale is to identify utility easements that should be conveyed or reserved prior to sale. The review should include the steps in Table 13.13-1 entitled "Excess Land Review."

Table 13.13-1

EXCESS LAND REVIEW

Step	Action
1	Identify and complete easement obligations still outstanding as a condition of a relocation.
2	Identify easements for future relocation needs for projects in the current STIP.
3	Identify existing facilities on the property where the Owner may need to acquire an easement from the State.
4	Transmit a copy of the excess land property map to the potentially affected Owners asking for: • Identification of facilities on the property. • Size and type of facility on property. • Owner's rights of occupancy on the property. • Owner's interest in purchasing property rights from the State. • Owner's response within 30 days.

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Table 13.13-1 (Continued)

EXCESS LAND REVIEW

Step	Action
5	Review Owner's response and provide Excess Land with the findings: • If no obligations are pending, return to Excess Land with "No objections to sale." • If the State's obligations are still pending, request Excess Land to prepare and issue a Director's Easement Deed (DED) to the Owner or to insert a clause in the deed of the property to be sold reserving an easement to the Owner. The Utility Coordinator must provide Excess Land with a plan showing the easement width, location with ties, size and/or type of facility to occupy the easement, and a copy of the Utility Agreement containing the State's obligation for the DED or reservation, as appropriate. • If the Owner wishes to acquire property rights, the Utility Coordinator should furnish Excess Land with the information listed above. • If the Utility Owner does not have a vested or prior right, the Excess Land Agent will request an appraisal and offer the Utility Owner the opportunity to purchase an easement for their facility. The easement reservation will be done in the same manner as shown above. • If the Utility Owner does not wish to purchase the easement, the Excess Land Agent will request the Utility Owner to relocate their facilities outside the surplus parcel.
6	The Utility Coordinator should retain a copy of all correspondence and deeds in the R/W Utility File.

13.13.03.00 Vacations and Relinquishments

- **Vacation** - A *vacation* is the CTC action by which the public right of use is removed from a State highway right of way. Whenever utility facilities are within the area to be vacated, the district advises the Owners and determines whether they wish utility reservations as provided in S&H Code Sections 8340 and 8341. The Utility Coordinator must establish a procedure with the District's R/W Engineer to ensure that right of way on which utilities are located is not vacated without appropriate reservations or a JUA/CCUA. Prior rights are not necessary: if the owner requests a reservation, it shall be provided.

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- **Relinquishment** – A *relinquishment* is the act of and process of legally transferring property rights, title, liability, and maintenance responsibilities of a portion or entirety of a state highway or a park and ride to another entity. The Utility Coordinator is responsible to review any area to be relinquished and determine if all JUA/CCUAs have been issued to the Owners. The Utility Coordinator shall make arrangements to be notified of all proposed relinquishments and shall check R/W Utility files for outstanding JUA/CCUAs. If any are incomplete, the Utility Coordinator must complete them prior to relinquishment.

13.13.04.00 Airspace Leases

Airspace leases may require investigation prior to execution of the lease. Both parties to the lease should be aware of existing utility facilities and the liability for relocation if necessary. The Utility Coordinator will not initiate action on airspace leases until requested.

13.13.04.01 Airspace Lease Not Allowed for Utility Facilities

Since State franchise laws do not allow the renting of freeway airspace for utility facility use, all utility use of freeways is covered by Encroachment Permit rules and regulations only.

13.13.05.00 Encroachment Permits

Caltrans policy for encroachments, including utilities, is found in the Project Development Procedures Manual (PDPM) Chapter 17 and the Encroachment Permit Manual (EPM) Chapter 600. Should there be any discrepancies or omissions found between the EPM and the PDPM, the PDPM will take precedence.

All utility facilities must be designed, installed and maintained in accordance with the Department's PDPM Chapter 17, the EPM, and other applicable federal and state laws, regulations and requirements. Facilities shall also be installed, maintained and operated in accordance with PUC General Orders 95, 112-D, 128, and others, if the Utility Owner is regulated by the CPUC, as may be applicable, in a manner that does not impede the safety, design, traffic operations, maintenance, integrity and stability of the highway. Utility construction activities shall be performed in accordance with prescribed Encroachment Permit requirements.

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Longitudinal utility placements are prohibited within State highway access control right-of-way (with the exception of subsurface conduits with no access points in highway right-of-way) and may be permitted on conventional highways in accordance with Caltrans policy.

13.13.05.01 Review of Encroachment Permits

Utility Coordinators are to review all "state required relocation" utility Encroachment Permit applications. These applications should be logged in and out by date and number since definite time limits for review and issuance of permits have been established by law.

- **Encroachment Permits** – Master Contracts between the State and some Owners contain conditions providing that when an Owner initially installs new facilities within the right of way of an existing freeway or frontage road by encroachment permit, the Owner will pay in its entirety that portion of the cost associated with any future rearrangements of the facilities. These contracts further provide that where the facilities are initially installed before the highway became a freeway, the cost for rearrangement shall be shared. Any betterment, such as an expansion of capacity, installed following designation of the highway as a freeway shall be covered by an encroachment permit, and that portion of the relocation costs associated with the betterment shall be the Owner's liability. Whenever new facilities are installed in an Owner's prior right area and are installed consistent with the granting document, whether installed before or after the freeway designation, subsequent relocation costs shall be the State's liability.

  Note: The Utility Coordinator may encounter some encroachment permits which are stamped "Freeway Permits." Disregard the stamp and handle as an encroachment permit.

- **For Record Purposes Only Permits** – In those cases where the Owner has, or is entitled to, a JUA/CCUA, the Encroachment Permit shall be stamped or typed with the words, "FOR RECORD PURPOSES ONLY." Care must be exercised to determine that the use proposed by the Owner granted in the JUA/CCUA does not exceed the rights granted in the Owner's original document.

  Example 1: The Owner proposes to install a "buried telephone cable" within the JUA/CCUA area that is limited to "four circuits of open wire;" the permit would not be stamped "Freeway Permit" as the new buried cable is not consistent with the rights covered in the JUA/CCUA.

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Example 2: The Owner proposes to install larger conductors going from "60KV" to "115KV" and the JUA/CCUA is for the "transmission of electrical energy;" the permit would be stamped "FOR RECORD PURPOSES ONLY" as the new 115KV conductors are consistent with the rights covered under the JUA/CCUA.

- **Permits for New Longitudinally Installed Facilities Within Freeways** – Provided an encroachment exception is approved to allow a new longitudinal facility within State highway access control rights-of-way in accordance with PDPM Chapter 17, the statutory right conferred by S&H Code Section 703 for publicly owned sewers, fire hydrants, and streetlights can be waived under the provisions of Civil Code Section 3513. The following provision should be included in all Encroachment Permits issued for new longitudinal encroachments of this type to be installed in an existing freeway:

  "(Name of persons or entity waiving right), with full knowledge of the provisions and its rights thereunder, expressly waives all right whatsoever under Section 703 of the Streets and Highways Code, which provides that publicly owned sewers in any freeway shall be relocated when necessary at the expense of the Department."

  - **Wired Broadband** – California Assembly Bill 1549 (2017), an act to add Section 14051 to the Government Code relating to highways, requires that the Department notify broadband companies of transportation projects that are suitable for installation of wired broadband. (See the Department's broadband guidelines.) The Utility Coordinator shall have no responsibility during the installation of wired broadband under Government Code Section 14051.

13.13.06.00 Utility Franchise Reviews

Pursuant to S&H Code Section 682, all cities and counties have the right to grant franchises within the right of way of a conventional State highway subject to the conditions and limitations provided in Sections 682 through 695. The district shall take steps to establish liaison with all city councils and county boards of supervisors within the district so the district will receive notice of all pending applications for utility franchises coming before each city council and county board of supervisors. It is the district's responsibility to determine whether the requested franchise will affect any existing or contemplated State highway or freeway.

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13.13.06.01 District Review of Franchise Applications

If the requested franchise is to be situated in or serve in an area in which there are no State highways or freeways, whether existing or contemplated, the district shall, without referral to Headquarters R/W, advise the city or county that the Department has no objection to granting the requested franchise. The district, in each case, shall forward a copy of the related correspondence to Headquarters R/W.

13.13.06.02 Headquarters R/W Review of Franchise Applications

Where the requested franchise is to be situated in or serve an area in which State highways or freeways are located or contemplated, the franchise shall be submitted for Headquarters R/W and Legal review. The district must furnish the following information along with the proposed franchise:

- The name of the Utility Owner requesting the franchise.
- A copy of the proposed franchise and applicable ordinance.
- The date of the public hearing.

Initially, Headquarters R/W will communicate directly with local representatives of the governmental unit concerned. Copies of correspondence will be sent to the affected district. Headquarters R/W will advise the district, in writing, of action or disposition to be taken. The district will then handle the matter on the local level with the municipality.

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13.14.00.00 - FEDERAL AID PROCEDURES

13.14.01.00 General

Utility relocations on projects with federal participation are generally processed in the same manner and with the same forms as State-only financed projects. The only difference is that FHWA Authorization to Proceed (E-76) and FHWA Specific Authorization (Form RW 13-15) must both be obtained before commencement of any work to qualify for FHWA reimbursement of relocation costs.

It is not intended that this section cover all the detailed requirements for Federal-aid reimbursement of State costs. The Utility Coordinator should review the Code of Federal Regulations (CFR), in particular 23 CFR 645 and the additional instructions contained in FHWA's "Program Guide Utility Relocation and Accommodation on Federal-Aid Highway Projects."

13.14.02.00 FHWA Alternate Procedure

In accordance with 23 CFR 645.119, the State has been granted authority under the Alternate Procedure process to act in the relative position of FHWA for reviewing and approving arrangements, fees, estimates, plans, agreements, and other related matters required by the CFR as prerequisites for authorizing a utility to proceed with and complete the work.

The State must obtain Federal Authorization to Proceed (E-76) for the project authorizing the use of the Alternate Procedure and listing every utility company for which Federal-aid reimbursement will be sought, with an estimate of the cost of the relocation, before the State may issue a Specific Authorization under the Alternate Procedure process.

Issuance of FHWA Specific Authorization has been delegated to the Regions/Districts except those listed in the following manual section (refer to Section 13.01.02.01).

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13.14.02.01 Nondelegated Relocations

In accordance with 23 CFR 645(b), the FHWA retains approval of relocations under the following four circumstances:

- Utility relocations and adjustments of major transfer, production, and storage facilities such as generating plants, power feed stations, pumping stations, and reservoirs.

- Advance installation of new utility facilities, within the proposed right of way prior to the right of way being purchased or under the State's control to provide for installation of the new facilities in a manner that will meet requirements of the planned project.

- Utility relocations entirely or partly on right of way FHWA has authorized for acquisition under the hardship and protection provisions of 23 CFR 710.

- Utility relocations when the State and the Owner cannot reach agreement on their separate responsibilities.

Approval of these items must be requested directly from the FHWA through HQ R/W. See Section 13.14.07.00 below.

13.14.03.00 Federal Authorization to Proceed (E-76)

FHWA authorization to proceed with utility relocation work must be obtained prior to requesting the Owner to prepare a relocation plan and estimate for all projects proposed for Federal-aid reimbursement. Authorization is obtained by submittal and approval of Form E-76. P&M normally processes all E-76s, but the Utility Coordinator is responsible to provide accurate utility information and ensure the Alternate Procedure is requested.

FHWA must authorize the State to proceed with utility relocations on a project-by-project/owner-by-owner basis before a Specific Authorization to relocate any Owner's facilities may be issued. Any facility relocation or acquisition of replacement right of way the Owner does prior to approval is not Federal-aid reimbursable.

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13.14.04.00 FHWA Specific Authorization to Proceed

The Specific Authorization must be issued before any physical relocation work is commenced or Owner-contracted engineering services are authorized. The Specific Authorization (Form RW 13-15) affirms the need for relocation is justified, liability for the cost is proper, and the Owner's plans and estimate are reasonable for accomplishing the necessary relocation.

When the utility relocation work is to be performed by our highway contractor, and is part of the PS&E, the "RELOCATION COST ESTIMATE" item in the FHWA Specific Authorization (Form RW 13-15) must include a line for Phase 4 (Construction Funding) and show the amount authorized.

The following statement must be added to the "Remarks" section of the Specific Authorization:

> "The proposed adjustment of utility facilities to be performed by the highway contractor is approved. Payment for the utility adjustment will be vouchered through the construction program, therefore, the authorization date for this work will be the date that FHWA approves the construction project.
>
> This memorandum must be attached to the District Certification."

13.14.05.00 Changes After FHWA Specific Authorization Is Issued

Major changes, such as changing from Owner-accomplished work to Owner-contracted-out work, or additional work not shown on the original authorization, will require a supplemental authorization in the same form as the original request (Form RW 13-15). Major changes or additions are not eligible for Federal-aid reimbursement unless authorized.

Minor changes, additions, and deletions do not need supplemental approval; however, to be included under the original authorization, they must be documented by memorandum in the Utility File. The documentation must include a description of the change and revised maps and estimates. Refer to Section 13.06.03.05 - Revised Notices.

See Section 13.09.03.00 for discovered work and emergencies.

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13.14.06.00 FHWA Approval of Nondelegated Relocations

Headquarters R/W obtains FHWA approval of nondelegated relocations (see Section 13.14.02.00) via transmittal of the ROI package, with attachments, to FHWA. The district is advised of approval of the nondelegated relocations by an endorsement on the FHWA Specific Authorization. Any exception to approval is noted in the Specific Authorization, and the district is required to adhere to all exceptions.

13.14.07.00 FHWA Approval of Utility Agreements

Utility Agreements on Federal-aid projects also require FHWA's approval. Upon execution of the Agreement by the Owner and the Region/District, the Utility Reviewer prepares and approves the FHWA Approval of Utility Agreement (Form RW 13-15) on FHWA's behalf.

13.14.07.01 Buy America Clauses

Buy America Clauses must be included on any Utility Agreement, in which the project is eligible for Federal Funds. Regardless if there is Federal Aid on the project or not, if the project at some point could receive Federal Funds (NEPA document on the project), Buy America Clauses must be used in the Utility Agreement. (See 13.07.03.05 for Buy America Clauses.) See Section 13.15.00.00 for Buy America information.

13.14.08.00 Special Federal Reimbursement Procedures

Department procedures have been designed to provide a uniform approach to all transactions regardless of whether or not there is federal funding in the project. This reduces procedural complexity and ensures a more consistent process with Owners. Special rules affect Federal-aid reimbursement and approval requirements and the Utility Coordinator must be aware of these to minimize loss of federal funds where applicable.

13.14.08.01 Nonreimbursable Costs

Federal reimbursement of State costs is limited to the more restrictive requirement of either State law or Federal regulation. If State law, e.g., payment of interest, is more liberal, reimbursement is limited to the Federal standard. If State law, e.g., required depreciation credits (see 13.04.05.06), is stricter, State rules must be followed. Each element of cost or

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credit must be individually reviewed and decided. Fortunately, there are only a couple of items, as discussed below, where the Federal rule is more restrictive and therefore controlling for reimbursement.

- **Interest During Construction** - FHWA regulations prohibit payment of interest on funds used during construction or borrowed by the Owner (a.k.a. AFUDC). State law recognizes interest during construction as a valid charge to the job, with some restrictions. Interest during construction shall be deleted from the voucher for FHWA reimbursement (coded as nonreimbursable). Audits will make the final determination of acceptability on the audit certificate.

- **Additional Ducts** - There is a Statewide understanding with telephone Owners to allow spare ducts under certain conditions (see Section 13.04.07.09). FHWA will reimburse only for the number of ducts required to convert existing aerial facilities to underground facilities, plus one spare duct. The cost of nonparticipating ducts must be set out in the billing, with final cost determination identified during the audit process and excluded in the Federal voucher.

13.14.08.02 Nonreimbursable Costs - Work Completed Prior to Authorization

The following are ineligible for Federal-aid reimbursement:

- All costs incurred prior to FHWA Authorization to Proceed (approved E-76).

- Utility relocation engineering done by a consulting engineer completed in advance of FHWA Specific Authorization.

- Relocation work done by newly identified Owners covered by Notices issued subsequent to the R/W Certification date.

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13.14.08.03 Service Disconnects and Removals

Ordered utility service disconnects and removal of meters and meter set assemblies should be handled as right of way clearance items as this qualifies the associated costs for Federal-aid reimbursement. Payments to Owners should be coded with the appropriate object code for a federal-aid reimbursable demolition or clearance cost.

Federal regulations prohibit reimbursement for the cost of removing facilities under normal utility relocations unless salvage credits are received by FHWA for the removed facilities (see Section 13.04.07.09).

13.14.08.04 Owner Retention of Records

Section 23 CFR 645.117(i)(3) requires that the Owner retain all records and accounts relating to reimbursed relocation costs for a period of three years from date of final payment to Owner. This requirement exists for State-only funded projects as well.

13.14.09.00 Owner's Consulting Engineer Agreements

The Owner's employees normally do utility relocation engineering. When a Utility Owner is not adequately staffed to pursue the necessary preliminary engineering work for the utility relocation, a consultant may perform the required engineering if the Owner and the consultant agree in writing on the services to be provided and the fees and arrangements for the services, and if the fees charged are not based on a percentage of the cost of relocation.

When a consultant is used to provide relocation engineering services, the district ensures the Owner's consultant contract is administered in accordance with 23 CFR 172 and 48 CFR 31. The consultant selection process should closely follow the State's own consulting engineer selection process.

The Owner's continuing contractor may be used where the district has determined it is cost effective to do so and verified that the contract between the Owner and the contractor is in writing and that similar work is regularly performed for the Owner under the contract at reasonable costs.

If the amount to be paid under the consultant agreement exceeds $100,000, the agreement must be submitted to Audits for preaward evaluation.

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All consultant agreements should:

- identify the maximum fee to be paid under the agreement,
- include a fee schedule,
- provide for inspection by the State of all books and records,
- require the three-year retention of those books and records,
- contain a description of the work to be performed, and
- include the following clause:

> "The Contractor agrees that the Contract Cost Principles and Procedures, 48 Code of Federal Regulations, Chapter 1, Part 31 shall be used to determine the allowability of individual items of cost. Any costs for which payment has been made to Contractor that are determined by subsequent Caltrans audit to be unallowable under these regulations, are subject to repayment by Contractor to State."

13.14.09.01 Nonapplicability of Federal EEO and Wage Rate Laws

FHWA has advised the State that federal laws relating to equal employment opportunities, wage rate requirements, and other similar requirements for recipients of federal aid do not apply to Owner-let contracts. This exception does not relieve the Owner of meeting federal laws that would apply irrespective of whether federal assistance is involved.

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13.15.00.00 – BUY AMERICA

13.15.01.00 General

Implementation of Moving Ahead for Progress in the 21st Century (MAP-21) has broadened how Buy America is applied to federally funded highway construction projects. MAP-21, section 1518, amended 23 U.S.C. 313, is to apply to all contracts eligible for Federal Assistance carried out under a NEPA document regardless of funding, if at least one contract has Federal Funds.

13.15.02.00 Buy America Requirements

The Buy America requirements stated in 23 U.S.C. 313 and 23 CFR 635.410 apply to all iron and steel materials, 90% by weight that is permanently incorporated in a project. The provision requires that all manufacturing processes be done domestically. Manufacturing begins with mixing and melting and continues through the coating stages. "Coatings" include epoxy coatings, galvanizing, painting or any other coating that protects or enhances the value of the material.

13.15.02.01 Materials Subject to Buy America

For utility relocations, the following materials are subject to the Buy America requirements:

- Poles and cross arms
- Pipe and valves
- High-strength bolts, anchor bolts, and anchor rods
- Girders used to comprise transmission towers and stand-alone structures
- Rebar and other reinforcing iron/steel from all cast-in-place installations
- Conduit and ducting
- Fire hydrants
- Manhole covers and rims, and drop-inlet grates

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13.15.02.02 Definitions of Materials Subject to Buy America

- Anchor and High-Strength Bolts - Anchor and high-strength bolts will be distinguished in one of three methods to be selected, and consistently applied, by the utility owner: 1) the utility owner may identify anchor and high-strength bolts in the specifications or plans as necessary for the safe and functional design of the utility relocation. If a bolt is not called out as anchor or high-strength, it stands that the design did not require that level of performance and the supplied bolt is not subject to Buy America; 2) the utility owner may identify anchor and high-strength bolts through the application of a strength rating. Any bolt possessing a yield strength of fifty-thousand pounds per square inch (50-ksi) or greater will be considered an anchor or high-strength; 3) the utility owner may identify anchor and high-strength bolts through the application of a weight measurement. Any bolt possessing a weight of 15 pounds or greater will be considered an anchor or high-strength.

- Girders - A load bearing beam or strut commonly taking the cross-sectional shape of a circle, square, rectangle, or an I, C, L, or Z, and assembled for the purpose of creating lattice towers, stand-alone platforms, or transmission towers.

- Lattice Towers - A structure that is compiled of girders and is typically used in series to support conductor cables.

- Permanent Installation - Is the final location and final installation of the materials as defined on the plans or in the specifications. No further adjustments or relocations are necessary to accommodate the final transportation project improvements.

- Stand-alone Platforms - A structure that is compiled of girders and is used to permanently hold or support large equipment.

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13.15.02.03 Materials Not Subject to Buy America

The following is a list of materials that are **NOT** subject to the Buy America requirements:

- Assembly Materials (miscellaneous steel) - The collection of miscellaneous materials used to fasten, hold, attach, secure and/or assemble materials including, but not limited to, nuts, bolts, U-bolts, screws, washers, clips, fittings, sleeves, lifting hooks, mounting brackets, pole steps, clamps, brackets, mountings, straps, fasteners, hooks, pins, braces, disks, clevises, couplers, swivels, snaps, crimps, trunnions, dead-ends, compression swages, and other miscellaneous materials used to assemble.

- Attachment Materials - An item or material that is not an integral part or permanently attached to the pole, pipe or valve. **Cross arms are an exception to this rule and do not qualify as attachment materials.** Attachment materials include, but are not limited to, cross arm bracing, insulators, avian equipment, miscellaneous hardware (defined below), fittings, racks, ladders, encasements, guy wire, strand, conductors and tubing 0.75-inch diameter or less.

- Betterments - An improvement that occurs to the utility during the relocation process that increases capacity **and** is not otherwise required in order to successfully relocate the utility as a result of the roadway improvement project. (Betterments must be excluded from the utility agreement or contact that includes work eligible for Federal funds.)

- Conductor - A material (specifically wires and cables) that allows the flow of energy including electricity, heat, data, audio/video transmission, etc.

- Encasements - Include cabinets, housings, boxes, vaults, covers, shelves, and other items used to protect or house equipment or miscellaneous electronics.

- Fittings - Individual parts used to join, adjust or adapt a system of pipes including, but not limited to, elbows, tees, wyes, crosses, nipples, reducers, end caps, couplers, o-lets, transitions, connectors (steady state, seismic and flexible), unions, mechanical flanges (not permanently affixed to the pipe), bushings, ferrules, gaskets, O-rings, plugs or taps.

- Maintenance - An action or application of materials necessary to keep a system functioning safely and at optimal capacity; general upkeep.

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- Miscellaneous Electronics - Manufactured products or assemblies consisting of many components such as electronic equipment, routers, switches, radios, processors, power supplies, batteries, antennas, splice cases, pre-connectorized hubs and terminals, and cross-boxes.

- Miscellaneous Hardware - An assembly of small parts that are compiled to form a finished product that is often used independently or as an attachment material, including, but not limited to, locks, switches, cutouts, regulators, gauges, meters, barometers, strainers, filters, pilots, arrestors, insulators, ball bearings, dampeners, needle valves, braces, pipe supports, actuators, motors and pumps.

- Temporary Utility Relocation - A temporary utility relocation is generally subject to the schedule necessary to accomplish the scope as defined by the NEPA document. A temporary utility relocation is one that is needed to allow the roadway construction to proceed but is not required to remain in its relocation as a result of the ultimate roadway improvement. For example, if the scope requires the sequential completion of six separate construction contracts, theoretically, a temporary utility relocation could remain in place prior to commencement of the first construction contract and extend beyond completion of the sixth construction contract prior to its final placement. A temporary utility relocation can also be established if the contract specification or plans require that the steel or iron material used on the project either must be removed at the end of the project or may be removed at the contractor's convenience.

13.15.03.00 Buy America Certification

The State requires that the Utility Owners provide reasonable assurance that utility materials subject to the Buy America requirements are compliant prior to permanent installation. The State will accept either the Utility Owner's Self Certification, or the Vendor/Manufacturer's Certification.

13.15.03.01 Utility Owner Self Certification Method

The Utility Owner may self certify that materials used in the relocation are Buy America Compliant. See Section 13.07.03.05 (V-11a) for specific Utility Agreement clause. The following provisions must be met by the Utility Owner:

1) Utility Owner will source materials that comply with Buy America requirements.

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2) Utility Owner will certify compliance via a contract provision in the Utility Agreement.

3) Utility Owner will not be required to provide copies of supplier certifications i.e. Mill Test Report (MTR) or other utility owner-signed certifications as part of this Agreement or with the final invoice.

13.15.03.02 Vendor/Manufacturer Certification Method

The Department or Local Agency will enter into a legally binding Utility Agreement (UA) with each Utility Owner on a project by project basis. See Section 13.07.03.05 (V-11b) for specific Utility Agreement clause. The following provisions must be met by the Utility Owner:

1) Utility Owner will source materials that comply with Buy America requirements.

2) Utility Owner will demonstrate Buy America compliance by one of the two (2) following methods (or a combination of both):

   a) Utility Owner will collect written certification from the vendor(s);

      i. The written certification will be signed by the vendor on company letterhead, or other acceptable documentation, signed by an authorized representative of the vendor and will declare that all supplied materials subject to the Buy America provisions are fully compliant.

   b) Utility Owner will collect written certification from the factory(ies);

      i. The MTR issued and signed by the initial fabricator stating that the materials subject to Buy America were melted and manufactured in the United States.

      ii. Other written statements on company letterhead, or other acceptable documentation, signed by an authorized representative from the manufacturers providing any additional treatment to the fabricated material (such as blasting, galvanizing or painting) will state that all treatment processes occurred in the United States in accordance with FHWA guidelines.

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3) All documents obtained to demonstrate Buy America compliance will be held by the Utility Owner for a period of three (3) years from the date the final payment was received by the Utility Owner and will be made available to Caltrans or FHWA upon request.

4) One (1) set of copies of all documents obtained to demonstrate Buy America compliance will be attached to, and submitted with, the final invoice.

5) If no materials were subject to Buy America, the Utility Owner will indicate that as part of the final invoice submittal (i.e., with a separate memo, rubber stamp on the invoice or other reasonable method).

13.15.03.03 Additional Provisions Common to both Certification Methods

1) No certification (demonstration of Buy America compliance) is required for any materials or parts that are not subject to Buy America requirements for any reason, including, but not limited to, application, material composition, and the minimal use threshold exclusion.

2) Utility Owners will bear responsibility to ensure all materials permanently incorporated into their utility relocations are either compliant or not required to be compliant.

3) Where a Utility Owner purchases manufactured products from a vendor for use by the owner in its relocation activities, a certification from the vendor to owner that the materials meet Buy America requirements shall be deemed to constitute compliance by the Utility Owner.

4) Where a Utility Owner obtains construction services in connection with utility relocation work and the provider of construction services is also responsible for provision of manufactured products used in connection with that project, a certification from the provider of construction services that the materials provided by that construction services provider meet Buy America requirements shall be deemed to constitute compliance by the Utility Owner.

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13.15.04.00 Exclusions to the Buy America Requirements

The Buy America requirements will **not** apply in the following cases:

- Existing materials that are relocated from one location to another within the project limits
- Any associated materials (including spare materials) required for maintenance
- Any materials necessary to repair equipment that was discovered or damaged during construction and requires immediate action to restore to safe conditions or to minimize adverse public impact (i.e.: discovered work)
- Any necessary materials associated with a temporary utility relocation
- If the utility relocation effort is not eligible for reimbursement with federal funds. (i.e., If the Utility Owner is required to pay for 100% of the entire relocation effort, then the materials associated with that relocation are not subject to Buy America. However, all work must remain separate and cannot be accomplished under a utility agreement or contract that includes work that is eligible for Federal funds.)

13.15.04.01 De Minimis

It is up to the Utility Owner to declare compliance with the minimal use threshold exclusion. Non-domestic iron and steel materials may be used if the cost of such materials do not exceed one-tenth of one percent (<0.1%) of the individual Utility Agreement (UA) amount, or $2,500, whichever is greater. The De Minimis equation is calculated according to the following formula:

$$\frac{\text{Combined Cost of Only those Materials that are Subject to Buy America } \textbf{and} \text{ are Non-Compliant (limited to the individual UA)}}{\text{Total Utility Relocation Cost (cited in the individual UA)}}$$

See Section 13.07.03.05 (V-13) for specific Utility Agreement clause.

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13.15.04.02 Buy America Compliant Materials Increase Cost by at Least 25%

Per 23 CFR 635.410, the work to be performed under the utility agreement may include foreign iron and steel products if the cost of Buy America compliant materials will cause the cost of the work to increase by at least 25%. To determine applicability of this provision, one of the following two procedures shall be used:

1) If the Utility Owner will use a contractor to perform the work included in the utility agreement, the following procedures apply: Demonstration of meeting the 25% excess cost requirement must be accomplished by receiving two separate bids each from at least two qualified contractors for the work. Requests for bids from the qualified contractors must conform to 23 CFR 635.410(b)(3). One bid from each contractor will include a cost of performing the work described in the utility agreement using Buy America compliant material and the other bid will include a cost for the same work assuming foreign materials. If the bid with the Buy America compliant materials is at least 25% greater than the bid that includes foreign material, then the contract can be awarded to the lowest bid based on materials that are not compliant with Buy America.

2) If the Utility Owner will perform work in the utility agreement with its own forces, the following procedures apply: Demonstration of meeting the 25% excess cost requirement must be accomplished by receiving two separate bids from vendors or manufacturers listing the cost of the Buy America compliant materials on one bid document and listing the cost of non-compliant materials on a separate bid document. The Utility Owner will take the cost of the Buy America compliant materials and use it to create the total estimated cost of the work included in the utility agreement. The Utility Owner will do the same with the cost of the non-compliant materials. If the cost of the work included in the utility agreement with Buy America compliant materials is at least 25% greater than the cost using the materials that are not compliant with Buy America, than the non-compliant materials may be used.

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13.15.05.00 Waivers to the Buy America Provisions

The Utility Company, through the STATE may request a waiver if, the Buy America provisions are inconsistent with the public interest or iron and steel are not produced domestically in sufficient quantities and at a satisfactory quality. Waivers are allowed for specific materials on a project by project basis. There are nationwide waivers, but these are extremely rare and not advisable. A Waiver is a tool of last resort when all other avenues have failed.

13.15.05.01 Requirements

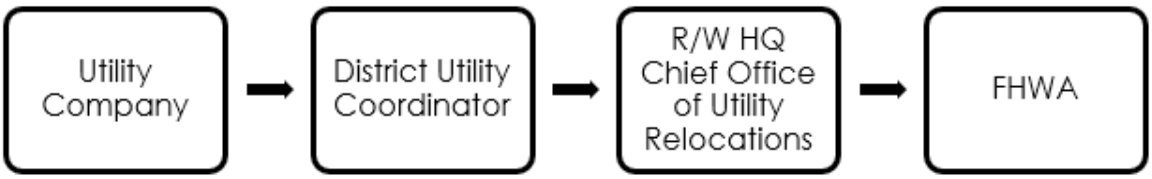
A Waiver request shall include:

1) Federal-Aid/ARRA Project Number
2) Project Description
3) Project Cost
4) Waiver item cost
5) Brief description of the item's function
6) Country of origin for the product
7) Reason for the Waiver

The reason for the Waiver must give sufficient detail and analysis on why the specific material cannot be produced domestically, in sufficient quantities, and at satisfactory quality.

13.15.05.02 Process

The following flowchart outlines the sequence of steps that involves a Waiver request from inception to approval.



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The Waiver request shall be developed and written by the Utility Company and submitted to the District Utility Coordinator. The District Utility Coordinator will forward the request to R/W HQ Chief, Office of Utility Relocations. HQ will review the request for completeness and forward to FHWA. The process can take anywhere from six (6) to twenty-four (24) months depending on the complexity of the project, thoroughness of the request, and review by FHWA.

For more detailed information on waivers, please see the FHWA website.

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13.16.00.00 – DELEGATIONS

13.16.01.00 Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Utility Relocations 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, Headquarters (HQ), or FHWA, 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**
	13.01.01.01 13.05 (all)	Report of Investigation (ROI) Package Approval – All*	District	Senior RW Agent
	13.01.02.01	Notice to Owner Approval*	District	Senior RW Agent
	13.01.02.01	Utility Agreements Approval *	District	Senior RW Agent
	13.07.03.00	Non-Standard Clause Approval	HQ	Supervising RW Agent
	13.11.02.01 13.11.04.00	Joint Use Agreements (JUA) Approval	District	RW Manager
	13.11.02.02 13.11.04.00	Consent to Common Use Agreements (CCUA) Approval	District	RW Manager
	13.11.07.03 16.07.02.00	Acquired in State's Name, Director's Easement Deeds Over $15,000 (CTC Approval Required)	District	RW Manager

* Except those falling within the scope of 23 CFR 645.119(b).

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Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	**RW Manual Section**	**Responsibility**	**Delegation**	**Lowest Level of Sub-Delegation**
	13.01.01.01 13.14.02.00	FHWA's Delegation for Approval of Specific Authorization *	District	Senior RW Agent
	13.01.02.01	FHWA's Delegation for Approval of Utility Agreements*	District	Senior RW Agent
SHC §680.5, 707.5	13.04.03.00	Authority to Approve Agreements for the Positive Location of Underground Utilities	HQ	Supervising RW Agent
SHC §707.5	13.04.03.00	Authority to Approve Freeway Master Contracts	HQ	Supervising RW Agent
	13.14.02.00	Federal Aid Procedures – Utility Relocations Falling Within the Scope of 23 CFR §645.119(b)	FHWA	FHWA
	13.04.09.00	Liability in Dispute Settlements	HQ	Supervising RW Agent
	Update Pending	Non-Disclosure Agreements	HQ	Supervising RW Agent

* Except those falling within the scope of 23 CFR 645.119(b).

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Exhibits are located online:

- External Exhibits site
- Internal Exhibits site (internal Caltrans link)

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Forms are located online:

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14.00.00.00 - RIGHT OF WAY CERTIFICATION

14.01.00.00 - INTRODUCTION

14.01.01.00 General

This chapter defines and describes the nature, uses, and procedures of R/W Certifications essential for project delivery. For purposes of this chapter, the term project certification refers specifically to the R/W Certification.

14.01.01.01 Definition

R/W Certification is a written statement summarizing the status of all right of way related matters pertaining to a proposed construction project. The purpose of the R/W Certification is to document the construction project is ready for advertising and states:

- Real property interests have been, or are being, secured.
- Physical obstructions including utilities and railroads have been or will be removed, relocated, or protected as required for construction, operation, and maintenance of the proposed project.
- Right of way acquisition and relocation assistance program requirements were conducted in accordance with applicable federal and state laws and procedures.

The Federal Highway Administration (FHWA), pursuant to 23 CFR 635.309, recognizes all four certification levels utilized by the State. These four levels are as follows: Certification No. 1, Certification No. 2, Conditional Certification No. 3, and Special Certification No. 3 with Work-Around (Special Certification No. 3W). Under the Federal rule, projects may be advertised, bid proposals opened, and construction contracts awarded using a Certification No. 1, Certification No. 2, or a Special Certification No. 3W pursuant to 23 CFR 635.309(c)(ii)(iii)(iv).

Additionally, a Conditional Right of Way Certification No. 3 for advertisement only [23 CFR 635.309(c)(i)(iii)(iv)] may be used on a limited basis when believed to be in the public interest. This Conditional Certification No. 3 only

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allows for the project to be advertised; construction bids MAY NOT be opened until the certification is upgraded to a Certification No. 1 or No. 2. Approval of a Conditional Certification No. 3 is limited to an exceptional circumstance that warrants advertising prior to completion of right of way acquisition activities. Criteria for using these certifications can be found in Chapter 14.02.00.00.

14.01.02.00 Projects Requiring R/W Certification

The DDC-R/W must certify the following types of projects.

- Any project for which Plans, Specifications, and Estimates (PS&E) are submitted to the district/region or Office Engineer for contract advertisement and award.
- Any project where federal funds participate in any phase of the project.
- Any project that is authorized for district/region contract advertisement and award.
- Any project to be undertaken by day labor, casual labor, or force account.

14.01.03.00 Projects Exempt From R/W Certification

Projects conducted solely for the purpose of emergency reopening of transportation facilities under authority of Government Code Sections 14120-23 are exempt from formal R/W Certification processes if no PS&Es are prepared.

14.01.04.00 Responsibility for R/W Certification

The DDC-R/W is responsible for certification of the right of way to the Project Manager for project advertisement or contract award.

District/Region R/W confirms or rescinds certification to the Project Manager, and district/region Office Engineer.

All matters affecting the validity of a previously issued R/W Certification shall be brought to the attention of the Project Manager to determine the need to update or rescind the original certification.

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14.01.04.01 Input to PMCS and ROWMIS

On the date the district/region R/W certifies the project, the district/region shall enter the R/W Certification number and date into PMCS and ROWMIS (PMCS EVNT ADV Screen and ROWMIS Data Sheet Tab; see R/W Manual Chapter 3 for details).

14.01.04.02 Certification Rescinded by District/Region

When a district/region rescinds a R/W Certification, for reasons such as design changes prior to advertising or discovery of facts that otherwise make the certification invalid, it shall remove the certification date from PMCS. The District/Region Project Manager, district/region Office Engineer, and FHWA, when necessary, shall be notified in writing that the R/W Certification has been rescinded.

14.01.04.03 Project Canceled by Office Engineer

When the district/region Office Engineer cancels a project, it will notify the DDC-R/W in writing. District/Region R/W shall rescind the R/W Certification, remove the certification date from PMCS, and enter a new certification target date (Month-Year) if necessary.

14.01.05.00 Age of Certification

For projects not yet listed for advertising, district/region R/W shall update any certification over one year old, and when requested by the Project Manager or district/region Office Engineer. (See Section 14.01.08.00 also.)

14.01.06.00 Unusual Project Circumstances

"Unusual circumstances" are any deviations from the requirements or standard practices outlined in this chapter. When there are unusual circumstances in a project, the district/region shall forward a full explanation of the circumstances to HQ R/W for approval prior to certification and at least one month prior to the project advertising date. The approval should be included in the certification or in an attachment and made a part of the certification.

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14.01.07.00 Modifications to R/W Certifications

District/Region R/W shall not take action on verbal requests to alter significant factual data in a certification until the Project Manager or District Office Engineer confirms the request in writing. The request must be attached to and made a part of the original certification. Revised certifications must have the word "Revised" clearly stamped and centered at the top of the front page.

14.01.08.00 Project Design Changes

A R/W Certification must be updated when the project design changes in any project phase, even if the right of way requirements have not changed. In cases of design changes that affect right of way, the Project Manager should allow at least six months prior to the new scheduled project advertising date to assure timely clearance of the new certification.

14.01.08.01 Split and Combined Projects

Occasionally a large project that has been certified under a single EA is split into several smaller projects, which are then advertised under separate EAs. In these cases, a separate (and new) R/W Certification is required for each project EA. Two or more separately advertised projects shall not be combined in a single certification. Each advertised project must have a separate certification matching the specific project PS&E.

Conversely, when two projects are combined into one project for advertising and construction, a new R/W Certification must be prepared for the combined project being advertised. (See Section 14.03.02.00.)

14.01.09.00 Local Public Agency (LPA) Work for State Project

A construction project on a state highway may include work on LPA streets or roads where the LPA acquires some or all of the required right of way. This includes tax measure and privately funded projects (see Section 14.01.09.02). Those parcels the LPA acquires for the construction project on a state highway, or as part of the state's contract, must be included in the district/region's certification. Any other applicable work done by an LPA must also be included, such as clearance, utility relocation, and relocation assistance. Complete documentation of the LPA acquisitions and certification shall be retained in the district/region certification file.

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14.01.09.01 Certification for Local Streets and Roads Projects

Refer to Local Assistance Procedures Manual Chapter 13 for certification procedures for Local Street and Road projects with federal funding.

14.01.09.02 Certification of Specially Funded Projects on State Highway System

Caltrans is required to accept the completed project (tax measure, locally or privately funded) into the state highway system if the project was Caltrans approved and the right of way was acquired and the project was constructed in accordance with Caltrans' practices. (See R/W Manual Chapter 17 for details for certification of this project type.)

14.01.10.00 Certifications and Hazardous Waste

Currently there is no requirement for R/W to certify the status of hazardous waste on a project. Typically, Project Development's Attachment A in the PS&E package addresses and attests to the existence and mitigation of hazardous waste.

14.01.11.00 R/W Certification for Design-Build Projects

Design-Build (D-B) is becoming a widely accepted alternative project delivery method for public works projects across the nation. D-B contracting is a method of project delivery where the design and construction phases of a project are combined into one contract. The D-B method allows the contracting agency to advertise the project for construction with conceptual plans, typically at 30% design, and having the design-builder complete the design. The risk and responsibility for design details are shifted from the Department to the design-builder. The D-B contract is awarded on either a low-bid or best-value basis. Significant time savings can be achieved through the D-B process compared to the typical Design-Bid-Build method in which the design and construction must be performed sequentially.

The D-B method accelerates project delivery by allowing the design and construction teams to work together early on, enabling the sharing of expertise, minimizing risk of design errors, and improving the constructability of the design. The D-B delivery method has resulted in many State DOTs reducing risks and shortening project delivery by at least one to two years.

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Initially, California's Design-Build Demonstration Program (codified in Section 6800 of the Public Contracting Code) authorized the Department to enter into D-B contracts for certain state or local transportation projects. This authorization sunset in January 2014. However, Assembly Bill 401 authorizes 10 additional D-B projects on the State Highway System. Provisions of this bill will expire on January 1, 2024. Projects selected for the D-B delivery method can be found at the D-B Program page.

Close scrutiny of a D-B project is necessary due to the phased delivery of many of the R/W deliverables. R/W Certification provides assurance that the acquisition of right of way and the relocation of displaced persons and/or businesses has been completed in compliance with state and federal regulations, including the Uniform Act. Certification of D-B projects will follow the policies and procedures outlined in the D-B sections below and will comply with all other provisions in Chapter 14 when applicable.

14.01.11.01 Design-Build Right of Way Statement

The traditional Design-Bid-Build (D-B-B) delivery method requires a R/W Certification prior to advertising the project for bid. The R/W Certification is an important component of the PS&E package. The PS&E package is the instrument for advancing the Design-Bid-Build project to advertisement. However, with a D-B project, the submittal of a R/W Certification is typically not feasible prior to the release for the Request for Proposals (RFP). In order to proceed with advertisement on a D-B project, a provision in the Code of Federal Regulations allows for advertisement without the requirement of a R/W Certification. In accordance with 23 CFR 635.309(p)(1)(v), a statement must be received by Headquarters Division of Right of Way and Land Surveys which states all right-of-way work has been completed, or that all necessary arrangements will be made for the completion of right of way, utilities, and railroad work.

The Right of Way Statement will be prepared by the District and will provide the status of the project right of way at the time of advertisement. The statement will include the following:

1. Project description and location;
2. Status of the Environmental Document;
3. Statement certifying that all right of way work has been or will be completed in accordance with all state and federal laws (including the Uniform Act) and in accordance with Caltrans policies and procedures.
4. Status of all right of way activities including acquisition of property rights, railroad facilities, utility relocations, compliance with the

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Relocation Assistance Program, Cooperative Agreements, environmental mitigation, Buy America, etc.;

5. Statement indicating the right of way plan and technical provisions have been included in the RFP.

The statement will be forwarded to Headquarters Division of Right of Way and Land Surveys for approval and, if required, forwarded to FHWA for review and approval. An example of the Right of Way Statement is provided as Exhibit 14-EX-14.

14.01.11.02 R/W Certification Flexibilities for Design-Build Projects

Right of Way acquisition and utility relocations are often perceived as the greatest risk component in a project's schedule. Construction of the project is dependent upon the availability of right of way. In order to expedite the right of way process for D-B projects, a project can be segmented. Unlike Design-Bid-Build projects where right of way clearance is required along the entire corridor prior to certification, D-B projects can certify segments as the right of way is acquired. In accordance with 23 CFR Section 710.313, a D-B project may be authorized for construction in phases or segments as right of way for an individual property or a group of properties becomes available. Per Department policy, construction cannot begin on a segment until all of the right of way for that segment is acquired. If any right of way activities are incorporated into the D-B Contract, the design-builder is expected to fully comply with all of the specific requirements related to right of way acquisition and certification as stated in the FHWA regulations 23 CFR Section 710.313.

Flexibility in delivering the right of way is one of the greatest advantages of a D-B project. Parcels that are considered critical to construction, regardless of their location on the proposed route can be targeted. A nonlinear progression of right of way acquisition allows for the potential for construction to commence while design continues on other segments of the project. As a result, sections of a project may be in different stages of the right of way process. Appraisals, acquisitions, RAP, utility relocations, railroad coordination, demolition & clearance, and planning & management/coordination can occur simultaneously. Therefore, it is necessary to develop a strong right of way team and an efficient process in order to successfully handle multiple aspects of right of way delivery. Involving the right of way team early in the design stage of a D-B project is critical to developing a successful D-B program. It is the responsibility of District R/W to advise the D-B Team to develop, to the extent possible, parcel delivery packages that are contiguous

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and/or grouped within close proximity, as this increases the chances of advancing a project to construction in an efficient and timely manner.

14.01.11.03 R/W Certification Process for Design-Build Projects

Processing certifications for D-B projects is very similar to certifying Design-Bid-Build projects. Criteria for certifying D-B projects remains the same. The distinction between certifying D-B projects vs. Design-Bid-Build is the submittal of multiple certifications due to segmented delivery of right of way.

Planned right of way limits will be identified in the Right of Way Acquisition Maps which are provided in the RFP. Scheduled delivery of right of way to the D-B Contractor is outlined in the Technical Provisions included in the RFP. Typically, parcels are segmented, or grouped, into delivery packages. As a result, several certifications will be processed throughout the D-B project. When a certification is submitted for approval, it should be crossed referenced with the parcel groups identified in the Technical Provisions. This is to ensure that the certification includes all the right of way parcels scheduled to be delivered to the D-B contractor. Any delays in providing access to scheduled right of way parcels may result in substantial costs due to potential D-B Contractor delay claims.

Certifications for D-B projects should meet the standard requirements for Certification No. 1 and Certification No. 2 levels. Due to right of way flexibilities afforded with D-B projects, the use of a Conditional Certification No. 3, or a Special Certification No. 3 with Work-Around is negated. If it is determined a Special Certification No. 3 with Work-Around is needed, HQ will review and may approve on a case-by-case basis. Per 23 CFR 710.313(b), the decision to advance a right of way segment to construction shall not impair the safety, or be coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties within the same segment or adjacent segments. Additional care must be taken to ensure that owners of unacquired parcels are not unduly inconvenienced or harmed as a result of the design-builder's construction activities.

FHWA approval may be required on D-B certifications, regardless of certification level achieved, based upon classification of the project. If the project is located on the Interstate Freeway System, FHWA approval is required if federal dollars are used in any phase of the project. If a project is identified as a Project of Division Interest (PoDI), delegations will be outlined in the Project Oversight Agreement and may require FHWA approval. PoDI's

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are considered high profile projects, typically over $500,000,000, with elevated risks and requiring a higher level of FHWA involvement.

14.01.11.04 R/W Certification Document Format for Design-Build Projects

The R/W Certification format for D-B projects is very similar to the standard format used for Design-Bid-Build projects. The only difference is the initial and subsequent certifications for a D-B project will provide a means for tracking the progress of the right of way deliverables. D-B certifications will include the total number of parcels required for the project, the total number of parcels acquired to date, and the remaining number of parcels to be acquired.

R/W Certification for all D-B projects will use the certification format shown in Exhibit 14-EX-13. Since the format contains specific wording required by FHWA, specifically the Certification statement, changes made in wording could invalidate the certification. Any deviation from the format or the wording must be fully explained in the certification and approved by HQ R/W.

14.01.12.00 R/W Certification for Construction Manager/General Contractor Projects

Construction Manager/General Contractor (CM/GC) is another alternative project delivery method that allows the Department to hire a construction manager during the design process to provide constructability feedback. Visit the CM/GC projects at the CM/GC Program page.

CM/GC has benefits that are not achievable through Design-Bid-Build. These benefits include innovation, risk mitigation, improved design quality, improved cost controls, and optimized construction schedules. More specifically, CM/GC potentially allows for:

- increased cooperation and coordination among the CM/GC, the designer, and owner;
- improved constructability of design due to the contractor's input during the preconstruction design process;
- making design decisions with full consideration of the construction perspective as it relates to types of materials used and means and methods of construction;
- reduced owner exposure to contractor claims and change orders due to design and constructability issues;

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- the ability to procure early work packages in order to mitigate risk of construction price volatility and accelerate project schedule;
- reduced project delivery time due to overlapping design and construction.

CM/GC is advantageous when delivering complex projects and is less suitable for straightforward projects that are easily defined and lack schedule sensitivity. Projects that benefit from CM/GC delivery may involve one or more of the following:

- The design is technically complex and/or has several design options that would benefit from contractor input prior to construction;
- There is a high coordination requirement with various stakeholders that has a potential to result in cost overruns and concerns with construction schedule;
- A need exists to prioritize acquisition of right of way parcels, factoring in the contractor's phasing and preferred means and methods;
- Collaboration is required for complex third-party issues (e.g., utilities).
- Project is schedule sensitive;
- Project is considered high risk.

CM/GC delivery consists of two phases: design (preconstruction services) and construction. During the design phase, the construction manager works with the project owner and design engineer (in-house or contracted) to identify risks and provide input on costs projections, phasing, schedule, best practices, and other input that helps to design a more constructible project. When design approaches 60% to 90% completion, the construction manager has the opportunity to bid on the construction package based on a defined scope and schedule. If the price is acceptable to all parties (owner, designer, and an independent cost estimator), the construction contract is executed and the construction manager becomes the general contractor. If the parties cannot agree on pricing, the project may revert to a Design-Bid-Build delivery method.

The rationale behind the CM/GC delivery concept is to allow for contractor collaboration, input, and expertise during project development beginning at the front end of the design process and continuing through construction. Early collaboration and coordination between the designer and the construction manager may lead to innovations that reduce costs, increase efficiency, and accelerate project delivery. This is in stark contrast to traditional Design-Bid-Build where contractors do not participate in the design phase of project development.

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Federal rulemaking is currently underway to provide federal guidance for the CM/GC delivery method. These rules will eventually be codified in the Code of Federal Regulations, Title 23.

14.01.12.01 R/W Certification Flexibilities for CM/GC

CM/GC enables the design team to identify the critical path of right of way and utility issues, allowing for a greater focus on those issues that affect the overall schedule. Like D-B, flexibility in delivering right of way is one of the greatest advantages of a CM/GC project. In order to expedite the right of way process for CM/GC projects, a project can be segmented to target the right of way activities on the critical path. Department policy requires all the right of way for a segmented package to be certified prior to beginning construction. Exceptions to this policy must be preapproved by HQ R/W&LS and, if required, by FHWA.

If any right of way activities are incorporated into a CM/GC Contract (e.g., clearance and demolition), the CM/GC is expected to fully comply with all the specific requirements related to right of way acquisition and certification in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, as well as State eminent domain laws, and the Caltrans Right of Way Manual.

Refer to Section 14.01.11.02 for additional guidance regarding flexibilities.

14.01.12.02 R/W Certification Process for CM/GC Projects

Processing certifications for CM/GC projects is similar to certifying both Design-Bid-Build and D-B projects, with the key distinction that both CM/GC and D-B projects may be certified in increments as the right of way is acquired. A primary objective of CM/GC is to begin construction as early as possible and continue construction with little or no work stoppages while the remaining design deliverables are completed and the right of way certified.

Planned right of way limits are identified in the Right of Way Acquisition Maps as is also typical for a Design-Bid-Build project. Parcels may be segmented, or grouped into early delivery packages. Each delivery package will have its own R/W Certification. As a result, multiple certifications may be required during CM/GC delivery until a project's right of way is certified in total.

Certifications for CM/GC projects should meet the standard requirements for Certification No. 1 and Certification No. 2 levels. When certifying a CM/GC

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project, the subject line in Exhibit 14-EX-15 must clearly define the project, explain the right of way delivery plan, and identify how many certification packages will be submitted for the project (e.g., "This is Package 1 of a proposed six certification packages."). If a parcel identified in a specific segment cannot be delivered at the time of certification, the PS&E may need to be modified to reflect the re-scoping of the segmented package. However, due to the work involved with a scoping change, this is not recommended.

In such an instance, HQ R/W&LS may approve a Special Certification No. 3 with Work-Around on a case-by-case basis. HQ R/W&LS retains sole discretion on whether to approve any District/Region request for a Special Certification No. 3 with Work-Around. FHWA approval may also be required on CM/GC certifications, regardless of certification level achieved, based upon the classification of the project. If a project is identified as a Project of Division Interest (PoDI), delegations will be outlined in the Project Oversight Agreement and may require FHWA approval. Also, if the project is located on the Interstate Freeway System, FHWA approval may be required if federal dollars are used in any phase of the project.

In lieu of no federal guidelines pertaining to right of way certifications under CM/GC delivery, the standards for certifying a project involving a work-around shall mimic the criteria for a Design-Bid-Build Special Certification No. 3 with Work-Around. Per 23 CFR 635.309(c)(3)(iii), the decision to advance a right-of-way segment to construction shall not result in unnecessary inconvenience and/or disproportionate injury to those occupants who have not yet moved from the right of way. Furthermore, per 49 CFR 24.102(h), no coercive action shall be taken in order to induce a settlement agreement with occupants who remain in the right of way that is scheduled for (a segmented) certification. Care must be taken to ensure owners of unacquired parcels are not unduly inconvenienced or harmed as a result of the CM/GC's collective construction activities. This includes owners located throughout a project's footprint.

14.01.12.03 R/W Certification Document Format for CM/GC Projects

The R/W Certification format for CM/GC projects is similar to the standard format used for Design-Bid-Build projects. The only difference is that the initial and subsequent certifications for a CM/GC project will provide a means for tracking the progress of the right of way deliverables. CM/GC certifications will include the total number of parcels required for the project as well as the total number of parcels being certified under each certification.

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R/W Certification for all CM/GC projects will use the certification format shown in Exhibit 14-EX-15. Any deviation from the format or wording must be fully explained in the certification and preapproved by HQ R/W&LS and when applicable, FHWA.

14.01.12.04 R/W Certification Process for Design-Sequencing Projects

Design-Sequencing is a method of contracting that enables the sequencing of design activities and permits each construction phase to commence when design for that phase is complete. The contract for the entire project is awarded to one contractor with a minimum of 30 percent complete plans. This process allows for the successful contractor to work with the designers to incorporate innovative designs and construction methods to improve delivery. With design-sequencing, there is a potential for faster performance, cost savings, and earlier delivery of the project to the public. There have been no projects authorized for this delivery method since 2004.

Currently Caltrans does not have authority to deliver projects utilizing design-sequencing, however, there are local agencies with authority to deliver design-sequencing projects.

Design-Sequencing guidelines for project certification can be found on the Design Sequencing page (internal Caltrans link).

14.01.13.00 R/W Certification File

The district/regions shall maintain both a hard-copy and electronic (e.g., ROWMIS) R/W Certification files containing pertinent documents related to the certification of a project, such as but not limited to:

- A diary for recording relevant information about the project.
- The project schedule, project design changes, and correspondence to and from Project Development and the Project Manager.
- Any necessary HQ R/W and FHWA approvals of unusual project circumstances.
- All clearance documents from various R/W functional areas.
- The original certification.

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The R/W Certification file shall be transferred to the project file system immediately after the project is certified and the contract has been awarded.

14.01.13.01 Project File System

District/Region P&M shall maintain both a hard-copy and electronic (e.g., ROWMIS) project file system that contains at a minimum the following documents:

- R/W Data sheet.
- R/W Certification file containing the original R/W Certification.
- Title VI Survey Forms (hard-copy only).
- Other project-related correspondence.

14.01.13.02 Functional Clearances and Record Retention

R/W functional clearances must be documented in the district/region R/W Certification files. The minimum requirement to certify a project is to obtain clearance memorandums from the utilities and railroads functions. Such clearances, together with the original R/W Certification and any pertinent correspondence, will be retained in accordance with the Department's Standardized Records Disposition Schedule for R/W project general files.

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14.02.00.00 - CRITERIA FOR CERTIFICATION

14.02.01.00 Prerequisites

Prior to issuing a R/W Certification, district R/W should review the draft district PS&E and PS&E submittal report to confirm pertinent data. Items to review include:

- Project identification (Co.-Rte.-KP-EA).
- Federal Aid Project Number.
- Location description.
- Work description.
- Special provisions relating to utility, railroad, and right of way clearance coordination.
- Confirmation that right of way construction contract obligations are properly included in the PS&E.
- Confirmation that the right of way as shown on the construction plans is consistent with district R/W records.

14.02.02.00 Submittal of R/W Certification to Office Engineer

At the time of PS&E to DES-Office Engineer (DES-OE), the project will be "Ready to List" (RTL). Right of Way Certifications should be indicated as Certification No. 1, Certification No. 2, or Special Certification No. 3 with Work-Around. If certifying a project with a Special Certification No. 3 with Work-Around, submittal of an updated certification to the DES-OE is required no later than 15 working days prior to the bid opening date. Refer to the Construction Contract Development Guide (CCDG), Section 10 for further information on right of way submittals to the DES-OE.

14.02.02.01 Submittal of R/W Certification to FHWA

If federal funding is used in any portion of a project, the FHWA, Federal Transportation Engineer (T.E.) must receive a R/W Certification a minimum of 15 working days prior to the FHWA "Authorization to Proceed" (concurrence and award) date. This authorization is given by the T.E. prior to the award of the construction contract. The HQ Budgets Program, Federal Aid Resources, is responsible for forwarding all required certifications to FHWA.

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***Use of a Special Certification No. 3 with Work-Around requires conceptual approval through HQ R/W&LS and may also require FHWA approval. See Section 14.02.03.05.**

14.02.03.00 Criteria for R/W Certification

Right of Way Certification formats and sample certifications can be found in the Exhibits section of this chapter. Exhibit 14-EX-3 is used for Design-Bid-Build Certifications, 14-EX-13 for Design-Build Certifications, and 14-EX-15 for Construction Manager/General Contractor Certifications. Eliminating any section in a certification is not permitted; if a section is not applicable to a project, indicate "N/A." Footnotes are provided for instructional purposes only and should be eliminated in the final certification. Nonrelevant language within a section (e.g., non-applicable utility/railroad statements) should be deleted.

14.02.03.01 R/W Certification No. 1

A Certification No. 1 requires the DDC-R/W to certify the state has full legal and physical possession of all right of way, including control of access rights when pertinent, and the right to remove, salvage, or demolish any improvements remaining in the right of way. A Certification No. 1 indicates:

- All work is within existing right of way;

  OR

  Acquisitions are complete (escrows closed and/or Final Orders of Condemnation recorded); AND/OR
- Orders for Possession are effective on **all** remaining unacquired parcels and occupants have vacated; AND
- Relocation assistance and payment requirements have been met; AND
- All necessary material and disposal sites have been secured; AND
- All R/W clearance, utility, and railroad work has been completed, or all necessary arrangements have been made (e.g., Utility Notices issued, demolition contracts awarded, and railroad contracts executed) for the work to be undertaken and completed as required for proper coordination with the project's physical construction schedule.

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14.02.03.02 R/W Certification No. 2

Requirements for a Certification No. 2 are similar to the requirements for a Certification No. 1 except the State's right to occupy and use some remaining parcels is by virtue of a Possession and Use Agreement. Other acquisition documents, such as a permit, license, or an approved R/W Contract with an effective right of possession date also requires the use of a Certification No. 2. If control of a parcel is obtained with a Possession and Use Agreement, or a R/W Contract with an effective right of possession date, funds must be deposited into an escrow account in order to meet the requirements for a Certification No. 2.

14.02.03.03 Conditional R/W Certification No. 3

A Conditional Certification No. 3 may be used on a limited basis when believed to be in the public interest. This level of certification allows a project to advance to bid advertisement; bids cannot be opened, nor a construction contract awarded until the certification is upgraded to a Certification No. 1 or 2. The upgraded certification must be provided to the District Office Engineer a minimum of 15 working days prior to bid opening.

NOTE: A request for a manual exception is required for any deviation from this process (e.g., upgrading a Conditional Certification No. 3 to a Certification No. 3 with Work-Around) and will be considered on a case-by-case basis. HQ/FHWA approval is subject to substantiation and justification of the extraordinary circumstances warranting such deviation.

Every R/W Certification No. 3 requires submittal of a memorandum from the district containing the information below. The memorandum is included as an attachment to the certification when submitting to HQ R/W&LS for review and approval. Approval requirements for a Conditional Certification No. 3 are pursuant to a conditional certification as outlined in 23 CFR 635.309(c)(3)(i)(iii), (iv). Approval of a conditional certifications requires evidence of exceptional circumstances. Meeting project schedules or avoiding escalation of project costs (when considered alone) are not deemed exceptional circumstances as these situations effectively apply to every project.

- **Full justification** for using a Conditional Certification No. 3, including the very unusual circumstances that require early advertisement.

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- **Full explanation** describing the circumstances leading to a Conditional Certification No. 3 along with a realistic date when physical occupancy and use is anticipated and substantiation that such a date can be achieved.

The DDC-R/W shall consider very carefully whether a Conditional Certification No. 3 is really necessary for a specific project. Additional information may be requested from the district to further justify the need for a Conditional Certification No. 3. Reasonable justifications include:

- Weather considerations.
- Construction and seasonal windows.
- Source of funds (other than federal aid) to be lost.
- Construction dollar savings by earlier advertisement.

Requirements for certifying a project with a Conditional Certification No. 3 are similar to requirements for a Certification No. 1 except legal possession or right of occupancy and use of some remaining parcels is not complete. A Conditional Certification No. 3 must contain the following additional information, as applicable:

- A statement that all remaining residential occupants have had replacement housing made available to them in accordance with 49 CFR 24.204 and R/W Manual Chapter 10, Relocation Assistance.
- A statement assuring that occupants of residences, businesses, farms, or nonprofit organizations who have not yet moved from the right of way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.

NOTE: A statement as to these assurances and the date when the contractor may enter the affected property must also appear in the bid documents.

- Identification of Right of Way milestones
- Identification of each parcel on which legal possession, and/or right of occupancy and use, has not been obtained. Appropriate notification shall be provided in the bid documents identifying all locations where state's right of occupancy and use has not yet been obtained.
- Perform risk analysis and identify controls to mitigate risks to substantiate that the anticipated actual dates when legal possession and physical occupancy and use will be obtained are reliable and realistic.

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14.02.03.04 Standard Usage for Conditional R/W Certification No. 3

The CTC Resolution of Necessity is the minimum requirement for a Conditional Certification No. 3. Although this is the minimum requirement, using Resolutions of Necessity to certify a project should only occur in exceptional circumstances such as safety or emergency work.

NOTE: Per CTC guidelines, a Conditional Certification No. 3 is not acceptable for seeking a funds vote from the CTC.

14.02.03.05 Special R/W Certification No. 3 with Work-Around

A Special Certification No. 3 with Work-Around (Certification 3W) allows physical construction of a project to commence while occupants of residences, businesses, farms, or nonprofit organizations remain within the right of way. All occupants of residences must have replacement housing made available to them in accordance with R/W Manual Chapter 10, Relocation Assistance.

If federal funds are involved in any portion of a project, including construction, conceptual approval of the work-around must be obtained by HQ R/W&LS and FHWA in advance of certifying the project for advertising. Delegations are outlined in the Stewardship and Oversight Agreement between FHWA and the Department. FHWA approval of a Certification 3W is required if a project is located on the Interstate Freeway System, and may be required if the project is considered a Project of Division Interest (PoDI). Special Certification 3W approval for Projects of Division Interest (PoDI) may be retained by FHWA, or delegated to the Department. PoDI delegations are contained in the individual Project Oversight Agreement. Contact the Project Manager for a copy.

A Special Certification 3W requires submittal of an updated certification to the OE no later than 15 working days prior to bid opening. The certification does not need to be raised to a Certification No. 1 or No. 2, but must be updated to provide any progress pertaining to the work-around parcel(s).

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14.02.03.06 Standard Usage for Special Certification No. 3 with Work-Around

A Special Certification 3W may only be used in the most extraordinary circumstances. A critical need to advertise and award the project must exist. The district is required to identify and consider all risks and controls to mitigate associated with certifying the project with a Special Certification 3W and shall include such risks in the project's risk register. District Right of Way must manage all risks to the best extent possible.

Approval from HQ R/W&LS is required whenever a district proposes to use a Special Certification 3W. A memorandum (similar to the requirements outlined above for a Conditional Certification No. 3) requesting approval must be submitted to HQ R/W&LS. The memorandum will describe the extraordinary circumstances and include a targeted plan detailing how the district proposes to achieve targeted dates for possession. Use of a Special Certification 3W shall not be approved unless the district can show substantial guarantees that vacation, possession, and clearance dates are completely realistic and enforceable. The district will submit the memorandum, along with a draft certification, to HQ R/W&LS at least two weeks prior to the required certification date for HQ review, and four weeks prior to the certification date if FHWA review is required. HQ R/W&LS will obtain FHWA's approval.

As an example, use of a Special Certification 3W may occur where all parcels have been acquired, or have effective Orders for Possession, and occupants have vacated. However, personal property remains on one or more parcels. In this case, the right of way corridor has not been cleared. The RAP section of the certification must provide an explanation of what personal property remains in the right of way, why it still remains, and how and when it will be removed. Any work-around parcel shall be clearly identified in the certification along with an explanation of the circumstances and a targeted date for providing access to the contractor.

14.02.03.07 R/W Clearance Under Special Certification No. 3 with Work-Around

Clearance work to be performed is listed on the R/W Certification as usual, except that occupied structures must be noted. Work-around times and how coordination with the contractor can be achieved must be explained in the certification giving reasons therefor and approximate dates for clearance work and how it will be accomplished. (Also see Section 14.03.09.00.)

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If **occupied, non-salvable** improvements are to be left in the right of way until occupants have vacated, it is preferable to include demolition in the highway construction contract. The resident engineer must be notified when the improvements have been vacated. Separate demolition contracts running concurrently with the highway contract **cannot** be used.

Appropriate notification shall be provided in the contract special provisions when clearance cannot be completed on **salvable** improvements prior to start of construction on the project (usually because it is not feasible or practical due to economy, remaining occupants, or special operational problems). R/W clearance work that others are to accomplish must be completed prior to start of construction activities, as right of way Phase 9 funded demolition contracts cannot run concurrently with the construction project.

The State may sell salvable improvements in advance of vacation by the occupants. For example, the buyer of the improvements may be asked to agree to start removal of improvements with 10 days' notice and to complete removal within a certain number of days. Adequate time must be included in the work-around provisions to allow for both vacation by occupants and removal of improvements.

If the construction contractor is to demolish or remove any **salvable** improvements, the district R/W Clearance section must follow all procedures in R/W Manual Chapter 12 regarding appropriate levels of approval.

14.02.04.00 Certification Statements

The following certification statement is used when certifying a project with a Certification No. 1 or a Certification No. 2:

> *"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(1) or (c)(2) and 49 CFR Part 24. This project may be advertised with contract award being made at any time."*

The following certification statement is used when certifying a project with a Conditional Certification No. 3:

> *"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3)(i), (iii), and (iv) and 49 CFR Part 24. The project may be advertised at any time. The project will be certified as conforming to 23 CFR 635(c)(1) or (c)(2) by _____(date)_____."*

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The following certification statement is used on the initial submittal of a Special Certification No. 3 with Work-Around:

> *"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3)(ii), (iii), and (iv) and 49 CFR Part 24. The project may be advertised at any time. Appropriate notification has been included in the bid documents. An updated certification will be provided by ___(date)_____."*

The following certification statement is used on the "Updated" Special Certification No. 3 with Work-Around, which is required no later than 15 working days prior to bid opening:

> *"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3)(ii), (iii), and (iv) and 49 CFR Part 24. The project has been advertised and the contract may be awarded. I have confirmed that all appropriate notifications have been included in the bid documents concerning said work-around."*

14.02.05.00 R/W Certification Approval and Distribution

After the certification is prepared in accordance with the current status of the property rights, it must be approved by the DDC for R/W or the delegated representative. R/W will submit the original to Project Development and distribute copies of the certification to the certification file, the Office Engineer (district or region), the Design Engineer, and others as appropriate.

14.02.05.01 Submitted With PS&E Submittal

The DDC-R/W shall:

- Deliver (address) the R/W Certification to the District Director, Attention DDC-Project Development, at the earliest date possible after receiving the request to certify the project, but no later than two months prior to the proposed advertising date.
- Obtain HQ R/W advance approval for any deviation in the certification requirements as set forth in Section 14.01.06.00.
- Obtain advance approval, through HQ R/W, for authority to issue a "Special Certification No. 3 with Work-Around" and secure concurrence, as necessary, from district Project Development and Construction.
- Coordinate with district Project Development concerning the status and expected delivery date of a certification to meet tentative advertising dates.

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- Report immediately to district Project Development any changes in the status and expected delivery date of a certification that will affect the district's ability to meet the scheduled advertising date. Approval of and input into PMCS for certification dates should be coordinated at this time.

NOTE: For the above two Items, the R/W Project Coordinator should be responsible for reporting on the status of all projects nearing projected delivery dates to the Project Managers.

- Notify the DDC-Project Development, Project Manager, and the district Office Engineer, in writing that a certification is rescinded or changed because of right of way reasons (see 14.01.04.02).
- Make arrangements with district Project Development to notify district R/W when a project is canceled.

When a certification is revised, a Conditional Certification No. 3 is elevated to a Certification No. 1 or a No. 2, or the status of a Certification No. 3 with Work-Around is updated, the district shall provide the following at least 15 working days prior to a bid opening.

- Deliver a copy of the new executed certification to District Office Engineer.
- Provide district Project Development, Project Manager with a copy of the new executed certification.
- Provide HQ R/W with a copy of the new executed certification if they received the original.
- For projects that have been listed for advertising and include federal-aid R/W or construction funds, provide two copies of the new executed certification to either Headquarters Federal Resources or Headquarters Office of Local Programs, as appropriate. The DDC-R/W shall be responsible for determining which of these units should receive the certification.

14.02.05.02 Not Submitted With PS&E Submittal

If the initial R/W Certification cannot be prepared in time to accompany the PS&E submittal, the DDC-R/W shall provide written notification to the District Director, Attention DDC-Project Development, of the anticipated certification level (No. 1, 2, Conditional 3, or Special 3 with Work-Around) and the realistically anticipated date of certification delivery. This information is required in the PS&E submittal memorandum.

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When the certification is ready to be issued, the district should address it to the District Director, Attention DDC-Project Development, and e-mail a PDF copy of the original certification to the District Office Engineer.

For projects where federal-aid construction funds are anticipated, and when the project appears on the "Projects Tentatively Proposed for Advertisement" list, and no later than 15 working days prior to the proposed advertising date, the district should provide two copies of the original certification to either Headquarters Federal Resources or Headquarters Office of Local Programs, as appropriate.

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14.03.00.00 - CERTIFICATION FORMAT/CONTENTS

14.03.01.00 R/W Certification Format

The method of Certification specified under 23 CFR, Part 635.309, Subpart C, entitled "Physical Construction Authorization" is applicable to all federal-aid construction projects. Nonfederal participating projects are certified in the same manner as federal projects.

R/W Certification for all projects is made using the R/W Certification formats shown in Exhibits 14-EX-3, 14-EX-13, and 14-EX-15. Since the format contains specific wording required by FHWA, changes made in wording could invalidate the certification. Any deviation from the format or the wording must be fully explained in the certification and must be approved by HQ R/W.

14.03.02.00 Description of Project Being Certified

The items in the R/W Certification listed below must match the construction project that is to be advertised.

- Phase 1 Project EA
- Federal Aid Project Number
- District-County-Route(s)
- Post Mile Limits
- Location Description
- Type of Work

This data is available in the District Status of Projects and from the PS&E, which will have the most current information. (Also see Sections 14.01.08.01 and 14.02.01.00.)

The Construction and R/W Federal Aid Project Numbers, if available, should be shown on the R/W Certification. If pending, the word "pending" should be shown. If it is verified that no construction and/or R/W federal-aid exists for the project, the word NONE should appear on the certification.

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14.03.03.00 Required Right of Way

All property rights required for a project must be included in the R/W Certification. A state construction project may include work on local agency streets or roads where the local agency acquired some or all of the required right of way. Those parcels acquired by the local agency must be included in the certification.

Parcels to be included in a R/W Certification include regular right of way parcels acquired by deed, Final Order of Condemnation, Order for Possession, Right of Entry, Possession and Use Agreement, license, permit, or other acquisition documents used by certain governmental entities. This section shall include a full explanation of the circumstances regarding the status of possession on each parcel where the state does not have full legal and physical possession by virtue of a recorded deed, recorded Final Order of Condemnation, effective Order for Possession, or effective date of Right of Entry or Possession and Use Agreement.

Temporary rights, such as temporary easements (whether parcels or subparcels) and Permits to Enter (or Enter & Construct), must also be listed in the certification. It is important to include the effective date and expiration date of any temporary rights so they may be evaluated in terms of the final construction schedule.

14.03.04.00 Certification with Caltrans Rights of Entry (Exhibits 8-EX-24 and 8-EX-25)

Certifying a project with parcels acquired under Caltrans Rights of Entry (Exhibits 8-EX-24 and 8-EX-25) shall be avoided. Said documents do not meet the Uniform Act compliance standards for establishing just compensation and payment prior to possession (49 CFR 24.102). Use of these Caltrans Rights of Entry documents are limited to exceptional circumstances only (e.g., emergency purposes) in accordance with 49 CFR 24.102(j) where rapid response is required and there is no time to appraise and make an offer to purchase. See Acquisition Chapter, Sections 8.09.09.00 and 8.09.09.01.

Non-Caltrans Rights of Entry documents issued by other Federal, State or Local (County, City) governmental agencies typically do not fall into the same category as the Caltrans Rights of Entry documents (Exhibit 8-EX-24 and 8-EX-25). These types of documents are similar to a Caltrans Encroachment, issued upon consideration of an offer of just compensation for the project required right of way. Careful review of these non-Caltrans Right of Entry documents must be undertaken to confirm that the language of the non-Caltrans Right of

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Entry document meets the Uniform Act compliance standards of 49 CFR 24.102.

14.03.05.00 Status of Affected Railroad Operating Facilities

This section of the R/W Certification is meant to cover operating property of railroads (typically within two feet of rail crossing). The railroad determines which of their properties are operating and non-operating. See R/W Manual Chapter 8.69.00.00 for a detailed discussion on railroads.

Clearance of projects that involve railroads consists of three distinct and mandatory project deliverables:

1. CPUC Application Approval of project railroad plans for final project PS&E;
2. Identification and acquisition of railroad real property rights; and
3. Obtaining an agreement with the railroad for physical construction of a project when operating within railroad right of way.

Project right of way requirements from railroad property creates an acquisition parcel that must be covered under Section 1 of the Certification, "Status of Required Right of Way."

Depending on the complexity of Railroad involvement, either the District Railroad Coordinator, or HQ's R/W Railroad and Utilities Section is responsible for issuing a clearance memorandum (also see R/W Manual Exhibit 14-EX-10) to the Headquarters Office Engineer when all railroad matters have been resolved and the project can be advertised. The clearance memorandum forwards clauses required for the Contract Special Provisions, confirms that any required PUC authorization has been obtained for the project, and provides details of any Service Contracts and Construction and Maintenance Agreements with the railroads.

A copy of the clearance memorandum is sent to district R/W requesting that the District Railroad Agent insert the railroad clearance data into the PMCS AGRE Screen so it will print in the Agreements Column of the District Status of Projects.

The DDC-R/W usually should not provide Office Engineer or FHWA with an approved R/W Certification until the clearance memorandum has been received from Structures. If the clearance memorandum has not been received, however, the certification shall indicate this fact.

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The clearance memorandum is required for ANY project with railroad involvement that is advertised by district or Headquarters Office Engineer, even when a local agency makes the railroad arrangements.

The operating facilities of a railroad can be "affected" by a construction project in several ways, which would require a statement in this section of the certification.

14.03.05.01 Railroad Agreements

A "Right of Way Railroad Agreement" will be used when a Construction and Maintenance Agreement is not appropriate during both the PS&E and Construction phases of project delivery to formalize obligations between a railroad and the Department. An agreement is needed during PS&E for preliminary plan review and for protection of PS&E activities within the rail corridor. An agreement is needed during the construction phase to secure flagging services and project inspection. For example, an agreement with the railroad is used where the railroad is paid to do some work. Caltrans may not perform any work within two feet of either side of the tracks. Only railroad personnel can perform work in the track area. Refer to R/W Manual Chapter 8.69.00.00.

14.03.05.02 Clauses in Contract Special Provisions (Clearance Memorandum Required)

Clauses are required in the Special Provisions as follows:

- **Construction work will be performed within the railroad operating right of way and within 25 feet of the track—**The railroad must be provided insurance, and clauses are required in the Special Provisions.

- **Work is done in the railroad operating right of way but more than 25 feet from the track—**The contractor is responsible for damages and clauses are required in the Special Provisions.

- **Work is done over or under a railroad facility in connection with construction of a grade separation structure—**The contractor must notify the railroad when work is to be done. Railroad protection clauses are required.

- **Work is done over or under an existing grade separation—**The Agreements Branch will determine if the railroad should be notified and if clauses are required.

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NOTE: The clearance memorandum is required when any work is performed within the railroad's operating right of way, regardless of the actual distance from the railroad tracks.

14.03.05.03 Railroad Rights of Entry

A right of entry from a railroad is a key document before construction can commence. This document is a permit which allows encroachment within the rail corridor. It does not convey any real property rights. Both the project sponsor (i.e., Caltrans) and the primary contractor must obtain railroad rights of entry before the start of construction. The Department is responsible for securing rights of entry for Caltrans employees and the contractor must secure rights of entry with the railroad as a condition of contract award, and prior to ingress on railroad right of way.

A railroad "Right of Entry" does not meet the definition of Right of Entry pursuant to 49 CFR 24.102(j). Caltrans Right of Entry documents 8-EX-24 and 8-EX-25 are not used for railroad rights of entry. When railroad "Rights of Entry" are required, approval is to be reflected pursuant to the information contained in either a "stand alone" fully executed "Railroad Right of Entry," or when applicable, within (attached to) a fully executed Construction and Maintenance Agreement (C&M). List the identifying right of entry or C&M reference (attachment) in the R/W Certification, Section 1 (A) "Parcels covered by other acquisition documents."

Generally, rights of entry on railroad operating property are not **effective** until the Agreement has been fully executed.

14.03.06.00 Material and Disposal Sites

The R/W Certification should list all optional or mandatory material and disposal sites that require a state secured agreement and that will be made available for use for the project being certified.

On some projects, bidders are advised of available sites that have been previously tested and approved for use. Contractors make their own arrangements for use of such sites. These sites are NOT listed on the R/W Certification when the project does not require a state secured agreement with the site owner.

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14.03.07.00 Status of Required Utility Relocations

A R/W Certification must not be issued until either there are no required utility relocations or, if there are, that:

All utility work has been or will be completed in accordance with applicable policy and procedure including appropriate Buy America requirements covering the adjustment of utility facilities. All utility notices have been issued and arrangements have been made with the owners of all conflicting utility encroachments remaining within the right of way so that adequate control of the project right of way will be achieved. If applicable, federal participation has been determined.

AND

All utility work has been completed.

OR

All utility work will be completed by a stated date prior to award of the contract.

OR

All necessary arrangements have been made for remaining utility work to be undertaken and completed as required for proper coordination with project construction. The Contract Special Provisions provide for the coordination.

AND

All utility work completed or remaining to be completed must indicate one of the following:

- Project specific utility agreement(s) is(are) fully executed and include(s) the Buy America language.
- Project is not covered by a NEPA document and Buy America requirements do not apply.
- Buy America compliance is not applicable for utility relocations as Utility Agreements are not required.

NOTE: 23 CFR 635.309(b) requires utility arrangements to be completed prior to project construction except where it is determined such work is not feasible or practical; e.g., due to economy or special operational problems. If

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relocation has not been completed, the relocation schedule must be included in the R/W Certification and the Contract Special Provisions.

The R/W Certification shall include a listing by owner and type of all utility facilities located within the project right of way. For those in conflict with the project it shall also include:

- Notice number
- Notice date
- Company name
- Liability determination – percentage of state/owner expense
- Date of Executed Utility Agreement
- Federal participation
- A schedule for the utility relocation work (Actual Dates)

The schedule shall indicate:

- Specific date owner has agreed to complete work, AND/OR
- Highway contractor will complete work as part of the highway contract. Dates would reflect entire Construction window. A bid item number should be included in the highway contract with an explanation of the conditions of the bid item and liability for the work. If the state has any liability, include percentage of liability attributed to owner and state. If the utility relocation is eligible for federal participation, a signed copy of the Specific Authorization to Relocate Utilities memorandum must be attached to the R/W Certification. (See Utility Form RW 13-15.) Also refer to 23 CFR 645.119.

14.03.08.00 High and Low Risk Underground Facilities

A statement is **NOT** required in the R/W Certification on the status of High and Low Risk Underground Facilities within the construction project limits. The Project Engineer is responsible for administration of the High and Low Risk policy.

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14.03.09.00 R/W Clearance

The R/W Certification requires one of the following statements:

- No improvements or obstructions were located within the project limits.
- All R/W clearance work has been completed, and no improvements or obstructions are remaining within the right of way area required for construction.
- All necessary arrangements have been made for remaining R/W clearance to be undertaken and completed as required for proper coordination with the construction schedule.

All improvements should be cleared from the right of way **prior to R/W Certification** by sale, R/W Clearance Contract, district forces, or Grantor(s) pursuant to R/W Contract agreement. When this is not possible, one or more of the following procedures will apply.

- **Remaining improvements will be removed prior to advertisement of the construction project—**Clearance contracts and sales agreements have been executed and firm dates established for completion of the work. Notification in the highway construction project bid documents is not required.

- **Remaining improvements will be removed prior to award of the construction project—**Clearance contracts and sales agreements have been executed and firm dates established for completion of the work. Notification to prospective bidders describing the location and nature of improvements that will (or may) remain after the advertising date but will be cleared prior to award of the construction contract **must** be provided in the bid documents so bidders will know they are not to include clearance of these items in their bids.

- **Removal of remaining improvements will not be complete until some time *after award* of the construction contract—**Clearance contracts and sales agreements have been executed and the bid documents for the project contain appropriate notification of same with a date when clearance work will be complete. Notification **must** be included in the bid documents outlining locations, time periods, and coordination aspects that prospective bidders must consider in calculating their bids and to assure they are aware that they are **not** to include removal of these items in their bids.

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- **Removal of remaining improvements *will be included* in the plans and special provisions of the construction contract—**This option should only be considered in exceptional situations because most project construction contractors charge inordinately high amounts for demolition and salvage work. The improvements also may be in the way of other construction work. It should be noted that salvable improvements and materials cannot be sold by the contractor within the construction project limits, thereby minimizing any potential salvage value.

- **Occupied improvements will remain within the right of way.** This situation requires use of Special Certification No. 3 with Work-Around.

- **Salvable Improvements —**The state's policy is that salvable improvements be sold prior to project construction. If no buyer is found to purchase/remove a salvable improvement, then demolition/removal of this salvable improvement should occur prior to the start of construction activities via a separate demolition/removal contract (See Section 14.02.03.07). Note: Only rarely should salvable improvement removal/demolition occur as part of the construction contract. It should be noted that salvable improvements and materials cannot be sold by the contractor within the construction project limits, thereby minimizing any potential salvage value.

14.03.10.00 Airspace Agreements

If airspace agreements are in effect within the project limits, an explanation of any arrangements required with the lessee must be included in the R/W Certification and the bid documents.

14.03.11.00 Compliance with RAP Requirements

This section provides assurances that all current policy and procedure requirements for relocation advisory assistance and payments have been followed. Detailed data on any remaining occupants and personal property is also provided in this section of the R/W Certification. (Also see requirements for Special Certification No. 3 with Work-Arounds.)

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14.03.12.00 Environmental Mitigation

All R/W Certifications must address the status of any environmental mitigation on a project. This section describes the three status categories.

- No environmental mitigation parcels are required for the project.
- All environmental mitigation parcels on the project have been acquired.
- Acquisition of environmental mitigation parcels is ongoing. Explain acquisition status.

14.03.13.00 Certification - Authorized Signature

R/W Certifications are issued over the signature of the DDC-R/W or designee. The signature authority may be delegated provided it is in writing and a current copy of the delegation is on file with HQ R/W.

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14.04.00.00 – DELEGATIONS

14.04.01.00 Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Right of Way Certification 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 §635.309	14.01.02.00	Projects Requiring Right of Way Certification	District	Senior RW Agent
23 CFR §635.309	14.01.04.00	Responsibility for Right of Way Certification	District	Senior RW Agent
	14.01.04.02	Certification Rescinded by District	District	Senior RW Agent
	14.01.06.00	Unusual Project Circumstances – Deviations from Chapter Requirements	HQ	Supervising RW Agent
	14.01.07.00	Modifications to Factual Data in R/W Certifications	District	Senior RW Agent
23 CFR §635.309	14.02.03.03 14.02.03.05 14.02.03.06	R/W Certification #3	HQ	Supervising RW Agent
23 CFR §635.309	14.02.05.01	R/W Certification #3 Update or Upgrade	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 §635.309	14.02.06.00	Special Certification #3 With Work-Around	HQ	Supervising RW Agent
	14.03.01.00	Modifications to R/W Certification Format	HQ	Senior RW Agent
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Exhibits are located online:

- External Exhibits site
- Internal Exhibits site (internal Caltrans link)

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15.04.00.00 AIRSPACE RIGHT OF WAY USE AGREEMENTS

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15.00.00.00 - AIRSPACE

15.01.00.00 - GENERAL

15.01.01.00 Function

The Airspace function is responsible for leasing real property within the boundaries of a federally-aided facility where the use is permitted by Federal regulation and such use is consistent with the continued operation, maintenance, and safety of the facility. Per 23 CFR 710.403 (b), the Department must assure that all real property within the boundaries of a federally-aided facility is devoted exclusively to the purposes of that facility and is preserved free of all other public or private alternative uses, unless such alternative uses are permitted by Federal law (including regulations) or the FHWA. An alternative use, whether temporary or permanent, must be in the public interest, consistent with the continued safety, operation and maintenance of the facility, and such use must not impair the highway or interfere with the free and safe flow of traffic.

Airspace does not include the leasing of property held for future transportation projects.

15.01.01.01 Definition

The definition of "Airspace" within 23 CFR 710.105 (b) was deleted per the August 23, 2016 Federal Register. The term "Airspace" was replaced by the all-encompassing term "Right of Way." "Right of Way" is defined as "real property and rights therein obtained for the construction, operation, maintenance, or mitigation of a transportation or related facility under Title 23, United States Code." For purposes of this section and California State Statutes, Airspace is analogous to Operating Right of Way being the area between the right of way limits, including area above and below, utilized for the purpose and protection of public travel. An "airspace site" is a site within the right of way that is capable of development in a manner that ensures adequate protection to safety and adequacy of highway facilities and to abutting or adjacent land uses. An airspace site may consist of:

- Surface rights under a viaduct structure.
- Space above the traveled lanes.

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- Space within a loop of an interchange.
- Space between the main lanes and on or off ramps.
- Area in cut or fill slopes.

15.01.01.02 Airspace Policy

Streets and Highways (S&H) Code 104.12, "Leasing of Airspace," authorizes the Department of Transportation (Department) to lease airspace above, below and adjacent to State highways to public agencies and private entities in accordance with prescribed CTC procedures.

Airspace leasing activities by a Right of Way Use Agreement are conducted pursuant to CTC Resolutions, 23 CFR 710, and policy and procedures established in this chapter. While this chapter may refer to a "lease agreement" (as this continues to be described in history, statute and CTC resolution), it is noted that there is no "leasehold interest" being conveyed. All agreements are revocable, should the Department of Transportation need the property.

In general, the Airspace Program is limited to access controlled freeways and highways (interstates and/or federally funded transportation facilities). However, in certain circumstances, Right of Way Use Agreements can be utilized on non-access controlled conventional highways under the same guidelines.

Parcels outside the operating right of way (non-operating right of way) may also be leased using airspace procedures. These include space within a maintenance station, traffic management centers, office buildings, or other facilities. Conventional highways can also be considered Airspace if area exists for secondary uses. Often telecommunications facilities and cell towers can safely be accommodated (e.g., access and utilities are from outside the traveled way).

Established policies and procedures provide guidelines on leasing airspace sites to maximize use of property acquired for transportation purposes in allowing a dual use.

See Reference File for the most current CTC Resolution.

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15.01.01.03 Statutory Provisions Related to Leased Rights of Way

- Streets and Highways Code 225.5(a): no person shall display, sell, offer for sale, or otherwise vend or attempt to vend any merchandise, foodstuff, or service within any vista point or safety roadside rest area. However, S&H Code Section 220.5 allows vending machines in safety roadside rest areas.

- Vehicle Code Section 22518:
  (a) Fringe and transportation corridor parking facilities constructed, maintained, or operated by the Department of Transportation pursuant to Section 146.5 of the Streets and Highways Code shall be used only by persons using a bicycle or public transit, or engaged in ridesharing, including, but not limited to, carpools or vanpools. No person shall park any vehicle 30 feet or more in length or engage in loitering or camping, or vending or any other commercial activity, on any fringe or transportation corridor parking facility.
  (b) This section does not apply to alternatively fueled infrastructure programs in park-and-ride lots owned and operated by the Department of Transportation.

- Public Resources Code 25722.9(b) specifically authorizes the Department to develop incentive programs for EV charging stations within park and ride lots 50 spaces or more.

- 23 USC 137(f)(2) specifically allows EV charging stations within fringe or corridor parking facilities on the Interstate. Any fees charged for the use of any such facility in connection with the purpose of this subsection shall not be in excess of the amount required for operation and maintenance, including compensation to any person for operating the facility.

15.01.02.00 Responsibilities of Headquarters Airspace

Headquarters Airspace (HQ A/S) is responsible for:

- Developing all policies and procedures governing all aspects of airspace leasing and management. Note: District Permits handles all proposals to use property within the operating right of way of a conventional highway with the exception of Department owned property adjacent to a conventional highway (non-operating right of way e.g., maintenance station, park and ride lots).

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- Establishing delegation levels for review and approval of airspace uses and Right of Way Use Agreements (previously known as lease agreements).

- Preparing periodic reports on statewide and region/district income, expenses, inventory, production, and goals.

- Establishing standards to measure Airspace activity (i.e., income, expenses, production, and workload) in accordance with current and future contracts for region/district performance.

- Liaison with region/district Airspace Seniors, CTC, FHWA, other programs, and external agencies on Airspace matters.

- Coordinating budget requests for region/district PY allocation and workload projections.
- Resolving complex technical issues with potential statewide impacts through research and subsequent written guidance.

- Monitoring region/district activities to ensure the most effective and streamlined procedures are in place and working with regions/districts to make necessary changes to region/district activities or statewide procedures.

- Holding meetings, functional councils, training seminars, and workshops.

- Developing standardized Right of Way Use Agreement (templates) and language to protect the Department from potential liabilities and claims from the lessee, sub-lessees, and adjoining owners.

- Management of the Right of Way Real Property Services Airspace section of the Caltrans intranet and internet websites.

15.01.02.01 Annual Reports

HQ A/S prepares two reports:

- **Report to the CTC** - regions/districts provide information on inventory, income, and leasing activity for the previous fiscal year with specifics on Marler Johnson Right of Way Use Agreements, Park and Ride Joint Development, Park and Ride Demonstration Program, internal uses, building development, seismic retrofit, and other major programs.

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- **Business Plan** - a component of the Annual Report, containing a statewide plan for the Airspace program that establishes next year's objectives and goals. This report must be presented to the CTC each State Fiscal Year.

Caltrans Executive Management, the Transportation Agency or the California Legislature may also require special reports or information.

15.01.02.02 HQ Liaison Region/District Visits

HQ A/S staff will visit the Region/District Airspace (R/D A/S) Staff at least once every year to review current operations, and ensure accurate instructions are in place to assist Region and District Airspace Units (Airspace) with the work products and goals. Some of the items that may be discussed are the effectiveness of:

- Airspace efforts to maximize public and private use of the right of way.
- Written policies, procedures, and instructions.
- Annual marketing, workload, and budgetary plans used to track PY effort.
- HQ A/S assistance and training to improve region/district operations and prepare for the next budget cycle.

15.01.03.00 Responsibilities of Region and District Airspace Development Units

To manage an effective Airspace program, the Senior and staff will:

- Develop a positive marketing program to maximize revenue.
- Implement multiple use concepts during the project planning and design processes.
- Administer and manage all freeway leasehold and airspace areas.
- Identify potential airspace sites and maintain a current and accurate database in the inventory.
- Coordinate with the Environmental Branch to identify project environmental implications or determinations and to assist developers with requirements for environmental clearance, storm water pollution prevention, and air quality studies or statements.

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- Coordinate with region/district Maintenance and Landscape units to market the joint use of roadside rest areas and park and ride lots to provide better services to the traveling public while decreasing the Department's maintenance expenses on the sites.

- Cooperate with private industry to develop suitable sites.

- Protect airspace sites against adverse economic impacts, such as inappropriate utility encroachments and discriminatory down zoning.

15.01.04.00 Region/District Airspace Review

R/D A/S is responsible for conducting a region/district review of all proposals to lease an airspace site. A District Airspace Review Committee (DARC) consisting of representatives from Right of Way, Design, Traffic Operations, Landscape Architect, Project Development, Maintenance, Environmental, Structures, Hydraulics, and the State Fire Marshal must approve proposed airspace uses. Additional programs may be included if the program is affected by the proposed use (e.g., the Park and Ride representative from Traffic Operations). For telecommunications reviews, HQ telecommunication coordinator must be included.

Prior to submitting the proposal to DARC, R/D A/S should review the proposal and develop a plan for leasing the site, including:

- Best method to lease the site (bid or directly negotiated).
- Adjacent property management and excess sites that could be joined to the site and leased together.
- History of prior leases (including term and use).

Although formal meetings are suggested, informal discussions and routing of the proposal will suffice if the proposal is not complex.

R/D A/S shall provide relevant information to DARC members, such as:

- Proposed use and term.
- Site improvements (proposed and existing) - paving, striping, curbing, lighting, etc.
- Access - ingress and egress.
- Utilities, including water.
- Major developments - buildings, storage tanks.

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DARC representatives should be permanent members from each program who have committed to participate fully in the review. Responses should be returned in the established time frame (e.g., 15 days for conceptual and 45 days for preliminary and final). Close coordination with the proposed lessee is necessary to ensure documents are submitted on time to obtain all approvals prior to scheduled construction or occupancy date.

DARC is responsible for reviewing the proposal to ensure the use and improvements will not adversely affect highway safety nor interfere with operations. Any conflicts between the proposal and internal uses should be mitigated with the proposed lessee to the fullest extent possible.

R/D A/S should use discretion when forming a DARC review for a proposed use. Only those members that can provide valuable input on the impact to their program should be included in the review. A legal, low-value, noncomplex proposal with no improvements may require a less intensive review than a parking structure underneath a highway structure. Additionally, many of these types of proposals may not require extensive review at the conceptual phase. This can be done at the preliminary and final stages after the potential lessee provides more detailed information on the proposed Right of Way Use Agreement.
DARC reviews are held at the conceptual, preliminary, and final phases to ensure previous concerns have been addressed and the proposal has not dramatically changed since conceptual approval.

The preliminary phase is at R/D A/S's discretion considering the proposal's complexity and the level of review that was performed at the conceptual phase.

Functional branches involved in the review of airspace Right of Way Use Agreement proposals shall charge their time to their own program overhead Project ID (Encroachment Permits Manual Section 500.3).

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REGION/DISTRICT AIRSPACE REVIEW PHASES

Stage	Review
Conceptual	1. Does the proposal make sense? 2. Any program objectives? 3. Identify upgrades or modifications to site (e.g., slope or column protection). 4. Other interest parties? 5. Highest and best use. 6. Advise proposed lessee of DARC comments. 7. Does the lessee understand the requirement to pay a fair market lease rate?
Preliminary	1. Preliminary plan review: effect on operations. • access, utilities. • highway structures. • lessee's improvements. 2. Potential risks and liabilities compared to benefits and revenue. 3. Advise proposed lessee of DARC comments.
Final	1. All DARC comments addressed in final plans. 2. Local and environmental approvals obtained. 3. Construction and maintenance schedule. 4. Final plans showing excavation and trenching. 5. Advise proposed lessee and Permits Office of status.

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15.02.00.00 - INVENTORY OF AIRSPACE LEASES AND INTERNAL USES

15.02.01.00 Inventory Requirements

Each airspace site shall be entered into Right of Way Property Management System (RWPM). Refer to the most current RWPM User's Manual for inventory procedures.

The inventory data is used to obtain site-specific information and to prioritize sites with the highest development potential. The prioritized sites are marketed according to the region/district's annual marketing plan.

15.02.01.01 Identification Number

Each site is assigned a freeway lease area (FLA) number using region/district number, county abbreviation, highway route number, assigned site number, tenancy (e.g., 04-SF-101-0010-01). If a site is split for interim or other uses, each site should have a separate site number. If a site is combined with another site (airspace, excess land, property management), the combined site should be assigned the primary airspace site number.

Telecommunications sites are identified with a sequential site numbering system using 9XXX (e.g., 04-SF-101-9001-01 is the first site on the route and the first carrier; 04-SF-101-9002-01 is the second site on the route and/or the collocatee on the site).

Temporary or one-time leased sites such as those for tower cranes, tie-backs or sidewalks are identified with a site numbering system using 5XXX. These Right of Way Use Agreements are for construction purposes on parcels adjacent to the State route. The numbers are specific to the agreement. Once the agreement is expired, that number will not be re-used.

15.02.01.02 New Sites in Inventory

New sites identified as potential Right of Way Use Agreements should be added to the inventory as soon as possible. Potential sites on new freeway projects should be added to the inventory within six months of completion of construction.

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To assist in preparing the District Marketing Plan, Airspace should indicate which sites in the inventory have the highest revenue potential.

15.02.01.03 Mapping

Maps shall be prepared for each airspace site in accordance with R/W Engineering Section 6.01.04.00 and Exhibit 6-EX-1B (except for temporary sites). Temporary sites are mapped from the construction maps on the adjacent parcel.

Each airspace site must have a vicinity map and a site map. The vicinity map shows the general location of the site and its relationship to the state highway and local roads. The site map shows the perimeter of the site and its relationship to the highway centerline and right of way lines, including all structures. It also denotes the square feet of leasable area, usable area, and the area restricted from use (e.g., footprint of the columns).

Refer to Plans Preparation Manual, Division of Design, Section 4-15.

The vicinity map is the only mandatory requirement for adding a site to the inventory or obtaining conceptual approval. The site map can be requested from R/W Engineering if there is agreement on the size, shape, and area that will be leased and if the likelihood of leasing the site is high. Otherwise, use a copy of the record map with appropriate markings of the proposed airspace site, noting approximate boundaries and square feet. (Dual notations on maps of the area to be leased are allowed for local agency and lessee purposes, e.g., square footage, acreage.)

15.02.02.00 Department Use of Airspace Sites

A Department program may need to use an airspace site for a future transportation highway project (new construction or modifying an existing highway facility) or reserve it for an internal use (temporary or permanent). Any vacant or soon to be vacant site may be held for "CALTRANS USE" if the requesting program's submittal is approved.

The District Director (DD) approves such requests after Region/District Airspace (R/D A/S) analyzes the economic and local factors of removing the sites from the list of "available" sites. The analysis should include:

- Estimated fair market lease rate (FMLR) is based on the fair market value (FMV) of the site considering the highest and best use, the potential

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length of a Right of Way Use Agreement, and the present worth of the income stream.

- Potential loss of possessory interest tax revenue to the local agency.

- Date the requesting program needs the site for proposed construction or modification to an existing facility.

- If the site is currently leased, probable cost to cancel the Right of Way Use Agreement if the requesting program's need is immediate.

- Environmental considerations of the proposed internal use, including potential neighborhood and community impact.

Airspace presents its analysis of the proposed use to DARC for a recommendation to the DD to approve or deny the request.

A final decision by the Headquarters Deputy Director of Project Delivery is required if the DD's conclusion is at variance with other Department guidance, instructions, standards, or delegations for approval. HQ A/S approval is not required.

15.02.02.01 Internal Use

A Department program may need an airspace site for a permanent or temporary internal use. Examples of permanent uses are maintenance operations (e.g., vehicle storage), landscaping projects, employee parking, and park and ride lots. Examples of temporary uses are sites for relocated businesses due to seismic retrofit, internal construction staging areas, holding areas for historic buildings pending sale, and other immediate needs of the Department. If the site is not in the inventory, it should be added and coded as "CALTRANS USE" ("CT" in RWPM) to track potential savings to the Department by using its own real estate assets.

To ensure the Department is using its land assets properly, R/D A/S should annually review all sites held for Caltrans use to ensure the need still exists for the current usage and the current usage is still the best use of the property, considering other potential uses and net return. R/D A/S may discontinue the internal use if it is a significant underutilization. However, R/D A/S should consider Caltrans needs as a high priority and recognize that there may not be an alternative site that will adequately serve the Department's needs. If the Department intends to provide contractors with an airspace site for a construction staging area, this should be announced in the Construction Bid

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Package. If not, the site may be leased to the successful construction contractor prior to the start of the project.

15.02.02.02 Existing Internal Uses and Potential Airspace Right of Way Use Agreement

If a site currently held for Caltrans use can generate a higher return if leased, R/D A/S must prepare an economic analysis for the DD and request termination of the current use so the site can be developed for an external use.

If the internal use is an underutilization of the site and an adequate replacement site is available, R/D A/S and the user program may consider terminating the existing use and making the property available for lease. A Project Report is required, and the cost to relocate and reestablish the internal use at the new site should be considered. The analysis should consider the potential revenue against the cost to relocate the impacted facility and program, factoring in the probability of leasing the site and any risks the proposed lessee may encounter, thus reducing the probability of a successful lease. Relocation should occur only when the program using the site funds the cost.

The analysis may indicate (1) the existing internal use is proper, (2) the use should be discontinued and the site made available for lease, or (3) a portion of the property should be retained and a portion made available for lease as the program will no longer need the entire site.

A program (maintenance, construction) using a site must submit formal written notice to R/D A/S prior to vacating the site. The notice must state when the site will be vacated, the current condition of the site (e.g., hazardous materials) and list improvements that will remain. R/D A/S must coordinate termination of the use with the vacating program to ensure the site is ready to lease to a private entity.

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15.03.00.00 - PLANNING AND MARKETING

15.03.01.00 General

Properties offered for lease must attract the widest possible market to achieve the maximum return. Standard real estate marketing techniques should be used to ensure adequate exposure of the property for lease. The ability to be flexible as to the terms of lease and potential assemblage of adjoining sites should be brought to the attention of all prospective lessees. Region/District Airspace (R/D A/S) should use additional methods to achieve the widest distribution of leasing information for **specialized** property, such as advertising in technical magazines, developing a home page on the Internet, or hiring a leasing agent or broker.

15.03.02.00 Planning

R/D A/S is responsible for working with Project Development and Environmental to identify potential multiple use or joint use opportunities in the planning and design phases of transportation projects.

Pursuant to S&H Code Section 104.12, R/D A/S shall take necessary action to implement multiple use concepts developed in the project planning and design stage; therefore, staff should provide necessary technical information, including DARC recommendations.

Good working relationships with local agencies responsible for approval of R/D A/S proposals are necessary for successful planning and marketing activities.

15.03.03.00 Marketing

Prior to preparation of the annual budget, R/D A/S should prepare its annual plan for the next two fiscal years for marketing and budgeting purposes. The plan includes target workloads for all short term, long term, and telecommunications leasing activity. The plan shows sites R/D A/S intends to market, by quarter, and the lessee selection process (direct negotiation or bid). The plan is used to forecast, schedule, and identify resources.

In addition, each vacant site should have a specific marketing plan identifying and scheduling the leasing activities (e.g., appraisals, CTC approval, Right of Way Use Agreement and construction).

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Although sites in the plan are usually in the R/D A/S inventory, new sites (not yet approved conceptually) can be included if external interest is high.

As part of the plan, R/D A/S should review the economic viability of airspace sites in the inventory. If there is little or no interest in a site, R/D A/S should either change the proposed use (requires prior FHWA approval if on the Interstate) or remove the site from the inventory. All site mapping and preliminary work should be retained in a Region/District archive file for future use should interest in the site resurface.

15.03.03.01 Advertising

Sites should be advertised using the appropriate media, e.g., newspapers, radio announcements, Internet Web sites, and developers' periodicals. Note all advertising efforts in the site diary.

Methods used to advertise low value airspace sites should be limited to those methods that will attract some interest but will not cost more than the potential revenue. For example, an airspace site that can be used only as unimproved overflow parking does not warrant a major marketing campaign.

15.03.03.02 Signs

Advertising signs should be placed on airspace sites in accordance with the marketing plan and as follows:

- **Parking or Open Storage** - at least one month prior to bid opening.
- **Non-development or Development** - at least three months prior to bid opening.

R/D A/S should maintain an adequate supply of signs.

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15.03.03.03 Promotion

There are several ways to make the public more aware of the R/D A/S Program, such as:

- **Standard "For Lease" and "For Auction" Signs** should be at least 2' x 3' (aluminum or plastic) and mountable in some fashion. Example:

FOR LEASE
Contact: (Phone Number)
Right of Way Office
(Property of State of California)

- **District Public Affairs Office's** news releases and radio and television public announcements on ongoing and completed developments.
- **Staff Presentations** to community, local governmental entities, and professional real estate organizations.
- **Personal Contact** with local builders and developers to discuss the program.

15.03.03.04 Adjoining Owners

When a site becomes available, R/D A/S should contact adjoining owners and occupants to give them pertinent information about leasing the site, discussing potential uses for their benefit. Note all discussions in the site diary.

15.03.04.00 Broker Commissions

Although not currently a common practice, the Department is authorized, per CTC Resolution G-02-14, to contract for the services of a real estate broker to assist in developing a long-term Right of Way Use Agreement. If approved by DDC-R/W, the standard agreement must state:

- Commission is paid after the first lease payment is received.
- Installment payments will be made if the commission exceeds the monthly lease rate (e.g., broker receives half the rent paid until the commission is satisfied).
- Commission will not exceed three percent of FMV appraisal.
- The proposed lessee's offer and proposal are submitted with the broker's agreement.

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- The proposed lessee's option period does not exceed six months.
- The broker's agreement is site specific and limited to five sites per year.

15.03.05.00 Discriminatory Rezoning

The Department is concerned about local agency proposals to change the zoning of potential airspace sites that adversely affect their marketability. R/D A/S should work closely with local planning agencies to prevent general plan and zoning proposals that adversely affect existing or potential Airspace properties. R/D A/S may be notified of a planning action by direct correspondence from the local agency or by formal notice in a newspaper of general circulation pursuant to Government Code Sections 65854, et seq. Although formal notices are usually required, Government Code Section 65858 provides authority for local agencies to adopt certain interim zoning ordinances as urgency measures without the above notice requirements.

R/D A/S shall immediately notify the DDC-R/W, who will advise the District Director (DD), of any proposed planning or zoning action affecting Airspace property. The DD may intercede in instances where it is believed to be in the Department's best interest to oppose a local agency's planning or rezoning activity. At that point, the DD advises R/D A/S to contact the Legal Office and HQ A/S for assistance. If the DD determines it is not in the Department's best interest to intercede, the DD will document in writing the reasons for not contesting the local agency's proposed action and forward a copy to the Deputy Director of Project Delivery.

Legal and HQ A/S will jointly evaluate the local agency's proposed action to determine the appropriate method to oppose the action (e.g., formal correspondence, appearing at public hearings, formal meetings, and legal actions). HQ A/S may also involve the CTC as appropriate. Prior to initiating any legal action, the matter will be referred to the Director to review opposition attempts to date and to concur that the case warrants legal action.

Opposition will never include applying political pressure on individuals involved in the local planning process.

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15.04.00.00 - AIRSPACE RIGHT OF WAY USE AGREEMENTS

15.04.01.00 Types of Right of Way Use Agreements

23 CFR 710.105 states: "*ROW use agreement* means real property interests, defined by an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23). These rights may be granted only for a specified period of time because the real property interest may be needed in the future for highway purposes or other purposes eligible for funding under title 23."

The typical Right of Way Use Agreements (formerly known as airspace leases) are:

- **Rental Agreement** – noncomplex, nondevelopmental use for six months with one six-month extension.
- **Parking and Open Storage Agreement** - short term, nondevelopmental use for up to five years with no options or extension. Usually the result of an open bid process.
- **Nondevelopmental Agreement** - longer term nondevelopmental use for more than five years (including options), which may involve minor improvements to the site. Usually the result of direct negotiations.
- **Developmental Agreement** - long term developmental use for more than five years (including options) involving major construction. Usually the result of direct negotiations.
- **Marler Johnson Park Agreement** - Local public agency's use of a site for a park or recreational facilities.
- **Park and Ride Agreement** – month-to-month agreement with a nonprofit organization to use the park and ride facility in exchange for maintenance and security services.
- **Three-Year Directly Negotiated Nondevelopmental Agreement** – three-year lease with no right of extension, resulting from direct negotiations for sites that are not good candidates for bidding, or have been offered for competitive bid but no bids were received.
- **Telecommunications Wireless License (Site License Agreement)** - specific site agreement for a wireless facility for an initial ten-year term with three consecutive 5-year extension options. Carrier must have

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executed a HQ A/S Master License Agreement, which defines the specific terms and conditions for all sites.

See Section 15.06.00.00 for processing these leases.

Lease templates may be found in the Exhibits and the Real Property Services (internal Caltrans link) websites.

Current delegations for approvals are found at the end of this Airspace chapter in Manual section15.09.

Other Right of Way Use Agreement agreements may be entered into with public agencies (e.g., local public agencies, school districts, and government agencies) and the motion picture industry.

15.04.01.01 Rental Agreement

Rental agreements are for interim uses (e.g., Christmas tree sales, radio frequency testing, and construction staging areas). The term is limited to six months with one six-month extension and cannot go beyond one year without HQ approval. At no time will the use be extended beyond 12 months.

Although a rental agreement can be used when a site is pending approval of the terms and conditions of a directly negotiated Right of Way Use Agreement, the preferred method is to use a Letter of Understanding or Option Agreement. A rental agreement does not imply any approval to lease the site for development purposes.

15.04.01.02 Parking and Open Storage Agreement

Short-term parking and open storage Right of Way Use Agreements are used when the proposed lessee will make improvements limited to paving, curbs, lighting, landscaping and fencing to the site. The improvement to the site could be as minimal as grading and gravel. The term should be a period long enough to amortize the cost of improvements. The term is normally two years but can be for five years, depending on the need of the lessee and the potential rate of return that may result from a longer term agreement.

The standard agreement can also be used for other nondevelopmental uses that will not exceed five years as long as all other provisions in the agreement remain the same. HQ A/S shall be contacted for approval prior to modifying any standard provisions or clauses.

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The agreement is usually used after a competitive bid process but in rare circumstances can be used after direct negotiations (e.g., with an adjoining owner of a landlocked site or when in the best interest of the State).

15.04.01.03 Nondevelopmental Agreement

This agreement is very similar to the Parking and Open Storage Agreement, except the lease term is beyond five years but usually no more than 15 years, including all options and extensions. The longer lease time is needed to generate a higher rate of return, or the lessee needs the site as plottage for an adjoining development or to amortize the minor improvements needed at the site (e.g., paving, striping, lighting, landscaping and curbing). Also, local school districts or governmental agencies may require longer terms.

This agreement is usually the result of direct negotiations but, on rare occasions, can be the result of a competitive bid.

If Airspace determines direct negotiations will result in a higher return to the Department, the request must be submitted to the CTC (see Section 15.06.05.00). HQ A/S must concur with the Region/District Airspace (R/D A/S) recommendation prior to submitting the request to the CTC.

15.04.01.04 Developmental Agreement

The Department is not actively pursuing developments on airspace sites, particularly those proposals underneath a highway structure however will consider such leases on an individual basis. Should R/D A/S be approached with a developmental use (e.g., office building, mini-warehouse, renewable energy development, or parking structure), the DARC must thoroughly review the proposal before requesting approval to negotiate directly with the proposed lessee. Since competitive bids are rarely used for developmental Right of Way Use Agreement, there is no standard format. If R/D A/S determines that this is the best approach to generate the highest rate of return, it should consult HQ A/S when preparing the bid package and developing the selection process for the Offer and Proposals.

The complex nature of a development Right of Way Use Agreement usually requires writing a specific lease agreement, possibly using the standard agreement as the basic format. HQ A/S and Legal should be involved in developing the agreement prior to approving and executing the document.

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If R/D A/S determines direct negotiations will result in a higher return to the Department, it must submit a request to the CTC for approval to directly negotiate (see Section 15.06.05.00).

15.04.01.05 Marler Johnson Agreement

Pursuant to the Marler Johnson Highway Park Act of 1969 (reference Government Code Section 14013) and the terms and conditions established by the CTC, a local agency can request use of an airspace site for park or recreational purposes. The normal DARC process is followed and a FMLR is established. Rental offsets for anticipated savings to the Department can be deducted from the FMLR to determine the actual rate.

Example 1:

FMLR	$825/mo
Security costs from previous Fiscal Year (FY)	-$212/mo
Maintenance costs (debris, weeds, fire abatement) from previous FY	-$372/mo
Actual rate	$241/mo

R/D A/S should ensure all safety procedures for safe and healthy human exposure are followed. Local agency proposals should not propose children's play areas underneath the highway structure as this could create an unsafe condition from fumes, dust and/or falling debris.

15.04.01.06 Park and Ride Agreement

An FHWA approved demonstration program allows month-to-month tenancies on park and ride lots to enhance lot occupancy by providing security and maintenance.

Traffic Operations, Park and Ride Office, may request assistance from R/D A/S in locating a nonprofit organization to occupy a park and ride lot that is not being used to its full capacity. Leasing a portion of the lot provides on-site management of the facility to assist with maintenance and security, which should improve facility usage. In some cases, longer-term leases with other entities may be considered. Consult with HQ A/S on specific proposals.

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The FMLR for the area to be leased is offset against the savings to the Department from not having to provide security and maintenance. The nonprofit organization's use cannot reduce the number of parking spaces available. The minimum lease rate is $1 per month, calculated by subtracting the savings to the Department from an approved FMLR or $500 (minimum lease rate), whichever is greater.

Example 2:

FMLR	$400/mo
Minimum Lease Rate	$500/mo
Maintenance Offset	$600/mo $499/mo (maximum offset)
Lease Rate	$ 1/mo (minimum lease rate)

R/D A/S should review leases annually to ensure usage at the site has improved with on-site management, and that continuing the month-to-month arrangement is in the Department's best interest. All Right of Way Use Agreements shall contain clauses that state the agreement can be terminated with 30-day notice if the Department needs the entire area, if on-site management has not improved usage, or if the lessee is not providing the required level of security and maintenance.

15.04.01.07 Three-Year Directly Negotiated Nondevelopment Agreement

R/D A/S is authorized to negotiate directly with a proposed lessee on a site that has been unsuccessfully bid or cannot be bid because it is landlocked. The term cannot exceed three years, even with extensions, and the use cannot require any major site improvements. The following guidelines apply.

- The use is nondevelopmental, with limited improvements (e.g., paving, curbs and lighting).
- Lease rate is based on an estimate of the Fair Market Lease Rate (FMLR).
- FMLR is escalated each year by an appropriate negotiated percentage or by the area's Consumer Price Index (CPI).
- There is only one potential lessee.

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- DARC and FHWA must approve the use.
- The use complies with local zoning and is considered noncontroversial.
- No hazardous materials can be produced, stored, or transported.

This process was developed to streamline R/D A/S attempts to get a site occupied when it is in the Department's best interest; but the intended use, rate, and term do not justify the time needed to get CTC approval.

The CTC is advised annually on the status of these Right of Way Use Agreements and can terminate this practice if the agreements are not being used successfully.

15.04.01.08 Telecommunications Licenses

A statewide Master License Agreement (MLA) for Wireless Communications Services Carriers allows a licensed carrier to install and operate a wireless facility. Each carrier must execute the MLA with HQ A/S prior to executing a specific Site License Agreement (SLA) with R/D A/S.

The MLA allows the carrier to install a facility on any Caltrans owned property (maintenance facility, park and ride lot, office building, and within operating and nonoperating right of way) where it is in the public's best interests and does not interfere with the free and safe flow of traffic.

The MLA generally applies only to controlled access freeways and highways. Proposals to install wireless facilities on non-access controlled conventional highways is usually only through the Encroachment Permits Office.

Refer to the current Telecommunications Licensing Process and Guidelines for further details.

15.04.01.09 Public Agency Right of Way Use Agreements

A school district, local public agency, or other governmental agency can lease an airspace site at the Fair Market Lease Rate (FMLR) for public use (refer to CTC resolution G-19-43 [revised from G-03-03] or the most recent resolution). R/D A/S should coordinate renewals and payment schedules with the agency's budget cycles to ensure lease payments are allocated in its budget. R/D A/S should contact the agency at least six months prior to the budget cycle date to determine if the lease will be renewed. If so, an appraisal should be requested with a due date prior to the date of the

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lessee's budget request. After the appraisal is approved, R/D A/S should begin discussions immediately with the lessee to ensure adequate time for the lessee to request additional funds if the lease rate increases.

15.04.01.10 Filming on State Right of Way

In accordance with Government Code 14998.8, all applications for Film Industry use of State Owned Property are processed through the California Film Commission. The Film Commission then contacts the Department of Transportation. The Encroachment Permit Office in Los Angeles (District 7) is the Caltrans Statewide Film Coordinator (CSFC) and acts as the film liaison to approve or deny all applications for film activities under Caltrans' jurisdiction. The CSFC coordinates with Encroachment Permit staff in the other Districts where the film activity is proposed. Fees collected by the Film Commission are deposited into the Film Transfer Account, not in transportation accounts. The Department shall waive compensation and cooperate fully with the film industry for use of vacant airspace sites or for subletting leased sites to be compliant with GC 14998.8. Encroachment Permits staff is responsible for coordinating all necessary internal and external approvals, and activities, related to this use. Please refer to Encroachment Permit Manual Section 503 for more information. There are no Right of Way Use agreements signed for filming in the Right of Way.

15.04.01.11 Statute Directed Use – Emergency Shelter and Feeding Program

Occasionally the State Legislature will pass legislation authorizing certain uses, either at or below fair market rent, for Department-owned property. The State Legislature, in response to the housing crisis in California, has passed numerous pieces of legislation authorizing the use of Department-owned property for temporary emergency shelters or feeding programs. The Department is not mandated to allow such uses on Department-owned property. Currently, the various statutes authorizing the use of Department-owned property for temporary emergency shelters or feeding programs include the following:

- Streets and Highways Code 104.16: San Francisco
- Streets and Highways Code 104.17: Stockton and Santa Barbara
- Streets and Highways Code 104.18: San Diego
- Streets and Highways Code 104.21: Stockton
- Streets and Highways Code 104.24: Oakland
- Streets and Highways Code 104.25: San Diego
- Streets and Highways Code 104.26: Los Angeles and San Jose
- Streets and Highways Code 104.30: Statewide

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Streets and Highways Code 104.30 (SHC 104.30) was included in Senate Bill 211 during the 2019-2020 Legislative Session. SHC 104.30 authorizes the Department to make airspace or other real properties available to other gov't agencies for temporary emergency shelters or feeding programs.

If Local Public Agencies that implement their own transportation projects are subject to similar legislation. Local Public Agencies should follow guidelines outlined in sections below.

For statutes directing the use of an airspace property for park and recreation use, please follow the Marler Johnson Park Act provisions (15.04.01.05).

15.04.01.12 Site Identification for Statute Directed Use-Emergency Shelter and Feeding Program

Due to the complexities and potential environmental impacts of developing a site for temporary emergency shelter or feeding program, site suitability and allowable uses of the site shall be determined through a Region/District DARC review process, which shall include, at a minimum, the Region's/District's External/Public Affairs Office, Division of Environmental Analysis, Planning, Design, Encroachment Permits, and Maintenance. It is highly encouraged that the Region/District engage their local State Fire Marshal representative since the State Fire Marshal will be tasked with approving plans and issuing building permits and certificates of occupancy for any improvements developed on the site. Considerations of a suitable site must include access, geography, seismic activity, traffic patterns, etc. Local agencies must be encouraged to engage the community for possible solutions, needs, and wants.

15.04.01.13 Rental Rate for Statute Directed Use-Emergency Shelter and Feeding Program

The rental rates for the use of Department-owned property is specified in the various statutes. At this time, all of the aforementioned Streets and Highways Codes called out in Section 15.04.01.11 have a specified rental rate of $1.00 per month.

In addition to the rental rates, the various statutes also specify the administrative fees that the Department may charge local agencies to cover the support costs expended by the Department in developing and administering the lease.

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The administrative fee specified in the various statutes range from $500.00 per year to $5,000.00 per year, unless the Department determines that a higher administrative fee is necessary to cover the Department's costs. Of all the Streets and Highways Codes identified in Section 15.04.01.11, only SHC 104.30 caps the annual administrative fee (stating that it is not to exceed $15,000.00), irrespective of the Department's determination of an administrative fee necessary to cover the Department's costs.

Until sufficient resource expenditure data has been collected for this lease type, the Department's policy is to charge the local agency a flat rate for administrative fees while tracking actual administrative resource expenditures with a unique reporting code. This reporting code is established to accurately track actual support costs and may be used to establish future administrative fees charged for leases of this type. The flat rate for administrative fees shall be $5,000.00 for leases pursuant to SHC 104.30, and $500.00 for all other leases identified in Section 15.04.01.11.

In order to closely monitor and track the Department's actual expenses associated with developing and maintaining these types of leases, charging for all work associated with these leases must include a unique "Reporting Code as instructed below.

Requesting a Reporting Code: Complete form FA-1036 (REV 06/2018) and email the completed form. Reporting Codes must be assigned for **each** separate homeless lease account. For the following three sections, please complete the form in the following manner:

- *Reporting (10 characters maximum):* The reporting code should be constructed as "HOMEL", followed by the two-digit District number, followed by a unique 3-digit number the District assigns (it is imperative that this number does not conflict with any Airspace tenancy numbers). For example – "HOMEL04001" would be a potential reporting code for a District 4 homeless lease.
- *Short name (15 characters maximum):* Short name should be the complete tenancy number.
- *Reporting Code Name (60 characters maximum):* This name should be "Homeless Lease", including the space between the two words, and the full tenancy number including the pertinent dashes. For example – "HOMELESS LEASE 04-ALA880-0001-01" would be a potential reporting code for a District 4 homeless lease.

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15.04.01.14 FHWA Approval for Statute Directed Use- Emergency Shelter and Feeding Program

If the site identified was acquired with title 23, United States Code, funding, FHWA approval must be obtained for leasing the site at less than fair market value. As discussed in Manual Section 15.04.01.11, the Region/District shall submit a written Public Interest Finding (PIF) to HQ R/W for submission to FHWA for the approval of the statutory less than fair market rental rate.

15.04.01.15 Rental Agreement for Statute Directed Use- Emergency Shelter and Feeding Program

Please refer to the specific lease template on the Real Property Services Airspace website (internal Caltrans link). Local Public Agencies, that implement their own transportation projects who are subject to be a lessor for any such homeless support use, requiring access to the Lease template on the Division of Right of Way and Land Surveys, Real Property Services intranet website should contact an HQ R/W liaison for further assistance. The HQ R/W liaison contact information may be found at the internal Real Property Services Airspace website (internal Caltrans link). Any changes to the templates, excluding information pertaining to site specific developments, must be approved by HQ and the District's legal office. I

15.04.01.16 Term for Statute Directed Use- Emergency Shelter and Feeding Program

Temporary homeless support leases shall be for a maximum of three years, unless the lease is pursuant to a statute that specifically dictates the term of the lease agreement. Additionally, the Region/District shall not execute any leases after the sunset date specified in the specific statute. Furthermore, the Region/District shall not allow the term of any lease to extend beyond the sunset date specified in the specific statute. The intent of such statutes authorizing the use of Department-owned properties for homeless support sites is not to permanently shelter people but to erect these facilities as an emergency measure. Should a local agency wish to extend a lease term beyond three years, or renew the lease after three years, the Region/District shall obtain approval by HQ R/W. Please send all requests for extended terms or renewals to your HQ liaison.

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15.04.01.17 Construction Staging Leases

Section 5-1.32, "Areas for Use", of the Department's *Standard Specifications* allows the Department's contractor to occupy the highway only for purposes necessary to perform the work. The areas for use available to the Department's construction contractor must be within the project limits and must be within the environmentally approved project footprint.

It is preferable for the construction staging areas to be incorporated into the Construction Bid Package. This may be achieved by the Plans, Specifications, and Estimates (PS&E) package including designated temporary construction easements or the contract's standard specifications allowing the use of Airspace Freeway Lease Areas (FLAs) within the project's limits. If the standard specifications allow the use of any Airspace Freeway Lease Area to the Department's construction contractor within the project's limits, prior approval must be obtained from R/W. In this case, a separate Right of Way Use Agreement is not required, please refer to the Project Manager for property use requirements. It is imperative for R/W to closely review all iterations of the PS&E package and provide comments regarding the FLAs and the disposition of those FLAs.

In the instances in which the Department's construction contractor requires a construction staging area not included within the Construction Bid Package, Airspace properties may be used for construction staging if the following conditions are met:

- If the site is not within the project's limits, the rental rate must be at Fair Market Value (FMV). If federal funds were used to purchase the real property interest, and rent is less than FMV, FHWA must approve a Public Interest Finding (PIF). A less than FMV rental situation would arise when the Department is required to compensate the construction contractor a certain percentage markup for costs incurred, e.g. force account due to a Director's Order.
- Rental terms can only be for the length of the construction project (with allowances for short periods before and after the project for preparations and clean up).
- All Airspace processes and procedures must be followed for the staging use (DARC, environmental document approval, FHWA approval, and in certain cases CTC approval).
- Rental conditions will include environmental protections appropriate for the proposed use (non-permeable barrier, etc.).
- The construction company is responsible for obtaining all local permitting.

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- The property must be returned to the original condition after the construction staging use is completed.

15.04.02.00 Oil and Gas Leases

To generate revenue, oil and gas rights may be leased to any oil and gas company that will pay rates equal to or greater than the rate being paid to individuals in the same geographical area.

To lease a site, the company will provide R/D A/S with its proposed Right of Way Use Agreement, the anticipated revenue, a vicinity and site map, and a written legal description. After R/D A/S review of the agreement (with assistance from HQ A/S and Legal as appropriate), the company must execute the agreement before the Department executes it. Generally, the Right of Way Use Agreement or the memorandum of the lease is recorded. R/D A/S should ensure that the Department's signature is authorized to execute recordable documents in the county where the site is located. The company must pay a fixed lease rate based on market data until the drilling operation begins.

When the company starts actual production, royalties become due (percentage of gross revenues). R/D A/S must change the account to reflect zero rent and schedule the lease for an annual payment (in arrears). When the Right of Way Use Agreement is terminated, a quitclaim must be recorded, with a copy to R/W Engineering to update their records.

Oil and Gas leases are numbered using the same method of numbering for regular airspace properties, but use the 8000 number for sequence (e.g. 03-YOL113-8001-01).

15.04.03.00 Utility Companies

R/D A/S Right of Way Use Agreements and procedures are not used to establish or to continue the placement of public utility lines in freeway rights of way. The Caltrans Encroachment Advisory Group (EAG) in Headquarters issues permits for the use and occupancy of such rights of way for a public utility purpose. In other words, under no circumstances will the Department grant a Right of Way Use Agreement to a utility company. Exceptions are granted if a utility company proposes to lease an airspace site for parking, office space or a staging area. The utility company must be referred to the Office of Permits, which will handle all requests for an encroachment permit, including requests for exceptions to the longitudinal encroachment policy.

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Telecommunications Wireless Carriers are not treated as utility companies, even if part of their functioning is regulated by the California Public Utilities Commission (PUC), as they do not provide a necessary service to the public, and they operate in a competitive arena. Sites for wireless facilities are handled exclusively as "site licenses" (see 15.04.01.08) by Airspace.

15.04.04.00 Right of Way Use Agreement

Standard agreements for all types of airspace leases are available in each region/district. Right of Way Use Agreement templates may also be found in the Exhibits and the Real Property Services Airspace (internal Caltrans link) websites.

HQ A/S must approve all modifications to the standard lease provisions, and the R/W Program Manager or a delegated representative must execute the agreement. One original executed copy of all long term leases must be sent to HQ A/S.

15.04.04.01 Terms and Conditions

The standard terms and conditions of a Right of Way Use Agreement generally include (23 CFR 710.405(b):

- Use and improvements.
- Term of the agreement, including options and extensions.
- Lease rate per approved valuation report, if not prescribed by legislation, and also the rate of return.
- If a bid, the lease rate must be based on the last bid or the previous lease rate.
- Reevaluation provisions and periodic adjustments to the lease rate.
- Insurance and indemnification requirements.
- Default, liability, and termination provisions.
- Sublease, assignment, and transfer provisions.
- Retention and removal of improvements.

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- Maintenance responsibilities of all parties.

The standard Right of Way Use Agreement provides for all the above and more, and HQ A/S must preapprove any modifications to the clauses.

Requests for "CTC Approval of Terms and Conditions" of a Right of Way Use Agreement must provide detailed information about the above terms and conditions.

Sample format:

Use:	Improved parking
Term:	10 years, one 5-year extension
Lease Rate:	$835 (rounded) per month
Fair Market Value:	$100,000 as plottage
Rate of Return:	10%
Adjustments:	3.5% annually
Reevaluations:	After 10 years
Improvements:	Paving, striping, curbing
Termination:	Standard - either party after the first 5 years
Liability Coverage:	Standard $5,000,000

15.04.04.02 Insurance Requirements

Each airspace site must be insured for a minimum of $5,000,000 in liability and, if the site is developed, 100% of replacement cost. The lessee must provide a current certificate of insurance each year. R/D A/S should review it to ensure the fire coverage is sufficient considering increases in value. Each telecommunications wireless facility must be insured for $5,000,000 liability. R/D A/S shall monitor the insurance requirements for the Telecommunications licenses. Some prior or previous existing leases only required $2,000,000 or less at the time of execution, and these should be increased to the new minimum as the leases are amended or enter the option periods. Use Form RW 15-3.

15.04.05.00 Option to Lease

An option allows the proposed lessee to hold the site while obtaining all reviews and approvals necessary to construct (e.g., local permits and construction funding). The use of an option for long-term competitive bids does not require prior HQ A/S approval, but R/D A/S should consult with HQ A/S about the applicability of an option.

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15.04.05.01 Option Agreements

HQ A/S will assist R/D A/S in preparing the Option Agreement. If the Right of Way Use Agreement is through direct negotiations, the CTC must approve terms and conditions (Exhibit 15-EX-06, for internal Caltrans use), "CTC Approval of Terms and Conditions." The standard option period is three to six months.

15.04.05.02 Option Payments

The Option Agreement will specify the amount of option payment that the proposed lessee (Optionee) must pay to hold the site pending all approvals and executing the Right of Way Use Agreement. The option cost shall be the prorated monthly as determined from an Airspace estimate (based on the minimum bid and the potential rate if leased). The standard minimum option payment is one month's rent based on the successful bid.

15.04.05.03 Exercising Option Rights

The optionee/lessee must notify R/D A/S, in accordance with the notice provisions in the option agreement, whether or not optionee/lessee intends to exercise the option to execute the Right of Way Use Agreement. Extensions can be granted in rare circumstances, and provisions for such extensions should be addressed in the initial Option Agreement.

15.04.06.00 Exercising Option to Extend an Existing Lease

Not to be confused with the Option Agreement, some Right of Way Use Agreements provide for an option to extend the original term (e.g., 10-year initial term with three consecutive 5-year extension options). The lessee must state in writing 60 days before the end of the initial term its intent to exercise the option and identify any anticipated changes to the use or the agreement. R/D A/S must review terms of the agreement to ensure conditions to extend have been met and determine if the lessor (Department) agrees to or denies the option. If so, R/D A/S must immediately conduct a DARC review of the site before formally acknowledging the request. Also, the Right of Way Use Agreement may provide for reevaluation prior to the extension, requiring R/D A/S to coordinate the reevaluation with the Appraisal Branch and the lessee. R/D A/S sends an acknowledgment letter to the lessee and sends copies of the letter and notice to HQ A/S.

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If there is no change in the provisions of the Right of Way Use Agreement, an amendment to exercise an option is not needed. If there is a change, it is handled in the same manner as amendments.

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15.05.00.00 - LEASE RATES AND ADJUSTMENTS

15.05.01.00 Valuation of Lease Rate

The lease rate for airspace sites is the Fair Market Lease Rate (FMLR). Any rate below the FMLR is subject to the conditions set by the 23 CFR 710, the State Statutes and the CTC resolutions. The FMLR is established by the following methods:

- **Airspace Estimates** - used for preliminary discussions with potential users, for minimum value sites, or for uses of six months or less and may be used to establish value for these agreements.

  The lease rate for the rental agreement may not require an airspace estimate if there is already a clear basis in the market for the lease rate.

- **Airspace Appraisals** - A market value airspace appraisal is required for any site that will be leased on a direct basis without competitive bids and for those situations not meeting the criteria for bid lease valuations. This format is used for all development leases or when there is a question as to the site's highest and best use. The appraisal is valid for one year. When direct negotiations for a development lease are entered into, the appraisal should not be requested until the potential lessee executes a Letter of Understanding (see Section 15.06.05.02) and makes a deposit that is sufficient to cover the cost of the appraisal. The potential lessee has the option of obtaining an independent appraisal report from a list of approved appraisers.

  A reevaluation of the current lease rate may be required prior to extending the term of a long-term Right of Way Use Agreement, requiring a new airspace appraisal.

- **Bid Lease Valuations** - A bid lease valuation is required to establish a range of value in determining minimum rental rates on the basis of competitive bids. The valuation is valid for one year.

- **Annual Base License Fee Matrix**: A statewide wireless comparable site fee review is made by Airspace or Appraisal functional staff every five (5) years. Annual fees for comparable urban and rural sites are made for all categories of cell towers and small cell sites. A matrix is compiled denoting appropriate annual rates for Prime Urban, Urban and Rural sites to equipment categories. This matrix is reviewed and approved by the CTC.

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The approved fee matrix is considered to be the FMLR for wireless sites statewide.

For all valuations other than Annual Base License, both current use and lease rate should be considered when the airspace site is leased and the determination of the lease rate will be used to establish a new minimum bid.

Please see the Right of Way Manual 07.15.00; Airspace Estimates, Bid Lease Valuations, and Appraisals.

See Section 7.15.00.00 for specific procedures.

When the valuation is complete, R/D A/S should summarize the report to use in discussions with the proposed lessee or to present the terms and conditions to the CTC.

15.05.01.01 Lease Rate Appraisal

In lieu of a full appraisal report for any nondevelopmental uses on directly negotiated airspace leases, the R/D Airspace Manager can directly request a simplified format to determine the lease rate (rental rate) of sites used for parking, storage, or public parks. (Please see the Right of Way Manual 07.15.05.00; Rental Rate Appraisals for additional information.)

The appraisal will conclude a specific market lease rate as appropriate to the airspace site's attributes, limitations, benefits, and proposed use and terms.

This streamlined approach cannot be used if the highest and best use is in question or if the airspace site is considered as plottage to an adjoining property.

15.05.01.02 Percentage Leases

In rare cases, the FMLR will be a percentage of the gross income the lessee will generate at the site. R/D A/S must determine the best percentage and establish the method for calculating same (e.g., five percent of gross revenues over a base rent). In addition, the Right of Way Use Agreement must provide for an audit by R/D A/S, usually on an annual basis, of the lessee's records to ensure the calculated amount is accurate. R/D A/S can also request assistance to calculate the annual percentage rate if there is a question about the information the lessee provided.

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15.05.02.00 Plottage Value

R/D A/S should advise the Appraisal Branch if the airspace site will be joined to an adjacent site for development. The airspace site may provide additional square footage for parking that a local agency requires before the adjacent site can be developed, or the site may provide needed access to all or a portion of the adjacent site. An airspace site that increases the value of the adjacent site should generate a higher rate of return to the Department.

15.05.03.00 Rate of Return

A full appraisal report requires the property rights be valued as fee. A suggested rate of return based on market data should be included when the data is readily available. The rate of return will provide R/D A/S with a tight range of lease rates to use in negotiating all terms and conditions of the Right of Way Use Agreement. If no data is available, R/D A/S must determine the comparable rates of return to use in establishing a lease rate from the FMV of fee; e.g., $100,000 FMV x 10% rate = $10,000 annual FMLR (monthly = $835 rounded).

15.05.04.00 Scheduling Valuation Requests

Annually during the budget process, R/D A/S estimates the number and type of airspace site appraisals needed for the next fiscal year. The list identifies the lease areas to be valued and the dates by which the appraisals are needed. This list is then given to Appraisals, where it is used to prioritize preparation of airspace appraisals. R/D A/S should also request updates of appraisals over one year old.

Information about the site relevant to its valuation should be given to the appraiser. In cases of direct negotiation, the potential lessee's name and intended use are included in the appraisal request.

Effective communication between R/D A/S and Appraisals is essential. Changes to the schedule should be closely coordinated. The formal request for an estimate, valuation, or appraisal states the Airspace site number, the property rights to be appraised, and includes necessary appraisal maps, plans, and profiles of the freeway. It must include any restrictions that will be placed on use of property. R/D A/S should formally check on the status of its request well before the date the requested information is needed.

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The appraiser and R/D A/S agent should discuss site use and restrictions before start of the appraisal and at the rough draft stage. The appraiser should include in the appraisal, or otherwise convey to R/D A/S, any data useful in marketing the area to be leased.

15.05.05.00 Lease Payments

The lease rate is typically paid monthly (except for Wireless sites which are always annual payments). Advance lump sum payments can be made on a semiannual or annual basis (e.g., governmental entities that operate on a specific budgeting cycle or for minimum lease rates to save administration costs). As an informational item, if advanced payments are made for greater than a year, Accounting might ask that a refund be paid to the lessee. At that time HQ will notify Accounting as to why the account is paid into the future.

Prior notice or approval to HQ A/S is required in cases of any payments less than the minimum amount.

15.05.05.01 Minimum Lease Rate

The minimum lease rate is the appraised FMLR, but not less than $500 per month or $6,000 per year, with exceptions:

- For Park and Ride (nonprofit) and Marler Johnson lessees only, the lessee will provide a service to the Department (e.g., maintenance or security) or there is some other benefit.

- The legislature mandates lease rate (e.g., public agency use, homeless shelters).

- The approved FMLR appraisal supports a minimum rent of less than $500 per month, and the proposed use will benefit the local community or neighborhood. Where there is a question of the FMLR being below $500 per month a full appraisal must be requested by the R/D A/S Senior.

Any other circumstances should prompt R/D A/S to consult with HQ A/S.

Note: Below FMLR leases might conflict with the 23 CFR 701.403(e) requirement for FMLR and may require a public interest finding to be sent to FHWA, if on the interstate.

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15.05.05.02 Minimum Security Deposit

The minimum security deposit for any airspace site is one month's rent for nondeveloped, short-term sites, but not less than $500, and three months' rent for nondeveloped long-term sites. The minimum security deposit for developed sites is three months' rent, or more if the risk to the Department is great or the potential for damage and removal of improvements is high. Security deposits are required for all Right of Way Use Agreements except Telecommunications Licenses and agreements with public agencies.

When the proposed use represents an extraordinary risk to the Department, R/D A/S will need to ensure the minimum security deposit is increased to reflect this additional risk or liability. R/D A/S should only allow high-risk uses in special circumstances with legislation or after legal consultation when the benefits of the proposed use outweigh any risks or liability to the Department.

15.05.05.03 Periodic Adjustments

The lease rate must be adjusted for all Right of Way Use Agreements every two years. At a minimum, the rate will be equal to the Consumer Price Index (CPI) for the area and adjusted annually. Right of Way Use Agreement provisions establish a base rent and may not allow the adjusted rate to fall below the initial base rent (the lease rate when the Right of Way Use Agreement was executed). Other Right of Way Use Agreement provisions may not allow the adjusted rate to be less than the previous year's rate. It is imperative that R/D A/S review the Right of Way Use Agreement provisions to determine if negative adjustments to the lease rate can be applied. Other proposals to adjust the rate can be based on a range (e.g., more than 2%, but less than 7%) of the CPI, or adjusted at greater intervals than annually, but are compounded annually (e.g., adjusted every year based on the annual CPI not to exceed 25%).

Reevaluations of the lease rate for long-term Right of Way Use Agreements should occur at least every ten years (preferable every five years) unless otherwise called out in the Right of Way Use Agreement.
Increases in the lease rate require periodic adjustments to the security deposit to ensure there are sufficient funds to cover potential damages or losses. Some basic Right of Way Use Agreement types establish a mandatory rate increase.

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15.05.06.00 Rental Offsets

Rental offsets may not be promised or offered to a lessee unless the offset is part of an approved Right of Way Use Agreement. If a Right of Way Use Agreement is already in effect, the Senior must approve the offset in writing. This includes Marler Johnson leases and Park and Ride lots. Offsets are for materials only. Receipts for all materials in the offset must be provided by the lessee, copied and sent to Caltrans Accounting with the Senior approved adjustment.

Rental offsets should not be confused with rental adjustments to correct RWPS occupancy and billing errors or to process approved adjustments for certain maintenance activities and seismic retrofit credits.

15.05.07.00 Seismic Retrofit Adjustments

If the Right of Way Use Agreement provides for such, adjustments may be made when the region/district needs temporary access to the Airspace site for seismic retrofitting. The temporary use must be less than six months, impact less than 50% of the site, and not impact any of the improvements.

HQ A/S must preapprove R/D A/S's request for an adjustment. The request must be accompanied by the lessee's statement that no other form of compensation will be solicited.

The Department's long-term use of all or a portion of a leased airspace site may require the leasehold interest be acquired, depending on the specific provisions in the Right of Way Use Agreement.

Refer to appropriate Acquisition and Appraisal policy and procedural instructions for more details.

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15.06.00.00 - AIRSPACE LEASES - PROCESSING

15.06.01.00 Rental Agreement (Private Entities)

The potential lessee must submit a letter to Region/District Airspace (R/D A/S) stating the proposed use, the proposed rate, and the rental period (not to exceed six months).

After the DARC determines the appropriateness of the use and the lease rate is established, R/D A/S executes the standard rental agreement and opens an account in RWPS. HQ A/S and FHWA review, approval, and concurrence are not needed, and no copies need to be submitted to HQ A/S.

The tenant may be granted one six-month extension, for a total occupancy of one year, if no other parties have indicated an interest and if R/D A/S does not have plans to market the site for a higher use. While non-bid, nondevelopmental six month Right of Way Use Agreements at fair market are permitted, if other parties express interest in the site, the competitive bid process must be initiated immediately.

Please see CTC Resolution G-02-14 Item 2.4 or the most current resolution.

15.06.02.00 Short-Term Leases (Private Entities) - Competitive Bid

Many sites in the inventory are not suitable for development or have not yet attained their highest and best use. In some cases, parking or open storage may be the highest and best use. These sites can generate substantial revenue if leased for uses with shorter terms, such as parking and open storage.

Short-term uses are for two to five years and are most commonly used for parking lots with private lessees. When a site is offered for bid, R/D A/S should attempt to contact all interested or potentially interested parties. Marketing efforts may include media advertising, signing of the property, personal contact with owners and tenants of abutting properties, and mailing notices to all parties on the inquiry list.

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15.06.02.01 Bid Auction

A bid auction shall be held at least three months prior to expiration of any existing Right of Way Use Agreement. The normal process is to hold an oral auction unless R/D A/S anticipates more interest and a higher rate of return by asking for sealed bids. The bid package should identify proposed use, term, conditions, minimum bid, proposed occupancy date, insurance requirements, and selection process (e.g., highest bid). It should also require a minimum deposit to participate in the bid and provisions for payment to secure the site. A copy of the standard Right of Way Use Agreement should be attached or made available to all interested parties. See Exhibit 15-EX-02 for a sample bid package and Exhibit 15-EX-03 for sample bid instructions. HQ A/S review and approval of a short-term bid package is not required.

15.06.02.02 Minimum Bids

The minimum bid for a short-term use is established by the following:

- **Site Has Never Been Bid or Leased** - minimum bid is based on market data the Appraisal Branch establishes.
- **Site Has Been Previously Bid** - new minimum bid is based on the last minimum bid adjusted for current market conditions, but not less than 75% of the previous minimum bid.
- **Site Has Been Previously Leased** - new minimum bid is based on the most recent FMLR adjusted for current market conditions and annual adjustments (e.g., CPI percentage).

HQ A/S must approve reducing the minimum bid below 75% of the bid valuation, the previous minimum bid, or the previous lease rate if R/D A/S can substantiate the need to attract more interest in the bidding process.

The maximum return to the State should be obtained.

15.06.02.03 Bid Deposit and Payment

Each interested party in the competitive bid process must bring a cashier's check equal to three months of the minimum bid (Bid Deposit) to be allowed to participate in the auction. After completion of the bid or auction, R/D A/S shall immediately contact the successful bidder and request an **immediate** payment of the balance due, calculated by multiplying the successful bid by two months, adding the security deposit, and then subtracting the Bid Deposit. All other Bid Deposits are returned to the originators. The successful bidder, now the proposed lessee, must execute the standard Right of Way

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Use Agreement within 30 days of the bid, or R/D A/S will contact the second successful bidder in the process. Funds are not returned to the proposed lessee if the agreement is not executed.

15.06.02.04 Renewals

When the current lessee is the successful bidder in a competitive bid to lease the same property, a Lease Renewal (Form RW 15-4) may be used to identify any new provisions in the terms and conditions for continued use (such as storm water pollution prevention requirements), as well as the new rental rate. Extensive changes to the previous agreement would require a new Right of Way Use Agreement.

A renewal is different from an extension to an existing long-term Right of Way Use Agreement.

15.06.03.00 Long-Term Leases - Competitive Bid

Long-term bid Right of Way Use Agreements are not commonly used for nondevelopment. The lease process is generally the same for both nondevelopment and development Right of Way Use Agreements. Since there will be at least minimal construction (e.g., fences, landscaping, curbing, lighting, and paving) in most nondevelopmental Right of Way Use Agreements, the requirements for plans may still apply. The plans should also show circuitry of traffic on the site and the ingress and egress routes. Lessees may require longer term leases to cost out and amortize even minor improvements. Please note that competitive bid leases with terms 4 years and over must be approved by the CTC.

Refer to Table 1, "Process - Long Term Bid Lease," on the following pages.

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TABLE 1 PROCESS – LONG-TERM BID LEASE

Step	Responsible Party	Action
1	R/D A/S	Identify site to be leased, either by an inquiry or as part of the marketing plan.
2		If not in inventory, request maps from R/W Engineering.
3		Request DARC conceptual approval of proposed use. Include Permits and State Fire Marshal approvals as appropriate.
4	DARC	Review and approve/disapprove request. Comments to disapprove should accompany the review.
5	R/D A/S	If DARC does not approve, determine the problem and try to resolve any difficulty with the proposal. If the problem cannot be resolved and a short-term use cannot be identified, remove the proposal from the marketing plan and the inventory.
6		If DARC approves the request, collect airspace review fee and ensure all program restrictions and conditions are included in the bid package and the Right of Way Use Agreement (e.g., access limitations, column protection, and landscaping).
7		If possibly controversial and on the Interstate, send proposal, DARC comments and a site map to HQ A/S for FHWA ***conceptual*** approval.
8		Request bid lease valuation if not already scheduled.
9		Send proposed marketing plan and bid package to HQ A/S for review and approval. If the bid package suggests an option period, the proposed Option Agreement should be developed and included in the package. If not, the standard agreement should be included.
10		Sign site, place media ads, and contact neighboring owners/tenants.
11		Mail bid package to interested parties; conduct a site review as needed.

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TABLE 1 PROCESS – LONG-TERM BID LEASE (Continued)

Step	Responsible Party	Action
12	R/D A/S	Open Offer and Proposal bids. Analyze all bids received and send recommendation of the successful bidder to HQ A/S. Prepare memo requesting FHWA approval if the proposal differs slightly from the approved use, and submit through HQ A/S. Obtain DARC preliminary review if proposal differs slightly from conceptual plans.
13* 14	Lessee	Any modifications or changes require prior HQ A/S approval. An Option Agreement requires payment when executed by Optionee. Obtain local agency concurrence and evidence of insurance.
15 16 17	R/D A/S	Obtain District Environmental approval of lessee's environmental document. Obtain DARC approval of final construction plans. Send to HQ A/S to obtain FHWA approval of final construction plans (including maps), NEPA document, and air quality study if required for the project on the Interstate.
18	Lessee	Execute Right of Way Use Agreement and pay lease rate per terms of the Agreement.
19	R/D A/S	Submit Agreement to HQ Program Manager or delegated representative for approval if developmental Right of Way Use Agreement.
20	HQ A/S Delegated Rep	Developmental lease only: Sign Option and/or Agreement and return to Airspace.
21	Lessee	After final reviews/approvals are obtained, apply for an encroachment permit to construct.
22	R/D A/S	Monitor lessee's move onto the site, including any construction, and begin property management activities.

*Note - required for development purposes only.

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15.06.03.01 Offer and Proposal

An airspace site with a developmental Right of Way Use Agreement and a longer-term Right of Way Use Agreement requires a different method of selecting the successful bidder. While shorter-term parking or nondevelopment Right of Way Use Agreements are awarded based on the highest bid (lease rate), the preferred method for longer-term development Right of Way Use Agreements is to evaluate the offers and proposals received from developers.

The bid package should specify exactly how the successful bidder will be selected, requiring an Offer and Proposal (O&P) from prospective bidders. The O&P describes in detail the type of development proposed (e.g., amusement park, office building, and major recycling center) and the proposed lease rate over a period of years (e.g., graduated payments and percentage of revenues). The airspace site should be awarded to the developer that proposes the best and highest return to the Department.

Selection of the successful bidder should involve evaluating the best development and use of the site, as well as the quality and certainty of the investment return ("income") to the Department. The construction of an amusement park may be less intensive than an office building, but the Department may have little use for the amusement park after the Right of Way Use Agreement has expired. A major recycling center may generate a higher return in the earlier years of the lease but not generate the highest return over the entire term of the lease. Also, there may be more risks associated with a major recycling center because of contaminants. An office building, however, may require a longer option period before all approvals to construct are obtained.

HQ A/S will work closely with R/D A/S in determining the best method to lease a site for development and, if a competitive bid is selected because of considerable interest in the site, provide assistance in developing the bid package for O&Ps.

15.06.04.00 Long-Term Leases - Directly Negotiated

The CTC must approve directly negotiated Right of Way Use Agreements for all long-term agreements (more than three years), with some exceptions. Direct negotiations are often approved when an airspace site's potential revenue is increased if the site is "joined" with an adjacent site (whether privately or governmentally owned). Processing a directly negotiated Right of Way Use Agreement is generally the same for development and nondevelopment Right of Way Use Agreements. In most nondevelopment

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Right of Way Use Agreements, there will be at least minimal construction (such as fences, landscaping, curbing, lighting and paving), so the requirements for plans may still apply.

Per CTC Resolution G-19-43 (revised from G-03-03), CTC concurrence is not needed to directly negotiate with a public agency if certain conditions are met. The terms and conditions for a directly negotiated landlocked site require CTC approval.

Refer to Table 2, "Process – Long-Term Directly Negotiated Right of Way Use Agreement," on the following pages.

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TABLE 2 PROCESS – LONG-TERM DIRECTLY NEGOTIATED RIGHT OF WAY USE AGREEMENT

Step	Responsible Party	Action
1-7	Various	See Steps for Long Term Bid Right of Way Use Agreement
8	R/D A/S	Send "Consent to Directly Negotiate from the CTC" (see Exhibit 15-EX-05, for internal Caltrans use) to HQ A/S.
9	HQ A/S	Submit the Request to Directly Negotiate to CTC for approval.
10	R/D A/S	If approved by the CTC, R/D A/S may provide the proposed lessee with a Letter of Understanding (Exhibit 15-EX-04) detailing the anticipated Right of Way Use Agreement, with a copy to HQ A/S.
11		Request an appraisal report for the proposed use, either through the Appraisal Branch or from the proposed lessee. HQ must approve the appraisal report.
12		After lessee is advised of the FMLR, negotiate all other terms and conditions of the Right of Way Use Agreement, including time frame, term, and extensions. *No term is independent of another, so Airspace should negotiate the best terms for the Department, with the understanding that a favorable position for the Department in one area may require a less favorable term elsewhere.*
13		Secure preliminary plans and submit for preliminary DARC approval.
14		Send to HQ A/S to obtain FHWA approval of final construction plans (including maps), NEPA document, and air quality study if required for the project on the Interstate
15		Request "CTC Approval of Terms and Conditions" by sending a memorandum to HQ A/S.

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TABLE 2 PROCESS – LONG-TERM DIRECTLY NEGOTIATED RIGHT OF WAY USE AGREEMENT (Continued)

Step	Responsible Party	Action
16	HQ A/S	Request "CTC Approval of Terms and Conditions" at the next monthly meeting.
17	R/D A/S	If CTC approves terms and conditions, request lessee to execute the Right of Way Use Agreement, and forward it to HQ A/S for execution (unless delegated). All final approvals must be obtained PRIOR to execution (see 15.06.11.03).

15.06.05.00 CTC Approval

The CTC must consent to Airspace's recommendation that direct negotiations with a proposed lessee will result in a higher rate of return to the Department and that it is in the State's best interest to deal directly with one entity. After CTC approval of the initial request, the Letter of Understanding is sent to the Lessee.

Once negotiated, the terms and conditions, along with the appraisal summary, are presented to the CTC for final approval.

After CTC approval of the terms and conditions, the R/W Program Manager or delegated representative can execute the standard Right of Way Use Agreement.

Please see CTC Resolution G-02-14 or the most current resolution.

15.06.05.01 CTC Consent to Directly Negotiate

The request for CTC approval to direct negotiations must clearly state **why** it is in the State's best interest to lease directly to the proposed entity (e.g., plottage value, rate of return, and improvements to the site). It is best to state direct benefits in terms of financial return. Indirect terms, such as a general benefit to the local community is difficult to quantify.
Each proposed lessee must pay a processing fee of $1,000 (or, depending on the complexity of the issues, an appropriate amount required to negotiate the Right of Way Use Agreement) if the CTC consents to direct negotiations.

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CTC's consent to negotiate directly is only good for one year. Airspace must request an extension from the CTC to negotiate beyond that time. An additional processing fee is not required.

See Exhibit 15-EX-05 (for internal Caltrans use).

15.06.05.02 Letter of Understanding

A Letter of Understanding (Letter) (Exhibit 15-EX-04) is sent to the proposed lessee after CTC consents to direct negotiations. The letter states the Department's intent to negotiate in good faith for the proposed Right of Way Use Agreement. This will assist the proposed lessee in obtaining all local approvals and construction funding prior to executing the Right of Way Use Agreement, as the Department is agreeing to keep the site off the market pending successful negotiations.

The Letter states the CTC consent to directly negotiate is valid for **one year**. The Letter will also request funds to pay for the region/district's appraisal of the airspace site, which must be received prior to the Appraisal Branch completing the report (see 15.06.07.00). The Letter should also outline the time frame for negotiations and satisfaction of any issues Airspace, FHWA, DARC, or CTC have identified.

If mutual agreement cannot be reached on the terms and conditions within one year, the CTC may grant an extension. If the proposed lessee wishes to continue negotiating, there is no additional processing fee. If negotiations will not continue beyond the first year due to CTC, lessee, or R/D A/S desiring to terminate discussions, R/D A/S must send written notice to the proposed lessee canceling the negotiations and any and all agreements stated in the Letter. No fees or funds are returned to the proposed lessee.

15.06.05.03 CTC Approval of Terms and Conditions

R/D A/S must submit final negotiated terms and conditions via HQ A/S to the CTC. CTC must approve terms and conditions before the Right of Way Use Agreement is executed.

15.06.06.00 Public Agency Leases

Right of Way Use Agreements with public agencies do not require CTC consent to negotiate directly or approval of the terms and conditions. The lessee must be a public entity as defined in the Public Contracts Code, the lease rate must be at or above FMLR, and the use must be for a public

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purpose. Prior to concluding negotiations, R/D A/S must advise HQ A/S of the proposed rate and the appraised value. The executed Right of Way Use Agreement must have the appraisal summary supporting the lease rate stating it is fair market.

Please see CTC Resolution G-19-43 (revised from G-03-03) or the most current resolution.

NOTE: Uses for Agricultural Inspection Stations (with the Department of Food and Agriculture) and Weigh Stations (with the California Highway Patrol) are addressed through state-wide interagency agreements or MOU's coordinated through the Division of Maintenance and Operations.

15.06.07.00 Processing Other Right of Way Use Agreements

Three-Year Directly Negotiated Nondevelopment Right of Way Use Agreements, leases with nonprofit organizations on park and ride lots, and leases with the motion picture industry should follow a process similar to the directly negotiated Right of Way Use Agreement. R/D A/S should document the file as to why direct negotiations are in the State's best interest, the lease rate is based on market, and the standard Right of Way Use Agreement is being used.

It is important to note that "for profit" uses on a park and ride lot can be approved by following the normal lease process, and, although generally the lessee should be selected via a competitive bid, direct negotiations can be used if that method is in the best interest of the State.

Processing **Telecommunications Site License Agreements (SLAs)** is described in the Department's Telecommunications' Licensing Process and Siting Guidelines.

If several carriers are interested in the same site for a wireless facility, then Airspace must offer the site through competitive bidding, using the Annual Base Fee Matrix in the Master License Agreement (MLA) as the basis for the minimum bid. However, if the carriers can agree on a colocation (multiple carriers at the same site) or select other sites that are more feasible for their facility, Airspace can initiate the process to execute the SLA.

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15.06.08.00 Marler - Johnson Act Park Lease

R/D A/S shall specifically notify all appropriate local agencies of the availability of airspace for park and recreational uses that meet CTC criteria. Local agencies should be contacted about leasing potential sites.

Right of Way Use Agreements under this statute shall be made on the standard Right of Way Use Agreement format for the Marler - Johnson Highway Park Act. R/D A/S shall ensure that development is made in accordance with approved plans and within the time limits set forth in the Right of Way Use Agreement.

Local agencies should contact R/D A/S about leasing a site within nonoperating rights of way (Government Code Section 14013). R/D A/S shall review the local agency's request and, if the site will not generate a higher return if leased for some other use, initiate the process to lease the site to the local agency. Note: Government Code Section 14013 calls out leasing "nonoperating" right of way which by definition is not considered Airspace. Historically the Department has interpreted the Government Code's section intent to reference Airspace.

After determining that a Marler Johnson park or recreational use is appropriate, the Department may offer a lease for a period of ten years with five year extensions at the Senior's discretion. FMLR is required, but the rate may be offset up to the amount the Department will save in landscaping and maintenance expenses. Special provisions to terminate the Right of Way Use Agreement whenever the leased land is needed for transportation purposes are included in the standard Right of Way Use Agreement. CTC approval is not required if the Right of Way Use Agreement meets all other Marler-Johnson Right of Way Use Agreement requirements. Please see CTC Resolution G-19-43 (revised from G-03-03) Items 1.3 and 2.3 or the most current resolution.

15.06.09.00 Toll Bridge Authority Lease

Special handling is required for revenue received from airspace sites created by construction of bridges under authority of the Toll Bridge Authority Act and from concession leases in Terminal Facilities. Because these facilities were financed by the Toll Bridge Authority Act and bond indentures were executed under such Act, the Department's accounting procedures provide for handling and distribution of funds through District 4. Although the revenue is treated differently, all sites identified as airspace on the toll bridges shall be

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controlled by the same procedures established for any airspace site, including processes and approvals.

Property Management manages terminal facility leases under the same procedures as regular accounts are managed.

15.06.10.00 Subsequent Right of Way Use Agreement Documents

After a Right of Way Use Agreement has been executed, the lessee may need additional formal consent from R/D A/S to construct or modify operations on the site.

The lessee should be charged a processing fee to obtain approval of most subsequent documents, primarily subleases, assignments, and encumbrances. The processing fee is based on time involved in the review and provisions in the Right of Way Use Agreement to charge fees:

- Assignment: $1,000
- Renewal: $0
- Change in use: Consistent with Right of Way Use Agreement type
- Encumbrance: $1,000
- Estopple: $1,000
- Substitution: $1,000
- Amendments:
    - Minor changes: $0
    - Major change (tantamount to new Right of Way Use Agreement, requiring DARC review, CTC and/or FHWA approvals): $2,500 to $5,000 at district's discretion. Amount charged over $2,500 requires file documentation as to why the fee is in excess to the minimum $2,500 amount.
- Major change (tantamount to new Right of Way Use Agreement, DARC review, CTC approval, FHWA approvals): $2,500-$5,000 at district's discretion; amount charged over $2,500 requires file documentation to support the excess fee.

15.06.10.01 Estoppel Certificate

Lenders and potential assignees may want assurances that the lessee is not in default prior to executing any agreements with the lessee. The lessee's financial institution may request Airspace provide the lease status prior to approving the lessee's construction loan. The Estoppel Certificate states there is a valid Right of Way Use Agreement, the lessee is in full compliance with the terms and conditions, and the lease payments are current.

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See Exhibit 15-EX-08 for the **mandatory** format.

15.06.10.02 Encumbrance

The lessee may need to encumber the airspace site in order to secure a loan. Standard Right of Way Use Agreement may allow encumbrance with R/D A/S approval before the loan is secured. If granted, R/D A/S should ensure the financial institution will be responsible for all lease payments in the event lessee defaults on the airspace Right of Way Use Agreement.

The Right of Way Use Agreement should be reviewed carefully regarding any special language or provisions for encumbering.

15.06.10.03 Memorandum of Lease

When a lessee applies for a loan, the lending institution may require a Memorandum of Lease (MOL) signed by R/D A/S. If the MOL will be recorded, a region/district representative authorized to execute real estate documents for that geographical area must sign it.

Prior to executing the MOL, R/D A/S must recommend its execution, stating the lessee is not in default with any provisions of the Right of Way Use Agreement.

15.06.10.04 Sublease and Assignment

R/D A/S must approve lessee's request to assign or sublease any or all interests in an Airspace Right of Way Use Agreement. Each Right of Way Use Agreement provides for the notice and approval process, along with a fee and a sharing of any increase in the lease rate generated by the transfer. R/D A/S will execute the Assignment of Lease (Forms RW 15-6 or RW 15-7) or Consent to Sublease (Form RW 15-8) after review of the:

- Right of Way Use Agreement with the lessee.
- Proposed assignment or sublease between the parties.
- Statement detailing assignee's or sublessee's proposed use.
- Proposed assignee's or sublessee's financial statement (unless it is a bank or financial institution).
- Current lessee's status as a tenant. In rare circumstances, R/D A/S may relieve the primary lessee of the responsibilities in the Right of Way Use Agreement should the assignee or sublessee default. In some cases, the

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primary lessee's bank or financial institution may become the new lessee due to defaults between the two parties.

FHWA concurrence with subleases or assignments is required only if on the Interstate and there is a change in use or if the current use affects air quality.

15.06.10.05 Amendments

If an amendment to an executed Right of Way Use Agreement is considered a **major** change, prior approval from CTC and FHWA (when on the Interstate) may be required. R/D A/S shall submit the request to HQ A/S for processing. Any change that affects the following is considered major:

- Term of lease (primary or option).
- Reduced rental rate or the return to the State for the remaining term.
- Use including the type and square footage of the development.
- Lease adjustments and reevaluations (e.g., frequency or rate).
- Change in use.

R/D A/S must explain the effect of the amendment, justifying their recommendation of it. Any standard Right of Way Use Agreement provisions that were not part of the existing agreement should also be included at this time.

15.06.11.00 Reviews and Approvals

R/D A/S must ensure that each airspace site is thoroughly reviewed and appropriately approved to reduce potential risks to the Department. All affected programs and those entities with authority over the process should review each use. R/D A/S review fees are collected when district has obtained DARC and FHWA conceptual approval (if proposal is controversial and if on the Interstate) or for subsequent Right of Way Use Agreement documents, at the time of the request.

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Fees for Airspace review are as follows:

- Short-term rental agreements up to six months with one 6-month extension: $0
- Directly negotiated short-term Right of Way Use Agreements (two to five years): $2,500
- Competitively bid short-term Right of Way Use Agreements: $0 (Winning bidder pays Liquidated Damages or Forfeiture of Deposit)
- Long-term nondevelopment Right of Way Use Agreements: $2,500-$5,000; amounts above minimum at district's discretion, file documentation is required in support of amount over minimum (e.g., proposed development includes new technology requiring extraordinary time and consultation with DARC)
- Long-term developmental Right of Way Use Agreements: $10,000. Note: Some projects may require a Project ID to cover work not captured in the standard review fee.

Review fees may be waived by district with Senior approval and supporting reasoning (e.g., hardship to small agency) and documentation to file with an informational copy to HQ.

15.06.11.01 Conceptual Approval

Either R/D A/S or a proposed lessee may want to have an airspace site approved for a conceptual use. DARC must recommend the proposed use to FHWA through HQ A/S for parcels located on the Interstate. Based on information provided by R/D A/S, FHWA approves the general concept of the proposal only and is in no way bound to accept the final proposal. FHWA does not need to conceptually approve the use if the same use was approved when entered into the inventory.

15.06.11.02 Preliminary Approval

Preliminary approval is only needed when the information at conceptual approval was insufficient to determine the major impacts on the property or when the proposed use differs. A site may have conceptual approval as unimproved parking, but at the preliminary phase the lessee wants to pave, light, and stripe (with some excavation). The DARC should review the proposal again to determine the effects on operations (e.g., drainage, column protection, ingress, and egress). Restrictions and conditions are provided to the proposed lessee so all requirements are identified on the final plans. FHWA preliminary approval is also required for parcels on the Interstate.

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15.06.11.03 Final Approval

Before the Right of Way Use Agreement is executed, the proposed use must receive final approval. Generally, formal approval for a lease over five years includes:

- DARC approval of the final construction plans of the proposal.
- Local agency concurrence that the proposal does not conflict with local zoning ordinances (as evidenced by issuing a building permit).
- Recommendation of lessee's environmental document by District Environmental.
- Sites on the Interstate require FHWA approval of the final construction plans, environmental document, and, if necessary, an air quality study.
- Evidence of insurance per the Right of Way Use Agreement.

Sites offered for competitive bid must have conceptual approval for the proposed use. The bid package must state that final approval in accordance with these procedures must be obtained before the site is occupied.

Airspace sites for short-term unimproved parking and open storage, with no change in the approved use or improvements, may need less formal review for final approval.

When formal approval has been obtained, the Right of Way Use Agreement may be executed, and the tenant may make application for an encroachment permit to construct from the District Permits Office.

15.06.12.00 Environmental Status

Every site must have a NEPA/CEQA, including a "6010 metal study" report written by the lessee and the document approved by Caltrans Environmental Division for the proposed use that addresses environmental issues. Proposed lessee might also need to obtain final approval of their plan from the local agency. The study must be submitted to Caltrans District Environmental for review and approval. The recommendation states the document meets applicable CEQA and NEPA requirements.

Airspace should consult the Environmental Manual or the District Environmental Unit on specific questions.

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15.06.12.01 Aerially Deposited Lead

Within the NEPA/CEQA report, the contents must address Aerially Deposited Lead (ADL) levels and other heavy metals. Results of the "6010 metal study" must demonstrate results of ADL to be less than 320 parts per million for all commercial and industrial uses. If an airspace property is being used for parks and recreation or statute directed shelter use, ADL levels must be below 80 parts per million. Testing must be to the depth of excavation. It is the tenant's responsibility to bring a proposed airspace site to acceptable use levels. Remediation plans must be approved by Caltrans District Environmental.

15.06.13.00 FHWA Approval

FHWA approval of airspace Right of Way Use Agreements is required only when the airspace site is located on an Interstate. All federal requirements in 23 CFR 710 shall be followed.

If the proposal is considered a major environmental action, FHWA will require an appropriate Environmental Impact Statement (EIS) or Environmental Assessment (EA) in accordance with 23 CFR 771.

FHWA's final approval is required before the encroachment permit for construction can be issued. R/D A/S must submit, through HQ A/S, the final approved DARC comments, the proposed Right of Way Use Agreement document, the environmental document, an air quality statement or study, the proposed use and terms, and the final construction plans.

All issues DARC and FHWA raised at the conceptual phase must be addressed in the final package.

See below.

FHWA APPROVAL OF AIRSPACE SITES ON THE INTERSTATE REQUIRED FOR:

- Conceptual use of an airspace site not in the current inventory. (Requires a narrative describing the use and a location map.). This is sent only if the proposed use is controversial.
- A change in use (whether new Right of Way Use Agreement, assignment, amendment, etc.).
- Preliminary and final approval of the proposed use, including site plans (including 3D plans) and NEPA findings, on any airspace site within the right of way (Includes telecom sites).
  Note 1: Preliminary approval not required if only minor improvements (paving, striping, lighting) will be made.

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Note 2: Final approval of an airspace or telecom site requires detailed mapping and plans of all impacts to the land (location of buildings, excavation, trenching, utilities).

Note 3: DARC notes must be submitted with any request for conceptual, preliminary, or final approval.

- Categorical Exemption or Environmental Impact Document of any new Right of Way Use Agreement or a new lessee if the previous Categorical Exemption is over five years.
- Air Quality Statement.

15.06.14.00 Air Quality

An air quality study or statement is required for all airspace sites when the use will involve vehicle traffic, especially short-term parking. The study or statement will consider the impact of the frequency of hot and cold starts of the vehicles.

The determination of whether an air quality statement or study is needed depends on the site's status. If the site has never been leased, an Air Quality Assessment from the local Air Quality Regional Board or the local Association of Governments (e.g., SCAG) is required. This assessment must address the impacts of the proposed use on air quality based on each Region's Air Quality Assessment Model.

If the proposed use is the same as the previous use, a statement from the local Metropolitan Transportation Commission (MTC) is needed. The statement should address the fact that the Airspace Right of Way Use Agreement is not regionally significant and is not a transportation project. A blanket approval for all future Airspace Right of Way Use Agreements (new and renewals) for a specified use only (e.g., parking lots with less than 250 parking spaces) may be obtained from the local MTC.

FHWA must approve the air quality study or statement prior to execution of the Right of Way Use Agreement.

The air quality requirement applies to all new leases, any lease with a change in use, or a renewal of a lease if it is a different lessee. All other leases are currently exempt from the process.

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15.07.00.00 - INSPECTION AND USE REQUIREMENTS

15.07.01.00 Inspections

Region/District Airspace (R/D A/S) is responsible for security and maintenance of all leased airspace sites, so must regularly inspect sites to ensure lessees are maintaining sites properly. Inspections of all developed sites are required quarterly and inspections of all nondeveloped sites (e.g., parking lots) are required annually. Some uses may require more periodic inspections. Airspace should inspect and document all activities related to the lessee's property management activities. All documentation of the site inspections and lessee notifications shall be maintained in the parcel file diary notes with yearly site pictures taken. RWPM shall be updated immediately for the dates on which the inspections occurred.

When a leased site is not properly maintained, R/D A/S shall immediately inform the lessee by written letter sent by certified mail of the violation and provide the lessee with a list of actions that must be taken and a time period within which to make corrections. If action is not taken, R/D A/S may initiate default proceedings to secure the site. A copy of the letter shall be kept in the parcel file.

If a condition requires **immediate attention** (e.g., public safety and hazardous materials), the lessee should be given a formal 30-day notice to correct the problem and properly maintain the premises or to quit pursuant to Right of Way Use Agreement provisions. If the condition is not corrected within that time, the lessee is declared in default and served a three-day notice. Violations requiring a 30-day notice shall be reported to HQ A/S.

R/D A/S may negotiate with District Maintenance to assist with periodic inspections of occupied sites, charging their time to the Airspace account. As maintenance crews are in the field on a more regular basis, their assistance is needed in ensuring that hazardous or unsightly conditions and trespassing does not occur. If problems are found, Maintenance should notify R/D A/S in writing.

Storm water inspections of leased airspace are required under the Department's Storm Water Management Plan (see Section 15.07.10.00 and Exhibit 15-EX-14). Storm water inspections can be done at the same time as regularly scheduled airspace inspections, but should be done at least annually. Date of inspection must be entered into RWPM.

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15.07.01.01 Inspections of Vacant Sites

District Maintenance is responsible for inspection, security, and maintenance of all vacant airspace sites within operating and nonoperating right of way.

Maintenance work on vacant sites is charged to the appropriate maintenance expenditure authorization. R/D A/S should not budget property management funds (Object x058) for sites that are or will be vacant. R/D A/S should also consider removing them from the Airspace inventory.

R/D A/S will advise Maintenance when a site has been vacated and there are no immediate plans to lease it. Maintenance will not automatically maintain vacant sites that appear to be leased (e.g., improved sites).

15.07.02.00 Column Protection

R/D A/S sites underneath highway structures require special provisions to protect support columns. Two basic elements to consider in determining what type of protection is required is based on:

- Design of the columns.
- How the property will be used.

If the columns are made of steel and the use is anything other than passive (e.g., park or landscaping use), they must be protected. Note that use of 0.109 galvanized steel pipe is not acceptable as a barrier protecting steel columns.

If the columns are concrete, the Structures Office will determine specific column protection. Protection may not be required for all parking leases as the types of vehicles and the specific parking area may not mandate barriers. Heavy usage, pattern of traffic, truck parking, and RV storage, however, require the maximum level of column protection. The required protection method ranges from nominal to sophisticated.

On all new Right of Way Use Agreements, renewals, or extensions, column protection must be installed as part of the terms for renewing, extending, or leasing the site.

There are various methods of column and other structural protections, including backflushing.

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15.07.03.00 Backflushing

Vertical drains are susceptible to clogging. On open systems, Structures Maintenance must backflush with air and water from the outlet end.

Backflushing is very difficult where enclosed columns and closed drainage systems have been installed. To make backflushing possible on closed systems, gate valves accessible from within the building are required on the outlet end of column drains.

15.07.04.00 Highway Structures

Development underneath structures is rarely permitted. If considered, all proposed developments underneath a highway structure (e.g., buildings, multilevel parking structures, recreational areas) require the lessee to prepare a Project Study Report (PSR) addressing the safety and potential liability of leasing the site. Issues to address are number and frequency of people at the site, proposed use, hazardous or valuable materials to be stored, and current status of seismic retrofit work on the structure and its columns.

HQ A/S will review and approve the PSR.

At-grade parking and open storage proposals to use an airspace site underneath a highway structure will require less review than a parking structure or office building.

15.07.05.00 Mini-Warehouse Inspections

New mini-warehouse structures construction is not permitted. Inspections of existing (grandfathered in) mini-warehouse structures should include reviewing the resident manager's restrictions on storage of high value or high risk personal property. The resident manager shall be required to provide immediate access to individual storage units for Airspace or Fire Marshal inspection. R/D A/S should review the Right of Way Use Agreement for specific provisions on access and inspections. R/D A/S should review the lessee's standard sublease agreements to ensure the tenants are advised of all the Department's restrictions and rights.

15.07.06.00 Storm Water Inspections

Local agency or other mandate may require R/D A/S to inspect airspace sites after a storm to ensure standing water does not collect contaminants before

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entering the storm water drainage system. Typical sites are paved parking and open storage sites that may have oil and gas residue.

15.07.07.00 Encroachment Permits

Encroachment permits are issued for all airspace sites when construction occurs. This requirement applies to new paving, striping, lighting, electrical, and curbing, as well as all buildings. Modifications to an existing parking or storage area's traffic pattern may also require an encroachment permit. Minor modifications to the site will generally not require a permit.

Refer to the Encroachment Permits Manual for specifics.

15.07.07.01 Encroachments by Exception

Encroachments in access controlled right of way are handled by an exception process. The Program Manager for Design, with assistance from the Encroachment Advisory Group (EAG) in HQ, will review region/district recommendations to allow use of the operating right of way when safe and noninterfering. Typical requests are:

- Utility company installation of a pipeline parallel to the right of way line (not an Airspace use).
- Telecommunications carrier access to maintain the antenna and/or vault from the travelway (part of the site license agreement).
- Access from the travelway to adjoining private property (no exceptions granted).
- Access from adjoining property to landscape or otherwise improve the appearance of the private property (can be an Airspace use or handled by cooperative agreement through the Office of Landscape Architect).

R/D A/S should coordinate work with the Permits Office before transmitting the request to the EAG.

FHWA concurrence is required to allow private entities permanent access for encroachments on Interstate highways.

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15.07.07.02 Permits for Telecommunications Licenses

The Telecommunications License Program may require three encroachment permits to perform work in the right of way. These are:

- **Survey Permit** - to test the radio frequency of proposed facility prior to submitting preliminary proposals to Airspace.
- **Encroachment Permit** - to construct if proposed use is approved.
- **Annual Permit** - to maintain the equipment if the proposal is within operating right of way.

Refer to the Telecommunications License Process and Guidelines and the Encroachments Manual for more information.

15.07.07.03 Permits Office

As required in the Right of Way Use Agreement, the lessee shall obtain an encroachment permit prior to construction. In no case shall an encroachment permit substitute for a Right of Way Use Agreement.

Lessees may be required to obtain an encroachment permit prior to making any changes to the airspace site. The standard Right of Way Use Agreement requires R/D A/S to advise the Permits Office that all DARC concerns have been satisfactorily addressed and that DARC has reviewed and approved the final plans.

R/D A/S should formally advise the lessee of the encroachment permit process (e.g., application and required sets of plans). A copy of the letter to Permits will advise that all final approvals (e.g., environmental, local building permit, and DARC review) have been obtained and the Right of Way Use Agreement has been executed.

The lessee must obtain a performance bond and a payment bond, or a performance bond containing the provisions of the labor and material bond supplied by tenant's contractors, provided the bonds are issued jointly to tenant and Caltrans as obligees. An "Irrevocable Letter of Credit" is not acceptable as evidence for performance of a construction obligation.

NOTE: Permits Office does not accept dual obligee bonding. Caltrans must be the only agency on the bond.

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15.07.07.04 Monitoring Construction

Permits and R/D A/S shall carefully monitor construction of all developments on airspace sites. The permit shall provide that lessee will not occupy the improvements until all work is completed to the Department's satisfaction and a notice of completion has been issued to the lessee.

These permits shall specify that notice to the Bridge Structures Unit is required 48 hours prior to installing any attachments to a structure. If construction involves bridge structures, R/D A/S may request assistance from Structures Operations in monitoring the project.

Any changes in the plans shall require prior written approval of R/D A/S and Permits and revised plans covering these changes must be attached to the permit.

The local agency's planning department issues a Notice of Completion in accordance with their building permit. Permits issues an Encroachment Permit Completion Notice. The Permits Inspector does not ensure that building construction conforms to local standards; that is the responsibility of the local agency.

A copy of the final plans shall be forwarded to Structures Operations to ensure that a complete set of as-builts is on file for every structure in the State.

15.07.08.00 State Fire Marshal Inspections

State Fire Marshal (SFM) will inspect for fire safety, unapproved construction, illegal or dangerous storage practices, wiring, fire extinguishers, and sprinklers.

The Office of Structure Maintenance and Investigations (OSM&I) established general guidelines (Exhibit 15-EX-12) the SFM uses to inspect all facilities. R/D A/S should advise potential developers of these standards.

Health and Safety Code, Section 13108, specifies that the State Fire Marshal (SFM) prepare and adopt building standards relating to fire protection in the design and construction of the means of egress and the adequacy of exits from, and the installation and maintenance of fire alarm and fire extinguishment equipment or systems in, any state institution or other state-owned building or in any state-occupied building and submit those building standards to the State Building Standards Commission for approval pursuant to the provisions of Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of the Streets and Highways Code. Right of Way's policy is that the

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SFM is required to review and approve plans, prior to the execution of any Right of Way Use Agreement, when the Department of Transportation (the Department) is locating into an existing building and there will be tenant improvements prior to occupation. District Property Managers are responsible for ensuring that appropriate SFM review of plans and/or inspections are accomplished prior to execution of all Right of Way Use Agreements.

The regional SFM supervisor, whose final approval is required for all uses underneath a structure, is a member of the DARC. At a minimum, separate copies of the preliminary and final plans for all uses should be submitted to the regional SFM office for review and comments.

The SFM will also make an initial inspection of telecommunications wireless facility prefabricated shelters.

15.07.08.01 SFM Inspection Responsibilities

All Right of Way Use Agreements require SFM have access to the property at any reasonable time for appropriate inspection of the site.

Annually, R/D A/S and the SFM will develop a list and schedule of required inspections, identifying those sites needing quarterly or annual inspections and any new sites that will be leased requiring an initial and periodic inspection.

The SFM will conduct quarterly internal and external inspections of all buildings, annual inspections of open storage areas, inspections by request, and proposals for all new uses.

15.07.08.02 Conducting Inspections

The SFM shall conduct inspections per the established schedule, contacting R/D A/S when a problem is identified, when assistance is needed to gain access to the site, or when the inspection cannot occur as scheduled.

15.07.08.03 Inspection Reports

The SFM shall submit an inspection report, identifying any areas needing immediate correction. R/D A/S will confirm the problem and give the lessee a 30-day notice to correct deficiencies. R/D A/S may initiate default proceedings if lessee does not correct the problem.

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15.07.08.04 Special Requests

R/D A/S may request special assistance from the SFM for:

- Persistent problems with lessee's correction of noted deficiencies, especially if R/D A/S has instituted legal action.
- Situations involving extreme danger of fire or explosion requiring SFM and R/D A/S to take immediate action to remedy the problem and to prevent the lessee from continuing the practice.

The SFM must send a written report within one week. R/D A/S will forward a copy to HQ A/S.

15.07.08.05 Reporting of Fire

All fires on all properties must be reported to the State Fire Marshal immediately following the knowledge of a fire. You need to have the following information:

1. Type of incident (fire or explosion, etc.)
2. Location of incident
3. Time of incident
4. If Fire/Police Department was dispatched
5. Information on any injury or fatality
6. Name and number for a call back.

15.07.09.00 Hazardous Materials and Waste

The Department's policy is to ensure that all airspace sites are, and continue to be, free of hazardous materials and waste. A material is hazardous if it poses a threat to human health or the environment. Hazardous materials are defined in the California Code of Regulations, Title 26, Division 4, Section 8-339. R/D A/S must review all proposals to use or store hazardous materials on an airspace site.

Environmental should be included in the DARC to ensure any approved use of hazardous material is under control and in accordance with applicable statutes and regulations. Of particular concern are materials that are flammable, reactive (subject to spontaneous explosion or flammability), corrosive, toxic, or radioactive.

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Hazardous waste is any of the above materials that have escaped or been discarded or abandoned creating a potential liability for the Department. R/D A/S should closely monitor all approved uses of hazardous materials on an airspace site to ensure conformity with applicable laws, regulations, and local ordinances.

15.07.09.01 Inspections

Airspace sites should be inspected regularly for hazardous materials or waste that could contaminate the property. If R/D A/S discovers hazardous waste, the following action should be taken.

- **Hazardous Waste Exists** - If lessee's operation is causing the waste, immediately notify lessee the action must cease or the Right of Way Use Agreement will be terminated. Lessee is required to clean up any hazardous waste or material. Cooperation with Environmental, Legal, and Project Development may be required. HQ A/S must specifically approve any new Right of Way Use Agreement or Right of Way Use Agreement renewal for a site confirmed to contain hazardous waste or materials.

- **Hazardous Materials Exist** - The risk to the roadway and the public safety of allowing the operation to continue with possible cleanup costs must be weighed against long-term liability, community safety/impact and external positive factors. Documentation to justify continuing the Right of Way Use Agreement shall be retained in the file.

In each situation, the Right of Way Use Agreement should be reviewed to determine what is allowed and what remedial action is needed. R/D A/S should request amending the Right of Way Use Agreement to include the standard hazardous waste clause if the lessee will continue to occupy the site.

Environmental can assist R/D A/S in all inspections and determinations of hazardous materials or waste.

15.07.09.02 Hazardous Waste

If inspection of an airspace site indicates a potential for a problem with hazardous waste, R/D A/S should formally request the District Environmental Office with coordination of the HQ Environmental Division to investigate and test the site immediately to determine if the site is actually or potentially contaminated.

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Environmental will inspect the site and determine if:

- **Testing Is Not Necessary** - Environmental provides a written statement that no hazardous waste is present.
- **Further Investigation Is Necessary** – Environmental hires a consultant to determine if hazardous waste actually exists.
- **No Hazardous Waste Is Present** - Lessee is authorized to use hazardous materials, but the use prompts the HWC to recommend future inspections and specific controls to reduce the Department's potential liability.
- **Hazardous Waste is Present** - Lessee is required to immediately and effectively remediate hazardous situations.

Environmental's recommendation may require corrective action by the lessee, more frequent monitoring of the condition, or termination of the current use or the Right of Way Use Agreement.

15.07.09.03 Inventory

R/D A/S and Environmental must ensure all vacant or occupied sites with any identified hazardous waste are included in the tracking system maintained by Project Development. This includes all airspace sites with underground storage tanks.

On a semi-annual basis, the R/D A/S must report to HQ A/S confirmation of any and all items being stored within all airspace areas. A statewide report is provided to Caltrans Structures and the State Fire Marshal as requested.

15.07.09.04 Potential Surface Contamination

Certain developments may have a greater potential for hazardous waste contamination. Examples include service stations, paint companies, machine shops, light and heavy industrial manufacturing, fertilizer storage, junk and auto wrecking yards, and muffler shops. Proposals to use airspace sites for these uses should not be allowed in most cases.

15.07.09.05 Lease Clause

Standard Airspace Right of Way Use Agreements kept on the RPS intranet website contain a hazardous materials clause stating the lessee is responsible for cleanup and mitigation of all hazardous material and waste deposits on the site, regardless of the source or cause.

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Use of the hazardous waste clause and the lessee's proposed list of hazardous materials to be permitted should alert R/D A/S to potential problems. Before any Right of Way Use Agreement is executed, R/D A/S must inquire into the specific type of use and consider the risk.

15.07.10.00 Storm Water Management

Airspace sites are within the Department's municipal separate storm sewer system (MS4) and are covered by the Department's Statewide Storm Water Permit and Storm Water Management Plan (SWMP). Airspace sites are therefore managed to prevent the discharge of pollutants to the storm water drainage system in compliance with the Department's Permit and SWMP. R/D A/S will use standardized Right of Way Use Agreement language that conforms with the SWMP in new Right of Way Use Agreements and in existing leases that come up for renewal. The Right of Way Use Agreement language requires implementation of storm water best management practices (BMPs) that are activity specific and elimination of unauthorized illicit connections/illegal discharges to the storm drain system. Storm water education and outreach materials, including storm water pollution prevention fact sheets, will be provided to the lessee/tenant. The fact sheets contain the BMPs applicable to the lessee's activities.

R/D A/S will maintain a list of Right of Way Use Agreements with industrial activities that require coverage under the General Permit for Storm Water Discharges Associated with Industrial Activity (General Industrial Permit) issued by the State Water Resources Control Board (SWRCB). The list of leases requiring such coverage will be included in the Department's Annual Report to the SWRCB.

Lessees whose industrial activities on the lease premises require coverage under the General Industrial Permit will be required to provide the following:

- Copy of Notice of Intent (NOI) filed with SWRCB (or No Exposure Certification).
- Copy of Receipt letter from SWRCB with Waste Discharge Identification (WDID) number.
- Copy of Storm Water Pollution Prevention Plan (SWPPP) covering lessee's facility and activities.

In addition to obligations to maintain compliance with lease terms pertaining to storm water pollution prevention, lessees are required to comply with all federal, state and local storm water laws and ordinances.

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R/D A/S will conduct annual inspections of leased property using the Airspace Storm Water Inspection Report (Exhibit 15-EX-14), to comply with the SWMP's measurable objectives and assess lessee's conformance with lease terms. The results of the inspections will be kept in the parcel file and will be used to develop annual reports that document the Department's compliance with its SWMP.

Refer to the Right-of-Way Property Management and Airspace Storm Water Guidance Manual for storm water pollution prevention fact sheets, guidance materials and compliance procedures.

15.07.11.00 Default

The lessee is considered in default if any of the Right of Way Use Agreement provisions are violated. Typical defaults are:

- Delinquent account.
- Insurance certificate not current.
- Failure to maintain site to current standards.
- Current use not authorized.
- Allowing others to use the site without Airspace's prior approval (e.g., assignment and sublease).

R/D A/S should monitor each Airspace Right of Way Use Agreement to ensure any violations are found while there is still time to take corrective action (e.g., collect delinquent rent prior to lessee vacating, getting a current insurance certificate before a situation occurs, and preventing hazardous materials from becoming hazardous waste).

The lessee must correct violations in a timely manner. To ensure this, R/D A/S should issue formal written notice to make corrections within a specific time frame (usually 30 days, unless it is a safety issue, which may require a three-day notice). If action is not taken, R/D A/S should initiate default proceedings (e.g., termination, eviction, lawsuit, and collections).

Prior to initiating action, R/D A/S should carefully review the Right of Way Use Agreement to determine the appropriate remedies available. HQ A/S and Legal should be contacted to determine if there are additional steps that can be implemented.

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15.08.00.00 - MANAGING THE AIRSPACE PROGRAM - PROPERTY MANAGEMENT AND THE MARKETING PLAN

15.08.01.00 General

The R/D Senior should ensure sufficient staff is assigned to and adequate time is spent on managing the region/district's Airspace program, which includes property management activities, marketing plan to lease sites, and program efficiency.

15.08.02.00 Property Management

Property management activities are those actions taken after a site is leased and developments (if any) are constructed. (See Section 15.07.00.00.) Airspace must ensure the lessee is complying with all terms and conditions of the Right of Way Use Agreement. As each site is developed differently, the degree of property management activities will differ with each Right of Way Use Agreement. At a minimum, R/D A/S should review the current status of each Right of Way Use Agreement to ensure:

Monthly –

1) The lease payment has been received and the account is not delinquent. If after proper notification, the lessee does not pay any arrears, default proceedings should be initiated.

2) Expiring rental agreements or Right of Way Use Agreement will be scheduled for renewal, extension, or termination.

Quarterly –

1) Future adjustments to the lease rate have been calculated and are scheduled to be billed per the percentage established in the Right of Way Use Agreement. The lessee must be advised in writing of the increase in the lease rate at least 30 days prior to the billing date.

2) Lessee's insurance certificate provides the appropriate liability coverage and is current. Developed sites will also require fire insurance for all improvements. Failure to provide a current insurance certificate is cause to initiate default proceedings.

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3) SFM's inspection report has been received on all developed properties. Follow up when necessary to ensure deficiencies are corrected.

Annually –

1) SFM's inspection report has been received on all nondeveloped properties requiring inspection. Follow up as necessary to ensure deficiencies are corrected.

2) Lessees paying on a percentage of gross revenues have scheduled audits to calculate the next year's lease payments. Airspace and the lessee should initiate the review of gross receipts at least 60 days prior to the next billing cycle.

Field reviews are important in property management activities, and each site should be inspected on a regular basis to ensure the site is being used and maintained as authorized. The lessee should keep the site clean of debris and of **hazardous waste**. Upkeep should be consistent with or superior to neighborhood standards. At a minimum, Airspace should inspect each expiring Right of Way Use Agreement prior to renewal, extension, or termination (monthly); each developed site (quarterly); and each nondeveloped and vacant site (annually).

All activities should be noted in the site diary with copies of all correspondence kept in the site file.

15.08.03.00 Right of Way Use Agreement File

Each Airspace Right of Way Use Agreement must have a file that includes a diary of all written and verbal communications, including all requests and approvals. The site file must contain written documentation (letters, memoranda, and attachments) on the leasing procedures (bid vs. direct negotiations), proposed use, DARC comments (all phases), development plans, environmental and air quality documents, marketing plan for the site, standardized Right of Way Use Agreement, bid package, RWPS setup, request to add to inventory, field inspections, deficiencies corrected by lessee, default actions initiated, and all other pertinent information.

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15.08.04.00 Right of Way Property Management System

The Airspace Inventory is maintained in the Right of Way Property Management System (RWPM), which generates reports on region/district property management workload, number and type of Right of Way Use Agreements, potential and actual income, internal uses, high priority sites, telecommunications licenses, and due dates (e.g., expiration, inspections, and adjustments). Accounting also uses RWPM to generate bills and to track account payments and adjustments. All Airspace Right of Way Agents shall be proficient in using RWPM.

R/D A/S shall ensure the system is current and all relevant data is input by reviewing the data entries on a regular basis. The list of sites in the inventory should also be reviewed to determine if vacant sites could be marketed.

IRWS, if used, must also be updated as the two systems are integrated. Airspace site numbers cannot be entered into RWPM unless the route and site are first entered into IRWS. In the rare case where IRWS is used, please contact HQ Right of Way Airspace.

NOTE: ROWMIS cannot be used to input an airspace property into RWPM, as airspace properties are Alpha-Numeric (county-route) as part of the numbering system. ROWMIS does not accept letters in the numbering system.

15.08.05.00 Income

RWPM and Caltrans Accounting track all revenues received through leasing sites. All funds are deposited into the State Highway Account (SHA), which is used for transportation purposes. As such, FHWA does not require a percentage of the income received but expenses are not eligible for federal reimbursement.

Since gross income (funds actually received) is reported to management and the legislature periodically, it is critical Airspace make all efforts to collect lease payments on a timely basis.

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15.08.06.00 Marketing Plan

The marketing plan to lease sites provides a working plan for Airspace on high priority sites, a marketing plan to lease vacant sites, and anticipated workload and schedule to lease all sites.

The R/D Senior should review the marketing plan at least quarterly to ensure all ongoing negotiations and activities are on schedule and that appropriate reviews and approvals are being obtained as scheduled. Processing the documents and following up on their review and approval are critical (e.g., requests for appraisals, reviews of environmental documents, and FHWA's concurrence).

The success of the program depends greatly on R/D A/S's responsiveness to the proposed lessee and the reviewing and approving entities (e.g., CTC, FHWA, and DARC members). Resolving problematic leasing issues shall be a high priority.

R/D A/S shall monitor the future expiration of rental agreements and Right of Way Use Agreements and develop plans to lease the sites before the current Right of Way Use Agreement expires through the bid or negotiation process.

The marketing plan for high priority sites (those that will generate the highest return if leased) should be evaluated to ensure the best methods for marketing and advertising the sites are used. Additionally, any interim uses shall be considered pending longer-term site Right of Way Use Agreements. Scheduling competitive bids for sites new to the inventory, recently vacant, or expiring should be part of the marketing plan. Each site should be evaluated to determine:

Highest and best use (if different than the previous use).

Fair market lease rate based on the term of the new lease (e.g., a five-year Right of Way Use Agreement may generate a higher rate of return than a two-year Right of Way Use Agreement).

Best method for leasing the site.

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15.08.07.00 Program Efficiency

The R/D Senior is responsible for program efficiency. This requires monitoring the current year income and expenditures closely to ensure the income to expense ratio is within the norm for the region/district and the statewide program, based on past year results and new procedures in place, taking into consideration any HQ Program Manager should be informed of any significant fluctuations from year to year.

PY usage should not exceed the budget allocation nor be less than the contracted usage for delivering the program. Modifications to the allocation and contract require HQ Program Manager approval.

HQ A/S prepares periodic reports to the CTC and the Legislature on income and expenses for the region/districts and the statewide program. The R/D Senior should use the periodic reports to monitor gross revenues and operational expenses quarterly to evaluate possible changes in activities and to correct charging errors. HQ A/S will provide R/D A/S with special reports and assist in analyzing the data.

The targeted workload and actual work production should be reviewed quarterly. The report assists the Senior with evaluating charging practices versus statewide average, monitoring staff production, and accomplishing R/D A/S's annual goals.

15.08.08.00 Policy and Procedural Manuals

The R/D Senior should ensure each Airspace Agent has the current Airspace procedures outlined in the Airspace Chapter with Exhibits and Forms, the Reference File, region/district forms and exhibits, and other written guidance or instructions.

There should also be a plan to review the staff's work product to ensure it complies with all applicable laws and policies and that the work is being done on time and in accordance with the marketing plan.

15.08.09.00 Training and Development

Agents assigned to lease Airspace sites should be at the Associate level and have rotated through the major disciplines within Right of Way. A lesser degree of training and experience is acceptable for Agents who are assigned to property management activities only.

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The R/D Senior shall ensure staff have adequate training and experience to accomplish assigned tasks to manage the R/D Airspace program in an efficient and compliant manner.

In addition to the Airspace Chapter:

Agents assigned property management activities should be familiar with property management requirements, RWPM procedures, TRAMS and RWPM reports, and rules on collecting funds.

Agents assigned nondevelopmental leasing activities through competitive bid should be familiar with standard bidding and auctioning techniques, appropriate laws on contracting with the private sector, clauses in standard Right of Way Use Agreement, marketing techniques, and rules on collecting bid deposits.
Agents assigned more complex leasing activities (developmental, direct negotiations, and local agencies) should be familiar with negotiation and conflict resolution techniques, development costs, rates of return, CPI trends, special Right of Way Use Agreement language, provisions for assignments and subleases, and CTC procedures to obtain approval to execute Right of Way Use Agreement.

Agents should expand their knowledge and skills by attending formal courses on leasing, development, auctioning, marketing, and negotiating offered by the California Department of Real Estate, IRWA, and other organizations.

R/D Seniors should also encourage staff to expand their knowledge of Airspace practices by providing opportunities to:

1) Conduct sealed bids and auctions.

2) Meet with and make presentations to local agencies and the planning departments and the program or areas of concern to the local agencies and cities.

3) Negotiate terms, including fair market lease rate and rate of return, for all Airspace developmental uses.

4) Evaluate the risks and benefits of potential uses and proposed non-standard clauses to standard Right of Way Use Agreements.

5) Develop site specific and overall program marketing plans.

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15.08.10.00 Reference Library

R/D A/S should establish a reference library that contains appropriate manuals, guidebooks, information, and periodicals. At a minimum, it should contain:

1) Airspace Chapter with exhibits, forms, and reference file.

2) Appropriate R/W policies and procedures from Appraisals, Property Management, Planning and Management, Encroachment Permits, Environmental, and Maintenance.

3) All references in the Right of Way Airspace Chapter, exhibits, forms, and reference file (e.g., 23 CFR, S&H codes, and CTC Resolutions).

4) Standard Right of Way Use Agreement (kept on the RPS intranet website).

5) CTC agenda and minutes, CTC agenda, minutes and approvals, and reports to the CTC and CalSTA.

6) Airspace business plan.

7) RWPM inventory.

8) Region/District's annual marketing plan.

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15.09.00.00 – DELEGATIONS

15.09.01.00 Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Airspace 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**
CTC G-02-04	15.02.01.02	Establish Inventory (Subject to FHWA Approval)	District	Senior RW Agent
	15.08.04.00	Maintain Inventory	District	Senior RW Agent
	15.08.04.00	Deletions from Inventory	District	Senior RW Agent
	15.02.02.01	Approval of Internal Uses of Airspace by Department	District	RW Manager
	15.03.03.00	Approval of Annual Marketing Plan	District	Supervising RW Agent
CTC G-02-14	15.03.04.00	Execution of Standard Broker's Commission Agreements	District	RW Manager
CTC G-02-14	15.06.05.02	Letters of Understanding	District	RW Manager
CTC G-02-14 2.3	15.04.01.07	Three-Year Directly Negotiated Non-Development Agreement	District	Supervising RW Agent
23 CFR §710	15.06.01.00	Approval/Execution of Standard Rental Agreements	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**
CTC G-02-14 23 CFR §710	15.06.02.00	Approval/Execution of Standard Short-Term Bid Leases (5 Years)	District	Senior RW Agent
CTC G-02-14 23 CFR §710	15.06.03.00 15.06.04.00	Approval/Execution of Standard Long-Term Airspace Ground Leases - Nonbuilding	District	Supervising RW Agent
	15.04.04.00	Approval of Nonstandard Leases and Agreements	HQ	Supervising RW Agent
	15.06.10.01	Estoppel Certificate	District	Supervising RW Agent
	15.04.01.08	Execution of Wireless Telecommunication Master License Agreements	HQ	Supervising RW Agent
CTC G-02-04	15.04.01.04 15.06.04.00	Approval/Execution of Any Long-Term Building Development Leases	HQ	Supervising RW Agent
CTC G-19-43 GOV §14013	15.04.01.05 15.06.08.00	Approval of Standard Park (Marler-Johnson) Leases	District	Supervising RW Agent
	15.05.07.00	Approval of Seismic Retrofit Rental Adjustments	District	Supervising RW Agent
	15.06.02.02	Reducing the Minimum Bid Below 75% of Bid Valuation, the Previous Minimum Bid, or the Previous Lease Rate	HQ	Supervising RW Agent
	15.06.10.04	Approval of Subleases and Assignments	District	Supervising 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**
	15.06.10.05	Approval of Amendments to Terms and Conditions of Leases After CTC Approval	HQ	Supervising RW Agent
23 CFR §271	15.04.01.03 15.04.01.04 15.06.13.00	Requests for Approval From the FHWA, CTC, and Other External Agencies	HQ	Supervising RW Agent
	15.07.09.00	Approval of a Lease or Renewal of a Site Confirmed to Contain Hazardous Waste or Materials with Prior Approval of the DARC and the District Hazardous Waste Coordinator	HQ	Supervising RW Agent
CTC G-02-14	15.04.01.08 15.06.07.00	Execution of Wireless Site License Agreement (SLA)	District	Supervising RW Agent
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Exhibits are located online:

- External Exhibits site
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Forms are located online:

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16.00.00.00 - EXCESS LAND

16.01.00.00 GENERAL

16.01.01.00 Function and Responsibility

The Excess Land function is responsible for administering the inventory and disposition of Department-owned real property that is no longer required for rights of way or other operational purposes.

Region and District Excess Land staff have full delegation to operate and approve within the parameters outlined herein, and as specifically discussed in Section 16.13.01.00. Any activities outside the scope of this Manual and/or the delegation matrix shall be subject to approval by HQ R/W. Such approval may be conveyed either in writing or by electronic means. A copy of said approval shall be placed in each Excess Land parcel file to which it applies.

16.01.02.00 Creation of Excess Land

Excess land may be created in several ways. Landlocked or uneconomic remnants not required for the right of way may have been acquired. Downscoped projects, superseded highway segments, route rescissions, route unadoptions by legislative action, and lands decertified at the request of adjoining owners may also create excess. Properties no longer required for operating purposes, such as maintenance facilities or material and disposal sites, may be declared excess.

16.01.03.00 Definitions

Sections 16.01.03.01 Through 16.01.03.25

16.01.03.01 Excess Land

Excess land consists of real property rights, title to which is vested in the State of California, Department of Transportation, and which is determined and certified to be not required for rights of way or other operational purposes of the Department (see California Streets and Highways Code 118). The requirements for rights of way are established by the certificate of sufficiency contained in the appraisal report. Requirements for real property for other

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operational purposes are established and authorized by approval of specific Project Reports.

Excess land does not include:

- Airspace under or over State highways
- Hydrocarbon, mineral, or water rights
- Personal property
- Operating material and disposal sites

16.01.03.02 Inventory Parcel

An inventory parcel is excess land that is carried on the accounting inventory as an asset. Each inventory parcel has a Value at the Time of Acquisition (VTA) which is often based on the value listed under the RW 7-13 (Excess Property Inventory Valuation). Inventory parcels are all excess land, as defined above, except those parcels specifically defined as non-inventory. Inventory parcels include land decertified at the request of adjoining owners.

16.01.03.03 Non-Inventory Parcel

A non-inventory parcel is excess land the Department intends to convey to a specific entity under the terms of a written agreement, and decertified access rights. These parcels are not part of the Division of Accounting (Accounting) inventory and do not have a VTA.

Examples of non-inventory parcels of excess land include:

- Property rights to be conveyed pursuant to an executed utility agreement for facility relocations.
- Property specifically acquired for another agency under terms of a written agreement.
- All decertified access rights where no other property rights are involved.
- Property rights, including underlying fee in local streets, to be conveyed to a local agency under terms of a freeway and/or cooperative agreement.
- Parcels acquired for exchange pursuant to a written agreement.
- Parcels acquired for replenishment housing facilities.
- Parcels acquired for functional replacement (see Section 8.30.00.00).

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16.01.03.04 Planning Parcel

A planning parcel is a parcel identified only for planning purposes. It represents unacquired or undeclared excess land which may or may not eventually become excess. These parcels are not part of the Accounting system.

16.01.03.05 Disposal Unit

A disposal unit is the number given to the property for disposal purposes. It may consist of one or more parcels. When parcels are grouped for disposal, the lowest parcel number becomes the disposal unit number. Multiple parcel disposal units may be split or combined along the original parcel lines ONLY at the discretion of the Excess Land Manager to optimize marketability or disposal potential as necessary.

16.01.03.06 Inventory Value (VTA)

Inventory Value (also known as VTA) is the fair market value of the excess at the time of acquisition, considered as a separate parcel. The inventory value may not exceed the pro rata cost of the parcel. For more information on how VTA is determined, please see Section 7.03.07.00 in the Appraisal chapter of the Right of Way manual.

16.01.03.07 Acquisition Price (Pro Rata Cost)

The amount paid by State for the excess parcel at the time of original acquisition.

16.01.03.08 Direct Conveyance of Easements

This category is limited to the State's conveyance of easements to public utility companies and political subdivisions, special districts, etc., or by direct sale where grantee has the power of eminent domain. Such conveyances must be approved by the CTC.

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16.01.03.09 Direct Conveyance Pursuant to Cooperative Agreement

Pertains to the State's conveyance of property acquired pursuant to an agreement under which the public body and the State agree to jointly share in the acquisition and construction of an improvement jointly benefiting the State and the public body, with the fee or easement title to be conveyed to the public body for their future maintenance of the facility. Such conveyances must be approved by the CTC.

16.01.03.10 Direct Fee Sale to Government Agencies

Used when excess fee-owned property is sold to public entities without calling for competitive bids for consideration equal to the appraised fair market value of the property (CTC Resolution G-98-22 – as amended). Such conveyances must be approved by the CTC.

16.01.03.11 Direct Sale to Eligible Present Occupants

Direct sale, at fair market value to present occupants (tenants) who meet the eligibility requirements under CTC Resolution G-98-22 - as amended, commercial tenants in accordance with California Streets and Highways Code 118, or to present occupants subject to Government Code Section 54235. Such conveyances must be approved by the CTC.

16.01.03.12 Direct Sale to Former Owners

Direct sales, at fair market value, to former owners who have remained in occupancy (CTC Resolution G-98-22 – as amended). Such conveyances must be approved by the CTC.

Direct sales to former grantors under Roberti Act in Section 54235-54238 of Government Code. Such conveyances must be approved by the CTC.

Pursuant to California Code of Civil Procedure section 1245.245, the Department can sell directly to a former grantor if the Department acquired the property subject to a resolution of necessity and that property is not used for the public purpose stated within ten years following passage of the resolution by the CTC. Such conveyances must be approved by the CTC.

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16.01.03.13 Direct Sale to Housing Entity

Direct sale, at less than fair market value (i.e., at a reasonable price), to a housing entity that will use the property for low-and moderate-income housing purposes pursuant to Roberti Act, Government Code sections 54235-54238.9. Such conveyances must be approved by the CTC.

Note: also subject to Chapter 9.5 in Division 2 of Title 21 of the California Code of Regulations, which sets forth the priorities and procedures for state-owned surplus residential properties located within the State Route 710 (SR 710) corridor in the County of Los Angeles.

16.01.03.14 Exchange Per Contract

Authorized by Streets and Highways Code section 118, whereby excess land is conveyed to a party from whom the State is acquiring right of way and by using the value of the excess land as whole or part consideration for the required property or interest needed for State highway purposes. Such conveyances must be approved by the CTC.

16.01.03.15 Finding "A" Sales

Direct sale to an adjoining owner, without calling for competitive bids, of small, oddly-shaped, fee-owned parcels incapable of independent development and having a higher and better use as part of the adjoining property or, if sold to other than the adjoining owner, would cause an undue or unfair hardship to such adjoining owner in the normal development or operation of their property (CTC Resolution G-98-22 - as amended). Such conveyances must be approved by the CTC.

16.01.03.16 Finding "B" Sales

The sale of such excess parcels to other than the adjoining owner would deprive such adjoining owner of vested right of access to a public highway and would create a possible cause for action against the Department (CTC Resolution G-98-22 - as amended). Such conveyances must be approved by the CTC.

16.01.03.17 Miscellaneous Conveyances

Pertains to the sale of State's interests (such as access rights, mineral rights, or easements outside of the operating right of way) no longer required for

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operation of the highway facility. Such conveyances must be approved by the CTC.

16.01.03.18 Fair Market Value

A conclusion of value as defined in R/W Manual Chapter 7, Appraisals. Excess land appraisals are discussed in R/W Manual Chapter 7 and Section 16.04.00.00.

16.01.03.19 Nominal Value Appraisals

A conclusion of value as discussed in R/W Manual Chapter 7 and Section 16.04.00.00.

16.01.03.20 Public Sale Estimate (PSE)

An estimate of current market value, in brief written form as discussed in R/W Manual Chapter 7 and Section 16.04.00.00.

16.01.03.21 Private Sale

A private auction of "Finding A" parcels (see 16.01.03.15 - Finding "A" Sales) that have multiple adjoining owners who could use the property. If the parcel is of peculiar size, shape, or in landlocked condition precluding it from independent development and is being sold by sealed bid or private auction, all adjacent owners must be notified by mail.

16.01.03.22 Public Sale

Oral auction or sealed-bid auction that is open to any member of the public, public entities, etc. Public sales are by oral auction, or, sealed bid. All public sales are advertised through the Department's Excess Land website, real estate advertisement companies or directly mailed or e-mailed to prospective purchasers.

16.01.03.23 Liquidated Damages

Liquidated damages are damages whose amount the buyer and Department designate and agree upon during the formation of a contract to sell for the injured party to collect as compensation in the event of a breach of the sale contract.

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16.01.03.24 Bid Registration Deposit

A bid registration deposit of no less than $1,000 shall be presented by every bidder for every oral auction or sealed bid sale. The successful high bidder shall submit this deposit at the close of the auction, to be applied toward the purchase of excess land. This deposit shall be liquidated damages if the highest bidder breaches, defaults, or withdraws in the first three days following the public sale. Bid registration deposits may be increased for sales of high value properties at the discretion of the Excess Land Manager.

16.01.03.25 Purchase Deposit

A purchase deposit of at least 10% of the sale price shall be remitted by the highest bidder at public sale within five business days following the public sale. This deposit shall be liquidated damages if the highest bidder breaches, defaults, or withdraws after remittance of this deposit.

16.01.04.00 Organization

The DDC-R/W shall establish a District Excess Land Unit, hereinafter referred to as Excess Land, to efficiently and expeditiously dispose of excess land and improvements thereon in accordance with S&H Code Section 118. Responsibilities for all parcels in the Excess Land Inventory shall be properly assigned to ensure disposal in accordance with the principles outlined herein. HQ R/W will evaluate the effectiveness of the Excess Land Unit through periodic reviews and audits of district procedures.

In accordance with community planning and environmental values, sound business practice, integrity, and State law, Excess Land will:

- Minimize the number of parcels on the Excess Land Inventory.
- Minimize the holding period from date of acquisition to date of disposal.
- Maximize the return from sale of the land or interest conveyed.

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16.01.05.00 Parcel File

Excess Land maintains a file on every parcel in the Excess Land Inventory until final disposition is completed, including full reconveyance. The parcel file shall contain as a minimum the items listed below:

- Clearance circulation memorandums
- Economic justification and hold authorization forms, where applicable
- Copy of form 16-1
- Copy of waiver letters from adjoining owners if the sale is a Finding "A or B"
- Current excess land mapping
- Parcel Diary
- Copy of recorded deed
- Copy of payments to accounting with a copy of 16-29
- Executed Purchase Agreement
- Sales Brochure
- Correspondence
- ELMS printouts- Disposal Unit and Parcel Screens

16.01.06.00 Parcel Diary

A parcel diary sheet is required for each disposal unit. The diary is maintained in sufficient detail to document the steps taken towards ultimate disposal of the property. It is part of the Excess Land parcel file and includes the following information as a minimum:

- **Name of Assigned Agent**

- **Signed and Dated Entries** - documenting verbal and written inquiries, review dates and suggested actions, personal contacts regarding design studies and proposed routes, personal contacts involving sales attempts, when "FOR SALE" sign(s) were posted on the property, when advertisements were placed on the State's excess land website, when advertisements were placed through other advertising resources (where appropriate and cost-effective), when notices of sale were sent to appropriate governmental agencies (if applicable), and/or when copies of brochures were mailed to all owners adjoining the property being sold.

- **Public Sales** - dates and results.

- **Other** - any information necessary to understand the handling of the disposal unit.

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The diary and/or file shall contain documentation that prior to public sale, "FOR SALE" sign(s) were posted on the property, advertisements were placed in real estate advertisement resources when appropriate and cost effective, notices of sale were sent to appropriate governmental agencies, notices posted on the Department's excess land auction Web site, and copies of brochures were mailed to all owners adjoining the property being sold.

16.01.07.00 Excess Land Parcel Acquisition/Disposal Summary (Form RW 16-1)

An Excess Land Parcel Acquisition/Disposal Summary (Form RW 16-1) is prepared and maintained for each individual parcel of excess land and retained in the Excess Land parcel file during the Department's ownership.

Districts are to provide a copy of the completed RW 16-1 to Accounting after recordation of the Director's Deed. The Form RW 16-1 notifies Accounting to remove the VTA from the Accounting inventory.

16.01.08.00 Excess Land Inventory Memorandum (Form RW 16-28)

Excess Land prepares Form RW 16-28 and sends it to Accounting to record the VTA. This form is also used to make changes to the VTA. VTA additions or expenditure adjustments are due to actions district staff takes to create, adjust, return, incorporate, or delete excess parcels.

16.01.09.00 Excess Land Fiscal Transmittal (Form RW 16-29)

Excess Land prepares Form RW 16-29 to document fiscal transmittals to Accounting:

- **Cashiering Unit** - funds received from a buyer in connection with sale of excess land, decertification deposit, or miscellaneous fees.

- **Accounts Receivable Unit** - request regarding related adjustments, such as refunds or forfeiture of deposits.

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16.02.00.00 - EXCESS LAND INVENTORY

16.02.01.00 Inventory

Excess Land maintains records in the Excess Land Management System (ELMS) of all parcels defined as "excess land," inventory and non-inventory. There are three independent records of excess land that constitute the official inventories:

- **Accounting Records** - General ledger accounts maintained by the Accounting Service Center (ASC). ASC records do not include noninventory parcels.
- **Right of Way Record Maps** - maintained by Right of Way Engineering.
- **Excess Land Parcel Files** - maintained by Right of Way.

Each record serves a separate purpose; together they provide a record of accountability that facilitates management and disposition of excess land. The respective functions independently input data to the inventory from the three basic records. The three records must be kept current and the Right of Way Record Maps and Excess Land Parcel files and reconciled.

On federal-aid projects, all excess land files and documents, including maps, Inventory Disposal Records, correspondence, options, leases, notices, contracts, and agreements, shall carry the federal-aid project number for federal vouchering purposes.

ELMS is used to record, monitor, reconcile, and report the status of the excess land inventory. The ELMS User's Handbook for use of this system is available on the Right of Way, Real Property Services (RPS) intranet page. All parcels in ELMS are carried in "disposal units" consisting of one or more parcels. Multiple parcel disposal units may be split or combined (along original acquisition parcel lines ONLY) at the discretion of the Excess Land Manager to optimize the marketability or disposal potential as necessary. Each parcel has an inventory or non-inventory category. Disposal units may be comprised of both inventory and noninventory parcels.

Discoverer is another tool for extracting data from ELMS.

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16.02.01.01 Creation of Excess Lands

Excess Lands can be created in the following ways:

1. Regular Excess Parcels Acquired Through Acquisition
2. Rescinded Route Parcels
3. Excess Created by Design Change
4. Former Maintenance Stations and Material or Disposal Sites
5. Decertification (adjoining owner, public request or underlying fee owners)

16.02.02.00 Inventory Categories

All excess parcels will have disposable category assigned.

A summary of the inventory categories is as follows:

1 Disposable Category:
1A Available for immediate sale

2 Hold Category:
2A Engineering Hold
2B Public Agency Hold
2C Administrative/Legal Hold
2D Environmental Hold

3 Entry Category:
3 New excess land pending immediate clearance or pending hold category assignment

16.02.03.00 Inventory Category and Updating ELMS Accordingly

New excess parcels are placed in Category 3 pending clearance and transfer to another category. (See 16.03.00.00 for clearance procedures.) Parcels can remain in Category 3 no longer than 90 days and are automatically classified as 1A (available for sale) at 90 days.

Parcels in Category 1A should be disposed of as soon as possible. In accordance with Streets & Highways Code Section 118.6, property must be offered for sale within 12 months from the time it is determined to be surplus. If parcels in Category 1A do not have clearances, valuations, and/or maps and

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deeds, they are NOT available for immediate sale and should be transferred immediately to the appropriate hold category. Authority to transfer excess from 1A to a hold category requires specified approvals by the District Real Property Retention Review (RPRR).

16.02.04.00 RPRR and Transmittal of Hold Requests

The DD appoints the RPRR to evaluate properties to be retained. The committee meets annually, or as required.

At least two weeks prior to the RPRR meeting, Excess Land staff transmits request for approval to place a hold on excess land to H.Q.'s RPRR with the following:

- Map of the property.
- Signed Form RW 16-3.
- Any other data to facilitate review.

Upon request, the RPRR Chair can extend a hold up to 12 months by entering the extension date on the current RW 16-3.

New holds required before a scheduled meeting shall be placed in the appropriate hold category with approval of the RPRR Chair. The "release date" on the RW 16-3 will be the meeting date plus one month.

Excess Land staff is responsible for updating entries into the ELMS upon approval of hold requests.

Headquarters staff is responsible for reviewing ELMS reports and periodically auditing the District RW 16-3 forms to assure procedures and approvals are correctly being followed. See the "Inventory Matrix" on the following pages for additional information.

16.02.05.00 Decision Tree for Holds by Division

To obtain a copy of the RPRR procedure, please contact HQ.

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16.02.06.00 Detailed Inventory Matrix

The following section will help determine the proper inventory category for a parcel when a parcel is entered into ELMS. A detailed description of the process for each inventory category is as follows:

INVENTORY MATRIX

Category 1 – Disposable – 1A:

- **Description:**
  Parcels Available for Immediate Sale - placed in Category 1A and disposed of as soon as possible.

  If parcels in Category 1A do not have clearances, valuations, and/or maps and deeds, they are NOT available for immediate sale and should be transferred immediately to the appropriate hold category.

  1A Parcels having former owners or that are a part of the Roberti properties will have different clearance requirements.

- **Process:**
  Authority to transfer excess to any other category requires approvals as described in Section 16.02.04.00.

  Dispose of in accordance with guidelines set forth in Section 16.05.00.00.

Handle improved properties occupied by former owner or on rescinded routes in accordance with CTC Resolution G-98-22 and Government Code Sections 54235, 54237, and 54238.6 and CCP 1245.245.

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INVENTORY MATRIX (Continued)

Category 2 – Hold – 2A:

- **Description:**
  Parcels held for a specific request of an Engineering Branch for possible right of way requirement or mitigation purposes:

  - On the same project for which the parcel was acquired.
  - Possible additional right of way requirement for another project.
  - Parcels required for operational purposes, for example:
    - To provide the contractor with improved access to a construction site.
    - Batch plant site or similar use.
    - Parking space for trailers to be used by Engineering personnel (vacant land only).
    - Temporary detours.
    - Temporary material/disposal sites
    - Property Management

- **Process:**
  Each hold form (16-3) must specifically identify the planned use for the property and the date by which the parcel will be transferred to the project or released. A parcel map must be attached to each application.

  Hold approval subject to the review process in Section 16.02.04.00.

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INVENTORY MATRIX (Continued)

Category 2 – Hold – 2B:

- **Description:**
  Parcels held for sale to a Public Agency - parcels shall not be held for a public agency unless an official authorized to bind the agency to buy the land is submits a written, signed request. With RPRR's approval, the property may be held up to a maximum of one year after receipt of the written request and deposit; this allows the agency time to arrange financing. The request must contain:

  - Property description or map.
  - The public purpose for which the land will be used.
  - The agency's intent to buy the property.
  - The date the sale will be concluded and reason for delay, if any.

  Authority for direct sales of properties of notable environmental value is found under S&H Code Sections 118.6; and all other sales to public agencies for a public use under G-98-22. All public sales under G-98-22 are at the discretion of the excess lands manager.
- **Process:**
  Order maps, deeds, and appraisals if not previously requested.

  Offer property at market value after appraisal approved and give 60 days to respond.

  If official written acceptance is not received within 60 days, transfer to Category 1A and sell.

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INVENTORY MATRIX (Continued)

Category 2 – Hold – 2C:

- **Description:**
  Parcels held for Administrative or Legal reasons - examples are:

  - Clearances, valuations, maps/deeds not completed.
  - Relocation assistance or replenishment housing purposes.
  - Pending resolution for potential claims against the Department.
  - Judicial or legislative actions.
  - Routes that are candidates for rescission or down scoping.
  - Written instructions to hold received from CTC, the Director, or the HQ R/W Program Manager.
  - Parcels held for optimum return or for exchange. Examples include:
    - Other acquisition of adjacent land will provide access or make salable unit,
    - Access will not be available until construction is completed,
    - Exchange for needed right of way requested by Acquisition.

- **Process:**
  Document holds by written communication from the appropriate department including the reason for the hold and the release date.

  Hold approval subject to the review process in Section 16.02.04.00. Document hold request for exchange with a memo from Acquisition justifying the hold.

Category 2 – Hold – 2D:

- **Description:**
  Parcel held for environmental compliance or for mitigation purposes.

- **Process:**
  A Division requesting a "Hold" on an excess land property must include the reason and release date for the hold.

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INVENTORY MATRIX (Continued)

Category 3 – Entry – 3:

- **Description:**
  Temporary Hold for Clearance - place new parcels in this category pending clearance and transfer to another category.

  Parcels cannot remain in this category longer than 90 days. The ELMS will automatically place Category 3 disposal units in 1A after 90 days. To subsequently transfer from 1A to a hold category, follow the approval process in Section 16.02 04.00

- **Process:**
  Upon entry, immediately obtain internal functional clearances; e.g.,

  - Right of Way (Acquisition, Relocation Assistance, Property Management, Utilities)
  - Environmental
  - Maintenance
  - Project Management
  - Planning (Park & Ride)
  - Right of Way Engineering
  - Traffic
  - Design
  - Construction

If a property is determined to be of notable environmental value, the District must follow S&H Code 118.6.

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16.03.00.00 - CLEARANCE PROCEDURES

16.03.01.00 Various Functional Reviews

Excess Land establishes clearance procedures to assure that the property is not required for a definite use by other units in the Department. The various functional units are consulted, including:

- **Acquisition** - to determine if the excess is needed for exchange.

- **Relocation Assistance** - to determine if an eligible relocatee is in possession of an improved property or if the property can be used by a displacee.

- **Property Management** (Rentals and Clearance) - to determine whether a State tenant occupies the property. If a property will be sold subject to a tenancy, no State property shall be removed without full knowledge of its removal being given to prospective purchasers. If the State is leasing or renting the property to be sold, Property Management attaches a copy of the lease or rental agreement to the clearance document.

- **Utilities** - to determine if the excess parcels are needed for utility purposes.

- **Park and Ride** - to determine if the excess is suitable for use as a Park and Ride lot. Selected and approved parcels are incorporated into the right of way for the Park and Ride project.

- **Environmental** - to determine if the excess has potential for use as a mitigation site, either for projects currently being developed or for mitigation banking purposes. The District Environmental Branch will determine which parcels are suitable for such use. These parcels will be transferred to Category 2D.

- **Planning** - to determine if the excess is required by any planning project.

- **Project Development** - to determine if the excess is needed for a project.

- **Maintenance** - to determine if the excess is needed for maintenance purposes.

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16.03.02.00 Environmental Compliance

Excess properties are analyzed prior to disposal to determine if they are categorically exempt from the requirements of the California Environmental Quality Act (CEQA). Environmental and Excess Land jointly determine the CEQA requirements for excess land sales. CEQA requirements for surplus government property are contained in Class 12, CEQA Guidelines 15312. (See Section 16.12.02.00.)

Excess Land should initiate environmental compliance procedures as soon as it knows property may become excess. Although most parcels can be cleared in less than 30 days, the process may require several months if an environmental document is required.

See the table entitled "Environmental Compliance Process" on the following pages for additional information on environmental clearance.

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ENVIRONMENTAL COMPLIANCE PROCESS

	Excess Land	Environmental
All Excess	Circulates all excess parcels through Environmental for completion of a preliminary survey.	Conducts preliminary survey to identify any factors that may disqualify the proposed sales from being categorically exempt.
Categorically Exempt	Retains the Categorical Exemption Determination Form in the Excess Land file. Assesses the real estate market to determine an appropriate time frame for disposal that avoids significant disruption of the market. Careful planning is required to assure the disposal program avoids adverse cumulative effects. The sale of property that is categorically exempt shall not be delayed because other parcels in the area may not be exempt. The Sales Notice to Bidders should clearly state that sale of the excess is exempt from CEQA, but that future development or alteration of the property may be subject to CEQA and other environmental permit processes. (See Section 16.05.04.00.)	Notifies Excess Land promptly upon determination that a parcel is categorically exempt and completes a Categorical Exemption Determination Form.

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ENVIRONMENTAL COMPLIANCE PROCESS (Continued)

	Excess Land	Environmental
Not Categorically Exempt	Offers properties with notable environmental value to other governmental agencies, pursuant to S&H Code Section 118.6, at their current appraised fair market value. Transfer of such properties normally does not require an environmental document if the existing use of the property is expected to remain the same. Properties that require an environmental document are not advertised for sale or sold until the environmental document is completed and the Notice of Determination (NOD) is filed and the 30-day legal challenge period has expired. The Sales Notice shall state whether an ND or EIR was prepared.	Prepares an environmental document, Negative Declaration (ND) or Environmental Impact Report (EIR), as appropriate, if governmental agencies are unwilling or unable to purchase the properties within a reasonable time. Prepares and files the NOD with the Office of Planning and Research.

16.03.03.00 Hazardous Substances

Excess parcels may not be offered for sale until the District Hazardous Substances Coordinator has provided a Hazardous Substances Disclosure Document allowing sale of the parcel. The disclosure document will certify one of the following three conditions:

1. The parcel is clear of hazardous substances and may be offered for sale; or

2. That hazardous substances exist on the property but the property may be offered for sale with appropriate and full information disclosure regarding the nature and extent of the contamination; or

3. That hazardous substances exist/may exist on the property and further investigation or remediation is required, and the disclosure document is an attachment to an Excess Land Hold Request.

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The Hold Request must show the Project Manager an estimated schedule for the investigation or remediation. The responsible unit for the investigation or remediation will normally be the unit that controlled or maintained the property (e.g., Facilities, Maintenance, Traffic Operations).

16.03.03.01 Lead-Based-Paint Disclosure

For properties constructed prior to 1978, Excess Land must disclose the possible exposure to lead-based paints. See Excess Land Reference File 96-06 for procedures, forms, and requirements.

16.03.04.00 Notices to Other State Agencies

Notification to other State agencies of the proposed sale of excess land is required as shown on the table entitled "Notice Requirements for Other State Agencies" on the following pages.

Offers of direct sale to federal agencies may be made at the discretion of the Excess Land Manager based on knowledge of interest by a federal agency or physical proximity to a federal facility.

16.03.05.00 Offers to Local Public Agencies and State Resources Agency

Before any excess real property, except surplus residential property as defined in Government Code Section 54236, is offered for sale to the public, it must be offered for sale or lease to local public agencies, housing authorities, or redevelopment agencies within whose jurisdiction the property is located. (See Streets & Highways Code Section 118(a)(2).)

Excess Land must send Offers to Sell or Lease Surplus Land, Exhibit 16-EX-4, as shown below on the table entitled "Requirements for Offering to Local Public Agencies." The important elements of the offer are shown on the table entitled "Elements of Offer."

Other than the offers as required by statute for low/moderate income housing or park/recreational use, offers of direct sale to local public agencies are at the discretion of the Excess Land Manager.

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REQUIREMENTS FOR OFFERING TO LOCAL PUBLIC AGENCIES

Purpose	Sent to	Remarks
Developing low- and moderate-income housing	Any local public agencies including, but not limited to, housing authorities or redevelopment agencies within whose jurisdiction the surplus land is located.	With respect to any offer to purchase or lease, priority shall be given to offers for development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.
Park and recreational or open-space	• Any park or recreation department of any city within which the land is situated. • Any park or recreation department of the county within which the land is situated. • Any regional park authority having jurisdiction within the area in which the land is situated. • The State Resources Agency or any agency that may succeed to its powers.	

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REQUIREMENTS FOR OFFERING TO LOCAL PUBLIC AGENCIES (Continued)

Purpose	Sent to	Remarks
Enterprise zone	Nonprofit neighborhood enterprise association corporation if the surplus is within such jurisdiction.	Pursuant to Government Code Section 7073. (See Section 16.12.03.00.)
Designated program area	Program area agent.	As defined in subdivision (i) of Government Code Section 7082. (See Section 16.12.03.00.)
School purposes	Public school districts whose jurisdiction is involved.	Pursuant to Government Code Section 54222.

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NOTICE REQUIREMENTS FOR OTHER STATE AGENCIES

State Agency	Description of Property	Process	Minimum Information Required
Department of General Services Real Estate Services Division Attn.: Real Estate Sales Section 400 R Street, Suite 5000 Sacramento, CA 95814	• Any parcel, regardless of size, that abuts property owned by another branch of State government • Any parcel, one acre or larger in size, that has access to a public road • Any parcel, regardless of size, that in the district's opinion may be of value or use to another State agency	Send a letter to DGS. (See Exhibit 16-EX-2.) If a response is not received within the 60 days, dispose of the property in the normal manner.	• General location or vicinity map • Detailed parcel map showing local roads and streets and any adjoining property owned or controlled by any branch of State government • Appraised value, if available, or a statement that a fair market value appraisal will be made if there is an affirmative response

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NOTICE REQUIREMENTS FOR OTHER STATE AGENCIES (Continued)

State Agency	Description of Property	Process	Minimum Information Required
Department of Transportation Aeronautics Program P.O. Box 942873 Sacramento, CA 95273-0001	Any parcel within a two-mile radius of any public airport.	Send a notice to Aeronautics. (See Exhibit 16-EX-2.) Aeronautics notifies the appropriate Airport Director of the availability of properties. The notification prescribes a 60-day response time and specifies the name and phone number of a contact person. During the prescribed 60-day period, the Airport Director should notify the district directly of their needs for the parcel. If a response is not received within the 60 days, dispose of the property in the normal manner.	• Present zoning • Highest and best use • Topography • Improvements, if any • Encumbrances or copy of State's policy of title insurance • Other remarks as appropriate, e.g., access, utilities available

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NOTICE REQUIREMENTS FOR OTHER STATE AGENCIES (Continued)

State Agency	Description of Property	Process	Minimum Information Required
Housing and Community Development (HCD) 1800 Third Street Sacramento, CA 95814	Parcels that local public agencies have not expressed interest in purchasing but that may have unique affordable housing potential, as determined by HCD in isolated cases.	Send copies to HCD of all offers of property to local public agencies in accordance with statutory requirements outlined in Section 16.03.05.00. HCD notifies Caltrans within the prescribed 60-day period on a case-by-case basis and requests that the parcel be withheld from immediate sale for a specific time.	Copy of the offer to the local public agency.

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NOTICE REQUIREMENTS FOR OTHER STATE AGENCIES (Continued)

State Agency	Description of Property	Process	Minimum Information Required
• Department of Parks and Recreation P.O. Box 942896 Sacramento, CA 95814 • Department of Fish and Game 1416 Ninth St., 12th Floor Sacramento, CA 95814 • Wildlife Conservation Board 801 K Street, Suite 806 Sacramento, CA 95814 • State Coastal Conservancy 1330 Broadway, Suite 1100 Oakland, CA 94612-2530	Excess parcels that meet the requirements of Section 9, Article XIX, State Constitution • Coastal Zone land as defined in Section 9 • Lands within 1000 yards of any property that has been listed on, or determined by the State Office of Historic Preservation to be eligible for, the National Register of Historic Places • Lands within the Lake Tahoe region as defined in Government Code Section 66905.5	Notify the listed State agencies. Any proposed sale of such land requires authorization by the Legislature. If the agencies do not respond within 60 days, dispose of the property in the normal manner. Notification requirements do NOT apply to "exempt surplus land." To be considered exempt, the surplus land must be sold to an owner of contiguous land and must meet one of the following criteria: 1. Less than 5,000 square feet in area. 2. Less than the minimum legal residential building lot size for the local jurisdiction or 5,000 square feet in area, whichever is less.	• Parcel number • Area • Location • Acquisition cost • Overhead to acquire the property

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NOTICE REQUIREMENTS FOR OTHER STATE AGENCIES (Continued)

State Agency	Description of Property	Process	Minimum Information Required
		(Continued) 3. Has no record access; is less than 10,000 square feet in area; is not contiguous to land owned by a State or local public agency that is used for park, recreational, open-space or low- and moderate-income housing purposes; and is not located within an enterprise zone pursuant to Government Code Section 7073 nor a designated program area as defined in Government Code Section 7082. (See Section 16.12.03.00.)	

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ELEMENTS OF OFFER

Element	Explanation
Leasing Property to Be Sold at Fair Market Value	Any direct sale pursuant to Government Code Sections 54220 et seq. must be at current fair market value. The Department may only lease surplus real property pending the sale or exchange of such property (see S&H Code Section 118.6). The lease rate must be high enough to ensure that the eventual sales price of the parcel, when sold subject to the lease, is no less than the fair market value of the property if sold unencumbered by such lease.
Notification of Intent to Purchase or Lease Surplus Land	The entity desiring to purchase or lease surplus land must notify the Department in writing of its intent within 60 days after receipt of the Offer to Sell or Lease Surplus Land.
Resales of Land for Development of Low- and Moderate-Income Housing	A local public agency, housing authority, or redevelopment agency that purchases land from the Department may reconvey the land to a nonprofit or for-profit housing developer for development of low- and moderate- income housing as authorized by law.
Payment Period	Government Code Section 54225 allows the Department to provide for a payment period of up to 20 years in any contract of sale or sale by trust deed for: • Surplus land to be used for park, recreation, open-space, or school purposes. • Improved surplus land to be used for low- and moderate- income housing purposes. S&H Code Section 118 allows the Department to provide a longer payment period of up to 40 years in any contract of sale or sale by trust deed for improved and unimproved surplus land to be used for low- and moderate- income housing purposes.

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ELEMENTS OF OFFER (Continued)

Element	Explanation
Multiple Offers	If the Department receives offers to purchase or lease from more than one eligible entity, first priority shall be given to the entity that agrees to use the site for housing for persons and families of low- or moderate- income. By exception, first priority shall be given to an entity that agrees to use the site for park or recreational purposes if the land being offered is already being used and will continue to be used for park or recreational purposes, or if the land is designated for park and recreational use in the local general plan and will be developed for that purpose.

The preferred disposition for these properties is a direct sale, and when notice is received from two or more public agencies, preference shall be given to an agency that proposes to purchase the property.

When a notice is received from any entity desiring to purchase or lease surplus land, the district prepares:

- **Appraisal** - of the fair market value if sold.
- **Lease rate** - if the property is to be leased pending sale or exchange.

After completion of an appraisal or lease rate determination, the district and the entity negotiate to determine mutually satisfactory sales or lease terms (sales price must be based on the fair market value appraisal). If the price or terms cannot be agreed upon after 60 days, Excess Land may dispose of the surplus land.

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16.03.06.00 Outdoor Advertising Signs

Excess Land must assure that the Department has no obligation for outdoor advertising signs located on excess property that continues beyond the sale of such property. Excess Land determines whether or not a sign is located on the property prior to sale by:

- Reviewing the appraisal and acquisition documents.
- Clearing the property for sale through Property Management.
- Visually inspecting the property.

To determine the status of any existing signs, Excess Land sends a Request for Information on Signs, Exhibit 7-EX-11 to HQ R/W, Outdoor Advertising Unit, and proceeds as shown on the table on the following page after receiving a response.

If previously-sold excess property involves outdoor advertising signs where the Department retains a contractual obligation to ultimately pay when said signs are removed, Excess Land should review the situation in detail and coordinate with the Outdoor Advertising unit for clearance.

16.03.07.00 Clearance of Other Items

Excess Land should ensure that a parcel is not conveyed until it determines the State has no unfilled contractual obligations to convey easements or other rights for utility or other purposes over the property. If any such unfulfilled obligations exist, appropriate exceptions or reservations shall be included in the Director's Deed. Such items should be brought to the attention of prospective purchasers in the Sales Notice.

Procedures for clearance of other items are shown in the table entitled "Procedures for Clearance of Other Items."

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OUTDOOR ADVERTISING SIGN OBLIGATIONS

Sign Status	No Executed R/W Contract and Quitclaim Deed	Executed R/W Contract & Quitclaim Deed Covering Sign Relocation/Removal
Illegal Sign - Sign that was illegally placed on State highway right of way and one that does not have a current State Outdoor Advertising Permit.	Notify sign owner to remove the sign. Removal must be accomplished prior to sale of the property.	If sign owner refuses to remove sign, Clearance and Demolition has sign removed and bills owner for cost.
Nonconforming Sign - Sign was lawfully placed but does not conform to current law.	Have the sign removed as a right of way obligation prior to sale of the excess property.	Have sign owner execute an Advertising Structure Agreement and a rescinded Right of Way Contract. Consult with Legal about filing an action to rescind the existing contract if sign owner refuses to execute an agreement and/or a rescinded contract. As an alternative to expedite sale of the excess property, order sign owner to remove the sign. The Department shall pay the amount set forth in the existing Right of Way Contract.
Old Advertising Structure Agreement • Nonconforming Signs - Sign occupies property under an old agreement with a termination clause but no reference to highway construction.	Sell the property subject to the sign interest.	

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OUTDOOR ADVERTISING SIGN OBLIGATIONS (Continued)

Sign Status	No Executed R/W Contract and Quitclaim Deed	Executed R/W Contract & Quitclaim Deed Covering Sign Relocation/Removal
• Conforming Signs - Sign conforms to current law. Occupies property under an old agreement with ambiguous termination clauses, e.g., one clause provides termination by 30-day notice; another ties removal of sign to future highway construction.	Property Management has sign owner execute a new Advertising Structure Agreement prior to sale. Consult with Legal on the next appropriate action if sign owner refuses to execute a new agreement.	

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PROCEDURES FOR CLEARANCE OF OTHER ITEMS

Item	Procedure
Fee Conveyances Prior to Easement Conveyance Over Same Parcel	Where the State has easements that cross excess land that have not yet been conveyed to a third party pursuant to a contractual obligation, it is permissible to include the clause below in the fee Director's Deed of the affected excess parcels. The clause is to be used only when a Director's Deed easement across excess has not been recorded and posted on the Right of Way Record Maps at the time the Director's Deed for conveyance of the excess is prepared. When the easement deed is recorded and posted prior to preparation of the Director's Deed for conveyance of the fee excess, the Director's Deed of fee will make no mention of the easement except for the clause printed on the Director's Deed form that states "...subject to special assessments, if any, restrictions, reservations and easements of record." "Subject to an easement granted or to be granted to (name of company) for (purpose of easement) and incidents thereto upon, over and across: (Description of easement area)." It is essential that the "name of company," "purpose of easement," and "description of easement" are identical in the Director's Deed for the easement and the Director's Deed for the excess fee. Under normal circumstances, property or other rights acquired expressly pursuant to a contractual obligation or easements being conveyed over excess lands are not part of the Excess Land Inventory.

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PROCEDURES FOR CLEARANCE OF OTHER ITEMS (Continued)

Item	Procedure
Easements No Longer Needed for Transportation Purposes	Easements no longer required for transportation purposes may either be vacated or sold pursuant to S&H Code Section 118.6, depending on the circumstances. The DDC-R/W determines the method of disposal after considering the facts. Although easements are normally vacated, they can be appraised and disposed of in the normal manner where circumstances warrant, such as when easements are acquired for a transportation use but are never used. When easements are no longer needed, they are added to the ELMS. The decision on whether they are classified as inventory or non-inventory is based on definitions contained in the user's handbook.
Superseded Fee-Owned Right of Way	When title to a superseded right of way is owned in fee, it may be conveyed to a private owner only by Director's Deed. Salable segments of such right of way may be used in exchange the same as any other fee-owned property.
Excess Property That Has a History of Soil Instability	The clause below is included in all Director's Deeds, Sales Contracts, and Sales Notices used in the disposal of excess properties that have a history of soil instability caused in part or entirely by State highway construction. "It is mutually agreed and understood that this property may be subject to soil instability and that the grantees, for themselves and their successors or assigns, hereby waive any and all claims for damages resulting from further earth movement or soil instability which may occur because of prior actions by the State of California, its officers, agents and employees."

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PROCEDURES FOR CLEARANCE OF OTHER ITEMS (Continued)

Item	Procedure
Parcel Contractual Obligation Review	All excess land resulting from partial acquisitions is subject to a contractual obligation review prior to sale. Evidence of a completed contractual obligation review is first noted in the Parcel Diary and then in the property description portion of Form RW 16-1 at the time the résumé package is submitted for CTC approval by the following statement: "A parcel review has been completed and there are no contractual obligations". If contractual obligations are found, their disposition must be explained in full.
Flood Hazard Notice	The following notice is placed in all Sales Notices when there is a potential for flood hazards: "CAUTION: We are hereby putting you on notice that this property may be subject to potential flood hazards. The Department of Transportation does not assume any liability for any damage which may be caused by such flood hazards. We recommend that you fully investigate the potentiality of such hazards with the appropriate Federal, State and local agencies."

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PROCEDURES FOR CLEARANCE OF OTHER ITEMS (Continued)

Item	Procedure
Excess Property Located in Fault Hazard Zones	Section 2621.9 of the Public Resources Code (See Section 16.12.04.00) requires any person who is a seller or acting as an agent for a seller of real property located within a "delineated special studies zone" to disclose to any prospective purchaser of such property the fact that it is located within such a zone. To ensure the Department complies with all statutory requirements, the following statement is added to all contracts and agreements and to all Sales Notices used to notify prospective purchasers of the Department's intent to dispose of real property located within a special studies zone: "The real property which is the subject of this sale may be situated within a Special Studies Zone as so designated under the Alquist-Priolo Special Studies Zones Act Sections 2621-2625, inclusive, of the California Public Resources Code. As such, approval of any future construction or development of any structures for human occupancy on this property may be subject to the findings contained in a geologic report prepared by a geologist registered in the State of California. No representations on this subject are made by the Department of Transportation, and any prospective purchasers should make their own inquiry or investigation into the potential effects of this Act on this Property." The California Division of Mines and Geology's Special Publication No. 42 contains an index to individual quadrangle maps that can be used to determine if excess property is located in a Fault Hazard Zone.

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16.04.00.00 - EXCESS LAND APPRAISAL

16.04.01.00 General

The appraisal or value estimate is the basis on which property is sold, and no property may be disposed of until valuation is completed. Excess land valuations shall conform to guidelines set forth in the Appraisal Chapter.

An appraisal is required for utility easements to be located on excess land, except where providing the easement is the State's obligation pursuant to a contractual obligation or S&H Code Section 702 or 703, or if the right of way was acquired pursuant to S&H Code Section 83 with the utility already there.

16.04.02.00 Public Sale Estimates (PSE)

Either a market value appraisal or a public sale estimate, as defined in the Appraisal Chapter, is sufficient for determining minimum bids when excess land is offered at public sale. Generally, the least intensive report shall be prepared where the proposed sale method is by public sale.

At the discretion of the DDC-R/W, an Agent assigned to either Appraisals or Excess Land may prepare public sale estimates. Value conclusions are reviewed and approved by a Senior Right of Way Agent assigned to Appraisals. Alternately, a Senior Right of Way Agent assigned to Excess Lands may review and approve appraisals where the value conclusion is $15,000 or less, and Public Sales Estimates where the estimated value is $500,000 or less. Consideration, however, should always be given to having complex and/or controversial valuations prepared by the Appraisal unit regardless of value. Annual reviews are not required for appraisals and public sale estimates used in connection with public sales.

16.04.03.00 Market Value Appraisals

A market value appraisal is required for all direct sales of excess land. This includes the valuation of leases, easements, and fee parcels to be conveyed to local agencies as outlined in Section 16.03.05.00. Fair market value appraisals cannot be prepared by any member of the Excess Land staff, except for "nominal" value appraisals.

Excess parcels valued for direct sale to private parties at $500,000 or more require dual appraisals as outlined in the Appraisal Chapter. Parcels conveyed to another State agency by a Transfer of Control and Possession

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Agreement are excluded from the dual appraisal requirement. Since the process for securing an independent report may be time consuming, Excess Land should identify those parcels requiring two appraisals sufficiently in advance of proposed sale dates to enable hiring fee appraisers.

Approval of a market value appraisal for a direct sale is assumed to be valid for one year from the date of the appraisal unless Excess Land determines that a significant change in value during the year requires a review by Appraisals.

16.04.04.00 Nominal Value Appraisals

Excess Land Agents may prepare nominal value appraisals following the format and approval process described in Sections 7.14.01.00 and 7.14.04.01.B of the Appraisal Chapter.

The Certificate of Appraiser statements should state:

"I understand I may be assigned as the Excess Lands sales agent for one or more parcels contained in this appraisal report, but this has not affected my professional judgment nor influenced my opinion of value."

Although a yearly review is not required, Excess Land may request a review of nominal parcels any time one is warranted.

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16.05.00.00 - DISPOSAL METHODS AND PROCEDURES

16.05.01.00 General

Excess property shall be disposed of as soon as possible commensurate with sound business practices, statutes, and CTC Resolution G-98-22 as amended, so the number of parcels on inventory is maintained at minimum levels.

Property is not to be withheld from sale without full justification, including economic, environmental, and community considerations. Parcels shall be offered for sale within one year of becoming available for sale, pursuant to Streets & Highways Code Section 118.6. All efforts made to sell the property shall be documented in the file, and all offers are input into the ELMS.

16.05.02.00 Methods of Disposal

Excess real property can be disposed of as follows:

- **Internal transfers**
- **Public sale** - by auction, sealed bid, or continuous bid
- **Direct sale** - to adjoining owner (Findings A and B), to former owners, and to eligible present occupants
- **Private sale** - between adjoining owners
- **Exchange -** by Right of Way Contract
- **Functional Replacement** - by agreement (see Section 8.30.00.00)
- **Other direct conveyances:**
  To other governmental agencies
  Pursuant to utilities agreement
  Pursuant to cooperative agreement
  Pursuant to legislation
- **Leasing** - pursuant to S&H Code Section 104.15
- **Lease-Purchase**
- **Transfer of Jurisdiction** - to other State agencies
- **Private Brokers**

All conveyances of excess property are subject to the CTC's final approval, except where statutory or delegated authority vests with the Director. (See also Section 16.07.01.00.) Incorporations of property within State highway operating rights of way are at the discretion of the DDs.

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All printed matter, including the terms of sale, must clearly state that the sale is subject to Department and CTC approval, and is not binding upon the State prior to such approval.

16.05.03.00 Internal Transfers

16.05.03.01 Incorporation of Excess Parcels Within Operating Right of Way

Excess Land initiates appraisal map reviews, as set forth in Sections 16.01.04.00 and 16.01.05.00, to eliminate small remnants of excess land that can be included within the right of way. Examples include:

- **Park and Ride** - If any excess land is selected for a possible Park and Ride lot, a feasibility study should be undertaken comparing the economics of using the excess land to purchasing alternate sites. The study includes an analysis of the savings resulting from fewer cars on the road because of the facility. A determination is made of the lot size necessary for the particular location and the estimated time necessary to complete a project report.

- **Enhancement of Air Space** - Excess land situated adjacent to air space may be incorporated into the right of way to enhance utility of the air space. The file must be documented with an economic justification.

- **Unsalable Excess Parcels** - Consideration should be given to incorporating small unsalable parcels into the right of way.

Once the location and size of a possible Park and Ride lot are determined, Excess Land holds the area necessary for the lot for the time needed to process a project report, normally less than six months. Any remaining excess should be released and processed for sale as soon as possible. Special consideration should be given to the sale of any remaining excess. Particular attention should be given to access and economic enhancement since the Park and Ride site will be deleted if the project report is not approved.

Excess land is not to be transferred into the right of way until a project report for the Park and Ride facility is approved.

The Ridesharing Coordinator is responsible for working with Excess Land to determine the best site available for the cost. The project report discusses use of alternate sites and includes reasons for using the excess land.

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16.05.03.02 Inter-Program Transfers

Excess property may be transferred within the Department to another program, such as Maintenance or Administration. An accounting transaction transfers the property at its VTA to the appropriate program. Excess Land initiates the transfer by completing RW 16-1 and RW 16-28 with the required supporting data and submitting them to Division of Accounting.

16.05.03.03 Charging Excess Land to Projects

The following rules apply to projects on which construction has not been completed:

- If there is no Federal participation in the project cost, the amount to be charged to the project is the VTA.
- If a non-Federally participating excess parcel or portion thereof was acquired on a Federally participating project and it will be included in the right of way for the same or any other Federally participating project, the amount to be charged to the project receiving the excess land is the prorata cost of the parcel if the parcel is approved in an E-76 covering the original project. Where FHWA approval has not been obtained (i.e., no E-76), the project should be charged the VTA.
- If an excess parcel acquired on a nonparticipating project will be included in the right of way for a participating project, it is not eligible for Federal participation. This is because it was acquired before Federal approval of the project for which it is used.
- If fragmentary excess land will be incorporated in the right of way of completed projects with a closed EA/Project ID Number, the amount charged is the VTA.

Charges to EAs/Project ID Numbers on active projects for incorporation of parcels require the EA/Project ID Number to be adequately funded to receive the charges. Charges exceeding $10,000 could surpass the programmed amounts for any given project. Charges should not be made until it has been verified that the project can adequately receive the amount to be charged, or until a program supplement has been approved.

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16.05.04.00 Public Sales

16.05.04.01 General

Excess Land shall develop sales procedures to attract the widest possible market and to obtain the maximum return. The sales standards described in R/W Manual Sections 16.05.04.08 and 16.05.04.14 are the minimum necessary to ensure adequate exposure of public sale property.

16.05.04.02 Purchase Agreement (RW 16-5 and RW 16-6)

Generally if an excess parcel is capable of independent development compatible with its environment, it should be disposed of by public sale. Public sale may be by oral auction, sealed bids, or continuous bid, whichever provides the greatest return. Bids that fall below the published minimum shall be rejected. If no bids are received, the minimum is reanalyzed considering market conditions and the market approach before the property is again offered for sale.

The right to purchase is awarded to the highest responsive bidder. If the highest bidder defaults, consideration should be given to awarding the right to purchase to the second highest bidder at the high bid amount.

The right to purchase is for a definite period commencing on the first day after the date of sale. The usual right to purchase period is 60–90 days; the maximum right to purchase period is 180 days. Extensions of the right to purchase period must be supported by a full written analysis, approved in accordance with the current Executive Order Delegation Matrix in Section 2.05.00.00, and retained in the parcel file. If a right to purchase extension is approved, it must include the following terms:

- A right to purchase extension charge of 1% per month on the bid amount is made for the period of the extension.
- The extension charge is not applied to the purchase price.
- If the right to purchase is not exercised, neither the bid deposit nor the extension charge is refunded.

The use of a right to purchase extension should be utilized in limited circumstances and for short time frames of 60 days or less. Extensions for longer time frames can detrimentally impact the market value of the property and the marketability of the property if it has to be auctioned again. If a purchaser requires more time, an alternative sales method should be utilized.

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Please see Sections 16.05.13.00 and 16.05.14.00 for alternative sales methods utilizing an Option-Purchase Agreement or a Lease-Purchase Agreement.

The purchase deposit must be sufficient to cover out-of-pocket costs of the sale, e.g., printing and mailing the Sales Notice and advertising. The minimum purchase deposit shall be 5% of the highest bid. In the event of a default by the buyer, this will be retained as liquidated damages.

16.05.04.03 Default or Withdrawal of Highest Bidder

If the highest bidder fails to exercise the purchase rights within the prescribed period or fails to comply with the sale terms, the Region/District retains the liquidated damages. See Section 16.07.07.00 for procedure when a bidder requests cancellation of a sale prior to CTC approval.

Upon default, Excess Land notifies the highest bidder that the Bid Registration Deposit (if the breach, withdrawal, or default occurs in the first three days following the public sale and before the highest bidder has remitted the Purchase Deposit) or Purchase Deposit (if the breach, withdrawal, or default occurs after the first three days following the public sale) is being retained as liquidated damages.

Upon default of the highest bidder, Excess Land may offer a purchase option to the second highest bidder at the high bid. If the second highest bidder accepts award, the deposit required and the terms of the purchase are the same as stated in the Sales Notice. The right to purchase period shall commence on the first day following the date Excess Land receives written notice of acceptance by the second highest bidder.

Excess Land may preclude a defaulting bidder from bidding at a subsequent public sale. See R/W Manual Section 16.05.04.15.

16.05.04.04 Minimum Bids

The following guidelines apply to property available for public sale and property previously offered to public agencies in accordance with S&H Code Section 118.6.

- **First Offering** - As soon as possible after the property becomes available, offer it for sale within a range of 75-100% of PSE. The Excess Land Manager should consider the expected demand for the property, its shape and conformity of use with the neighborhood, and development potential when setting the minimum bid within the range.

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- **Subsequent Offering** - If the property is not sold at first attempt, the Region/District shall prepare a marketing plan that outlines and substantiates the marketing effort and justifies the minimum bid for subsequent offerings. A copy of the marketing plan must be retained in the Region/District's excess land parcel file. If the marketing plan indicates a minimum bid below 75% of the PSE, the Region/District shall request a revised PSE.

  After receipt of the revised PSE, if Excess Land believes that a minimum bid between 60% and 75% of PSE is warranted, that decision will be fully documented by memorandum to the file, signed by a Supervising R/W Agent or above. Properties are not to be offered with minimum bids below 60% of PSE. This authority may not be delegated below the Supervising R/W Agent level.

- **Marketing Plan** - The Region/District must consider the following while preparing the marketing plan:
  - Reducing the minimum bid.
  - Using an unannounced minimum.
  - Reviewing appraisal/PSE for concepts that may be inappropriate and revising appraisal/PSE as necessary.
  - Combining with other parcels.
  - Reducing the number of parcels in the disposal unit.
  - Expanding advertising.
  - Using other innovative marketing techniques.
  - Alternate sales methods.
  - Holding the disposal unit until market conditions improve. (See Section 16.02.04.00 for Hold Request procedures.)

16.05.04.05 Unannounced Minimum Bid

Parcels may be auctioned with an unannounced minimum bid, in which case all the foregoing requirements apply, with the following additional conditions and exceptions:

- All other terms of the sale, including required deposit, are indicated in the Sales Notice with the word "unannounced" after the term "Minimum Bid."
- The PSE and the unannounced minimum bid are confidential information and shall not, under any circumstances, be divulged to a prospective bidder or the general public. Excess Land is responsible for the actual amount of the minimum bid, which shall be established in writing by concurrence between the Excess Land Manager and his/her immediate supervisor. The minimum bid amount must be kept in a confidential and

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secure file. If the PSE or minimum bid is given to a prospective bidder, Excess Land shall cancel the sale and initiate a resale of the parcel using the PSE as the basis for the minimum acceptable bid.

- The Sales Notice shall include a provision allowing 10 days to evaluate the bids received. Excess Land has discretionary approval to accept any bid that exceeds 80% of the unannounced minimum acceptable bid. Otherwise HQ R/W approval is required prior to acceptance of the bid. Requests for acceptance will include the total number of bids, the bid amounts, and the Region/District's recommendation with reasons therefor.
- Bids accepted by Excess Land that are less than the unannounced minimum bid shall be justified by an Administrative Authorization memorandum signed by a Supervising R/W Agent. This authority may not be delegated.
- Unannounced minimum bids must be at least 75% of PSE.

16.05.04.06 State Financing Addendum (RW 16-6)

The State Financing Addendum, when added to the Purchase and Sale Agreement, provides that the purchaser has a prescribed number of days during the right to purchase period to open an escrow at purchaser's expense. The credit terms, the down payment amount and financing term, shall comply with Streets and Highways Code 118.

16.05.04.07 Notice of Surplus Real Estate Sale (RW 16-4)

A Notice of Surplus Real Estate Sale (Sales Notice) is used for properties sold by public auction, sealed bid, or continuous bid. Deviations from the standard terms and conditions require documentation and DDC-R/W approval. Innovation in preparing the front covers of these notices is encouraged, particularly for those properties having specialized uses or high values. The Sales Notice shall clearly state if credit terms are being offered, and, if so, all sales are subject to satisfactory proof of the buyer's creditworthiness. Credit reports will be obtained at buyer expense.

Accuracy about access, zoning, and availability of utilities is important when describing the characteristics of the property. Investigations regarding such factors should be thorough so the Sales Notice is reliable.

Copies of the Sales Notice shall be mailed or delivered to the Division of Accounting, all adjoining owners, and all other persons who may be interested in purchasing the property. Emphasis should be on reaching those segments of the market that specialize in the particular class of property.

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If a public sale is by sealed or continuous bid, the appropriate bid form shall be attached and mailed with the Sales Notice.

16.05.04.08 Posting of Property and Physical Inspection

Real estate type "For Sale" signs shall be placed on excess land offered for public sale and shall contain information about the parcel, the words "For Sale," and the address and phone number of the appropriate Region/District office. Signs should be of sufficient size and shape to be readily identifiable by the public and constructed of materials that will withstand the elements. Where high value or special purpose properties are for sale, consideration should be given to more extensive signing, or other types of display, to assure maximum exposure.

At the time of the appraisal and again upon posting, an Agent shall physically inspect the property documenting the property condition in the parcel file and taking photos if necessary. The physical inspections are to determine existence of any adverse interests, advertising signs, hazardous material/waste, persons in possession (trespassers or State's tenants), or easements. These interests shall be checked against the State's title policy and either cleared or brought to the attention of prospective bidders in the Sales Notice or during the auction.

Excess Land should check the property periodically during the advertising period to assure its condition remains unaltered and that "For Sale" signs are still posted.

16.05.04.09 Public Sales of Landlocked Parcels

Excess Land should undertake public sales of landlocked parcels of substantial area or value only after it has attempted to secure an access option from adjoining owners. Negotiations should be based on securing adequate rights commensurate with the highest and best use of the parcel.

The parcel diary should contain a notation that Excess Land reviewed the landlocked parcel with Design and no alternate means of access was or could be made available.

Résumé packages for sales of landlocked parcels must include a statement in the remarks section of the résumé form about attempts made to secure an access option. If an option is secured, a copy of the option agreement is included in the package.

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Options to purchase access may only be obtained on a voluntary basis, and the following guides should be used in attempts to secure options:

- **Option Period** - Sufficient to allow grantee to exercise the option within the terms prescribed in the Sales Notice. Allow sufficient time to advertise and complete all aspects of the sale.
- **Option Value -** Appraisals shall certify that the price to be paid for the optioned property is reasonable and that the optioned rights are adequate to serve the excess land.
- **Consideration for Option** - Shall normally be $500.
- **Form of Agreement** - The option agreement follows the form shown in Exhibit 16-EX-5.

16.05.04.10 Transfer Costs

The Department shall not pay fees for recording, escrow, title insurance, documentary stamp tax, or any other charges involved in the transfer of title to excess property. The payment of sales commission to buyer's agent and/or broker is strictly prohibited. This policy should be stated in the Sales Notice and brought to the attention of prospective bidders.

16.05.04.11 Oil, Gas, and Mineral Reservations

Excess Land shall avoid retention of oil, gas, and mineral rights at the time a fee-owned parcel is disposed of. In areas where active community oil and/or gas leases are in effect, the income or royalties therefrom are considered in the valuation of the excess property.

16.05.04.12 Delinquent Taxes

Excess Land shall investigate the status of taxes and assessments and report the status on Form RW 16-1 under "Fee Title" information section. Although property will generally not be subject to delinquent taxes, cancellation should be requested if they do exist. If property must be sold subject to delinquent taxes or assessments, this fact shall be brought to the attention of prospective bidders in the Sales Notice.

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16.05.04.13 Marketing Contact Lists

Excess Land in each Region/District shall maintain a comprehensive contact list or file with names and addresses of persons and firms who are interested in purchasing State property. Lists for hard copy mail distribution must be reviewed and purged annually in accordance with Government Code Section 14911. (See Section 16.12.03.00.)

A separate, return-addressed verification card may be attached to the material mailed. The card should state that the mailing list is reviewed annually as required by State law. It should provide a space for the recipient to affix postage when returning the card as an indication of desire to remain on the mailing list.

Suggested text for the message side of the verification card:

> "Your name is on our mailing list to receive notice and terms of sale for lands to be sold at public sale. If you wish to continue to receive these notices, please sign this card, place adequate postage on the reverse side, and mail immediately. If this card is not returned by (specify date), your name will be removed from our list. This notice is required annually by Government Code Section 14911. Please correct the address shown if incorrect; be sure to include ZIP Code."

All Department marketing contact lists are confidential and shall not be made available to the general public.

16.05.04.14 Advertising Excess Property - Public Sale

Since advertising is the key to successful sales of real property, Excess Land must be thoroughly familiar with advertising practices of the local and national real estate markets.

Prior to the sale, Excess Land must take the following actions as a minimum, and document them in the file:

- Send notifications to appropriate governmental agencies.
- Post "For Sale" sign on property.
- Place advertising on the Department's public Web site.
- Provide copy of Sales Notice to adjoining owners.
- Hold at least one "Open House" on improved properties.

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Use of advertising should be maximized with attention given to specialized publications, notices, or other information outlets (e.g., the Internet) for properties with special uses or characteristics. Format and placement of real estate advertisements, as well as cost, shall be in conformance with normal real estate transactions.

Minimum advertising content includes size, location, zoning, topography, other pertinent information, and date, time, and method of sale. In the case of public auctions, the location of the auction should be carefully specified. If sale is by sealed bid, the advertisement shall include date and time for receipt of bids and information on where bid proposal forms may be obtained. It should be made clear that bids must be made on the Department's bid forms. Contact information where additional information concerning the property may be obtained should be included.

16.05.04.15 Conduct of Public Auction Sales

When excess property is sold by public auction, the auction shall be conducted by at least two Agents from Right of Way, one of whom shall act as the auctioneer. The auction may be held on the premises or at another location. Sufficient copies of the Sales Notice must be available for people attending the auction.

At the time of the auction, the auctioneer should be prepared to provide any additional or special information that affects the property and to answer any questions from prospective bidders. Upon reading the breach of contract provisions and the minimum bid and deposit requirements, the auctioneer requalifies bidders, if practical, by asking for the showing of bid registration deposit checks. The auctioneer then announces, "The bidding is now open."

The auctioneer shall assure that adequate time is allowed for bidding before closing the sale. A right to purchase shall be awarded to the highest responsive bidder.

One of the Agents secures all necessary signatures on the purchase contract. The highest bidder signs the original purchase contract, showing address and telephone number. The Agent accepts the bid registration deposit remittance by cashier's check, certified check, or money order and delivers a receipt and a duplicate purchase contract to the high bidder. Personal checks shall not be accepted. Cash deposits should be discouraged. The Agent transmits the monies to Accounting with a RW 16-29, which places the funds in the special deposit account.

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The highest bidder must furnish the required deposit at the time of the auction as prescribed by the Sales Notice, otherwise the auctioneer may reopen the bidding and award the right to purchase to the second highest bidder at the high bid. Alternatively, the sale may be canceled and rescheduled.

The highest bidder must furnish the purchase deposit (5% of the high bid less the $1,000 bid registration deposit) within three days following the public sale. Failure to remit the purchase deposit in a timely manner shall constitute a default by the highest bidder.

One of the Agents shall obtain the name, address, and telephone number of the second highest bidder to be used in the event the highest bidder defaults. (See R/W Manual Section 16.05.04.03 for procedures when the highest bidder defaults.)

The original bidder registration sheet(s), original bidder tally sheet(s), a copy of the sales notice, and copies of any signed purchase agreements shall be retained in the file for all auctions conducted.

When a bidder has defaulted on a previous public sale, Excess Land has the discretionary authority to exclude that bidder from the next scheduled public sale.

16.05.04.16 Personal Checks

Excess Land shall not accept personal checks.

16.05.04.17 Conduct of Sealed Bid Sales

When sales are by sealed bids, at least two Agents must participate in the bid opening. One Agent opens the bids at the prescribed time and place in the presence of prospective purchasers who wish to be present. The other Agent tabulates all bids and announces the highest bidder.

Immediately after the bid opening, the highest bidder signs the original purchase contract, showing address and telephone number. The Agent accepts the bid registration deposit remittance by cashier's check, certified check, or money order and delivers a receipt and a duplicate purchase contract to the high bidder. Personal checks shall not be accepted. Cash deposits should be discouraged. The Agent transmits the monies to Accounting with a RW 16-29, which places the funds in the special deposit account.

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After the high bidder has executed the purchase contract, deposits shall be returned to the unsuccessful bidders. If an unsuccessful bidder is present when the deposits are released, the check may be hand delivered if a receipt is obtained.

The highest bidder must furnish the purchase deposit (5% of the high bid less the $1,000 bid registration deposit) within three days following the public sale. Failure to remit the purchase deposit in a timely manner shall constitute a default by the highest bidder.

See Section 16.05.04.03 for procedures when the highest bidder defaults.

The number of bids received shall be kept confidential prior to opening bids, and no additional bids shall be accepted after the bid submission deadline. Bidders may withdraw or revise their bids prior to the bid submission deadline.

The original bidder tally sheet(s), a copy of the sales notice, and copies of any signed purchase agreements shall be retained in the file for all auctions conducted until the property conveyance is recorded.

16.05.04.18 Notification of Tenants

To meet statutory requirements and maintain good public relations, Excess Land should advise tenants of progress made toward the sale of the property they occupy. Written notification shall be sent as follows:

- Notify tenants on State Route 710 in Los Angeles County that they may be eligible to purchase pursuant Government Code Section 54237.
- Notify commercial and residential tenants they may be eligible to purchase pursuant to Streets and Highways Code 118.1 (commercial) or CTC Resolution G-98-22, as amended (residential).
- Send a copy of the appropriate Sales Notice to each occupant.
- Immediately notify each occupant of the name, address, and phone number of the purchaser upon recordation of the Director's Deed. Notify each occupant if the parcel does not sell at the public sale.
- Notify each occupant of the specific date of the recording of the Director's Deed that divests the State of ownership of the particular property.

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16.05.04.19 Public Sale of Fragmentary Remainders

Whether landlocked or not, fragmentary remainders are normally sold under Finding A procedures. If the adjoining owners have refused to purchase the parcel, it may be sold at public sale after a public sale estimate has been obtained. A documented refusal must be obtained from all adjoining owners within a reasonable time prior to public sale of the parcel.

16.05.04.20 Protection of Improvements on Excess Land Following Public Sale

It is the Department's policy to minimize losses resulting from vandalism of improvements located on excess property on which a sale has been awarded. The policy is considered satisfied if the improved property is occupied by tenant(s) under a Department rental agreement.

For sales of unoccupied improved excess parcels in areas where vandalism or theft of improvements can be reasonably foreseen, Excess Land has the discretionary authority to include terms in the Sales Notice that the successful bidder will be required to execute a rental agreement that results in:

- Immediate possession of the property by the purchaser.
- The payment of fair market rent by the purchaser commencing from the date of the sale.
- The payment of a security deposit consistent with R/W Manual Chapter 11.07.14.00. This deposit is separate from the Bid Registration Deposit and the Purchase Deposit.
- Elimination of the Department's liability for claims for damage resulting from injury to any person or property.
- Cancellation on the date of expiration or extension of the sale period or recordation of the Director's Deed, as applicable.
- Return of possession of the property to the Department in the event of default in a condition equivalent to that which existed on the date the sale was awarded.

These provisions may be satisfied by minor modifications to a standard rental agreement, but the Department must receive a fair rental for the property for the specified use. Temporary access for one day or less may be given to purchasers to facilitate sale of the property. Excess Land shall request a rental rate determination to be prepared concurrently with the Public Sale Estimate. The rental rate shall be included in the sale notice. Property Management shall assist Excess Land in preparing the agreement.

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Property Management is responsible for notifying Excess Land immediately of the receipt or issuance of a 30-day termination notice involving tenants of improved excess property on which escrow is still open. Excess Land notifies the purchaser of the pending termination date of the tenancy. If the property will become vacant more than 15 days prior to the last day of the right to purchase period, the purchaser is requested to accept a Right of Entry. If the purchaser will not accept a Right of Entry, Excess Land should make all efforts to either expedite close of escrow or ensure security of the improvements. "No Trespassing" signs and periodic checks by local police, the California Highway Patrol, and Excess Land personnel may be necessary in high-risk areas.

Improvements that contribute a zero or negative value to the property may be removed prior to public sale of the parcel with proper documentation and a request to the Clearance Agent.

16.05.04.21 Change in Terms and Conditions of Sale Subsequent to Publication of Sales Notice

Occasionally it is necessary to alter the terms and conditions of sales after initial publication of the Sales Notice. For example, Maintenance may request reservation of a slope easement, Right of Way may discover a zoning change, or some other significant change may occur that has a direct bearing on the price a purchaser may be willing to pay. If time permits, Excess Land should post to the Department's Internet ad an addendum to the Sales Notice and send the addendum to all persons known to have received the original Notice. In addition, the State representative must announce the changes at the sealed bid opening or at the public auction. The highest bidder shall be required to execute a written statement of understanding that the sale is made subject to those specific terms and conditions, as well as the terms and conditions contained in the original Notice.

16.05.04.22 Eviction of Occupants of Excess Property

Excess land is normally sold subject to the occupancy of existing tenants since a Department-initiated eviction may create renewed RAP eligibility, unless the eviction is for cause. Relocation Assistance and Excess Land must agree to all proposed evictions of former eligible occupants. Evictions of former RAP eligibles should only take place where there is a clear economic advantage or other compelling reason.

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The sale of occupied excess to another public entity for ultimate clearance and use may also create RAP eligibility by the purchasing public entity. All sales agreements with other public agencies must contain a clause specifying that the purchasing agency assumes responsibility for relocation benefits that may accrue to existing occupants. If agreement cannot be reached, Excess Land should request a legal determination of liability before consummation of the sales agreement.

16.05.04.23 Offsets and Adjustments to Sale Price Prohibited

No offsets or adjustments shall be made to the sale price following the conclusion of a competitive sale. If the condition of the property substantially changes following a competitive sale, the sale shall be canceled, the high bidder's deposit shall be returned, and a revised valuation must be requested before the property can be offered for another public sale.

16.05.05.00 Direct Sale to Adjoining Owners, Finding A and B

Excess Land may sell small, odd-shaped, fee-owned, excess parcels directly to adjoining owners without calling for competitive bids under the provisions of CTC Resolution No. G-98-22 as amended, Exhibit 16-EX-6. Finding A and B parcels are defined as follows:

- **Finding A** - Direct sale to adjoining owner, without calling for competitive bids, of small, odd-shaped, fee-owned parcels incapable of independent development and having a higher and better use as part of the adjoining property or, if sold to other than the adjoining owner, would cause an undue or unfair hardship in the normal development or operation of such adjoining owner's property.

- **Finding B** - The sale of such excess parcels to other than the adjoining owner would deprive such adjoining owner of vested right of access to a public highway and would create a possible cause for action against the Department.

Upon making either a Finding A or B determination, Excess Land may sell the excess parcel to the adjoining owner. The minimum consideration shall be the appraised fair market value of the parcel considered as part of the adjoining property.

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If the adjoining owner refuses to purchase the excess for such consideration, Excess Land may sell it by competitive bid at public auction. The Department shall retain title to the excess if sale to another party would deprive an adjoining owner of an existing vested right of access to a public highway (Finding B).

All offers of direct sales made to an adjoining owner are confirmed in writing. Any refusal to purchase at the offered price shall be documented and, if possible, signed by the adjoining owner.

16.05.05.01 Adjustment of Sales Price

Adjustment of sales price may only be done in response to specific legislation. By federal law, 23 CFR 710.403(e), sales of federally participating excess land at less than fair market value requires prior FHWA approval. Compliance with this section shall constitute compliance with FHWA regulations regarding prior approval.

All sales are subject to CTC approval, and Excess Land must fully document the statutory authority that permits the sale below the fair market value.

16.05.05.02 Payment of Recording Fees - Purchase Consideration $100 or Less

When the total consideration is $100 or less, Excess Land may pay recording fees in consideration of the savings in maintenance costs. The sales agreement must contractually obligate the Department to pay the recording fees.

16.05.05.03 Finding A and B Sales to Other Governmental Agencies

Finding A and B sales may be made to other governmental agencies in the same manner and under the same conditions that apply to privately-owned adjoining property.

Sales made to other governmental units for public road or street widening or extension purposes shall be treated as direct sales.

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16.05.05.04 Informal Time Payment Sales, Finding A or B

CTC Resolution G-98-22 as amended provides for an informal time payment plan for a period not to exceed 18 months when the adjoining owner is unable to pay the value of the subject property in one payment. When property is sold under this plan, no interest is charged and a letter form of agreement is satisfactory. The signed acceptance of the conditions shall be made on one copy of the letter to be retained in the parcel files.

This letter shall include:

- Description of the property or attached map.
- A statement that the purchaser is in fact an adjoining owner.
- A statement that the sale must be approved by the CTC.
- A statement about purchase price and monthly payments.
- A statement that the sale may be canceled if payments become delinquent, in which case the Department retains one month's installment and returns the balance to the adjoining owner.
- Provision that the purchaser will pay the recording fee.
- A statement about the vesting of the Director's Deeds.
- A statement about the Department's reservations, if any.
- A listing of any title encumbrances affecting the conveyed property.
- A statement that the Director's Deed shall be recorded upon final payment.

Excess Land requests Director's Deeds and makes entries for removal of the parcel from the Excess Land Inventory after the adjoining owner executes the agreement (Exhibit 16-EX-7).

16.05.06.00 Direct Sale to Eligible Present Occupants

16.05.06.01 Direct Sale of Commercial Property Pursuant to S&H Code Section 118.1

Except as provided in S&H Code Section 118.6, Excess Land must first offer commercial property on rescinded routes to the State's tenant if the tenant has made improvements that are valued in excess of $5,000 and are consistent with the terms of the Rental Agreement. In the clearance procedure for excess land created by route rescission, Property Management identifies all improved excess commercial properties where the present

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tenant, at their own expense, has made authorized capital improvements valued in excess of $5,000.

Commercial property is defined as real property used for the production of income through the sale of products or services, and excludes agricultural, industrial, or residential uses. Typical commercial properties are banks, service establishments, restaurants, parking lots, retail stores, and office buildings.

Improvements must be capital improvements that add value to the real property. The term does not include expenditures for maintenance and repair. In addition:

- The value must be documented.
- The tenant must not have been reimbursed for improvements through rental offsets.
- The improvements were made consistent with terms of the Rental Agreement.

Excess Land must determine if the eligible tenant is interested in purchasing the property at current fair market value and must document the tenant's intention in the parcel file. When there is more than one eligible tenant, the opportunity to purchase at fair market value by direct sale must be offered to each tenant.

- If waivers can be obtained from the other tenants, the property may be offered to one tenant.
- If waivers cannot be obtained, tenants may purchase property jointly or Excess Land can offer the property at a private sale.

When an eligible tenant indicates a desire to purchase at a direct sale, Excess Land shall obtain two independent appraisals of fair market value from qualified appraisers and offer the property at the approved appraised value. Refer to Right of Way Manual Section 7.14.02.02 for appraisal procedures. The Excess Land Transaction Résumé must contain a description of the improvements and must fully document the qualifying conditions set forth in the above definition of improvements.

If the eligible tenant refuses the offer to purchase at the approved appraised value, Excess Land should immediately schedule the parcel for public sale.

Excess Land should refer legal issues or questions that occur because of unusual circumstances to HQ R/W for reference to Legal for resolution prior to committing the Department to a course of action.

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16.05.06.02 Direct Sale to Present Residential Tenant-Occupant at Fair Market Value

CTC Resolution G-98-22 as amended (Exhibit 16-EX-6) authorizes the direct sale to present residential tenant occupants provided that:

- The purchase price shall be at fair market value, as supported by an approved appraisal prepared for such sale;
- The tenant is current in all rent obligations; and
- The tenant has been in occupancy as a tenant of the State for a minimum of five consecutive years.

Excess Land must determine whether an eligible residential tenant is interested in purchasing the property at fair market value, and must document the offer of direct sale and the tenant's intentions in the parcel file.

If an eligible residential tenant refuses the offer to purchase at the approved appraised value, Excess Land should immediately schedule the parcel for public sale.

16.05.07.00 Private Sale Among Adjoining Owners

Excess Land shall offer an excess parcel that qualifies under Finding A procedures for direct sale to more than one adjoining owner by private sale, sealed bid, or auction among all adjoining owners if:

- The parcel can be properly used by two or more adjoining owners, and the sale is consistent with normal land use and would not impose a hardship on any of the remaining adjoining owners.
- Written waivers cannot be obtained from all but one of the adjoining owners.

Waivers from adjoining owners are retained in the Excess Land files. Where written waivers cannot be obtained, certified letters to the adjoining owners confirming their noninterest will suffice.

The value of the excess land may differ depending upon which adjoining ownership it is considered a part of for appraisal purposes. In this case, the minimum bid is set at the lowest appraisal value as plottage to the owners who have expressed interest in bidding.

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When a parcel is offered by private sale among adjoining owners, Excess Land shall send a Sales Notice to all adjoining owners by certified mail whether waivers have been obtained or not. The Notice sets forth the terms and conditions of sale and contains sales terms in the manner detailed in Section 16.05.04.00 for public sale parcels. Sale by sealed bid or auction is discretionary.

16.05.08.00 Exchange by Right of Way Contract

The Department is authorized by S&H Code Section 104 (b) to acquire lands in excess of its needs and to exchange the same for other property needed for State highway purposes. Information regarding exchange transactions is contained in the Appraisal and Acquisition Chapters. Appropriate documentation of exchange transactions is found in the table in R/W Manual Chapter 16.07.00.00 entitled "Excess Land Disposal File Documentation."

Excess land to be exchanged shall be valued at its highest and best use. The Department must receive full value for the excess in the exchange. Any imbalance or inequity in appraised values and proposed payments in the exchange must be justified by Administrative Settlement on the Acquisition side of the transaction pursuant to Section 8.01.29.00. The value of the excess may not exceed the value of the property acquired by the Department.

16.05.09.00 Other Direct Conveyances

16.05.09.01 Governmental Agencies

CTC Resolution G-98-22 as amended governs direct conveyances of excess land to local, State and Federal public agencies for a public purpose. This is a separate authority for conveyance of excess land to public agencies that:

- Qualify for direct sale under Finding A and B procedures.
- Qualify for direct conveyance pursuant to special legislation.

In negotiating with another public agency for direct sale, it is important for the agency to understand that the agreed sale price is subject to final approval by:

- **CTC** - if a Director's Deed is required.
- **Director** - if a Transfer of Jurisdiction is required.

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16.05.09.02 Direct Sales to Governmental Agencies

Direct sales to public agencies shall be for a public use, and generally at fair market value. The governing body of the public agency must provide a resolution that states the excess land will be used for public purposes. "Public purposes" means the preponderant area of the property shall be substantially for government, as opposed to proprietary, functions. The intended specific use of the property shall be stated in the resolution. A copy of the resolution shall be submitted with the résumé package to the CTC for approval. To ensure that the property will be used for public use, a reversionary clause may be included in the Director's Deed. Refer to R/W Manual Engineering Chapter, Section 6.15.04.04, for approved clause.

A sale to a government agency under this section requires a minimum 5% nonrefundable deposit that will be applied to the purchase price if the right to purchase is exercised. If the right to purchase is not exercised, the deposit is retained as liquidated damages.

The sales agreement may take the form of a one year exclusive right to purchase. The exclusive right to purchase may be extended for an additional year provided:

- The purchasing agency requests an extension prior to the expiration of the original extension.
- The appraisal is updated to reflect the current market value of the property and the sale price adjusted accordingly.
- The purchasing agency pays an additional 5% nonrefundable deposit, also to be applied to the purchase price.

16.05.09.03 Conveyances to Utility Companies

To avoid processing these items through the CTC, every effort should be made to acquire these replacement facilities easements directly in the name of the utility company involved. If possible, use the utility company's easement form.
Land acquired in the State's name for replacement of public utilities facilities pursuant to a Utilities Agreement is disposed of in accordance with the terms of the Agreement. The acquisition appraisal shall stand in lieu of the excess land appraisal.

Where the property was not acquired specifically for replacement purposes but by terms of the Utilities Agreement it is necessary to relocate a utility

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facility on excess land, an excess property appraisal shall be provided and the degree of title required by the Utilities Agreement shall be conveyed pursuant to terms of the specific agreement.

If the excess parcel is sold before the easement is conveyed to the utility company and the easement was acquired in the State's name, an easement shall be reserved to the State. The easement is subsequently conveyed to the utility company.

If a utility was located in a public street or highway that was incorporated into a State highway pursuant to S&H Code Section 83, and the area occupied by the utility is subsequently declared excess, an easement should be reserved to the utility company in the Director's Deed conveying the excess.

16.05.09.04 Cooperative Agreements

Land acquired in the name of the State for use or partial use by another agency pursuant to a Cooperative Agreement is conveyed under the terms of the Agreement. The acquisition appraisal serves as the excess appraisal.

If the Agreement provides for conveyance of lands acquired for other purposes, an excess property appraisal shall be provided.

When the Agreement provides for conveyance of land or lesser interests for nonmonetary consideration (such as construction work to be performed by the other agency or savings in future maintenance costs to the Department), the functional unit responsible for originating the Agreement must provide an evaluation of the benefits or savings accruing to the Department. This assures that the consideration being received is commensurate with the value of the property being conveyed.

16.05.10.00 Coastal Zone

Article XIX of the State Constitution, Section 10, requires the Department to offer excess land parcels in the Coastal Zone, as defined by Section 30103 of the Public Resources Code (see Section 16.12.04.00), to the following agencies and departments (see Section 16.03.04.00):

- Department of Parks and Recreation
- Department of Fish and Game
- Wildlife Conservation Board
- State Coastal Conservancy

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These parcels may be transferred for a consideration at least equal to the Department's acquisition costs, including overhead. Any proposed sale requires authorization by the Legislature, and the acquiring agency is responsible for pursuing Legislative authorization.

16.05.11.00 Transfer of Jurisdiction

All transfers are authorized by Government Code Section 14673 and do not require CTC approval. However, the Public Works Board must approve proposed payment to the Department of Transportation for transfers subject to the Property Acquisition Law (PAL), Government Code Sections 15850, et seq. It is the responsibility of the agency acquiring property to inform Caltrans if the transfer of excess land is subject to PAL.

Procedures for preparing and approving Transfer of Jurisdiction are shown in the following two tables:

TRANSFERS NOT SUBJECT TO THE PROPERTY ACQUISITION LAW

Government Code Section 14673

Responsible Party	Action
Requesting State Agency	Responds within 60 days of Region/District's Notice of Intent to Sell Excess Land. Informs the Region/District of the following: 1. To transfer the excess parcel to them at fair market value and for a specified purpose. 2. The budget authority to pay for the excess parcel and that payment is NOT subject to the PAL. 3. Legislative authority if for less than fair market value.
Region/District	4. Prepares an appraisal, legal description, maps, and the Transfer of Jurisdiction Agreement, Exhibit 8-EX-32. 5. Requests Division of Accounting to prepare Accounts Receivable Bill (or credit to the appropriate land bank after the Transfer is recorded*) in the amount of the agreed purchase price.
Division of Accounting	Provides Accounts Receivable Bill to Region/District.

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TRANSFERS NOT SUBJECT TO THE PROPERTY ACQUISITION LAW (Continued)

Government Code Section 14673

Responsible Party	Action
Region/District	1. Has the Region/District Director or designee sign the original and one copy of Agreement. 2. Transmits agreements, maps, and the A/R Bill to the requesting agency for execution. 3. Retains a copy of the Agreement and A/R Bill for reference during processing.
Requesting Agency	Signs the original and one copy of Agreement and sends both along with maps to DGS for approval.
DGS, Real Estate Services Division	1. Reviews the transaction and has the Director of General Services approve and sign the original and one copy of the Agreement. 2. Returns one of the fully-executed Agreements to the Region/District for recording. 3. Retains the second signed Agreement for conforming recording reference on the Agreement and for the State Proprietary Index (SPI) and archives.
Region/District	4. Sends one copy of executed Agreement to HQ R/W. 5. Records the Transfer Agreement. 6. After recorded, sends original Transfer Agreement to requesting agency. 7. Sends a copy of the recorded Agreement to DGS. DGS can then conform recording reference on their original signed agreement. 8. Retains one copy of recorded Agreement in file. 9. Make entries in the ELMS according to Pages V-69 and V-70 of the ELMS Manual. 10. Forwards RW 16-1 to Division of Accounting to record transaction and remove parcel(s) from inventory.
HQ R/W	Enters the date the Agreement was approved by the Director of General Services in the CTC Approval field on the Disposal Unit Screen.

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TRANSFERS SUBJECT TO THE PROPERTY ACQUISITION LAW

Government Code Sections 15850, et seq., and 14673

Responsible Party	Action
Requesting State Agency	Responds within 60 days of Region/District's Notice of Intent to Sell Excess Land. Informs the Region/District of the following: 1. To transfer the excess parcel to them at fair market value and for a specified purpose. 2. The budget authority to pay for the excess parcel and that payment is subject to the PAL. 3. Legislative authority if for less than fair market value. 4. Provides billing information to be sent to DGS.
Region/District	Prepares an appraisal, legal description, and maps, and sends copies of each to DGS, Real Estate Services Division (RESD).
DGS, Real Estate Services Division	Reviews the appraisal and maps and uses the legal description to prepare the Transfer Agreement. Returns the original and one copy of the Agreement to the Region/District.
Region/District	Requests Division of Accounting to prepare Accounts Receivable Bill in triplicate in the amount of the agreed purchase price.
Division of Accounting	Provides Accounts Receivable Bill to Region/District.
Region/District	1. Has the Region/District Director sign the original and one copy of the Agreement and transmits both signed Agreements, together with A/R Bill, to the requesting agency for execution. 2. Retains a copy of the Agreement and A/R Bill for reference during processing.
Requesting State Agency	Signs the Agreement and transmits original and one signed copy of Agreement to DGS for approval. Signs the original and one copy of Agreement and sends both to DGS for presentation to the State Public Works Board for approval.
Public Works Board	Approves payment for the Agreement.

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TRANSFERS SUBJECT TO THE PROPERTY ACQUISITION LAW (Continued)

Government Code Sections 15850, et seq., and 14673

Responsible Party	Action
DGS, Real Estate Services Division	1. Records the original Agreement (if required). 2. Sends the original recorded copy to the requesting agency. 3. Conforms recording reference on the second signed copy and retains for the SPI and archives. 4. Sends a copy of the recorded Agreement to Region/District. 5. Distributes other copies as required.
Region/District	6. Sends one copy of recorded Agreement to HQ R/W. 7. Makes entries in the ELMS according to Pages V-69 and V-70 of the ELMS Manual. 8. Forwards RW 16-1 to Division of Accounting to record transaction and remove parcel(s) from inventory.
HQ R/W	Enters the date the Agreement was approved by the Director of General Services in the CTC Approval field on the Disposal Unit Screen.

16.05.12.00 Requests to Decertify and Purchase

An adjoining owner or public agency may request the Department to decertify a portion of operating right of way, sell, or otherwise convey access or other property rights not considered as excess land. Excess Land shall not initiate any action until the requesting party has deposited, as a minimum amount, the estimated costs of processing the request, including appropriate overhead assessments. Accounting for the overhead should be done pursuant to procedures set forth in the Accounting Manual. Project Development reviews requests for decertification, and obtains approval from FHWA where necessary.

Overhead shall be charged for all requests for decertification, except where these areas are:

- A portion of an adjoining ownership that was inadvertently fenced within the right of way.
- Found parcels (parcels outside the defined limits of the highway).

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Excess Land shall request a separate EA/Project ID Number from Resource Management for each request and shall monitor charges to ensure that charges do not exceed the deposited amount. In the event the deposit amount is depleted, supplemental deposit payment(s) shall be required from the applicant.

DEPOSITS - REQUESTS TO DECERTIFY AND PURCHASE

Condition	Action
The requested rights can be decertified and are salable.	Retain the amount of the deposit that equals Department expenses and overhead charges for all functional areas expending effort for the decertification, including, but not limited to, Environmental, R/W Engineering, Project Development, and Right of Way. This includes preparation and review of fair market value appraisals. Apply the balance of the deposit to the sales price of the property if the requesting party decides to complete the purchase.
The rights are found to be salable, but the requesting party decides not to complete the purchase.	Retain that portion of the deposit attributable to the costs of investigation. Internal processing costs include, but are not limited to: • Actual salary and overhead costs (Right of Way overhead assessment rate, which may be obtained from Region/District/Region Resource Management) to obtain approvals for decertification. • Right of Way Engineering costs for map and deed preparation, reproduction, and reestablishment of survey monumentation. • Costs of rearranging utilities, fencing, landscaping, and other improvements affected by the decertification.
The area sought to be acquired cannot be decertified.	Refund all monies except the cost of investigation.

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16.05.13.00 Option-Purchase Agreement up to Two Years (Public Sales and Qualifying Direct Sales)

CTC Resolution G-98-22 as amended authorizes the use of an Option-Purchase Agreement for up to two years. This alternative allows a purchaser time to make necessary studies, complete the local zoning request process, and arrange financing on properties with development potential. Such properties would include large unimproved sites with commercial or industrial development potential. This method may be used in competitive bidding situations and qualifying direct sales in the more difficult-to-sell, high-value, or specialized property.

On Federally participating parcels or those eligible for Federal participation, HQ R/W will request FHWA authorization to extend the Federal reimbursement end date to equal the option period. This will be done prior to HQ R/W approving the use of an Option-Purchase Agreement or any extensions.

The purchase price is set at the highest bid (or current fair market value for direct sales) when signing the Option-Purchase Agreement. The option deposit shall be a minimum of 5% per year of the purchase price collected at the time of execution. The option deposits shall be applied toward the option price and are otherwise nonrefundable.

An Option-Purchase Agreement gives the purchaser the right, but not the obligation, to purchase the property.

Excess Land must prepare a marketing analysis demonstrating this method will maximize the return to the State. The analysis is retained in the Region/District and a copy must be forwarded to HQ R/W for review and approval. The Option Agreement shall explicitly state that it is subject to Department approval.

CTC approval of the option price and terms is required at the time an optionee acquires the Purchase-Option and any subsequent extensions. The Purchase-Option Agreement shall explicitly state that it is subject to CTC approval.

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16.05.14.00 Lease-Purchase Agreement and Partnering with an Adjoining Owner (Public Sales and Qualifying Direct Sales)

The Lease-Purchase Agreement and Partnering with an Adjoining Owner were approved by Agency Action Request on April 15, 1997, and their use requires HQ R/W approval.

The use of either alternative shall be limited to cases where good faith attempts to sell the property have been unsuccessful or where the property is not yet ready to sell and the marketing analysis predicts that it will be difficult to sell.

The lease term should be relatively short and the Lease-Purchase Agreement should obligate the tenant-buyer to purchase the property at the end of the lease.

On Federally participating parcels or those eligible for Federal participation, HQ R/W will request FHWA authorization to extend the Federal reimbursement end date to equal the lease period. This will be done prior to HQ R/W approving the use of a Lease-Purchase Agreement or any extensions.

The purchase price is set at the current market value when the Lease is executed. The tenant-buyer is required to pay an up-front consideration equal to one percent or more of the purchase price. The up-front consideration shall be applied toward the purchase price or is otherwise forfeited. The tenant-buyer shall pay above fair market rent. A rent credit percentage must be established according to prevailing practice and will be applied to the purchase price or is otherwise forfeited.

The Region/District must prepare a marketing analysis demonstrating this method will maximize the return to the State. The analysis is retained in the Region/District and a copy must be forwarded to HQ R/W for review and approval. The Lease-Purchase Agreement shall explicitly state that it is subject to Department approval.

CTC approval of the up-front consideration, lease rate, purchase price, and terms is required before the Lease becomes effective. The Lease-Purchase Agreement shall explicitly state that it is subject to CTC approval.

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16.05.15.00 The Department's use of Private Brokers (Including Public Auction Brokerages)

Agency Action Request approved April 16, 1997 provides that a private broker, including a public auction brokerage, with prior HQ R/W approval, may be hired to provide broader exposure for specialized or high value properties than could be realized under the normal public sales processes. This includes properties infrequently marketed by the State, such as office buildings or other commercial and industrial properties.

A broker or public auction brokerage should only be used when previous public sales attempts have not been successful and Excess Land believes there will not be sufficient qualified buyers to achieve the highest price. Broker or public auction brokerage participation should only be used if the sale cannot be conducted satisfactorily by the Excess Land Agent (Government Code Section 19130b).

A broker or a public auction brokerage must be solicited on an "open listing" basis. A licensed real estate broker may submit a bid, less their commission, on behalf of a potential buyer. The highest bid less the commission is selected.

A public auction brokerage and, in rare instances, a real estate broker, must be selected by a competitive process under the State's contracting process.

16.05.16.00 Sale of Access Rights Requiring FHWA Approval

FHWA approval of a proposed sale is required when any portion of the affected right of way lies within the access control lines, as shown on the plans for a federal-aid project previously approved by FHWA. Project Development determines when access rights are no longer needed and obtains the necessary approval from FHWA. Right of Way Engineering should notify Project Development at the earliest practicable time of proposals to sell access rights. This gives Project Development adequate time to obtain FHWA approval and prevents processing delays.

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16.06.00.00 - FEDERAL HIGHWAY ADMINISTRATION REQUIREMENTS ON DISPOSAL OF EXCESS LAND

16.06.01.00 General Policy Regarding Acquisition of Excess

Federal statute (Public Law 105-178, the Transportation Equity Act for the 21st Century, Section 1303) provides that "the Federal Share of the net income from the revenues obtained by the State under subsection (a) shall be used by the State for projects eligible under this title." Because net proceeds of excess land sales are deposited in the State Highway Account, Excess Land need not segregate federally reimbursed excess proceeds from nonfederally reimbursed excess proceeds, and no federal credits are required. By letter dated March 4, 1999 with FHWA concurrence dated March 8, 1999 (see Exhibit 16-EX-25), Caltrans has met the requirements of Public Law 105-178 and is not required to track and report expenditures from these revenues by project.

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16.07.00.00 - PROCESSING TRANSACTIONS

16.07.01.00 General

Excess Land is responsible for review of all excess land transactions prior to submission to the CTC. If the Region/District has a unique or unusual transaction, informal discussions or field reviews with HQ R/W are encouraged to resolve any questions prior to submitting the résumé package. A copy of the executed contract authorizing the conveyance shall be included in the résumé package provided to HQ R/W. Following HQ R/W's review of the complete résumé package to ensure it is accurate, the Excess Land Resume can be presented to the CTC for approval. The Region/District Excess Land office is to prepare and retain in the parcel file all applicable items shown on the table in this section entitled "Excess Land Disposal File Documentation."

16.07.02.00 Deed Approval Delegated to Region/Districts

Region/Districts may approve and execute Director's Deeds on behalf of the Department for excess land conveyances that qualify pursuant to CTC Resolution #G-98-22 (as amended). (See Exhibit 16-EX-6.) Staff approval of delegated Director's Deeds shall be in accordance with current delegations.

For all CTC delegated items, the Region/District should submit to HQ R/W:

- Copy of the approved Director's Deed.
- Copy of Form RW 16-1.

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16.07.03.00 Transmittal of Résumé Package and Director's Deed to HQ R/W – CTC-Approved Deeds

The Region/District will transmit résumé packages for Director's Deeds requiring CTC approval to HQ R/W. These packages can be transmitted electronically to HQ R/W. The packages shall include a copy of the executed authorizing contract and the following completed documents:

- Form RW 16-1.
- An Index Map and Parcel Map prepared in 8½" x 11" format that conform to the Department's Plans Preparation Manual, Director's Deed Mapping Standards.
- Administrative Authorization (if necessary) for adjustments to direct sale price (see Section 16.05.05.01).
- A Director's Deed that conforms to R/W Manual Chapter 6, Right of Way Engineering.
- A copy of the authorizing resolution from the public agency's governing body for direct sales to a public agency for a public purpose (see Section 16.05.09.02).
- Any other substantiating documents to explain and support the conveyance transaction when requested by HQ R/W.

All documents should be received in HQ R/W prior to District cutoff (see Section 16.07.04.00). The original deed is returned to the Region/District upon approval by the CTC. A copy is made and retained in HQ R/W files.

The Region/District executes and records the Director's Deed and sends the original to the purchaser, retaining a copy for the Region/District parcel file.

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16.07.04.00 Deadline for Submitting Résumé Package to HQ R/W - CTC-Approved Deeds

Region/District should transmit all material requiring submission to the CTC so that it is received in HQ R/W approximately 45 days prior to the CTC meeting or the District Cutoff date. HQ R/W notifies the Region/Districts of the cutoff date as soon as the CTC schedule is available. Résumé packages received after the cutoff date will be held for the next scheduled CTC meeting.

16.07.05.00 Recordation of Director's Deeds

Excess Land shall record all Director's Deeds prior to delivery to the purchaser, except for conveyances to other public agencies. The Director's Deed may be delivered to an escrow agent, when applicable, with appropriate instructions regarding recordation and payment of transfer costs. Recordation costs are borne by the purchaser, except as noted in Section 16.05.05.02.

Deeds to other public agencies may be delivered to them for acceptance and recordation. The public agency is required in these cases to provide Excess Land with recording data when available.

16.07.06.00 Nonpayment of Transfer Costs

The Department shall not participate, nor pay any costs involved in the transfer of title, such as escrow fees, seller's share of real estate commissions, and policies of title insurance. Payment of such items constitutes a gift of public funds.

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EXCESS LAND DISPOSAL FILE DOCUMENTATION

Item	Explanation
Form RW 16-1	For multiple-parcel disposal units, include a separate RW 16-1 (sections I, II, and III) for each parcel in the disposal unit, and a recapitulation in sections IV through VI-A/B.
Director's Deed	The original is returned to the Region/District upon approval by the CTC. It is signed in the Region/District, recorded by Excess Land, and sent to the buyer. A copy is retained in the Region/District's parcel files.
Parcel Map	Clearly showing the property to be conveyed, and, for direct sales, identifying all adjoining owners and any abutting State-owned excess land.
Appraisal Report or Public Sale Estimate (PSE)	An original or copy of all valuations shall be retained in the file.
Index Map	In sufficient detail to show the property being conveyed in relation to adjacent streets and highways.
Correspondence	Copies of any correspondence or other information that has bearing on the disposal, gives a total picture of the transaction, or facilitates review (e.g., legal opinions, legislative inquiries, administrative authority to sell for less than appraised value or minimum bid.)
Purchase Agreement	One copy of each signed Purchase Agreement shall be retained in the file.
Additional Information	Memorandum of Substantial/Nonsubstantial Reduction For parcels that were not originally full-take acquisitions and all Finding B conveyances shall contain the following statement in the property description section of Form RW 16-1: "A parcel review has been completed and there are no contractual obligations." If contractual obligations are found, their disposition shall be explained in full.
Adjustments	For VTA of rescinded route parcels and any other adjustments to VTA on Form RW 16-28.

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EXCESS LAND DISPOSAL FILE DOCUMENTATION (Continued)

Item	Explanation
R/W Contract	Copy of the contract and any amendments, the MOS, the Federal Participation Memo (if applicable), and a parcel map for exchange transactions.
Note and Deed of Trust	One copy retained in Region/District files. (Original sent to Division of Accounting until reconveyed.)
Utility Agreement	Copy of the agreement establishing the State's obligation for transactions with utility companies.
Cooperative Agreement	Copy of the agreement for conveyance of excess real property interests to a public agency pursuant to a Cooperative Agreement.
Agreement for Transfer of Jurisdiction	Copy of the agreement for conveyance of excess real property interests to other State agencies. Archive copy.
Notice of Determination	For those parcels that require an environmental document. (See Section 16.03.02.00.)
Other Agreements	Copy of the agreement providing the authority for conveyance of excess real property interests to the purchaser.

16.07.07.00 Cancellation of Sale Prior to CTC Approval

At the Region/District's discretion, Excess Land may cancel a sale prior to CTC approval. Excess Land shall act expeditiously to notify all concerned parties of the cancellation and to reschedule the sale of the excess land at the earliest possible date. The reasons for the cancellation are documented in the parcel file. If a bidder requests cancellation of sale prior to CTC approval, Excess Land retains that portion of the deposit representing liquidated damages.

16.07.08.00 Cancellation of Sale Prior to Recordation

Prior to recordation of the deed, the buyer or the Department may wish to withdraw from the sale if it is discovered that the condition of the parcel has changed to the detriment of the buyer or material facts advertised in the selling of the parcel were in error. Under these circumstances, Excess Land shall cancel the sale, request an updated valuation, and reschedule the sale at the earliest possible date.

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16.07.09.00 Correction Deeds

When an executed Director's Deed contains deficiencies or defects in the legal description and a Correction Deed must be secured, either before or after recording of the original, Excess Land shall consult with Right of Way Engineering for appropriate corrective measures.

Director's Deeds to correct legal descriptions in previous conveyances do not require submission to the CTC. (See Exhibit 16-EX-6.) File documentation for correction deeds must clearly state the error being corrected and cite the delegated authority to approve.

16.07.10.00 Vesting Changes

Director's Deeds approved by the CTC requiring a change or correction in the vesting must be submitted to the CTC for approval with a résumé that summarizes the need for change or correction and recapitulates prior action by the CTC.

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16.08.00.00 - CREDIT SALES

16.08.01.00 General

S&H Code Section 118 authorizes the Department to sell, contract to sell, sell by trust deed, or exchange real property, or interest therein, found to be in excess of highway needs upon terms, standards, and conditions established by the CTC. Sales shall be for cash. Credit terms shall not be offered without prior HQ R/W approval.

All such contracts of sale or sales by trust deed shall bear interest. Except where otherwise provided by law, the payment period in any such contract of sale or sale by trust deed shall not extend longer than 10 years.

Such transactions with private parties shall require a down payment of at least 30% of the purchase price. Excess Land will verify the creditworthiness of the buyer of any property to be sold by Trust Deed. See R/W Manual Section 16.08.05.00.

16.08.02.00 Low- and Moderate-Income Housing

When unimproved real property is sold or exchanged for the purpose of housing for persons of low and moderate income, as defined in Section 50093 of the Health and Safety Code (see Section 16.12.04.00), the payment period may not exceed 40 years and the down payment shall be at least 5% of the purchase price.

The rate of interest for any such contract of sale shall be computed annually and shall be the same as the average rate returned by the State's Pooled Money Investment Fund for the five fiscal years immediately preceding the year in which the payment is made.

Such contracts of sale or sale by trust deed shall not be used if the proposed development or sale qualifies for financing from other sources and if such financing makes feasible the provision of low and moderate income housing.

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16.08.03.00 Credit Sale by Trust Deed

Credit terms should not be offered when adequate financing is available and shall not be offered without prior HQ R/W approval. A potential buyer's inability to secure financing is not adequate justification to offer credit terms. Credit terms are limited to properties selling for $100,000 or more. Sales under $100,000 must be for cash, except for those sold under informal time payment plans (see Section 16.05.04.00). Requirements for credit sales are shown on the table entitled "Credit Terms - Sale by Trust Deed" on the following page.

All improved residential property sold to a local public agency, if subsequently sold or transferred to a nonprofit housing organization for housing of persons and families of low and moderate income sold and financed pursuant to S&H Code Section 118 (a)(2), shall be endorsed by the city in which the parcels are located, or the county if located in an unincorporated area. The endorsement shall provide that the housing remain at affordable costs to persons and families of low or moderate income and very low income households for the longest feasible time as determined by the city or the county, but not less than 15 years. By endorsing such a sale, the city or county accepts responsibility for ensuring the housing remains affordable. The local public agency shall record covenants or restrictions implementing this provision in the office of the county recorder. Notwithstanding any other provision of law, the covenants or restrictions shall run with the land and shall be enforceable against the original purchaser from the department and successors in interest.

16.08.03.01 Escrow Requirement

For credit sales, the purchaser shall open an escrow at purchaser's expense with a title company satisfactory to both parties and shall deposit a fully executed Note and Deed of Trust into the escrow within 30 days after execution of the sales agreement. The balance of the down payment is due prior to recordation of the Director's Deed. The Note and Deed of Trust shall be written in the amount of the balance of the purchase price and shall be payable to the State of California, acting by and through the Department of Transportation. The title company handling the escrow shall be the trustee, and the purchaser shall bear all costs.

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CREDIT TERMS - SALE BY TRUST DEED

Term	Requirement	Type of Real Property
Credit Check	All purchasers on credit terms, except for government agencies, must prove creditworthiness. The cost of the credit check will be borne by the purchaser.	All property.
Payment Period	Not to exceed 10 years	All improved real property. All unimproved real property with the following exceptions.
	Not to exceed 40 years	Unimproved real property sold or exchanged to provide housing for persons of low- or moderate-income.
Down Payment	At least 30%	All real property, with the exception of unimproved property, to be used for low- or moderate-income housing.
	At least 5%	Unimproved real property sold or exchanged to provide housing for persons of low or moderate income.
Interest Rates	Prevailing federal funds rate as established by the Federal Reserve Bank, plus five percent	All properties other than unimproved real properties sold or exchanged to provide housing for persons of low and moderate income.
	Average rate (computed annually) returned by the State's Pooled Money Investment Fund for the past five fiscal years immediately preceding the year in which payment is made	Unimproved real property sold or exchanged to provide housing for persons of low or moderate income.

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16.08.03.02 Provisions of Trust Deed and Note

The Trust Deed and Note shall designate the purchaser as Trustor; the title company as Trustee; and the State of California, acting by and through the Department of Transportation, as Beneficiary. The Trust Deed shall contain provisions substantially the same as shown on Exhibit 16-EX-16. These provisions are common to those contained in the standard forms of major title companies.

16.08.03.03 Processing of Director's Deed Sale with Trust Deed

The résumé package prepared for the sale shall include a copy of the Purchase and Sale Agreement with State Financing Addendum, Trust Deed and Note, and a completed Form RW 16-1 indicating:

- The sale is on credit terms pursuant to Section 16.08.03.00.
- The amount of the deposit received.
- The date the required balance of the down payment will be deposited with the escrow agent.

16.08.03.04 Deposit of Director's Deed with Escrow Agent

The Department's escrow instructions, containing substantially the same language as shown on Exhibit 16-EX-17, shall be forwarded with the Director's Deed to the title company handling the escrow.

16.08.03.05 Retention of Trust Deed and Note

Excess Land shall forward the recorded Trust Deed and executed Note to the Division of Accounting with a request to forward a statement to the purchaser. The statement shall provide for quarterly payments at the specified interest rate for the term of the Note. The Division of Accounting is responsible for safekeeping the Note and Trust Deed during the term of the trust.

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16.08.03.06 Full Reconveyance Upon Payment

Accounting shall notify the DDC-R/W upon receipt of final payment of the outstanding balance or written notice by the trustee that full payment has been deposited in escrow for the Department. The DDC-R/W shall request the District Director to execute a Full Reconveyance.

Excess Land forwards the signed Note and Request for Reconveyance to the trustee for cancellation and issuance of the Full Reconveyance. The purchaser pays all fees in connection with the reconveyances.

16.08.03.07 Partial Reconveyances, Subordinations, and Assumptions

Partial reconveyances may be authorized if:

- It is in the Department's best interest.
- The remaining property is adequate security for the balance of the loan.

The district shall prepare an appraisal and a memorandum to the file, which shall explain and justify the proposed partial reconveyance and the value of the remaining property. An appropriate fee will be charged to the borrower sufficient to cover the administrative expenses incurred by the Department.

Subordination of the Department's interest is limited to easements required by public utilities or public agencies in connection with a public project. All monies received by the purchaser in connection with conveyance of the subordinated interest are paid to the Department and credited against the principal obligation.

Excess Land shall document requests and justify subordination approvals in the excess land parcel file.

Assumption of a loan may be allowed with Caltrans' approval. An approved credit report and an Assumption Agreement (Form RW 16-18) are required.

16.08.03.08 Prepayments

The principal obligation under a Trust Deed may be prepaid in full or in part at any time without penalty. Partial payments made in advance of the regular schedule shall be applied against the principal obligation and shall not replace regularly scheduled payments.

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16.08.03.09 Fire Insurance Coverage

The purchaser shall deposit with the escrow agent a Fire Insurance Policy in an amount commensurate with the value of any substantial improvements located on the parcel at the time of purchase. This Policy names the State of California, acting by and through the Department of Transportation, as co-insured with the purchaser if the improvements are of substantial value, habitable, or usable in connection with operation of the property.

Fire insurance policies are written to cover a one or three year period. Excess Land must assure that the policy is renewed prior to expiration of the prescribed term.

The State of California may be named as co-payee on a check for settlement of a claim resulting from fire damage to insured improvements. Excess Land shall forward the check to Division of Accounting for endorsement along with a complete report of the extent of damage and a statement of the amounts, if any, to be paid to the State. Excess Land's recommendation should consider the outstanding balance under the Trust Deed and the security the remaining property represents.

16.08.03.10 Defaults

If the purchaser defaults after commencement of payments and recordation of the Trust Deed, Excess Land shall notify the trustee to begin default proceedings in accordance with terms of the Trust Deed. Excess Land shall take all actions necessary, including attendance at the default proceedings and payment of reasonable costs, to enter a bid in the trustee sale on the State's behalf. Excess Land should contact Legal regarding specific guidelines. Division of Accounting will provide the necessary calculations of amounts due.

16.08.03.11 Acceleration Clause in Trust Deeds

The acceleration clause shall be enforced if the purchaser sells the property by deed or installment contract. Before enforcing the clause, Excess Land should discuss the factual circumstances of the sale with Legal.

Enforcement of the acceleration clause is not required in the following instances:

- Conveyance of non-substantial utility easements.
- Conveyance of non-substantial portion of property for public purpose.

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- Conveyance to either spouse resulting from dissolution of marriage.
- Encumbrance of the property with a second trust deed or other junior encumbrance by the purchaser.

16.08.03.12 Trust Deed Late Payment Penalties

Quarterly payments are due on the first day of the month beginning 90 days after close of escrow and the first day of each quarter thereafter. For example, if escrow closes on December 15, the first payment is due April 1.

All credit sale promissory notes shall provide for a penalty of 5% of any trust deed payment that is paid more than 10 days after its due date.

16.08.04.00 Trustor Bankruptcy

Excess Land should contact Legal and request assignment of an attorney immediately after being notified that the Department's trustor has filed for bankruptcy.

The Clerk of the Bankruptcy Court will send a Notice of Meeting of Creditors to the debtor, the creditors, and other interested parties. Excess Land should attend this meeting to ensure the Department is on the list of creditors filed by the debtor (trustor). If not, a proof of claim must be filed with the court within a specified time.

The State's attorney should attend all subsequent meetings and hearings to ensure protection of the Department's interest.

16.08.05.00 Credit Check

Excess Land shall establish the creditworthiness of prospective credit buyers. At a minimum, existing Department records must be reviewed to determine that the applicant is not currently in default on prior credit sales, and a credit report containing a FICO score of 750 or higher must be received from an established credit reporting agency. The buyer shall pay the costs of the credit report at the public sale. Such costs are nonrefundable in the event the buyer defaults.

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16.09.00.00 - RESCINDED ROUTE PROCEDURES

16.09.01.00 General

Excess parcels created by route rescission are subject to the requirements and instructions previously set forth in this Chapter, except as modified or supplemented in this section.

16.09.02.00 Phase I - Notice of Intention to Rescind

Phase I commences when the CTC passes a Notice of Intention to Rescind. The assigned project team consists of one representative from each of the district functions indicated in the following table.

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PHASE I RESPONSIBILITIES

Team Member	Responsibilities
Excess Land	Acts as team leader and coordinates the efforts of the project team. In coordination with Project Development, completes notification to governmental agencies immediately following a Notice of Intention to Rescind. Identifies properties subject to provisions of S&H Code Section 118.1 and notifies eligible tenants. Simultaneously coordinates and commences development of a Project Sales Plan, including estimated sales dates and probable disposal methods. Identifies parcels that may have significant environmental sensitivity and assumes responsibility for obtaining environmental clearance.
Right of Way Engineering	Provides project and parcel mapping where needed. Provides Director's Deeds and Director's Deed maps to team leader as soon as possible after the "Notice." Completes Items A through F on Rescinded Route Parcel Inventory, Form RW 16-7, covering each disposable property. Forwards the form to Property Management.
Property Management	Completes Items G and H on Form RW 16-7.
Planning and Management	Completes Items I, J, and K on Form RW 16-7. Identifies those parcels that meet the three qualifying criteria under S&H Code Section 118.5 for payment of back taxes to local taxing agencies.
Relocation Assistance	Compares the Rescinded Route Parcel Inventory forms to existing RAP records and determines the amount of relocation assistance that may be necessary, if any.

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The project team shall:

- Complete a detailed inventory of all the Department's real property on the route segment that is a candidate for rescission within 30 days following passage of the Notice.

- Notify all appropriate State, regional, county, and city agencies as quickly as possible after the Notice of Intention to Rescind is passed. Notification should indicate the Department's intent to dispose of previously acquired rights of way and should satisfy the provisions of S&H Code Sections 118 and 118.6 and Government Code Sections 54220 et seq. and 54235 et seq. (See Exhibit 16-EX-2 for a suggested format of the notification letter or memorandum.)

- Develop Project Sales Plan.

- Complete Director's Deed and map for each property.

16.09.03.00 Phase II - Route Rescission

Phase II commences when the CTC rescinds the route adoption. The assigned project team consists of one representative from each of the district functions indicated in the following table entitled "Phase II Responsibilities." The Phase II team shall:

- Enter all Department-owned real properties on the rescinded route segment into the ELMS within 30 days following rescission.

- Settle all contractual, RAP, and other obligations in a manner equitable to both the Department and the property owners.

- Dispose of the excess properties.

16.09.04.00 Federal Advanced Acquisition Fund (FAAF)

The ultimate rescission of a route adoption and direction by the CTC to dispose of previously acquired rights of way requires the Department to withdraw the project from FAAF programming. Such withdrawal necessitates repayment of the full amount of advances received from FHWA and payment to FHWA of the net rental income received from any FAAF parcels on the project until the date of withdrawal.

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16.09.05.00 Local Real Estate Taxes

S&H Code Section 118.5 requires the Department to pay local real estate taxes equal to the taxes that would have been paid had the property remained in private ownership. Such taxes shall be paid only in those instances where all three of the following criteria are met:

- The parcel was acquired by Final Order of Condemnation.
- No portion of the parcel that was acquired has ever been used for any of the purposes specified in S&H Code Section 104.
- The parcel is being offered at public sale.

The amount of any payments made pursuant to S&H Code Section 104.10 with respect to the property (24% of gross rent receipts) shall be deducted from the amount required to be transmitted pursuant to this section.

16.09.06.00 RAP Policy

After the CTC rescinds a route adoption, RAP policy requires that offers of RAP benefits and services be formally withdrawn from former owners and inherited tenants. Former owners who have remained in occupancy and tenant occupants who meet the criteria of CTC Resolution G-2 (as amended) are given the opportunity to purchase their property by direct sale.

All occupants should be encouraged to remain in occupancy as protection against vandalism. However, their right to occupy after the Director's Deed has been recorded will be dependent upon their working out an agreement with the new owner.

If occupants are forced to relocate from a dwelling as a direct result of the Department's disposal of the dwelling, within 90 days of the recordation of the Director's Deed, Relocation Assistance shall coordinate and accomplish the following pursuant to Government Code Section 54238.3(b):

- Provide relocation advisory assistance to affected parties where appropriate.
- Make relocation payments where appropriate.

Applicability of Government Code Section 54238.3(b) is limited to Interstate Route 710 between Route 10 and Route 210.

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RAP-eligible former owners still in occupancy may elect to repurchase with applicable RAP benefits in accordance with existing policy.

RAP-eligible former tenants should be notified and advised of their eligibility in accordance with existing policy.

Excess land will normally be sold subject to the occupancy of existing tenants since State-initiated evictions may create renewed relocation eligibility unless the eviction is for cause. All proposed evictions of former eligible occupants should be mutually agreed to by Relocation Assistance and Excess Land. State-caused evictions of former RAP eligibles should only take place where there is a clear economic advantage or other compelling reason to do so.

Another action that may cause renewed eligibility for previously eligible occupants or for ineligible occupants is the sale of occupied excess to another public entity for ultimate clearance and use. All sales agreements with other public agencies must contain a clause specifying that the purchasing agency will assume responsibility for relocation benefits that may accrue to existing occupants. If agreement cannot be reached as to responsibility for relocation of existing occupants, the district should request a legal determination of liability before finalizing the sales agreement.

It is the responsibility of Excess Land to coordinate closely with the District RAP Manager to determine the most economical method of fulfilling the State's RAP obligations.

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PHASE II RESPONSIBILITIES

Team Member	Responsibilities
Excess Land	Acts as team leader and coordinates efforts for timely disposal of rescinded route properties. Enters parcels into the ELMS in accordance with the ELMS/EDP Users Handbook. Follows the Sales Plan developed during Phase I in sending appropriate notices to occupants. Handles purchase or lease requests from other governmental agencies in the normal manner. It is essential from a public relations standpoint that occupants be advised of the progress toward, and actual sale of, the parcels they are occupying. This element should be included in the plan.
Planning and Management	Requests HQ R/W to withdraw the rescinded route segment from FAAF programming, where appropriate. Works with local taxing agencies to clear the State's obligation, if any, under S&H Code Section 118.5. This responsibility is limited to those parcels identified during Phase I as meeting the three qualifying criteria. S&H Code Section 118.5 requires any back taxes to be paid prior to consummation of any public sale. It is important to clear any required back tax payments as soon as possible so that public sale of the parcel can occur promptly. Section 118.5 is imprecise about the method of calculating the Department's tax liability. If differences of opinion develop with a local assessor or tax collector, the District should work with District Right of Way Planning and Management to reach a reasonable settlement of the Department's back tax liability, if any. Provides a written certificate upon clearance of the Department's Section 118.5 obligation on a particular parcel.
Acquisition	Negotiates with former owners or their successors in interest on part-take parcels selected during Phase I for direct sale to such parties, including settlement of all deed and contractual obligations. Coordinates their efforts with other members of the Project Team.

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PHASE II RESPONSIBILITIES (Continued)

Team Member	Responsibilities
Relocation Assistance	Reviews and updates occupancy data with Property Management and confirms RAP eligibility status of occupants. Promptly issues notices to all occupants who were previously offered relocation benefits, formally effecting the change of RAP eligibility.
Appraisals	Provides necessary appraisals or disposal value estimates when requested.

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16.10.00.00 - SALES OF SURPLUS RESIDENTIAL PROPERTIES AND REPLACEMENT HOUSING

These provisions have been superseded by Government Code Section 54235, et seq., and are rescinded in their entirety.

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16.11.00.00 - PORTER BILL PARK LEASES

16.11.01.00 General

CTC Resolution No. G-3 (Exhibit 16-EX-9) sets forth the general terms and conditions of the lease of excess property to local agencies for park purposes (S&H Code Section 104.15).

16.11.02.00 Determination of Qualifying Parcels

Pursuant to S&H Code Section 104.15, District Right of Way shall assist local agencies in developing park and recreational facilities on excess land where such use represents the highest and best use.

As excess parcels are certified for disposal, Excess Land shall review them for conformance with the criteria established for Section 104.15.

Excess Land should negotiate a direct sale to a local agency on any parcel with a market value of $2,500 or less since the procedures for processing a Porter Bill application are complex and expensive for both the local agency and the Department.

Taking into consideration the terms and conditions of the lease, Excess Land shall lease only those excess parcels where the fair rental value substantially equals the value of the enhancement and benefit to the State highway in preserving its view, appearance, light, air, and usefulness. The rental rate shall be determined considering the present value of the proposed construction and maintenance of park improvements, including any cost to maintain landscaping undertaken by the lessee within the State highway right of way, which would otherwise be the Department's obligation. A minimum rental fee of $100 shall be charged.

On routes involving federal participation, the following qualifying criteria are used as a guide in obtaining FHWA participation.

- The final voucher has not been submitted for the right of way project.
- The related highway facility has not been open to traffic for more than two years.
- There would be no substantial difference in Federal participation whether the parcel is incorporated in the right of way or is disposed of by public sale.

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- The proposed use of the excess land would enhance the highway facility or further integrate the highway into the local environment.

16.11.03.00 Local Agency Notification

Where excess properties are economically and physically suited for park and recreational uses, local agencies shall be invited to consider such development.

Excess Land shall notify all interested local agencies, such as cities, counties, and recreational districts, of the availability of parcels. The notification should indicate that the Department intends to sell the excess land but will withhold the properties from public sale for 60 days to allow local agencies to respond.

The local agency shall be furnished with a copy of a Request for Consideration of Lease of Excess Land Pursuant to Section 104.15 (Exhibit 16-EX-10), appropriate maps of the available area, and a copy of the proposed lease (Exhibit 16-EX-11). See Exhibit 16-EX-12, Instructions on Use of Lease Format.

16.11.04.00 Request for Consideration of Lease

The local agency shall have no more than 60 days after receipt of the written notice to inform the Department of its intention to apply for use of excess lands for park purposes pursuant to Section 104.15. The local agency shall submit a Request for Consideration of Lease of Excess Land Pursuant to Section 104.15 within 120 days of notifying the Department of its intention. The local agency's request or application must be accompanied by the following:

- An 8½" x 11" or 11" x 17" preliminary development plan that includes a description of the proposed development, type of activity, location of active recreational facilities, and access routes from the State highway and the local community area. The plan should also provide a brief justification of need for the lease for park and recreational purposes.
- Estimates of construction and annual maintenance costs.
- Proposed method of financing the project.
- Time frame for development.

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16.11.05.00 Fair Market Value Requirement

Excess Land shall inform the local agency that it will be required to purchase the affected property at fair market value whenever the excess parcel:

- Exceeds a depth necessary to protect the State highway, public work, or improvement and its environs or will not preserve its view, appearance, light, air, and usefulness; and

- Use of a portion of the land for park purposes, pursuant to Section 104.15, may have a detrimental effect on the market value or salability of the excess land lying beyond the depth necessary to protect the State highway, public work, or improvement and its environs or will not preserve its view, appearance, light, air, and usefulness.

Fair market value shall be based on the value of the affected property as a part of the whole parcel for its highest and best use without consideration of the effects of the proposed park.

16.11.06.00 District Investigation

Upon receiving notification from the local agency of its intention to apply for use of excess lands for purposes pursuant to Section 104.15, the district will investigate the use to which the excess property will be put and the extent to which projected use will protect such highway, public work, or improvement and its environs and will preserve its view, appearance, light, air, and usefulness.

The District Porter Bill Review Committee (consisting of District Right of Way, Landscape Architecture, and Environmental Analysis) shall conduct the investigation. If the district does not have a representative available, it should request participation through the appropriate Headquarters office. The Committee shall certify that the entire area covered by the proposed application conforms to the requirements of Section 104.15 and shall make a recommendation for Certification of Conformance, Exhibit 16-EX-13, to the DD or the DDC-R/W. Either the DD or the DDC-R/W will execute the Certificate.

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16.11.07.00 Criteria

Criteria for determining the extent to which projected use will protect the highway, public work, or improvement and its environs and will preserve its value, appearance, light, air, and usefulness shall include, but not be limited to, the items in the chart on the following pages.

Criteria	Explanation
Economic Uses	All economic uses of the property should be considered and a determination made that park and recreational development is economically practical and that no unreasonable revenue loss will be incurred by development as proposed.
Economic Feasibility	The measure of economic feasibility shall be where the fair rental value, taking into consideration the terms and conditions of the lease, substantially equals the value of the enhancement and benefit to the highway, public work, or improvement in preserving its view, appearance, light, air, and usefulness.
Visibility	Neither immediate access from the highway nor visibility of all portions of the parcel to be leased by highway motorists is a requirement. If any portion of the parcel is not visible, an analysis should be made of the possible benefits from developing the nonvisible portion as a park or the drawbacks from selling the parcel for development, relative to the criteria established for Section 104.15. That portion of the parcel not visible may be included in the leased area if positive benefits are expected for either the State or the local agency.
Continuous Development	Portions of the larger parcel not capable of continuous development should not be considered for lease. Continuous development could be hampered by natural or man-made obstacles, such as flood control channels, tree banks, railroad tracks, or streams.
Joinder	Joinder to other parcels with different uses or a higher and better use for independent development should be considered. A narrow strip adjoining a residential development would probably be best used by joining to the residential development if it is not of sufficient size to be used for park purposes.
Value	No portion of the parcel to be leased shall unreasonably exceed in value the present enhancement and benefit criteria applied to the larger parcel.

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<table>
<tr><th>Criteria</th><th colspan="2">Explanation</th></tr>
<tr><td>Recreation/Use</td><td colspan="2">The proposed development may be either for active recreation or passive enjoyment. Active recreational facilities should be located or screened by planting or other means so use does not create a nuisance, distraction, or hazard to the highway user or nearby community. For example, parking areas and maintenance yards must be screened by landscaping and night lighted facilities must be located so lights do not create a distraction, glare, or hazard.</td></tr>
<tr><td rowspan="2">Environmental Hazards</td><td colspan="2">Environmental hazards and constraints should be considered both for potential beneficial or adverse effect on park use, as well as in determining fair market value.</td></tr>
<tr><td>Seismic zones
• Located on fault
• Near fault
• Potential damage from landslides

Floodplains
• Likelihood of occurrence
• Potential damage to wells or other improvements
• Propensity to reduce capacity of flood channels
• Permit required or prohibitions against development
• Protection of riparian vegetation</td><td>Unstable soils
• Landslides or mudflows
• Shrink swell characteristics
• Foundation or bearing constraints
• Subsidence
• Erodibility

Topography
• Slope excessive
• Access limited
• Exposure to adverse weather

Health and safety hazards
• Dangerous areas, e.g., cliffs and crevasses
• Quicksands or bog areas
• Agricultural spraying
• Riptides, undertows, etc.
• Throwing objects on roadway
• Objects thrown from roadway</td></tr>
</table>

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Criteria	Explanation
Sensitive Areas	Environmentally sensitive areas should be considered. Wildlife habitat • Limited extent • Unique • Rare or endangered species of wildlife present • Breeding or nursery area • Essential to life cycle of certain species • Proximity to State or Federal Refuges • Protection of wetlands or other critical habitats • Value for scientific purposes (academic research) Water areas • Potential for pollution of domestic or municipal sources • Hazard to users • Value as wildlife habitat • Aesthetic considerations • Recreational uses Coastal zone or other area of unique value • Provide beach access • Equestrian, pedestrian, bicycle use potential • Aesthetic considerations Heritage resources • Historical significance • Archaeological significance • Natural landmark • Paleontological value Vegetation • Rare or endangered species • Specimen trees • Aesthetic considerations • Erosion protection • Potential commercial value • Value for scientific purposes
Sensitive Elements	Socially sensitive elements from perspective of both impact of the park on adjacent areas and the adjacent areas (including the highway) upon the park should be considered such as the following: Noise • Sensitivity of receptors • Character of neighborhood • Proposed use of park Air quality • Sensitivity of receptors • Potential for increase of pollutants due to increasing traffic Traffic • Safety • Noise and air pollution • Parking • Access • Increase on residential streets • Create barrier to circulation Storm Water Quality • Sensitivity of receptors • Potential for increase in discharge of pollutants due to site activities (e.g., litter)

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16.11.08.00 District Process

Upon receipt of the Request for Consideration of Lease of Excess Land Pursuant to Section 104.15 from the interested local agency, the district will develop the items in the following table.

Item	Explanation
Fair market value appraisal	Meeting the requirements set forth in Section 16.04.00.00.
Engineering statement	Signed by appropriate district representative containing: • Age of State highway or public work. • Estimated economic life. • Planned or anticipated additional transportation requirements for adjacent or nearby facilities that could affect the planned park and a map showing such effect. The anticipated year of impact and a negative statement, if applicable, should be included. • Traffic volumes through the planned economic life of the highway facility.
Statement of anticipated reasonable annual maintenance costs	Based on the leased portion remaining in State ownership and being incorporated into the Right of Way. This should be signed by a representative of the Landscape Architecture staff.

After receiving the items listed in the table, Excess Land shall complete the Supplemental Data Sheet (Exhibit 16-EX-14).

Excess Land shall forward copies of the following documents to HQ R/W for review and submittal to the CTC:

- Local agency's request with attached preliminary development plan.
- District Certification of Conformance.
- Approved fair market value appraisal.
- Supplemental Data Sheet.
- Engineering statement.

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- Maintenance cost statement.

16.11.09.00 CTC Determination

The final determination in each case rests with the CTC and can only be made after analysis of the development plans, cost, benefits, appraisal, and other factors.

If the CTC determines such park use is appropriate, Excess Land shall notify the local agency and cooperate with it in preparing detailed plans and specifications for the proposed development.

Excess Land shall immediately advise the local agency if its application is not approved. The local agency may appeal the decision.

16.11.10.00 Lease Negotiations

Excess Land shall negotiate a lease and sales contract, where appropriate, with the local agency. The property is withheld from sale for a period of one year after the CTC approves the application.

Within the one-year period, the local agency shall submit detailed plans for development of the proposed park for the District Landscape Architect's review and approval. The local agency shall also submit proof of its financial ability to commence construction of the proposed park within two years after plan approval and to complete construction within three years after plan approval.

If the local agency is unable to complete the detailed plans or negotiate a lease and sales contract within the one-year period, a 90-day extension may be granted. Excess Land shall process the parcel(s) for public sale after the 90-day extension period unless the local agency can demonstrate substantial progress towards completing the required documents.

16.11.11.00 Lease Execution

Upon approval of the detailed development plans, execution of the lease by the local agency, and preparation of Director's Deeds and sales contract, if appropriate, Excess Land shall execute the lease according to the existing delegation of authority.

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After the lease is executed, Excess Land shall remove the parcels under lease from the Excess Land Inventory and transfer them into Special Account #784001 (excess land under long-term park leases).

16.11.12.00 Compliance

After the lease is executed, Excess Land is responsible to ensure that the local agency complies with the terms of the lease, including those pertaining to storm water pollution prevention. Porter Bill lease properties shall be annually inspected using the Property Management inspection forms, 11-EX-55 and 11-EX-55SW (both for internal Caltrans use). Date of inspection must be recorded in the Right of Way Property Management System.

16.11.13.00 Lease Provisions

The standard Lease for Park and Recreational Purposes Pursuant to Section 104.15 and instructions for use of the lease can be found in Exhibits 16-EX-11 and 16-EX-12.

The terms and conditions as shown on the standard lease are applicable to all leases executed pursuant to Section 104.15. The CTC may prescribe additional terms.

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16.11.14.00 Appraisal Requirement

A fair market value appraisal is required in all cases involving leases under Section 104.15. The fair market value appraisal must contain the additional data listed in the table below.

Data	Explanation
Breakdown statement of fair market value and fair rental value	For property as a whole and for areas carrying a different or higher value.
Map	Showing: • Areas of varying value. • Area of lease. • Area of the remainder. • Total area proposed for development as park and present ownership. • Unique topographic factors (such as power lines, freeways, rivers, and streets) as well as any environmental sensitivities or hazards.
Estimate of fair market value	Under the conditions of the lease and factors affecting value determination as to the area to be leased.
Fair market value of any remainder	Appraiser's rationale.

Appraisals shall use the information listed above to establish the rental rate appropriate under the terms of Section 104.15 and to determine whether or not the local agency will be required to purchase property lying beyond the area to be leased.

HQ R/W, Appraisal Office, must review and approve all appraisals prepared for properties proposed to be leased pursuant to Section 104.15.

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16.12.00.00 - STATUTES

16.12.01.00 General

This section contains statutes referred to in this chapter that are not included in the Department of Transportation's Statutes Publication (1996).

16.12.02.00 CEQA Guidelines 15312 (14-CCR 15312)

15312. CLASS 12. SURPLUS GOVERNMENT PROPERTY SALES. *Class 12 consists of sales of surplus governmental property except for parcels of land located in an area of statewide, regional, or areawide concern identified in Section 15206(b)(4).*

However, even if the surplus property to be sold is located in any of those areas its sale is exempt if:

(a) The property does not have significant values for wildlife habitat or other environmental purposes, and

(b) Any of the following conditions exist:

(1) The property is of such size, shape, or inaccessibility that it is incapable of independent development or use, or

(2) The property to be sold would qualify for an exemption under any other class of categorical exemption in these guidelines, or

(3) The use of the property and adjacent property has not changed since the time of purchase by the public agency.

16.12.03.00 Government Code

§ 7073. Designation of enterprise zones; application, criterion, technical deficiencies

(a) The governing body of a city or county may, either by ordinance or resolution, propose an eligible area plus one commercial or industrial area or both within its respective jurisdiction as the geographic area for an enterprise zone. A county may propose an area within the unincorporated area as the geographic area for an enterprise zone, but shall not propose an area within an incorporated area. This proposed geographic area shall

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be based upon findings by the governing body that the area is a depressed area and that the designation as an enterprise zone is necessary in order to assist in attracting private sector investment in the area. The city or county shall establish definitive boundaries for the area to be included in the application for designation and, if designated by the agency, the designation shall be binding for a period of 15 years.

(b) Following the application for designation of an enterprise zone by a city or county, the governing body shall apply to the agency for designation. The agency shall adopt regulations and guidelines concerning the necessary contents of each application for designation.

(c) Any city, county, or city and county with an eligible area within its jurisdiction may complete a preliminary application. A maximum of 20 applications may be chosen each year to complete a final application.

(d) (1) From the applications received, the agency may designate by December 1991, not more than 25 enterprise zones within the state, one of which may be designated an airport enterprise zone and not more than three of which may be designated high technology enterprise zones.

(2) In the case of any existing enterprise zone or area established pursuant to Chapter 12.9 (commencing with Section 7080), or any new enterprise zone or area established pursuant to Chapter 12.9 (commencing with Section 7080) designated on or after the effective date of the act adding this paragraph, a city or county may propose that the enterprise zone or area established pursuant to Chapter 12.9 (commencing with Section 7080) within the incorporated area be expanded by 15 percent to include definitive boundaries that are contiguous to the enterprise zone or area established pursuant to Chapter 12.9 (commencing with Section 7080). The agency may approve that expansion for enterprise zones based upon the criterion specified in subdivision (e), and for expansion of areas established pursuant to Chapter 12.9 (commencing with Section 7080), the criterion specified in Section 7082.

(e) In designated enterprise zones, the agency shall select from the applications submitted those proposed enterprise zones which, based on those applications, meet, to the extent possible, the following criterion:

Those proposed enterprise zones which, upon a comparison of all the applications submitted, indicate that they propose the most effective, innovative, and comprehensive regulatory, tax, program, and other incentives in attracting private sector investment in the zone proposed.

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For purposes of this paragraph, regulatory incentives include, but are not limited to, all of the following: the suspension or relaxation of locally originated or modified building codes, zoning laws, general development plans, or rent controls; the elimination or reduction of fees for applications, permits, and local government services; and the establishment of a streamlined permit process.

Tax incentives include, but are not limited to, the elimination or reduction of construction taxes or business license taxes.

Program and other incentives may include, but are not limited to, all of the following: the provision or expansion of infrastructure; the targeting of federal block grant moneys, including small cities, education, and health and welfare block grants; the targeting of economic development grants and loan moneys, including grant and loan moneys provided by the federal Urban Development Action Grant program and the federal Economic Development Administration; the targeting of state and federal job disadvantaged and vocational education grant moneys, including moneys provided by the federal Job Partnership Training Act of 1982; the targeting of federal or state transportation grant moneys; and the targeting of federal or state low-income housing and rental assistance moneys.

In the process of designating new zones, the agency shall take into consideration the location of existing zones and make every effort to locate new zones in a manner that will not adversely affect any existing zones.

(f) In evaluating applications for designation, the agency shall ensure that applications are not disqualified solely because of technical deficiencies and shall provide applicants with an opportunity to correct the deficiencies. Applications shall be disqualified if the deficiencies are not corrected within two weeks.

(g) For purposes of this section, "high technology enterprise zone" means an enterprise zone which is intended to attract private sector investment in high technology industries and is proposed to be located in an area which would permit the association of those industries with an urban university or college.

(h) The applications and selection criteria for designation adopted pursuant to Section 7076 prior to the effective date of the act adding this subdivision shall apply to this section, as amended by the act adding this subdivision.

(i) Section 7076 shall not apply to the extent it conflicts with the provisions of the act adding this subdivision.

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(j) For purposes of this section, "airport enterprise zone" means an enterprise zone intended to attract private sector investment in aviation-dependent industries, commercial aviation, and other commercial and industrial activity and which includes a rural airport located within unincorporated territory.

§ 7082. Definitions

For purposes of this chapter:

(a) "Block group" means the smallest area for which the United States Department of Commerce, Bureau of the Census, provides data on personal income.

(b) "Cluster of block groups" means one or more contiguous block groups.

(c) "Poverty level" means the poverty level, as defined by the United States Department of Commerce, Bureau of the Census, as periodically updated.

(d) "High density unemployment area" means any of the following:

(1) A metropolitan statistical area or nonmetropolitan statistical area within this state, as identified by the Department of Commerce, which contains at least 4,000 people (in the case of a metropolitan statistical area) or at least 2,500 people (in the case of a nonmetropolitan statistical area) in a cluster of block groups, each of which meets the following criteria according to the most recent available decennial census information:

(A) The average unemployment rate for the block group for the most recent 12-month period for which data are available was at least one and one-half times the average national rate of unemployment for that 12-month period.

(B) The average poverty rate for the block group for the most recent 12-month period was at least one and one-half times the average national poverty rate for that 12-month period.

(C) At least 70 percent of the household earnings for the block group for the most recent 12-month period was a maximum of 80 percent of the average state household earnings for that 12-month period.

(D) The area excludes nondistressed areas.

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(2) If an area does not meet the criteria of a high density unemployment area specified above, an applicant may petition to the department for the designation based upon compliance with one or more of the following:

(A) A special census is conducted and approved by the population research unit of the Department of Finance which demonstrates compliance with paragraph (1).

(B) The applicant's jurisdiction has experienced a major economic dislocation resulting from plant closure or closure of a federal installation within the last 12 months prior to the application.

(C) The applicant's jurisdiction contains a specifically defined geographic area that meets the eligibility criteria for pockets of poverty under the United States Department of Housing and Urban Development's Urban Development Action Grant (UDAG) program as described in 24 CFR Part 570, Sections 570.466(a)(2) and (a)(3), and as periodically updated.

(D) A block group meets substantially similar criteria measuring economic distress as that measured in paragraph (1). Each census block shall meet the "substantially similar" criteria.

(E) The area consists of the entire geographic area of a community. Area boundaries shall be synonymous with the boundaries of the community. As used in this subparagraph, "community" means a subdivision of a city or county (not including a city), including a neighborhood or suburb which has distinct boundaries, is recognized as a community by the individuals residing and working within the community, and has existed prior to the program planning process. Documentation demonstrating that the area meets the definition of "community" may include a map prepared for purposes other than the program, which lists both the name and boundaries of the community. The area shall meet the following criteria:

(i) Complies with the above definition of "community."

(ii) A minimum of 51 percent of the geographic area or population of the area meets the criteria of subparagraphs (A), (B), and (C) of paragraph (1), and the remainder of the area has substantially similar economic distress.

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(3) A petition for designation of a high density unemployment area received by the agency after April 1, 1985, shall be reviewed by the agency pursuant to the criteria specified in paragraph (2).

(e) "Nondistressed area" means any block group which does not meet the definition of a high density unemployment area.

(f) "One-stop service" means an efficient and expeditious method for providing services to qualified businesses.

(g) "Agency" means the Trade and Commerce Agency.

(h) "Qualified business" means any person, corporation, or other entity certified during the taxable or income year by the agency as meeting paragraphs (1) and (2).

(1) During the period of designation, the entity is engaged in the active conduct of a trade or business within the program area.

(2) Meets any of the following requirements:

(A) Has an average of at least 50 percent of its employees who are residents of a high density unemployment area.

(B) Has an average of at least 30 percent of its employees who are residents of a high density unemployment area, and has set up a community service program or a substantial equivalent as defined by regulations, or programs approved by the local government entity and the community advisory council in which the program area is located, or both.

(C) Is a business at least 30 percent owned and operated by a resident or residents of a high density unemployment area. For purposes of this subparagraph, "owned and operated" means that the resident or residents of a high density unemployment area who are owners of the business are responsible for at least 30 percent of the work performed by the business and share in at least 30 percent of the ownership, control, management responsibility, risks, and profits of the business.

For purposes of this subdivision, "a high density unemployment area" means the high density unemployment area contained in the applicant's final application to the agency if the population of that high density unemployment area is in excess of 150,000.

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A business entity shall be certified prior to obtaining any benefits of a qualified business, and shall be recertified no less than every three years, as determined by the agency. The agency shall periodically audit qualified businesses for compliance with this section, and decertify any business found not in compliance. Priority shall be given to auditing qualified businesses within 18 months of the original certification of a business. A business may appeal to the secretary of the agency a decision to deny certification or recertification or a decision to decertify, within 30 days of the decision.

Financial institutions shall not be qualified businesses.

(3) A person, corporation, or other entity shall not be a qualified business if the business uses a residential structure in a high density unemployment area for a nonresidential use, unless the structure has been unoccupied for at least one year prior to designation of the program area.

(i) "Program area" means one targeted economic development area and, where applicable, one neighborhood economic development area in the Employment and Economic Incentive Program. The term applies both to areas contained in an application for designation, and an area awarded designation. In an application containing a high density unemployment area with a population in excess of 75,000, "program area" means the targeted economic development area, the high density unemployment area, and, where applicable, the neighborhood economic development area. The benefits of the Employment and Economic Incentive Program shall only accrue to program areas after designation.

(j) "Agent" means the person or entity designated by an applicant to facilitate the operations of the Employment and Economic Incentive Program as described in subdivisions (a) and (b) of Section 7087.

(k) "Applicant" means a city, county, or city and county applying for designation under the Employment and Economic Incentive Act.

(l) "Resident" means, unless otherwise defined, a person whose principal place of residence is within a high density unemployment area and who has lived in that area for six months prior to employment by the qualified business.

(m) "Infrastructure" means the physical systems and services which support development and people, including, but not limited to, streets and highways, transit services, airports, and water and sewer systems.

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(n) "Community services" means any type of emergency assistance, counseling and advice, medical care, instructional, or social services, or recreational programs and facilities furnished to individuals or groups in high density unemployment areas or program areas.

(o) "Neighborhood economic development area" means an area which meets all of the following criteria:

(1) It shall be located entirely within or contiguous to the high density unemployment area contained in the application for designation.

(2) It shall be zoned primarily commercial.

(3) Its boundary shall be continuous.

(4) It shall be of sufficient size to sustain a diverse mix of commercial businesses and its size and location shall be appropriate to reducing the economic distress within the high density unemployment area.

(5) At least a part of its area shall be within the territorial jurisdiction of the applicant. If an area for which designation is sought encompasses the territorial jurisdiction of two or more local governmental entities, all of those entities shall be a party to the application for designation, except that any one or more of those entities by resolution or ordinance may specify that it shall not participate in the application as an applicant, but shall agree to complete all actions stated within the application which apply to its jurisdiction, if the area is designated.

The area may have, but is not required to have, a history of gang-related activity whether or not crimes of violence have been committed.

No residential structure may be used for nonresidential use unless the structure has been unoccupied for at least one year prior to designation as a program area, or unless comparable replacement housing is provided for all persons displaced in accordance with Section 33413 of the Health and Safety Code. No person shall be displaced under this section unless relocation assistance is provided pursuant to Section 33415 of the Health and Safety Code.

An agricultural area shall not be designated as a neighborhood economic development area.

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(p) "Targeted economic development area" means an area which meets all of the following criteria:

(1) Its boundary shall be continuous.

(2) It shall be zoned primarily industrial or other mixed business uses.

(3) It shall be of sufficient size to sustain a diverse mix of businesses and its size and location shall be appropriate to reducing the economic distress within the high density unemployment area.

(4) At least a part of its area shall be within the territorial jurisdiction of the applicant. If an area for which designation is sought encompasses the territorial jurisdiction of two or more local governmental entities, all of those entities shall be a party to the application for designation, except that any one or more of those entities by resolution or ordinance may specify that it shall not participate in the application as an applicant, but shall agree to complete all actions stated within the application which apply to its jurisdiction, if the area is designated.

The area may have, but is not required to have, a history of gang-related activity, whether or not crimes of violence have been committed.

The area may be, but is not required to be, within a high density unemployment area. However, if the area is outside a high density unemployment area, it shall be within reasonable commuting distance of the high density unemployment area which is contained in the application for designation. If the area is outside a high density unemployment area, the applicant jurisdiction in which the area is located, in making its application, shall secure the endorsement of its application from at least one city or county which has jurisdiction within the high density unemployment area and is in close geographic proximity to the high density unemployment area.

The area may include vacant or sparsely developed parcels of land or abandoned facilities.

No residential structure may be used for nonresidential use unless the structure has been unoccupied for at least one year prior to designation as a program area, or unless comparable replacement housing is provided for all persons displaced in accordance with Section 33413 of the Health and Safety Code. No person shall be displaced under this section unless relocation assistance is provided pursuant to Section 33415 of the Health and Safety Code.

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An agricultural area shall not be designated as a targeted economic development area.

(q) "Application area" means the program area and high density unemployment area contained in an application for designation.

§ 14911. Mailing lists; annual correction

Whenever any state agency maintains a mailing list of public officials or other persons to whom publications or other printed matter is sent without charge, the state agency shall correct its mailing list and verify its accuracy at least once each year. This shall be done by addressing an appropriate post card or letter to each person on the mailing list. The name of any person who does not respond to such letter or post card, or who indicates that he does not desire to receive such publications or printed matter, shall be removed from the mailing lists. The responses of those desiring to be on the mailing list shall be retained by these agencies for one year.

§ 65854. Public hearing upon ordinance or amendment; notice.

The planning commission shall hold a public hearing on the proposed zoning ordinance or amendment to a zoning ordinance. Notice of the hearing shall be given pursuant to Section 65090 and, if the proposed ordinance or amendment to a zoning ordinance affects the permitted uses of real property, notice shall also be given pursuant to Section 65091.

§ 65856. Public hearing; exceptions

(a) Upon receipt of the recommendation of the planning commission, the legislative body shall hold a public hearing. However, if the matter under consideration is an amendment to a zoning ordinance to change property from one zone to another, and the planning commission has recommended against the adoption of such amendment, the legislative body shall not be required to take any further action on the amendment unless otherwise provided by ordinance or unless an interested party requests a hearing by filing a written request with the clerk of the legislative body within five days after the planning commission files its recommendations with the legislative body.

(b) Notice of the hearing shall be given pursuant to Section 65090.

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§ 65858. Interim zoning; urgency measures

(a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body, to protect the public safety, health and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.

(b) Alternatively, an interim ordinance may be adopted by a four-fifths vote following notice pursuant to Section 65090 and public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may by a four-fifths vote extend the interim ordinance for 22 months and 15 days.

(c) The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains a finding that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.

(d) Ten days prior to the expiration of an interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

(e) When an interim ordinance has been adopted, every subsequent ordinance adopted pursuant to this section, covering the whole or part of the same property, shall automatically terminate and be of no further force or effect upon the termination of the first interim ordinance or any extension of the ordinance as provided in this section.

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§ 66905.5. Region

As used in this title:

"Region" includes that part of Lake Tahoe within the jurisdiction of the State of California, the adjacent parts of the Counties of El Dorado and Placer lying within the Tahoe Basin in the State of California, and that additional and adjacent part of the County of Placer outside of the Tahoe Basin in the State of California which lies southward and eastward of a line starting at the intersection of the basin crestline and the north boundary of Section 1, thence west to the northwest corner of Section 3, thence south to the intersection of the basin crestline and the west boundary of Section 10; all sections referring to Township 15 North, Range 16 East, MDB & M. The region defined and described herein shall be as precisely delineated on official maps of the agency.

16.12.04.00 Health and Safety Code

§ 50093. Persons and families of low, moderate, and median income; definitions; filing and publication of standards and criteria

"Persons and families of low or moderate income" means persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the department in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. However, the agency and the department jointly, or either acting with the concurrence of the Secretary of the Business and Transportation Agency, may permit the agency to use higher income limitations in designated geographic areas of the state, upon a determination that 120 percent of the median income in the particular geographic area is too low to qualify substantial number of persons and families of low or moderate income who can afford rental or home purchase of housing financed pursuant to Part 3 (commencing with Section 50900) without subsidy.

"Persons and families of low or moderate income" includes very low income households, as defined in Section 50105 and lower income households as defined in Section 50079.5, and includes persons and families of low income, persons and families of moderate income, and middle-income families. As used in this division:

(a) "Persons and families of low income" or "persons of low income" means persons or families who are eligible for financial assistance specifically

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provided by a governmental agency for the benefit of occupants of housing financed pursuant to this division.

(b) "Persons and families of moderate income" or "middle-income families" means persons and families of low or moderate income whose income exceeds the income limit for lower income households.

(c) "Persons and families of median income" means persons and families whose income does not exceed the area median income, as adjusted by the department for family size in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

As used in this section, "area median income" means the median family income of a geographic area of the state, as annually estimated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. In the event these federal determinations of area median income are discontinued, the department shall establish and publish as regulations income limits for persons and families of median income for all geographic areas of the state at 100 percent of area median income, and for persons and families of low or moderate income for all geographic areas of the state at 120 percent of area median income. These income limits shall be adjusted for family size and shall be revised annually.

For purposes of this section, the department shall file, with the Office of Administrative Law, any changes in area median income and income limits determined by the United States Department of Housing and Urban Development, together with any consequent changes in other derivative income limits determined by the department pursuant to this section. These filings shall not be subject to Article 5 (commencing with Section 11346) or Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, but shall be effective upon filing with the Office of Administrative Law and shall be published as soon as possible in the California Regulatory Code Supplement and the California Code of Regulations.

The department shall establish and publish a general definition of income, including inclusions, exclusions, and allowances, for qualifying persons under the income limits of this section and Sections 50079.5 and 50105, to be used where no other federal or state definitions of income apply. This definition need not be established by regulation.

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Nothing in this division shall prevent the agency or the department from adopting separate family size adjustment factors or programmatic definitions of income to qualify households, persons, and families for programs of the agency or department, as the case may be.

16.12.05.00 Public Resources Code

§ 30103. Coastal zone; map; purpose

(a) "Coastal zone" means that land and water area of the State of California from the Oregon border to the border of the Republic of Mexico, specified on the maps identified and set forth in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting this division, extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less, and in developed urban areas the zone generally extends inland less than 1,000 yards. The coastal zone does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, established pursuant to title 7.2 (commencing with Section 66600) of the Government Code, nor any area contiguous thereto, including any river, stream, tributary, creek, or flood control or drainage channel flowing into such area.

(b) The commission shall, within 60 days after its first meeting, prepare and adopt a detailed map, on a scale of one inch equals 24,000 inches for the coastal zone and shall file a copy of the map with the county clerk of each coastal county. The purpose of this provision is to provide greater detail than is provided by the maps identified in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting this division. The commission may adjust the inland boundary of the coastal zone the minimum landward distance necessary up to a maximum of 100 yards except as otherwise provided in this subdivision, or the minimum distance seaward necessary up to a maximum of 200 yards, to avoid bisecting any single lot or parcel or to conform it to readily identifiable natural or manmade features. Where a landward adjustment is requested by the local government and agreed to by the property owner, the maximum distance shall be 200 yards.

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16.12.06.00 Streets and Highways Code

§ 30410. Disposition of property no longer necessary for use.

Whenever any property acquired for any of the purposes of this chapter, whether by agreement, grant, or eminent domain, either in fee or in any lesser estate or interest, is no longer necessary for use in connection with any improvement authorized to be constructed pursuant to this chapter, or whenever a lesser interest than is owned therein is sufficient for the construction, maintenance, and operation of any improvement, or whenever it is for any other reason in the public interest to do so, the property, any part thereof, or any interest therin may be leased, sold, exchanged, or otherwise disposed of or dealt with by the director in the manner, upon such terms, and subject to such reservations as are first approved by the commission.

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16.13.00.00 – DELEGATIONS

16.13.01.00 Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Excess Land 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**
	16.01.05.00	Review of Appraisal Maps	District	Associated Governmental Program Analyst (AGPA)
	16.01.09.00	Excess Lands Parcel Summary RW 16-1	District	Senior RW Agent
Lean 6 Sigma RPRR Requirements	16.02.04.00	Approval to Hold Excess Land	District	District Director
CTC Resolution G98-22	16.05.02.00	Conveyances of Excess Property Requiring CTC Final Approval	HQ	Supervising RW Agent
	16.05.03.01	Incorporation of Excess Parcels Within Operating Right of Way	District	Senior RW Agent
	16.05.03.02	Inter-Program Transfers (Accounting Transaction) RW16-1	District	RW Manager
	16.05.04.02	Option Period Exceeding 180 Days	District	Supervising 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**
	16.05.04.04	First Offering 75%-100% of PSE	District	Senior RW Agent
	16.05.04.04	Subsequent Offerings Minimum Bid May Be Reduced to 60% or More of PSE Regardless of Valuations For a Minimum Bid of Less Than 75% for the First or Subsequent Offerings, the District's Rationale Must be Provided in Writing to HQ R/W for Informational Purposes and a Copy Placed in the District's Excess Lands File.	District	Supervising RW Agent
SHC §118(a)&(b)	16.05.04.05	Recommend to CTC Acceptance of Bid 80% or More of the Unannounced Minimum Bid	District	Supervising RW Agent
SHC §118(a)&(b)	16.05.04.05	Recommend to CTC Acceptance of Bid Less Than 80% of the Unannounced Minimum Acceptable Bid	HQ	Supervising RW Agent
	16.05.04.06	Variations of Extensions of Option Period	District	Supervising 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**
	16.05.04.09	Public Sales of Landlocked Parcels Consideration for Access Option	District	Supervising RW Agent
	16.05.04.09	Form of Agreement Other Than Exhibit 16-EX-5	District	Supervising RW Agent
	16.05.09.02	Direct Conveyances – Adjustment of Sales Price When Market Value is $1M or More	District	RW Manager
	16.05.09.02	Direct Conveyances – Adjustment of Sale Price When Market Value Is Less Than $1M	District	RW Manager
GOV §14673	16.05.11.00	Transfers of Control and Possession	District	District Director
CTC Resolution G98-22	16.07.02.00	Approval of Conveyances of Excess Land Pursuant to CTC Delegation	HQ	Supervising RW Agent
	16.07.07.00	Cancellation of Sale Prior to CTC Approval	District	Senior RW Agent
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	16.11.10.00	90-Day Extension to Negotiate Porter Bill Lease and Sales Contract Beyond One-Year Period	District	Senior RW Agent
	16.11.11.00	Porter Bill Lease Execution	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**
GOV §54235, et seq.	16.10.05.00 16.10.06.00 16.10.07.00 16.10.08.00	Sales of the Properties Located in the Route 710 Corridor Under the Roberti Bill	HQ	Supervising RW Agent

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Exhibits are located online:

- External Exhibits site
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Forms are located online:

- External Forms site
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17.00.00.00 - LOCAL PROGRAMS

17.01.00.00 GENERAL

17.01.01.00 Introduction

The Right of Way Local Programs function has a dual role in assisting in the development of transportation projects on local streets and roads which use federal funding, while at the same time actively working with local and regional agencies to jointly develop special funded (e.g., tax measure) projects on the State Highway System. As such, the Local Programs function uniquely exemplifies the partnership role the California Department of Transportation (Department) plays with cities, counties, and transportation authorities while simultaneously continuing our long-standing, close relationship as an intermediary with FHWA.

17.01.01.01 Objectives

There are a number of objectives for this chapter:

- To provide a comprehensive, practical guide and reference for the Local Programs function;

- To define the local agency projects by type and funding, and to describe the respective requirements for each;

- To describe the extensive revisions in the state funding apparatus brought about by the enactment of STIP reform legislation, the Transportation Funding Act, Government Code Section 14529 *et seq,* (formerly known as SB 45).

- To emphasize the fundamental shift in Department policy by delegating the majority of future STIP funding decisions to regional transportation authorities and local agencies as well as the authority and responsibility to develop and certify their own projects; and,

- To assist local agencies that are seeking federal aid or which use local or state funding for projects on the State Highway System (SHS) by describing the processes and procedures to obtain or utilize this funding.

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17.01.01.02 Background

This manual is a compilation of information from many sources, including federal and state laws, regulations, operating processes, and guidelines. It describes procedures resulting from the almost simultaneous enactment of the 1998 Federal Transportation Equity Act for the 21st Century (TEA-21) and the 1998 State Transportation Funding Act.

TEA-21 provides new federal funding for a wide array of projects through fiscal year 2003. The new STIP legislation significantly and fundamentally changed the funding resources/processes for transportation projects. It has transformed the traditional statewide program from a project delivery document to a funding management tool for developing transportation projects. It acknowledges that although the Department is the owner-operator of the State Highway System (SHS), the regional agencies have the lead responsibility for resolving urban congestion problems, including those on state highways.

The STIP consists of two broad programs: an Interregional Transportation Improvement Program (ITIP), where projects are nominated by the Department; and a Regional Transportation Improvement Program (RTIP), where projects *both on and off the SHS* are nominated by regional authorities. Department utilizes 25% of available statewide transportation funds for the ITIP. The remaining 75% is available to regional agencies for the RTIP. The RTIP is further divided by formula into county shares for projects nominated in the RTIP.

NOTE: Under the new STIP legislation, Department retains its responsibility for the planning, design, construction, operation, and maintenance of the State Highway System (SHS).

17.01.01.03 Reengineering

This chapter also reflects the changes brought about by Department "reengineering" efforts for local assistance projects. These comprehensive revisions were necessitated by the Department's management decision to transfer responsibility for implementing their own projects to Local Public Agencies (LPAs) whenever possible while at the same time commensurately reducing Department involvement in these projects.

For these federal-aid projects, the objective of the "reengineering" changes has been to provide the LPAs with broad delegations, latitude, and responsibility for developing their own projects. However, under Section 23 of

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the Code of Federal Regulations (23 CFR), Department remains responsible for the administration of federal-aid transportation projects. In 1995 the FHWA Division Administrator confirmed that, although the reengineering concept of transferring broad project development responsibility to LPAs was acceptable, the traditional Department responsibility with regard to Uniform Act compliance would remain unchanged and could not be delegated to LPAs.

Because of the substantial changes required to implement the Transportation Funding Act, the "reengineering" effort must be considered as continuous since policy and procedural revisions are regularly being made in furtherance of the commitment to ensure more autonomy at the local/regional level. At the same time, we are continuing to fulfill our stewardship and oversight responsibilities to FHWA.

In the past, prior to the reduction in Department involvement, ample staff was generally available to perform the respective Right of Way Local Programs' functions, including playing an active role in assisting local agencies in developing their federal-aid projects while concurrently meeting our oversight responsibilities. One of the by-products of this substantial level of involvement was the common knowledge we shared with FHWA and the sponsoring LPAs that (with few exceptions) local agencies desiring to do so were successfully utilizing federal funding while completing their projects in compliance with all applicable laws and regulations.

With the passage of the STIP reform legislation and TEA-21, there has been a substantial increase in the funds available for local/regional transportation projects. The increased number of projects, in tandem with the revised procedures, has understandably prompted a surge in the number of questions and requests for assistance as LPAs have begun exercising their newly delegated authority, unfettered by the prior Department's routine involvement throughout the project development process. Fortunately, neither of these landmark legislative acts changed the *way* we in Right of Way do business in Local Programs (e.g., approve projects/funding, monitor projects for Uniform Act compliance, etc.). We just do *more* of it.

Consequently, as the transition to LPA autonomy continues, the major ongoing challenge for the Region/District Local Programs staff is to simultaneously provide assistance to LPAs in furthering their projects while performing an appropriate level of monitoring to assure compliance with the Uniform Act.

This has placed substantial emphasis on the need for careful consideration in planning monitoring/oversight activities. We acknowledge that <u>all</u> projects

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need not be monitored at the same level and each Region/District must develop a means of evaluating LPA projects based on the size, complexity, prior experience with the sponsoring agency, etc. Given the wide diversity in the scope of projects from Region/District to Region/District, this system will permit the Right of Way Local Programs Coordinator to assign priorities and determine monitoring needs. In this way, LPAs that need the most assistance and monitoring can receive a commensurate amount of staff time.

For an additional discussion of the monitoring responsibilities, see Section 17.03.00.00.

17.01.01.04 Types of Projects

This chapter contains applicable instructions for the following types of projects:

1. Federal-aid local assistance projects (formerly known as local streets and roads projects). These are also variously referred to as "Local Grant," "Local Entity," "Local Assistance," or "Off-System" projects.
2. Special Funded projects. These are projects on the State Highway System (SHS). They are also referred to as "Measure" or "On-System" projects. They are sponsored by local public agencies using various funding sources including local sales tax measures, development impact fees, and private sources.
3. Privately funded SHS projects. A privately funded or private developer project is any project on the SHS that is entirely funded by a private entity and is not sponsored by an LPA. All such projects require some form of agreement with the Department (usually a Highway Improvement Agreement) which contains the respective roles and responsibilities of the state and the developer. Private developers do not have the ability to condemn property and therefore must agree on a mutually acceptable price with the property owner. The State is not concerned with the method of determining Fair Market Value (FMV), but the property owner must be offered at least current FMV for their property. And, if necessary, the private entity must notify all property owners of their right to compensation for relocation assistance benefits, including moving expenses, as outlined in the Caltrans Right of Way Manual.

NOTE: Although usage of the terms "On-System" or "Off-System" is widespread, care must be taken because FHWA also uses these same terms to refer to projects "on" or "off" the Federal Aid Highway System. For

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FHWA purposes, projects "on" the Federal Aid Highway System include the following:

- Projects on the Interstate Highway System
- Projects on the National Highway System
- LPA Projects which utilize federal aid in any phase of the project

For a broad discussion of the Federal Aid Highway System, please refer to Chapter 3 of the *Local Assistance Program Guidelines*.

17.01.01.05 Identifying Projects with Right of Way Issues

Any project can have right of way issues. Almost all transportation projects require some property rights and/or the relocation of utilities. Both federal and state laws require that people/businesses affected by transportation projects be treated equitably and fairly.

The need for property can be permanent or temporary, in fee (control of all rights), or in easement (use of some of the rights), and may be a direct or indirect result of the project.

The Department has developed a comprehensive right of way checklist (see Exhibit 17-EX-1) to assist LPAs in determining whether real property or property rights issues are involved in their projects.

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17.02.00.00 - ROLES AND RESPONSIBILITIES

17.02.01.01 FHWA - General

The federal agency with the major transportation role is the U.S. Department of Transportation (US DOT). Within the US DOT, FHWA has the primary responsibility for transportation projects undertaken with federal funding that are discussed in this Manual. FHWA has the authority and responsibility for implementing and monitoring federal laws, regulations, and executive orders affecting these projects. Other agencies within US DOT include the Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and the National Highway Traffic Safety Administration (NHTSA).

Caltrans has obtained major delegations of authority from FHWA under the provisions of the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA), TEA-21, and previous transportation acts. Caltrans has, in turn, passed on these delegations to LPAs whenever possible. With these delegations go the responsibility for initiating and completing each project phase in accordance with the appropriate state and federal laws and regulations without extensive FHWA or state involvement.

ISTEA established provisions for Congress to adopt a National Highway System (NHS) of approximately 155,000 miles of major roads in the United States. In November 1995, the President signed the legislation defining the new NHS. It includes all Interstate routes, a selection of urban and rural principal connector highways, the defense strategic highway network and strategic highway connectors. In California, about 180 miles of local agency principal connectors were selected to be part of the NHS.

17.02.01.02 FHWA Role

For all federal-aid projects, FHWA is responsible for the following project activities:

- Obligation of federal funds.
- Approval of the National Environmental Protection Act (NEPA) measures except for projects that qualify for a Programmatic Categorical Exclusion.
- Specific authorization for utility relocation (see Chapter 14, Utilities in the *Local Assistance Procedures manual)*.

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- Execution of Project Agreements.

- Acceptance of Right of Way Certifications for projects on the Interstate where total project costs exceed $1 million.

  NOTE: The Federal Uniform Act **must** be followed on all federal-aid, local assistance projects. This applies if the federal funds are used only in the construction portion, even when no such funds are used for the acquisition of right of way.

Exhibit 17-EX-2, "Flow Chart of Right of Way Procedures," provides an overview of the right of way process for federal-aid projects.

17.02.01.03 Process Reviews

Although substantial responsibility for the administration of local assistance projects has been delegated to LPAs in certifying their own projects, FHWA has retained the overall responsibility for compliance with the Uniform Act. FHWA periodically performs process reviews of LPA projects to ensure that Uniform Act requirements are being met.

17.02.01.04 Title VI, 1964 Civil Rights Act

LPAs must comply with all the requirements of Title VI of the 1964 Civil Rights Act on federal-aid projects. This is to ensure that all services and/or benefits derived from any right of way activity will be administered without regard to race, color, gender, or national origin. (23 CFR 200 and 710, Subparts B and E.)

17.02.02.01 Local Public Agencies Roles

Regional and local agencies have significant transportation roles. Regional Transportation Planning Agencies (RTPAs) and Metropolitan Planning Organizations (MPOs) develop Regional Transportation Plans and have the primary responsibility in responding to intraregional transportation needs. Local agencies with transportation roles include city and county planning, and traffic and public works departments. All of these agencies also work together with the state and FHWA to provide for both interregional and local transportation needs.

All cities and counties in California lie within the jurisdiction of an RTPA, MPO, or one of the County Transportation Commissions (CTCs).

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NOTE: There are a number of counties throughout the State that have formed County Transportation Commissions (CTCs). They share the same acronym with the State of California Transportation Commission (see below) and care should be taken while reading the text not to confuse which entity is being discussed.

17.02.03.01 State Roles

The state agency with the major transportation role is the Business, Transportation and Housing Agency (BT&H). Within BT&H, the Department has the responsibility for the planning, development, construction, operation, and maintenance of the state's highway system.

17.02.03.02 California Transportation Commission (CTC)

The CTC is an independent state commission responsible for programming and allocating funds for the construction and maintenance of the highway, and passenger rail and transit improvements throughout California. It advises and assists the Governor, the Secretary of BT&H, and the Legislature in formulating and evaluating state policies and procedures for transportation programs. Other functions performed by the CTC include the following:

1. Adopting the State Transportation Improvement Program (STIP) including an estimate of the state and federal funds that will be available.

2. Adopting *STIP Guidelines* for the implementation of the 1998 State Transportation Funding Act.

3. Allocating funds for the State Highway Operation and Protection Program (SHOPP) for maintenance, operational safety, and rehabilitation projects.

4. Submitting an evaluation of the Department annual budget to the Legislature, showing Department's ability to deliver a balanced transportation program along with the adequacy of transportation revenues.

5. Adopting Guidelines for monitoring Local Assistance projects to protect the state's funds and to ensure that they are spent in a timely manner. These are entitled *Guidelines for Allocating, Monitoring and Auditing of Funds for Local Assistance Projects.*

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6. When condemnation becomes necessary, adopting Resolutions of Necessity for projects on the State Highway System which are funded with STIP and SHOPP dollars.

17.02.03.03 State Transportation Improvement Program (STIP)

The STIP is a multiyear planning and budgeting document adopted by the CTC in even-numbered years. The transportation improvements funded through the STIP may be on the SHS, rail systems, or local streets and roads. There are two broad programs that constitute the STIP:

1. Interregional Improvement Program (IIP):

   The Department funds its projects from the IIP after discussions with regional and local agencies, county transportation commissions, and transportation authorities. The Interregional Transportation Improvement Plan (ITIP) is the *document*, which lists the nominated projects. The ITIP replaces the Department's proposed STIP (PSTIP). Each county receives a fixed percent of the ITIP. Eligible projects include freeways, conventional highways, intercity rail, grade separations, and mass transit improvements. Twenty-five percent of all STIP funds is set aside for the ITIP.

2. Regional Improvement Program (RTIP):

   Each RTPA has the responsibility under the STIP reform legislation to develop, in consultation with the Department, a Regional Improvement Program (RTIP) of projects within its jurisdiction. Eligible projects include conventional improvements to state highways, grade separations, soundwalls, rail transit, local streets and roads, and pedestrian/bicycle facilities. Seventy-five percent of the STIP funds is set aside for the RTIP.

The Department and regional agencies consult with each other in the development of the ITIPs and RTIPs. As part of this consultation, Department advises LPAs as far in advance as possible which projects are likely to be included in the ITIP and where joint funding may expedite the project. This process is a reciprocal one, permitting regional agencies to also advise the Department of projects which are proposed for programming in the RTIP. Concurrently, federal regulations require that projects be included in a Federal Transportation Improvement Program (FTIP) in order to be eligible for federal funding. The responsibility for identifying projects while preparing a FTIP is shared between the Department and LPAs.

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A new project *on* the SHS may not be included in either an ITIP or an RTIP without a complete Project Study Report. [See Section 17.04.02.06, "Project Report/Project Study Report (PR/PSR)."] For projects *not* on the SHS, the equivalent of a Project Study Report must be prepared.

17.02.04.01 Department's Role

The Department has the overall responsibility for building and maintaining a statewide multimodal transportation system. This includes balancing state and regional needs for funding availability and allocation.

The Department "*has overall responsibility for the acquisition, management, and disposal of real property on federal aid projects.*" [23 CFR 710.201(b).] Department is also required to "*fully inform political subdivisions (LPAs) of their responsibilities in connection with federally assisted highway projects.*" [23 CFR 710.201(h).] This information is set forth in the Caltrans Right of Way Manual. This Manual establishes procedures for appraisal, acquisition, relocation assistance, property management, and the other right of way functions and activities, and is intended to assist right of way personnel in complying with both federal and state laws, regulations, directives, and standards. Local agencies which use federal funds for their transportation projects do so with the understanding that they must conduct all right of way activities in accordance with the Caltrans Right of Way Manual.

In addition, Department will also "*monitor real property acquisition activities conducted by political subdivisions (LPAs) to ascertain that right of way is acquired in accordance with the provisions of State and Federal Laws and as required by FHWA directives.*" [23 CFR 710.201(h).]

17.02.04.02 Department's Role - Local Assistance (Off System) Projects

As noted above, the Department has obtained major delegations of authority from FHWA on federally assisted local transportation projects. Department has passed many of these delegations to LPAs. This effort, referred to as "reengineering," greatly reduced the traditional Department's role in preliminary engineering (design), right of way, and construction review. At the same time, other areas such as project authorization, consultant selection, and reimbursement payments were streamlined to eliminate multiple reviews. The Department's role for federal-aid local assistance projects is discussed at considerable length in Section 17.03.00.00.

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17.02.04.03 Department's Role - Special Funded (On System) Projects

The rapid growth and availability of "special" funding for transportation projects on the SHS is evidence of the determination by a majority of voters to control both the scope and the timing of improvements to the regional transportation infrastructure by willingly taxing themselves to finance these projects. The Department strongly supports and acts in partnership with cities, counties, RTPAs, MPOs, and private developers in the construction of these projects on the SHS. This active stance on Department's part is evenly reciprocated by locally elected officials, as a reflection on their ability to achieve the goals of the voters they represent.

It is important that Department staff and our LPA partners maintain a clear understanding of our mutual and reciprocal responsibilities. The Department has a much greater role in special funded projects than in the federal-aid local assistance projects because the state is the ultimate "owner-operator." Project sponsors should be made aware of this greater level of involvement at the outset of the development process. All projects on the SHS, regardless of funding, must comply with Department standards, practices, and procedures. The Department actively participates in the project development, right of way, and construction processes. All these roles in implementing Special Funded projects are discussed at considerable detail in Section 17.04.00.00.

17.02.04.04 Right of Way Headquarters' Role

The Right of Way Headquarters' responsibilities for both local assistance and special funded projects include the following:

A. Interpreting federal and state laws and regulations dealing with LPA transportation projects.

B. Developing policies and procedures for incorporation into the Right of Way Manual Chapters for LPA projects.

C. Ensuring that relevant informational material is disseminated to the Regions/Districts for distribution to LPAs.

D. Coordinating with other Headquarters Right of Way functions as well as the Headquarters Division of Design, Division of Local Assistance, and the Legal and Accounting Service Centers.

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E. Coordinating information and policy matters between Regions/Districts to ensure uniformity of operating measures and procedures.

F. Advising and assisting Region/District Local Program Coordinators in meeting their responsibilities.

G. Assisting Regions/Districts in providing training to LPAs.

H. Regularly visiting each Region/District to evaluate the performance of the Local Programs function.

I. Reviewing and coordinating legislative matters affecting Local Program projects.

J. Providing staff assistance as necessary to the Chief, Division of Right of Way and other Department management.

17.02.04.05 Region/District Role - Engineering

At the inception of either a federal-aid local assistance or a special funded project, the project sponsor should contact the District Local Assistance Engineer (DLAE). The DLAE has overall responsibility for liaison with all LPAs in the Region/District.

17.02.04.06 Region/District Role - Right of Way

Each Region/District is responsible for designating a Right of Way agent as the Coordinator for Local Program projects. Inasmuch as the Local Programs function encompasses all phases of right of way, the Coordinator ideally should be an experienced agent with a broad knowledge of all aspects of right of way and contract administration. Furthermore, as the Local Programs Coordinator is representing the State in dealing with both FHWA and LPAs on transportation projects, strong interpersonal and communication skills are considered prerequisites.

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The Right of Way Coordinator's responsibilities include the following:

A. Acts as liaison with the DLAE and the Division of Local Assistance on all LPA projects.

B. Acts as the primary contact for all LPA projects, which involve right of way or rights in real property.

C. Approves/disapproves the qualifications of those LPAs seeking approval to perform their own right of way functions. This includes renewal upon expiration of the qualification term.

D. Maintains a list of all LPA projects with sufficient detail to track the status of the project.

E. Attends field reviews (staff time permitting) at the inception of the project.

F. Performs monitoring and oversight as needed. (See following Sections 17.03.00.00, Federal-Aid Local Assistance Projects for monitoring, and 17.04.00.00, Special Funded Projects for oversight.)

G. Reviews and accepts LPA's Right of Way Certifications for their projects and approves Right of Way Certifications on certain Special Funded projects. Acceptance and/or approval of Right of Way Certifications should be done at the Senior Level or above.

H. Reviews, facilitates, approves, and executes TEA/EEM documents when grant funds are used for land acquisition. This includes the preparation of the appropriate escrow amendments and instructions as necessary.

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17.03.00.00 - FEDERAL-AID LOCAL ASSISTANCE PROJECTS (OFF-SYSTEM PROJECTS)

17.03.01.00 General

For a local federal-aid project, the Local Public Agency (LPA) is responsible for the conception, planning, programming, environmental investigation, design, right of way (including the cost estimate), choice of consultants, the Right of Way Certification, construction, and maintenance. The LPA must ensure that its staff, consultants and contractors comply with all applicable state and federal laws, regulations, and procedures in developing, implementing, and constructing its projects. All Right of Way activities will be subject to Caltrans oversight.

17.03.02.01 Funding and Programming - Roles of Metropolitan Planning Organizations and Regional Transportation Planning Agencies

Transportation planning involving the funding for local projects begins at the regional level. The plans are developed by Regional Transportation Planning Agencies (RTPAs), Metropolitan Planning Organizations (MPOs), and County Transportation Commissions (CTCs). The results of these efforts are incorporated in the Regional Transportation Improvement Plan (RTIP).

The RTIP is submitted to the Department and FHWA for approval and to the CTC for funding. RTIP projects, which involve federal funding, are included in an FTIP. Before an LPA project can be eligible for federal participation, it must be in an approved FTIP. This is the LPA's responsibility.

The CTC encourages the Department to assist regional agencies responsible for preparing a federal TIP, recognizing that federal regulations require that projects in counties with urbanized areas be included in the FTIP in order to qualify for federal funding.

After inclusion of the project in an FTIP and funding is programmed in the RTIP, the LPA should then work with the District Local Assistance Engineer (DLAE) before proceeding with project implementation. The DLAE will coordinate all the necessary authorizations from FHWA. As noted above, the primary Department responsibility for the administration of federal-aid local assistance projects rests with the DLAE.

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This section of the Right of Way Local Programs Manual was previously dedicated to Federal-Aid Local Assistance Projects (a.k.a. Local Streets and Roads projects) that are NOT on the State Highway System.

Instead of updating this section, we will direct you to the Local Assistance Procedures Manual, Chapter 13 - Right of Way, which was released on July 9, 2004.

Chapter 13 includes 60 pages of valuable information about the right of way process that, indeed, will assist the local agency in completing the right of way portion of their transportation project.

Additionally, each Caltrans District Office has a staff of knowledgeable right of way agents who will be happy to assist you with all of your right of way needs. This includes any information regarding Utility Relocations (see Chapter 14 of the Local Assistance Procedures Manual) which is part of the right of way process. We encourage you to take advantage of this valuable resource.

For information about Local Agency projects that are ON the State Highway System, or any portion thereof, please see the following section in this Manual, Section 17.04.00.00.

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17.04.00.00 – LOCAL PUBLIC AGENCY PROJECTS ON THE STATE HIGHWAY SYSTEM

17.04.01.00 Local Public Agency Projects on the State Highway System - Background

The focus of this chapter is locally funded projects on the State Highway System (SHS) sponsored by Local Public Agencies (LPA's). All LPA projects on the SHS, within the existing or proposed right of way, are subject to the requirements of the Right of Way Manual (R/W Manual).

NOTE: For locally funded and sponsored projects off the SHS administered by the Division of Local Assistance, primary guidance is contained in the Local Assistance Procedures Manual (LAPM), Chapters 13 and 14; however, this manual provides supplemental guidance.

Projects having as little as $1 in federal funding in any phase of the project are classified as Federal-aid projects. Projects with no federal dollars in any phase of the project are not Federal-aid projects. Both types of projects on the SHS are subject to the provisions of Department policies and procedures, including the R/W Manual.

The Department is the owner-operator of the SHS. After construction is complete and the project is accepted, the Department remains responsible for operations and maintenance and retains tort liability, which explains why there is such a comprehensive level of involvement. All SHS projects must be developed in accordance with Department standards and practices, including planning, design, right of way acquisition, and construction.

Background and guidelines for these projects are found in Deputy Directive 23 (DD-23-R1), "Roles and Responsibilities for Development of Projects on the State Highway System, dated February 23, 2007." (See Exhibit 17-EX-7.)

Prior to a Local Public Agency (LPA) beginning work on any project on the SHS, there must be an executed Cooperative Agreement (see the Project Management Manual, Chapter 20) and/or an Encroachment Permit must have been issued [see guidance for administration of the Project Evaluation Engineering Report (PEER) project delivery process in the Project Delivery Procedures Manual (PDPM, Chapter 9, Article 8 and Appendix I, and the Encroachment Permit Manual, Section 500.10, Oversight Projects)].

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17.04.01.01 Partnership Projects

Either the Department or an LPA sponsors this type of project. There is a variety of funding sources, which may include tax measure proceeds, local, state or federal monies, and direct contributions to the local agency from developers. The Department may be only a financial contributor, but may also be responsible for certain aspects of the projects such as construction management. Roles, responsibilities, and funding obligations must be defined in one or more Cooperative Agreements, regardless of the amount contributed by the project sponsor or the Department. (For additional detail, see Section 17.07.00.00, "Cooperative Agreements.")

17.04.01.02 Privately Funded Projects

Owners or developers of property adjacent to or near the SHS can use their own funds to construct, repair, or improve any portion of the highway. Some of these projects are undertaken to mitigate impacts or to improve access to the development. Privately funded projects are defined as projects on the SHS, which are sponsored by a private, nonpublic entity and have no funding in a State programming document.

When a new, privately funded project is proposed, a decision must be made in designating the project sponsor. The Department strongly encourages LPAs to sponsor privately funded projects to demonstrate community acceptance of the project and to improve coordination with other local agencies. If a proposed privately funded project is sponsored by an LPA, it will then be processed as a locally funded project.

If an LPA does not sponsor the project, the Department will work directly with the private sponsor. As the owner-operator responsible for assessing the impact of new projects on the existing SHS, the Department is responsible for the preparation of the PSR at Department's expense. It is the responsibility of the private sponsor to provide suitable engineering data, as well as technical and financial information needed for the Department to prepare the PSR. The private sponsor may prepare and submit a draft PSR, at its own expense, to expedite the project development process. The sponsor is responsible for performing all subsequent project development, right of way, and construction activities, with the Department providing oversight at the private project sponsor's expense.

A Highway Improvement Agreement accompanied by an Escrow Agreement, if applicable, will be required for all privately funded projects.

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The private sponsor must follow the Department's Manual for projects on the SHS.

17.04.01.03 Public Toll Roads

These projects use locally generated funds to build toll roads, which will ultimately be part of the SHS. The toll revenues are used to reimburse the costs in constructing the facilities.

17.04.02.01 Project Estimates

The Right of Way estimate is the first step in building a credible budget. The reliability of estimates for project costs at every stage in the development process is necessary for sound project management. The elements of an estimate allow R/W Planning and Management to forecast capital outlay support, personnel requirements, capital outlay expenditures, and future programming needs.

For projects where the Department is responsible for preparation of the Right of Way Data Sheet, the Region/District's R/W Estimating units are often called on to provide cost estimates with little lead time and with only very preliminary studies available. As the project design is progressively refined, alignment changes routinely occur with widespread and consequential impacts. Accordingly, when establishing right of way widths, initial consideration should always be given to the need for maintenance access, drainage, noise barriers, material sites, construction work areas, etc.

Estimates, even at an early stage, are often viewed as a Department financial commitment by LPAs that use the data to develop their project's budget. In the case of tax measure initiatives, project sponsors do not have the option of raising additional funds if there are cost increases and are consequently left with a serious shortfall of funds and/or the need to reduce the number or size of their projects during the life of the tax measure. This can become a very critical and sensitive issue. It is therefore very important that estimates are made with care and are based on the best information available at the time.

When LPAs are preparing their own project estimates, the Right of Way estimates must be prepared by Right of Way staff of a Qualified Local Agency or a Right of Way Consultant that has either an Appraisal License or a Real Estate License with a minimum two years of experience and the knowledge necessary to estimate the value of all types of real estate needed for transportation projects.

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The Right of Way Local Programs Coordinator should provide assistance whenever possible. For additional detail, refer to Chapter 4, "Estimating," in this Manual.

17.04.02.02 STIP Requirements

Locally funded projects, prior to authorization to proceed with project development, should have an approved PSR, environmental clearance and, as applicable, be included in the STIP. During development of each STIP cycle, the Regional Transportation Improvement Plans (RTIPs) should incorporate locally funded projects where a concept has been agreed on and there is a firm funding commitment by a resolution or other documentation from the LPA even if they are not included in the STIP. Locally funded project costs in the STIP include all Department project support costs for each of the following four components:

1. All permits/environmental studies;

2. Preparation of the PS&E;

3. Right of Way Acquisition; AND

4. Construction/construction management, engineering (including surveys and inspections).

If the Department and an LPA agree, they may recommend that a new locally funded project will be jointly funded. In this case, the LPA will nominate its share in the RTIP and the Department will nominate the interregional share in the ITIP.

17.04.02.03 Support Budget for Locally Funded Projects

All locally funded projects on the SHS must be included in the District's database, whether PMCS or PRSM, even if they are not included in the STIP. The Department *or* LPA Data Sheet is the source from which resources are entered into PMCS via the COST screens.

NOTE: Failure to include all locally funded projects will result in the Local Programs' oversight PYs being underallocated.

PMCS and PRSM databases must also be regularly updated to reflect the project's current status, e.g., workload, production, or scheduling changes. This is crucial to ensure the oversight PYs are properly budgeted.

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In preparing a support budget for work on locally funded projects, a Region/District must plan for activity in two general areas:

1. The Region/District's support budget must include effort performed in preparation of the PSR, the environmental document, oversight, project certification, and general advice and assistance for LPAs undertaking the projects. These estimates must be considered in light of the Region/District's experience with acquiring agencies as to the degree of oversight and assistance necessary to certify projects. The Region/District must properly flag LPA projects so that budget personnel can identify the resources needed. The projects' PMCS Cost Screen should reflect full right of way effort as though Right of Way was doing the work. As a general rule of thumb, Right of Way oversight or contract administration is estimated at 10% of total PY effort. The Right of Way Coordinator must maintain close liaison with the unit developing locally funded projects, whether it is the DLAE or Project Development staff to obtain the latest estimates of the type and number of projects expected.

2. In Regions/Districts where reimbursed work is performed, the costs must be specifically budgeted before the work may be undertaken.

17.04.02.04 Project Report/Project Study Report (PR/PSR)

The Project Report (PR) and Project Study Report (PSR) are essentially feasibility studies, which develop both the project's scope and schedule. These documents identify alternate proposals for the project and contain preliminary analyses of the costs, impacts, and requirements. They also detail a crucial element: whether the project results in significant capacity improvement, which is defined as either an increase in capacity more than two miles long or the construction of a major freeway-to-freeway interchange. The combined PR/PSR was designed for noncomplex, noncontroversial projects.

For locally funded projects, Right of Way participates in the preparation of the PSR as part of the project development team and by producing a R/W Data Sheet which contains the estimated R/W capital outlay requirements for the project, as well as an estimate of the amount and type of work to be performed.

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17.04.02.05 Final Design/Plans, Specifications, and Estimate (PS&E)

The final design and PS&E must be approved by the Department and must conform to Department standards and practices. See Deputy Directive 23 (DD-23-R1) 'Roles and Responsibilities for Development of Projects on the State Highway System, dated February 23, 2007," Exhibit 17-EX-7.

17.04.02.06 FHWA Role - Mixed Funding

Locally funded projects can have a mixture of funding, including both State and federal as part of the LPA's share. When projects utilize federal funding for right of way acquisition or construction or when modifications are made to an Interstate freeway in which FHWA has already participated, FHWA approval is required. Dependent on the funding mixture, the approval mechanism is often an Authorization to Proceed (E76). In instances where there is no federal funding, the approval mechanism is the approval of the NEPA document. All projects on the NHS must be approved by FHWA.

17.04.02.07 NEPA/CEQA

All locally funded projects must comply with the California Environmental Quality Act (CEQA). Any project where Federal-aid funds are used or where modifications are made to an Interstate freeway in which FHWA has already participated, must comply with the National Environmental Policy Act (NEPA).

17.04.02.08 Hazardous Waste Studies

All transportation projects on the SHS require the investigation and avoidance, if possible, of any exposure to hazardous waste products. Examples of hazardous waste include petroleum products, pesticides, organic compounds, heavy metals, or other compounds that are injurious to human health or the environment. All projects, which include the purchase of right of way, excavation, or the demolition/modification of structures, will require at a minimum an Initial Site Assessment to determine if any known or potential hazardous waste exists within the project area. The Department's hazardous waste policy and procedures are set forth more fully in Chapter 7, "Appraisals," Chapter 8, "Acquisition," and Chapter 12, "Clearance and Demolition," of this Manual, and Chapter 18 of the *Project Development Procedures Manual*.

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17.04.03.01 Advance Right of Way Activities

In order to avoid loss of federal funds as well as ensure project approval, regular right of way acquisition activities (a written offer) must not be conducted by an LPA on a proposed project prior to completion of the environmental process. The LPA may, however, commence "regular" project appraisals if the following has occurred: (1) the draft environmental document must have been circulated, (2) the public hearing process completed, (3) a preferred alternative has been approved, and (4) the project is not controversial. This policy is necessary to avoid any possible allegations of such acquisitions predetermining the proposed project location and design alternatives.

In all other instances, preliminary regular right of way activities that can be performed are those necessary for completion of the environmental impact assessment and preparation for public hearings. If the project does not meet the criteria stated above, "regular" appraisals cannot commence nor should the property owner be contacted. Activities that can be performed are limited to obtaining general appraisal information for later appraisals as well as work on relocation assistance studies and preliminary utility relocation efforts up to, but not including, the issuance of the Notice to Owner to Relocate.

17.04.03.02 Advance Acquisitions

Some limited acquisitions may take place prior to completion of environmental and hearing requirements. These acquisitions may include the following, which are also discussed in the Acquisition Chapter in this Manual. It is emphasized that each type of acquisition described below may only take place prior to environmental approval and location selection if:

- The LPA shows compliance with applicable acquisition rules. (For details, refer to Chapter 8, "Acquisition," in this Manual.)

- Advance acquisitions (hardship and protection) shall not influence the environmental process for the project, including decisions relative to the need to construct the project or the selection of specific alternative locations.

- A Categorical Exemption package along with a request for either a hardship or protection acquisition has been submitted to FHWA and approved.

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17.04.03.03 Advance Acquisition - Procedures

LPAs making such acquisitions are encouraged to use Department procedures to consider and evaluate advance acquisition requests in conformance with State and Federal criteria. All decisions to acquire under these guidelines should be thoroughly documented (for details, refer to Chapter 5, "Early Acquisition, Corridor Preservation, Hardship and Protection" in this Manual. Also if the environmental and route location processes have not been completed, the advance acquisition must not influence the environmental assessment of the proposed project, nor can they influence the decision relative to the need to construct the project or the selection of a specific location.

All advance acquisitions must comply with Title VI of the Civil Rights Act of 1964 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.

A request to acquire hardship or protection acquisitions prior to completion of environmental clearance requirements must be authorized in advance by FHWA's regional office if FHWA has already approved the project with the proposed acquisitions. This prior FHWA approval for the advance acquisition is required even if the right of way costs will be paid with the LPA's own funds and the project will later be programmed for Federal-aid construction costs.

Close cooperation and communication between the Region/District R/W Local Programs Coordinator, Acquisitions, and the LPA are necessary in order to ensure that eligible costs are neither prematurely submitted for reimbursement nor overlooked entirely when they in fact become eligible for reimbursement.

17.04.03.04 Hardship Acquisition

A hardship is defined as a situation where unusual personal circumstances accrue to an owner of property and are aggravated or perpetuated by reason of a pending transportation facility purchase and cannot be solved by the owner without acquisition by the LPA. See Chapter 5, "Early Acquisition, Corridor Preservation, Hardship, and Protection," of this Manual. FHWA retains approval of hardship acquisitions.

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17.04.03.05 Protection Acquisition

A protection acquisition is one required to prevent development of property in the path of a proposed project route that would cause higher acquisition and construction costs and relocation of people and businesses if deferred. FHWA retains approval of protection acquisitions. See Chapter 5, "Corridor Preservation, Hardship, and Protection," of this Manual.

17.04.03.06 Early Acquisition

Refer to Chapter 5 of this manual for details.

17.04.03.07 Dedications

A dedication is the setting aside of property for public use, without compensation, as a condition prior to the granting of a permit to construct, a zoning variance, or a conditional use permit, etc. The project's timing, i.e., when the additional right of way is required for the highway improvements, dictates whether the Department or the LPA (usually City or County) accepts title to the parcel at the time of dedication. The property owner will normally initiate the request to the LPA that triggers the dedication. Valid dedications can however be accepted throughout the project development process.

There are a number of situations in which dedications occur. Some examples are as follows:

1. When the additional right of way is required for highway improvements that are being constructed in conjunction with a developer's project.

2. When LPAs require the dedication of property rights in conformance with the agency's adopted General Plan. In these cases, in exchange for permits, variances, or land use changes, LPAs require the dedication of property to the setback or the ultimate right of way line as reflected in their General Plan.

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17.04.03.08 Donations (Contributions)

A donation is the voluntary conveyance of property, without compensation, for the improvement of a current or future public project. Donations of right of way may be accepted from an owner/owners if owner/owners do so voluntarily and are advised of their right to compensation. The owner/owners must be provided with an appraisal of the real property to be acquired, or a waiver valuation, if appropriate, unless the owner/owners release the LPA from such obligation. The waiver of just compensation and/or release from obligation to provide an appraisal must be documented. Exhibit 17-EX-8 has been approved for this purpose and should be used whenever donations are offered and accepted. The offer to donate should originate with the property owner and must not in any way result from an act of coercion or suggestion by the LPA.

Property owners who offer to donate should be advised of their right to reserve airspace development rights as set forth in Streets and Highways Code 104.12, which states if leased property was provided for SHS purposes through donation or at less than fair market value, then the lease revenues shall be shared with the donor or seller if so provided by contract when the property was acquired.

Donations may be made at any time during the development of a project. However, any document executed to effect a 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 donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after completion of the environmental clearance and public hearing, if required.

Once the environmental and route location process requirements are satisfied and regular Right of Way activity is under way, donations may be accepted by the acquiring agency as part of their regular acquisition program, provided the restrictions referred to above are followed.

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17.04.03.09 Donations (Credit for Local Match)

The fair market value of donations can be considered eligible as local matching funds whenever federal funds participate.

17.04.03.10 Acquisition of Excess

To avoid involvement in an excess lands disposal program, Regions/Districts as a general rule should not acquire or accept title to future excess land in the Department's name in conjunction with the acquisition of the rights of way on locally funded projects. If the excess is acquired, the acquisition should be via a second deed vesting the excess land portion in the LPA. Where right of way lines are indefinite, excess may be acquired in the Department's name with the understanding that all excess land acquired by the state will be deeded back to the LPA for their disposal upon completion of the highway construction.

17.04.03.11 Sale or Exchange of Excess Property

Locally funded projects may involve the acquisition of property that becomes excess to Department needs as a result of interchanges being removed or reconfigured, ramps being relocated, etc.

Streets and Highways Code Section 118 permits the Department to sell or exchange right of way when it is determined that the property is no longer needed for highway purposes. On these projects, in the furtherance of our partnership approach, it is the Department's policy to cooperate with the LPA sponsor in making possible the exchange of state excess for property acquired by the LPA.

A valuation of the property involved will be completed by the Department's Right of Way staff. The value of the property acquired for state highway improvements should normally be of equal or greater value than the value of state excess property to be exchanged. If the state excess has greater value, the entities should normally pay the state the cost difference. However, the value of the state highway facility improvements financed by the entity may be factored into exchange values if it is in the best interest of the state.

The real property exchange should be considered during early stages of project development whenever possible and addressed in the appropriate project development document (PSR, PSR/PR, etc.). Terms and conditions of the property exchange should be included in the Cooperative Agreement. The property exchange is subject to CTC approval.

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NOTE: Where State funds participate in right of way acquisition, either on or off the State Highway System, the proportionate share of proceeds from the sale of excess real property shall be returned to the Department. The LPA shall contact the Department's Right of Way Liaison in their area prior to the sale of excess real property.

17.04.04.01 Utility Relocation

In order to ensure utilities are relocated in timely fashion, it is crucial that early liaison be established between the utility companies and the design unit. This early involvement will help determine where potential conflicts exist, where possible design changes would preclude the need to relocate the utility and, if utility relocation is required, allow the utility company to budget the necessary staffing and capital outlay required to carry out the relocation activity on a schedule compatible with the project certification requirements.

Utility relocation can commence after the environmental document is approved and continue concurrently with the property acquisition process. Although it is preferred to have all utility relocations completed before the highway construction begins, utility relocation work may continue through the construction process. All utility relocations must comply with state and federal laws and conform to Department specifications. For additional discussion, refer to Chapter 13, "Utility Relocations," in this Manual and Chapter 14, "Utility Facilities," in the *Local Assistance Procedures Manual*.

17.04.04.02 Utility Master Contracts

The Department has entered into master contracts with a number of the larger utility owners for the apportionment of relocation costs on freeway projects. These contracts are to be applied in lieu of otherwise applicable Streets and Highways Code sections and are applicable to all freeway projects on the SHS no matter what the source of project funds or the agency responsible for project design. The terms of the Master Contract determine the cost apportionment, but as a general rule, utility activities fall under the Master Contract terms whenever those activities support the construction, maintenance, improvement, or repair of the freeway, regardless of whether such activities take place within the right of way, outside the right of way on other public property, or outside the right of way on private property. In order that the Department not be inadvertently assessed utility activity costs which ought to have been paid by the LPA, it is extremely important that the Cooperative Agreement contain utility relocation clauses that are not modified unless Region/District Right of Way Utility Relocation section has been consulted and has agreed in writing to any proposed clause

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changes. The only exception to the use of the Master Contract is when the freeway improvement project is an LPA-imposed mitigation requirement arising as a result of developer request for property improvement. In this case the developer will be responsible for all utility relocation costs in accordance with applicable case law.

17.04.04.03 High and Low Priority Utility Facilities

All underground high and low priority utility facilities within the State Highway rights of way shall be handled in accordance with the Department's utility policy as referenced in the Project Development Procedures Manual Chapter 17, Encroachments and Utilities.

17.04.04.04 Agreement for Positive Location of Underground Utilities (Pos-Loc)

In an effort to accelerate project delivery and eliminate discovered utility work, the Department has implemented the Positive Location ("Pos-Loc") Program. Pos-Loc is a project delivery activity using state administered contracts to expose underground utilities for state highway projects, using vacuum excavation methods.

The Department has entered into a standard "Agreement for the Positive Location of Underground Utilities" with willing utility companies that call for the Department to pay 100% of all positive location (pothole) work for all projects on the State Highway System.

Local Public Agencies responsible for delivering Utility Relocation Services for projects on the State Highway System are required to implement this policy.

Please refer to the Right of Way Utilities website for information regarding utility companies that have executed Positive Location Agreements and names of the Department's Utility Coordinators in your area. Additional information regarding the Positive Location Agreement process can be found in Chapter 13, "Utility Relocations," of this Manual.

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17.04.05.01 Cooperative Agreements

After the PSR is approved, the LPA(s) and the Department jointly develop and execute a Cooperative Agreement(s) which contains all the respective responsibilities and funding roles for the various phases of project development and construction. All locally funded projects on the SHS with construction costs *greater* than $1,000,000 require Cooperative Agreements. Please see Section 17.07.00.00 for further discussion.

NOTE: Projects with construction costs *less* than $1,000,000 can also be quite complex due to funding or other factors. A Cooperative Agreement is the only practical way to adequately memorialize the respective agreements and responsibilities in projects involving right of way and/or right of way utilities. The Department should enter into a Cooperative Agreement in all such cases and the $1,000,000 threshold figure should be ignored.

17.04.05.02 Tracking of Right of Way Expenditures

It is crucial that each Region/District have a responsible Right of Way Project Coordinator/Administrator to track the monthly/total expenditures for each project from the inception of the Right of Way activities. Some of the responsibilities are to ensure that each Cooperative Agreement is current and adequately funded. If additional resources are needed, the Cooperative Agreement must be amended. If resources have been exhausted, all right of way activities must stop and cannot continue until an amendment has been executed and additional resources secured.

17.04.05.03 Capital Support Reimbursed Work

The Region/District's Right of Way staff may perform work for LPAs on Locally Funded projects on the State Highway System and be reimbursed pursuant to a Cooperative Agreement. Any new or revised Cooperative Agreements for reimbursed work require individual approval from your Deputy District Director for Program and Project Management.

17.04.05.04 Reimbursed Supervision

On some locally funded projects, when the appropriate approvals provided for above have been obtained, the Department will provide supervision of an LPA's right of way activities. In this context, reimbursed supervision includes providing the necessary review and approvals to complete the Right of Way phase of the project.

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NOTE: The difference between the Department (or a qualified LPA) providing "oversight" and "supervision" involves the *approval* of work products. These review/approval responsibilities must be included in the Cooperative Agreement.

17.04.05.05 LPA Qualification Requirements

Qualified LPAs may perform the right of way functions for which they have been approved. Nonqualified LPAs must utilize one of the options listed under Section 17.05.07.01. (See Section 17.05.00.00, "Local Agency Qualifications," and Section 17.06.00.00, "Consultant Qualifications.")

17.04.06.01 Locally Funded Projects - Duties

In addition to the general duties described at Section 17.02.04.03, other Right of Way duties may include the following:

A. Coordinating with the Region/District Planning and Management Branch to ensure that *all* locally sponsored and funded projects are included in PMCS/PRSM and are updated as necessary on the Status of Projects report.

B. Coordinating/assisting in the preparation of the Project Study Report, the Project Report, cost estimates, etc.

C. Coordinating/assisting with the preparation of Cooperative Agreements or Highway Improvement Agreements.

D. Coordinating the Department's line functions (e.g., appraisals, acquisition, relocation, etc.) when their assistance is necessary in performing oversight or when the state performs these functions as reimbursed work.

E. Providing oversight during the right of way phase (if these functions are performed by others) to ensure that all right of way activities and "deliverables" conform to state standards. [See Section 17.04.06.02, "Oversight (Quality Assurance)."]

F. Approve the Right of Way Certification. (See Section 17.08.00.00, "Project Certification.")

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17.04.06.02 Oversight (Quality Assurance)

The Department, as the ultimate owner-operator of the SHS, will always be liable for maintenance and operation of the System and retains tort liability once the completed project has been accepted. Furthermore, as also discussed above, on locally funded projects, the Department plays an active role in the project development process. Department approval is required for the Project Report and the PS&E. The Department usually prepares the environmental document (which may require extensive Right of Way involvement). During the right of way phase, we are very much concerned with the quality of the work product and therefore with the qualifications of the parties performing this work. It is therefore in our best interest to become as involved in the projects as staff time permits. Project sponsors, whether LPAs or private entities, are responsible for funding these projects, but often need Department involvement to become familiar with the development process and requirements. For our purposes here, this involvement is referred to as oversight. The Department funds its oversight activities on locally funded projects unless the project is privately sponsored. On private projects, the project sponsor is responsible for the cost of oversight.

Oversight is an intensive level of Department staff involvement in providing review of all right of way activities, and acting as a resource for information on Right of Way Manual requirements. LPAs negotiating Cooperative Agreements should be made aware as early in the process as possible that Department staff will play an active role in reviewing the right of way activities for the project. (See Exhibit 17-EX-11, "Functional Responsibilities," Oversight.)

Oversight responsibility begins with providing the LPAs all applicable manuals, handbooks, guidelines, etc., containing the federal and state requirements and regulations. It can include assistance in preparing and reviewing the Project Study Report, maps, cost estimates, R/W data sheets, utility relocation arrangements and schedules, and any other requirements for the project. It can also include qualifying LPAs to perform their own right of way functions and assisting nonqualified LPAs to retain qualified consultants. Of particular concern to the state, oversight should include the review of a representative sampling of "deliverables," i.e., right of way maps, appraisals, acquisition files (deeds, contracts, diaries, etc.), RAP files (claims, payments, diaries, etc.), and review and approval of the LPA's R/W Certification.

Oversight responsibilities extend beyond the project certification and include whatever efforts are necessary to ensure that the right of way acquired for the project is properly conveyed to the Department and that our

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requirements are satisfied pertaining to system integrity (e.g., title, description, and monumentation).

17.04.06.03 Expenditure Authorizations - Oversight

As noted above, each locally funded project will be the subject of a Cooperative Agreement. (See Section 17.07.00.00, "Cooperative Agreements.") When the Agreement is being developed and in particular after the Agreement is approved, the Local Programs' role is *usually* one of oversight. Each Cooperative project will have an Expenditure Authorization (EA) assigned. Local Programs staff may be involved in activities from a project's inception through the end of construction. Consult Division of Right of Way's Time Charging Manual for appropriate time charging codes.

17.04.07.01 Appraisal Requirements

Purchase of the required right of way can be made only after a written appraisal of its market value has been made and approved to establish just compensation per the 49 CFR 24.104 requirement. All projects on the SHS require an appraisal review process which at a minimum:

A. Requires a qualified reviewing appraiser review the appraisal to assure it meets applicable appraisal requirements and shall, prior to approval, obtain any necessary corrections or revisions.

B. If the reviewing appraiser is unable to approve or recommend approval of the appraisal as an adequate basis for the establishment of just compensation and it is not practical to obtain an additional appraisal, the reviewer, acting as reviewing appraiser, may develop appropriate appraisal documentation to support an approved or recommended value.

C. Requires a signed statement, which identifies the appraisal report reviewed and explains the basis for such recommendation or approval. In addition, any damages and/or benefits to the remainder must be identified in the statement.

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17.04.07.02 Dual Appraisal Requirements

While the Department no longer requires dual appraisal reports for unusually complicated parcels or parcels exceeding $500,000 in value, it is our responsibility to point out appraisal situations where it may be prudent or helpful to have two appraisal opinions. It is the LPA management's responsibility to decide if they are comfortable with only one appraisal when the values may be several hundred thousand dollars of measure money, compared to the cost of a second appraisal.

Section 7.01.00.00 in Chapter 7, "Appraisals," in this Manual contains the Department's recommendations for dual appraisals.

17.04.07.03 Access Control - Private Property Benefits

Access control changes that directly benefit or serve private property require that compensation be paid for the increased value of the property. The increased value is determined by a "before and after" appraisal of the property.

For additional information, refer to Chapters 7 and 16 of the Right of Way Manual.

17.04.07.04 New Public Road Connection - Benefits

If the proposed access opening or modification is for the purpose of allowing a new public street connection, compensation as defined above will be required unless the street clearly serves a public purpose and there are no abutting private properties that would receive a preponderance of benefit due to increased development potential.

NOTE: For additional discussion of these policies, refer to Chapter 26 and Chapter 27 of the *Caltrans Project Development Procedures Manual.*

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17.04.08.01 Locally Funded - Power of Eminent Domain

As Implementing Agency for Right of Way, the LPA will acquire property for state highway purposes and take title first in its own name (Streets and Highways Code Section 113 for Cities and Streets and Highways Code Section 760 for Counties). Caltrans acceptance of title and ultimate vesting in the State will occur after completion of the project's Right of Way Close Out activities. See Deputy Directive 23 (DD-23-R1), Roles and Responsibilities in Development of Projects on the SHS (Exhibit 17-EX-7).

NOTE: When Caltrans is the Implementing Agency for RW, title will be taken in the State's name. As a condition of Caltrans taking title as the RW Implementing Agency, Caltrans shall also be the Implementing Agency for Construction.

In general, there are no comparable legislative provisions authorizing transit/transportation/measure authorities to acquire property by condemnation or take title to property acquired for state highway purposes. In the absence of specific statutory authority, local traffic authorities do not have power to take title to real property to be used for state highway purposes. Conversely, the state is not authorized to take property by eminent domain in the name of the traffic authority.

17.04.08.02 Acquisition Settlements

The decision as to the most effective way to acquire the necessary rights of way is the responsibility of the LPA. The Department's *usual* role is limited to oversight. Within this context, LPAs must review and approve their own administrative authorizations and/or settlement amounts, exchanges, etc., according to the criteria contained in the Right of Way Manual. The Department's role is to ensure that such acquisitions are in conformance with the Uniform Act and that such actions do not deprive the property owner of just compensation.

Whenever the Department is performing acquisition for an LPA on a reimbursed basis and an administrative settlement or statutory offer is proposed, the LPA must be involved in and approve any amount over the approved appraisal.

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17.04.09.00 Condemnation When LPA is Implementing Agency for RW – General

The power of eminent domain can only be exercised if the condemning authority can establish:

- The necessity of the project,
- The project location is most compatible with the greatest public good and least private injury,
- And, the property is necessary for the project.

State statute allows the California Transportation Commission, cities and counties to hear and adopt resolutions of necessity for the acquisition of property needed for projects on the State Highway System. The exercise of eminent domain to acquire property for state highway purposes can be accomplished only by the state (Department) or by the county or city in which the property is located.

When the LPA is the Implementing Agency for RW and has authority to condemn under California Eminent Domain Law, Code of Civil Procedures, the steps involved in taking resolution requests to a local board begin during the draft cooperative agreement phase. The decision to take Resolutions of Necessity to the Local Board of Supervisors or City Council is made for the project in its entirety.

When the LPA, city or county, is the project sponsor and implementing agency for Right of Way, the LPA shall hear the resolutions. For city-sponsored projects, the city council must pass a resolution, by two-thirds vote, agreeing to hear the Resolutions of Necessity for the project. For county-sponsored projects, the county must pass a resolution, by four-fifths vote, agreeing to hear the Resolution of Necessity for the project. LPA's that do not have authority to condemn under California Eminent Doman Law, Code of Civil Procedures shall coordinate with the LPA that has jurisdiction.

NOTE: If the LPA having authority to condemn elects to have Caltrans undertake the role of Implementing Agency for RW, the Department will perform all right of way work including assumption of this condemnation task. The cost for providing Design, Right of Way and Legal services is reimbursable to Caltrans and must be included in the Cooperative Agreement, Right of Way Services Agreement, or applicable amendments thereto. In addition, prior budgetary authority for reimbursable work must be obtained. See section 17.07.00.00 Cooperative Agreements of this chapter for more detailed discussion. Access the standard Cooperative Agreement Articles.

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17.04.09.01 Notice of Intent

The local agency, as Implementing Agency for R/W is required to follow the Department's Notice procedures. Please see Section 9.01.04.00. A Notice of Intent to adopt a Resolution of Necessity can only be served after the grantor has been given a reasonable amount of time to consider the offer presented. The Notice of Intent cannot be served immediately following the offer to acquire.

17.04.09.02 Resolution of Necessity

The resolution must satisfy all of the requirements of the Code of Civil Procedures (CCP), Title 7, Chapter 4, Article 2. When the LPA is the Implementing Agency for R/W, all legal activities associated with the eminent domain activities, including process of the resolution package, must be performed by the LPA's Legal Counsel.

The Resolution of Necessity must contain a general statement of the public use for which the property is being acquired and must reference the appropriate statute for the property rights to be acquired by eminent domain. Frequently cited references are:

- Streets and Highways Code Section 102 allows for acquisition by eminent domain for state highway purposes
- CCP Section 1240.410 – the acquiring agency is acquiring a remnant of such size, shape or condition that it will have little market value
- CCP Section 1240.510 – the property is being acquired from another public agency for a compatible use
- CCP Section 1240.610 – the property is being acquired from another public agency for a more necessary public use
- CCP Section 1240.220 – the public agency is acquiring additional property for future use, requires owner's consent
- CCP Section 1240.150 – entire parcel is to be acquired when the remainder would be of little value to the owner, requires owner's consent

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The resolution must also contain a general location and extent of property rights to be acquired to allow for reasonable identification. The resolution document must declare the public finds each of the following:

- Public interest and necessity require the project
- The project is located in a manner to provide the greatest public good and least private injury
- The property is necessary for the project
- An offer has been made to purchase the property in accordance with Section 7267.2 of the Government Code

17.04.09.03 Request to Appear

Statute allows the property owner fifteen days within which to request an appearance before the board hearing the resolution request. If a Request to Appear is not timely, then the right to appear has been waived and the resolution will be heard as a consent item. Exceptions to timely requests may be granted jointly by the delivering agency and the governing body. The reasons for exception will be documented in every case. Possible reasons are documented illness or documented travel.

If the owner requests an appearance, then the local agency must follow a review process in accordance with Caltrans Right of Way policies and procedures. The review process may require postponement of the date the resolution is heard before the CTC, County Board of Supervisors or City Council.

The Condemnation Evaluation Meeting and Condemnation Panel Review Meeting provide a forum where property owners can meet with Local Agency Right of Way and Local Agency and Caltrans Design managers in an effort to resolve design issues. These reviews address the concerns of the property owner. It is important that Caltrans as owner-operator and decision-maker be included in the review process. Occasionally, certain acceptable design exceptions with minor impact can satisfy the property owner's concerns. The Condemnation Evaluation Meeting and the Condemnation Panel Review Meeting may be combined only when there are no design issues. If there are no design issues, then the decision to combine the two meetings is made by the LPA.

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17.04.09.04 Condemnation Responsibilities (LPA as Implementing Agency for RW)

In preparation for condemnation, the LPA will *normally* provide the following:

A. Current title reports with indications of each interest to be named in the lawsuit and updates of such reports as necessary.

B. Relocation assistance certificates of occupancy indicating names of persons of other entities in possession of the property.

C. An adequate legal description of the property.

D. Right of Way/Parcel maps as required for condemnation complaints.

E. All notices and reports necessary to obtain Resolutions of Necessity including reports and/or presentations where an owner seeks to exercise his right to appear before the appropriate governing body to contest the necessity for the taking.

F. Documents necessary to deposit the just compensation with the State Treasurer.

G. Necessary information for obtaining orders of possession.

H. All efforts required to process suit papers and to file, serve, and prepare proof of service documents for required summons, complaints, and orders for possession.

I. An authorized representative from the LPA who will appear at the hearing before the appropriate governing body to adopt the Resolution of Necessity.

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17.04.09.05 Condemnation Trials Responsibilities (LPA as Implementing Agency)

In preparation for trial, the LPA will *usually* provide the following:

A. A copy of the LPA's staff appraisal report.

B. Relevant acquisition files and data, including copies of parcel diaries, correspondence, and other related material.

C. Engineering witnesses familiar with the property to be acquired, the proposed project and the improvements associated therewith.

D. All maps, exhibits, and photographs required for trial.

E. Expert appraisal witnesses.

17.04.10.01 Property Management - Income

Pursuant to Streets and Highways Code Sections 104.6 and 104.10, twenty-four percent (24%) of the gross rental income derived from property acquired in the state's name is to be transferred to the county in which rental income is derived. These sections are applicable whenever property is vested in the state's name regardless of the source of money to acquire the property and who will provide the property management services to the LPA. Pursuant to Streets and Highways Code Section 104.13, the Department is responsible for the payment of possessory interest taxes on leased property held for future state highway needs and for excess lands. All funds distributed to a county (24%) pursuant to Section 104.10 are considered to be the full or partial payment of the total possessory interest taxes due.

The above distribution of funds must be clearly detailed in the Cooperative Agreement or Right of Way Services Agreement with the LPA, particularly in situations where another LPA is acting as an agent for the Department in providing the property management services.

If Department is providing the property management, the balance of gross rental receipts (less adjustments for possessory interests and/or 24% allocation) will be transferred to the LPA. Costs incurred in conjunction with property management activities are reimbursable costs and will be part of the advance deposit for estimated support costs. The LPA will not be paid interest on rental income.

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17.04.11.01 Local Agency Relocation Assistance Appeals Process

Whenever the LPA is proposing to do their own relocation assistance work, they must have an appeal process that meets the Uniform Act/CFR requirements and is approved by the Department.

The District must approve the process and the Appeals Board members or hearing officers designated by the LPA. The submittal to the Department should include the following:

1. Assurances that all persons receiving relocation assistance will be advised of their right to appeal.

2. The names and qualifications of prospective members of an Appeals Board or appeal review officers. (Note: Appeals Board members should not be persons who are involved in the relocation claims process nor any supervising persons involved in the claims process.)

3. The LPA's plan for hearing appeals in a timely manner and advising the appellant of the outcome of the hearing.

4. Assurances that all appellants who do not receive the total relief requested will be advised of their right to seek judicial review.

17.04.12.01 Project Certification

The LPA sponsor is responsible for certifying that physical and legal possession of the necessary right of way has (or will be) obtained, that all occupants have vacated the property, and that all acquisition and relocation activities comply with applicable state and federal laws. The certification must be submitted to the Department for approval with the following information and attachments: status of required right of way, agreements for possession and use, compliance with relocation assistance program, status of affected railroad facilities, material and disposal sites, specific authorization and utility contract for utility relocation. For an additional discussion of the Certification process, see Section 17.08.00.00, "Project Certification," and Chapter 14, "Right of Way Certification," in this Manual.

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17.04.13.01 Acceptance of Title by Caltrans

The LPA sponsor is responsible for delivering title to the right of way acquired for the project to the Department free and clear of all encumbrances detrimental to Department's present and future uses.

The Department, as owner/operator, will accept the completed LPA sponsored project into the SHS, provided the project was approved and that right of way was acquired in accordance with Department policies, practices and procedures, including terms of the project Cooperative Agreement. To ensure compliance, the following procedures have been adopted:

A. LPA-Sponsored Projects (Public Projects)

1. The LPA prepares and submits to the Local Programs Coordinator the acquisition documents (Right of Way Contract, Grant or Easement Deed, escrow instructions, etc.) for each acquisition transaction.

2. The Coordinator reviews and approves the transaction and arranges for the authorized District Right of Way representative to acknowledge acceptance of the deed.

3. Upon acceptance, the Region/District will submit the Deed and escrow instructions to the title company.

4. The title company, upon receipt of a check from the LPA (or the Department, if appropriate), will close escrow, issue a policy of title insurance as in the amount specified in the escrow instruction letter, and record the deed vesting title in the LPA or state, free and clear of all liens and encumbrances except as otherwise stated.

B. Private Developer-Sponsored Projects (Private Projects):

1. The Developer acquires the necessary rights of way with title vested in the developer's name.

2. The Developer provides the Department, prior to the issuance of an encroachment permit, a Right of Way Certification and acquisition package consisting of a Grant Deed vesting title in state's name, a Policy of Title Insurance, and escrow instructions for each parcel acquired.

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3. R/W reviews the certification and acquisition package(s) and prepares a Memorandum of Settlement.

4. R/W confirms that the certification and acquisition documents are correct, signs R/W Certification, and notifies the Encroachment Permits Branch.

5. The state grants the encroachment permit to Developer.

6. Prior to acceptance of the completed project by the Department, the Grant Deed conveying title to the state is recorded and a policy of title insurance naming the state is issued.

17.04.14.01 Assessment Districts

In order to minimize future controversy, in cases where LPAs wish to utilize assessment district procedures in acquiring rights of way, the following procedure has been established:

A. Requirements for Prior Department and FHWA Approval (Where Necessary)

For each project where the local share is to be provided by an assessment district (construction and/or right of way reimbursement), the LPA sponsor shall receive prior Department approval of its intended assessment district procedures. If the project has federal aid, FHWA approvals are also required.

B. Procedure for Securing Approval

At the field review stage, the LPA seeks the Department and FHWA's approval (when necessary), submitting its intended assessment procedures and a description of the method its valuation engineer will use to determine individual assessments.

The District forwards the assessment procedures to Headquarters for approval.

The request, when appropriate, is then forwarded to FHWA for approval. Each level of approval should be obtained before Right of Way activities are commenced.

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C. Criteria to be Used in Granting Approval

The following criteria will be used by the Department and FHWA (where appropriate) to determine whether the proposed assessment district is consistent with the requirements of 49 CFR 24.A-C.

1. All property to be acquired must be appraised in accordance with existing procedures.

2. The assessment may not be made on a formula which would automatically increase an owner's share if the owner successfully secures a higher payment through the judicial or negotiation processes.

3. An assessment must be based on a relationship attributable to the special benefit each individual property owner receives and not by the costs and amount of right of way acquired. A consistent method of assessment will be done on a districtwide basis.

4. The inclusion of severance in deriving the method of assessment may conflict with the concept of all properties being benefited by the project unless the damages are offset by benefits, as actually determined, in an after condition.

5. Funds received from property owners in the assessment district cannot duplicate Federal funds to be applied to the highway project, but must be limited to the local share of the total project cost.

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17.05.00.00 - LOCAL AGENCY QUALIFICATIONS

17.05.01.01 Qualifications - General

Federal regulations (23 CFR 710.201) assign the Department the overall responsibility for the acquisition of right of way on all federal-aid highway projects and also require the Department to have a right of way organization adequately staffed, equipped, and organized to meet this responsibility. A Local Public Agency (LPA) may acquire right of way on federal-aid projects only if the Local Public Agency is qualified in accordance with this manual section, or meets the requirements under Section 17.05.07.01, "Nonqualified LPAs - Options." Further, unless State forces are performing the right of way activities, the Department's policy requires using only qualified Local Public Agencies, or their qualified consultants, for locally funded projects on the State Highway System, regardless of whether the projects have federal aid. Note: For projects on the State Highway System, right of way work performed by other than the Department must be funded with "Local Agency" funds.

Department procedures for qualifying LPAs to perform the work authorized by their level of certification for projects with federal funding, both on and off the State Highway System, are detailed in this section. As part of the qualification process, the Department reviews organization charts and education and experience levels of staff. The accounting system of the LPA must be evaluated to determine its ability to accommodate segregation of federally participating and non-federally participating activities. For projects on the State Highway System, the LPA must submit for review and concurrence, on a project-by-project basis, work plans, timelines with milestones, and staffing plans. Selection criteria, including education and experience requirements, have also been developed for evaluating the qualifications of consultants to work for LPAs. These selection guidelines are discussed in Section 17.06.00.00, "Consultant Qualifications."

NOTE: The Department is charged with the responsibility for imposing sanctions in cases of material noncompliance with State and Federal law and requirements. Sanctions may include the loss of qualification status as well as loss of some or all federal funding for the project. Chapter 20 of the LAPM provides a detailed discussion of deficiencies and sanctions (https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/ch20.pdf).

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17.05.01.02 LPA Qualification Requirements

LPAs may be qualified to perform all right of way functions or only for individual functions (such as acquisition), depending on the qualifications of their staff and number of staff available to perform the technical work and subsequent reviews.

To be qualified, an LPA must:

- Be adequately staffed, trained, and organized to do right of way work properly and timely,

  AND

- Agree to conform to Department policies and procedures in order to meet state and federal requirements.

The above staffing requirements may be met by furnishing a staffing and organization chart, including duty statements and résumés of staff's experience.

It is the Region/District's responsibility to determine if the LPA is adequately staffed and has the necessary expertise at all levels of staff involvement. The Coordinator must document these determinations to certify an agency as qualified, and notify the LPA of qualification approval and recertification requirements.

When work is to be performed on the State Highway System, the Local Public Agency must provide current staffing information along with work plans and timelines with milestones on a project-by-project basis. The Authorizing Document for the project triggers the need to begin the qualification process. The timing for the review will coincide with the initiation of the Draft Cooperative Agreement for the project. If the plans do not allow adequate staffing or time for completing the right of way activities, then the Department will either suggest modifications or request that the LPA submit revised plans and timelines in order for the LPA to comply with State and Federal law and requirements.

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17.05.01.03 Levels of Qualification for LPAs

The LPA may have experienced staff, but not in sufficient number to be qualified for every right of way function. The following levels of qualification can be obtained with prior Department's Region/District approval:

- Level 1 - Staff is qualified to do technical work in one or more specific functional areas. These areas will be shown in the qualification approval. As an example, some smaller rural agencies have sought approval to perform only appraisal or acquisition functions. Level 1 approvals are good for up to three years and for projects "ON" the State Highway System, they require review and approval on a project-by-project basis.

- Level 2 - Staff is qualified to do technical work in some but not all functional areas. There is sufficient staff to perform these functions on more than one project at a time. Level 2 approvals are good for up to three years and for projects "ON" the State Highway System, they require review and approval on a project-by-project basis.

- Level 3 - Staff is large enough and qualified to do technical work in all functional areas. Level 3 approvals are good for up to three years and for projects "ON" the State Highway System, they require review and approval on a project-by-project basis.

17.05.02.01 Procedures for Obtaining Qualification Status

A. The LPA contacts the Region/District Right of Way Coordinator requesting approval of qualification status.

B. The Region/District meets with the LPA to explain state and federal requirements and what must be done to become qualified. A Right of Way Headquarters Local Programs representative may participate in the meeting if requested by the Region/District. The Region/District should see that the LPA has all needed material, e.g., the Caltrans *R/W Manual*, the FHWA *Right of Way Project Development Guide*, any necessary policy and procedure memos, and current copies of Titles 23 and 49 of the Code of Federal Regulations (CFR).

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C. The LPA subsequently submits its organizational charts, staff résumés, duty statements, and agrees to adopt Caltrans procedural manuals for right of way activities on federal-aid and/or State Highway System projects. The LPA shall maintain sufficient access to Caltrans procedural manuals, either through hard copies or Internet access, so as to provide adequate direction to right of way employees on how to perform their assigned duties.

D. The Region/District will then conduct its investigation to determine if the LPA maintains access to current Caltrans procedural manuals and operates in conformance with state and federal requirements. This review will include an evaluation of the LPA's personnel to determine if they are adequately trained and experienced in right of way activities to perform to Department standards. Also, Caltrans Audits and Investigations' Accounting will evaluate the LPA's accounting systems to determine whether it meets requirements. The Department's experience with the LPA may be satisfactory and, thus, an audit evaluation may not be required. Regions/Districts should only initiate requests for audit evaluations when circumstances dictate, then the request should be processed through HQ R/W Local Programs. See 17.05.03.01.

17.05.02.02 Staff Training and Experience Requirements

Region/District must review LPA staff résumés and staff experience as a component of determining the LPA's level of qualification. Staff must have experience in government acquisitions with Uniform Act requirements. Part of the review includes review of sample work products, including timelines and completion of work product. Appropriate consideration should be given to references and past performance, including responsiveness to agency direction. Qualification evaluation criteria for LPA staff performing right of way activities must be appropriate for the functions under consideration for qualification. Educational background must include technical/professional training with particular emphasis on real estate related courses. Examples of education and training are:

- Successfully completed coursework at an accredited college in Real Estate Principles and Practices, Real Estate Law, Real Estate Appraisal.
- Real Estate Certification from an accredited college.
- Successfully completed coursework from professional organizations such as IRWA or the Appraisal Institute, e.g., Appraisal Principles, Appraisal of Partial Acquisitions, Uniform Standards of Professional

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Appraisal Practices, Communication in Real Estate Acquisition, Reading Property Descriptions, etc.
    - Professional Designations, such as SR/WA Designation or MAI Designation.
    - Licenses such as Real Estate Brokers License or Real Estate Sales License.
    - Certification for Real Estate Appraisers as issued by the Office of Real Estate Appraisers.

Qualification evaluation criteria for LPA staff performing right of way activities include the following experience/professional background considerations for specific functional areas:

- To perform Appraisal work, the LPA employee must have:
    - Training and experience in appraisal of rights for eminent domain purposes.
    - Knowledge of the Uniform Relocation Assistance and Real Property Acquisition Policies Act and State eminent domain law.
    - Successful completion of appropriate coursework from an accredited college and/or professional organization, for example: Appraisal of Partial Acquisitions, Principles of Real Estate Appraisal, Easement Valuation, Uniform Standards of Professional Appraisal Practices, etc.
- To perform Acquisition work, the LPA employee must have:
    - Training and experience in the acquisition of property rights for eminent domain purposes.
    - Knowledge of the Uniform Relocation Assistance and Real Property Acquisition Policies Act and State eminent domain law.
    - Successful completion of appropriate coursework from an accredited college and/or professional organization, for example: Communication in Real Estate Acquisition, Reading Property Descriptions, Eminent Domain Law, Legal Aspects of Easements, etc.
    - A real estate license is also helpful, but not necessary for an employee of a Local Public Agency.
- To perform Relocation work, the LPA employee must have:
    - Training and experience in relocation for eminent domain purposes.
    - Knowledge of the Uniform Relocation Assistance and Real Property Acquisition Policies Act and State eminent domain law.
    - Successful completion of appropriate coursework from an accredited college and/or professional organization, for example: Relocation Assistance, Business Relocation, Mobile Homes Relocation, Advanced Relocation Assistance, etc.

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- To perform Utilities work, the LPA employee must have:
  - Training and experience in preparing utility relocation estimates based on construction in the manner proposed, coordinating work to positively locate underground utility facilities including all High/Low risk utility facilities within the project limits.
  - Understand the determination of liability for cost of utility relocation and responsibility. Obtain and analyze data to allocate cost between the utility owner and local agency for all required utility adjustment work and to clearly document, support and set forth the basis of this finding in a Report of Investigation.
  - Training and experience in preparing Utility Agreements between the utility owner and local agency.
  - Training and experience in preparing Notices to Owner for utility facility adjustments.
  - Knowledge of Local, State and Federal laws, policies and procedures that deal with utility relocation.

17.05.02.03 Qualification Questionnaire

Historically, agencies were qualified only after answering an extensive questionnaire that covered all aspects of their organizations, policies, and staff experience. Completing the questionnaire is no longer a requirement, but we have included it as an information exhibit (see Exhibit 17-EX-12, Qualification Questionnaire) to simultaneously assist LPAs requesting qualification and Caltrans Right of Way Local Programs staff as an illustration of the depth of experience we are seeking for LPA qualification. At the same time, the questionnaire provides a convenient framework to help structure the interview and assessment of the applicant's level of qualification.

17.05.03.01 Caltrans Audits and Investigations

Caltrans Audits may evaluate an LPA before the agency will be approved for qualification. The primary objective is to determine if the LPA's accounting system is capable of accumulating and segregating reasonable and allowable project costs. Specifically, Audits evaluates the LPA's billing procedures, procurement procedures, project management, internal controls, and accounting policies and procedures to ensure the LPA's right of way accounting procedures are in compliance with Department's fiscal requirements for Locally Administered Right of Way Projects and increase LPA's awareness of federal reimbursement requirements where necessary. Follow-up reviews will be made as necessary to ensure this capability is maintained.

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When the Region/District Right of Way Local Programs Coordinator receives a request from an LPA for qualification, the district should decide if an accounting system audit is needed. If the District Local Programs Coordinator elects to pursue this, he/she should notify HQ R/W Office of Local Programs in writing and ask that Audits perform the evaluation. The summary of the audit evaluation will go directly to HQ R/W and will be forwarded to the Region/District for integration into the local agency qualification request.

17.05.04.01 Region/District Approval

The Region/District R/W Manager or designee will approve the request (if appropriate) and notify the LPA by letter that its organization has been approved to perform right of way functions on its projects. Copies of the letter will be sent to the HQ R/W Local Programs Office Chief. At a minimum, the letter to the LPA apprising them of their qualification status should address the following primary points:

1. Effective term of the approval.
2. Specification of the functions they are receiving approval to perform.
3. Confirmation of their possession and use of the current Caltrans *R/W Manual*.
4. The LPA's obligation to inform the Department of any organizational or policy changes affecting their qualification within 7 days of the change.
5. Department will review their work for compliance.
6. Qualified status can be withdrawn if deficiencies are found and not corrected or the qualifications of the staff change to the point where they can no longer meet the minimum requirements.
7. The LPA will be invited to attend FHWA and Department-sponsored classes.

In the event the LPA's qualifications cannot be approved, the Coordinator will inform the LPA of the necessary steps which must be taken to achieve approval.

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17.05.05.01 Maintenance Procedures for Qualification Status

The Regions/Districts will review all of their qualified LPAs on a project-by-project basis for work "ON" the State Highway System and at least every three years for work "OFF" the State Highway System to determine if staff and procedures are still adequate to perform right of way activities in the functions approved in conformance with federal and/or state regulations. The review and documentation should be completed as outlined below depending on the category.

A. Work "ON" the State Highway System

Right of way organizations that will be performing work "ON" the State Highway System involving right of way acquisition activities will be qualified on a project-by-project basis. In this category, the Coordinator will complete the following:

1. A Memorandum to File approving the Qualification for the Project including:

    a. A statement that the LPA has performed adequately for right of way on prior projects, if applicable.

    b. An updated organization chart for the LPA including résumés as necessary.

    c. A statement that the Local Public Agency has adopted current Caltrans procedural manuals to be used for the project to comply with current federal laws and regulations.

2. Submission of a copy of the Memorandum and updated Organization Chart to HQ R/W Local Programs to update the qualification files.

3. Caltrans Audits and Investigations' Accounting System Evaluation, if necessary. When the Local Public Agency's accounting practices have already been evaluated, the Department's experience with the LPA may be satisfactory and, thus, an audit evaluation may not be required. Regions/Districts should only initiate requests for audit evaluations when circumstances dictate, then the request should be processed through HQ R/W Local Programs.

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4. Notification of the LPA of approval in writing.

B. Work "OFF" the State Highway System

In this category are all Local Public Agencies that are performing work on federal-aid projects "OFF" the State Highway System involving right of way acquisition activities. The Coordinator will complete the following activities at least once every three years and keep the Qualification information in a file for each Local Public Agency:

1. Complete an in-depth review to determine if the LPA's organizational plan and policies and procedures have remained in substantial conformance with federal regulations. The review should encompass the areas outlined above.

2. If deficiencies are found, the Region/District should so notify the LPA and ask them to rectify the matter.
3. If the deficiencies are corrected or none are found, a summary of the review with a current organization chart should include a statement that, in the Region/District's opinion, there is reasonable assurance the LPA will perform right of way activities in compliance with requirements. The summary should also include the rationale for this opinion.

4. A copy of the memo is to be forwarded to HQ R/W Local Programs.

5. Caltrans Audits and Investigations' Accounting System Evaluation - Same as Category A.3. above.

6. The LPA is to be notified of the approval in writing.

17.05.06.01 Appraisal Review Qualification

On federal-aid projects, a formal review of the appraisal is necessary to establish the Fair Market Value for the property. (See 49 CFR 24.104.) A consultant review appraiser must have a valid general license issued by the State Office of Real Estate Appraisers (OREA) and experience in eminent domain appraisals.

If the LPA receives a qualification of Level 1 or 2 without having the staff or means to perform the appraisal review function, the agency shall hire either a qualified consultant (see Section 17.06.00.00) **or** another agency qualified to perform the review.

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NOTE: It must be noted that in instances where the LPA must hire a consultant or another agency to act as review appraiser, **only** the sponsoring LPA can determine the just compensation to be paid based on the approved appraisal; another agency or consultant cannot make that determination.

17.05.07.01 Nonqualified LPAs - Options

Local agencies that are not qualified to perform any or all of the respective right of way functions for a project must either hire another agency which is qualified to perform those functions or retain a consultant(s) who meets the Consultant Selection Criteria discussed in Section 17.06.00.00.

As part of the review process for projects on the State Highway System, the LPA must provide work plans, timelines with milestones, and staffing plans (including their plans for contracting with consultants or another LPA) for review and concurrence prior to execution of any consultant contracts covering right of way activities. This review should be triggered by the Authorizing Document and should be initiated at the time the Cooperative Agreement is being drafted.

Nonqualified LPAs have the following options:

1. Contract with a qualified agency.

2. Contract with a qualified private consultant(s) to perform one or more right of way functions. Appraisal consultants must have a license issued by the State Office of Real Estate Appraisers; acquisition consultants must have a valid California Real Estate Brokers License or Sales License and work for a Real Estate Broker with a valid license; relocation consultants must have training and experience in relocation work under the Uniform Relocation Assistance and Real Property Acquisition Policies Act. For additional information, refer to Section 17.06.00.00 on consultant qualifications.

3. Contract with a R/W Project Management Consultant. The contract must include provisions requiring any subcontractors to meet the right of way qualification standards set forth for right of way consultants. The LPA must retain the ability to monitor and control the qualifications of any subcontractors through the contract process.

4. Utilize a mixture of LPA staff and the resources available above at Items 1 and 2.

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5. Contract with a "turnkey" consultant. The contract must include provisions requiring the subcontractor meet the right of way qualification standards set forth for right of way consultants. The LPA must retain the ability to monitor and control the qualifications of subcontractors through the contract process.

17.05.08.01 Rescinding LPA Qualification Status

If an LPA fails to maintain qualified staff, cooperate in correcting identified deficiencies, or perform in accordance with state and/or federal requirements, the Region/District shall notify the LPA in writing that the failure will result in a loss or reduction of its qualification status as well as jeopardize federal participation in the project. If, after this notification, the LPA fails to correct identified deficiencies or continues its noncompliance with state/federal regulations, the Region/District will notify the LPA that its qualification status has been rescinded. This notification should be signed by the District Director or designee. Copies of this notification will be forwarded to HQ R/W Office of Local Programs and the FHWA Division Administrator.

NOTE: At each of the above steps in the qualification process, the LPA must be informed in writing of all approvals and denials whenever application is made or reviews are performed.

17.05.08.02 Concurrent Penalties

It should also be emphasized that in a number of cases failure to correct deficiencies, particularly having to do with Uniform Act violations, can have far more serious consequences. As noted in Sections 17.03.00.00 and 17.04.00.00, failure to comply with Uniform Act requirements or to correct any such violations can result in the loss of federal funding for the parcel, the entire right of way portion of the project, and/or the entire project including construction depending on the seriousness of the violation.

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17.06.00.00 - CONSULTANT QUALIFICATIONS AND SELECTION CRITERIA

17.06.01.01 Consultant Qualifications - General

It is extremely important for the LPA to scope the work in compliance with the Uniform Act and select a R/W consultant who not only knows what the LPA's specific needs are, but has the qualifications to perform the work legally and ethically to meet those specific needs.

The authority for the selection of private sector consultants to perform right of way functions on both local assistance projects (Off State Highway System) and locally funded projects (On State Highway System) with or without federal funding has been delegated to the Local Public Agency. The selection process will be administered by the LPA using the Consultant Selection Criteria and Guide (below). The Criteria establish recommended minimum levels of experience and permit the evaluation of prospective consultant firms. Work samples provided by the consultant should be reviewed by the LPA.

The LPA must advertise and seek competitive bids from consultants who meet the selection criteria for the right of way function needed on a project-by-project or time base method when there is State or Federal funding in the project.

17.06.02.01 Consultant Selection Criteria and Guide

RIGHT OF WAY ESTIMATING CONSULTANTS

To be used when an estimate of the cost of right of way requirements is needed for a project or an update to the right of way estimate is needed. When selecting consultants to prepare right of way estimates, care must be exercised to ensure that the candidates have expertise in appraisal fields of all types of real estate needed for transportation projects, acquisition for transportation projects, relocation for transportation projects, and utility relocation.

The consultant is required to possess either an Appraisal License or a Real Estate License. The consultant must have a minimum of two (2) years' experience and the knowledge necessary to estimate the value of all types of real estate needed for transportation projects, the cost to relocate displacees under the requirements of the Uniform Act, and the costs

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associated with utility relocations. Please see Exhibit 17-EX-21, Right of Way Data Sheet for Local Public Agencies.

APPRAISAL CONSULTANTS

To be used on projects where property rights are to be acquired for a project, whether those rights are temporary, permanent, in fee, or easement, or compensable damages accrue to property as a result of the project. The appraiser measures the fair market value of the rights to be acquired.

When selecting appraisal consultants, care must be exercised to ensure that the candidates have expertise in the specific appraisal field appropriate for the contemplated project. The greater the complexity of the project, the greater the need for highly specialized and/or experienced appraisers. An Appraisal License is required by law for transportation projects on or off the State Highway System.

Appraisal Consultants are required to possess:

- Appropriate Appraisal license as issued by the California Office of Real Estate Appraisers in accordance to the degree, complexity and value of the appraisal required:
    a) Residential License for any noncomplex 1-4 family property with value of $1 million and Nonresidential property with a transaction value up to $250,000.
    b) Certified Residential for any 1-4 family property without regard to transaction value or complexity; and Nonresidential property with a transaction value up to $250,000.
    c) Certified General for all real estate without regard to transaction value or complexity.
- Minimum two (2) years' experience in appraisal of rights for eminent domain purposes.
- Successful completion of a course in appraisal of partial acquisitions for public agencies.
- Successful completion of a course in the Uniform Relocation and Real Property Acquisition Policies Act taught by a recognized organization.
- Specific knowledge and experience appropriate for the proposed project, including effects of State Eminent Domain Law on the appraisal process.

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Appraiser Responsibilities under the Uniform Act:

- Property owner must be notified in writing of Agency's decision to appraise.
- Property owner or designee must be given opportunity to accompany appraiser during property inspection.
- Responsibility of sending Title VI information.
- Diary entry of notifications and contacts.
- Appraisal to contain minimum recognized standards for public acquisition (Zoning, Property Rights to be acquired, Highest and Best Use Analysis, Comparables, Improvements Acquired, Damages, Cost to Cure, etc.)
- All appraisals must contain Appraiser and Review Appraiser Certificates.

REVIEW APPRAISER CONSULTANTS

Each appraisal must be reviewed by a qualified review appraiser and contain a Review Appraiser Certificate. The review appraiser is the person responsible for assurance of appraisal quality and completeness and accuracy of the value determination. The review appraiser must remain independent and must not be subject to undue influence or pressure from any source to arrive at a particular value or to accept inadequate appraisal reports. For this reason, it is recommended there be a distinct and separate association between the fee and review appraisers in order to maintain the integrity of the review process. It is essential the review appraiser understands his/her responsibility is to recommend an estimate of value for just compensation determination by the acquiring agency. **The Uniform Act requires that an official of the acquiring agency must make the final determination of just compensation.**

Review Appraiser Consultants are required to possess:

- Certified Residential License for any 1-4 family property without regard to transaction value or complexity; and Nonresidential property with a transaction value up to $250,000 **or**
- Certified General License for all real estate without regard to transaction value or complexity.
- Minimum two (2) years' experience in reviewing appraisals for eminent domain purposes.
- Successful completion of courses in the Uniform Relocation and Real Property Acquisition Policies Act.
- Specific knowledge and experience appropriate for the proposed project, including effects of State Eminent Domain Law on the appraisal process.

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Review Appraiser Responsibilities under the Uniform Act:

- Confirmation of Analysis of Highest and Best Use, Damages, and Cost to Cure Damages.
- Confirmation of valuation.
- Confirmation of Calculations and Report Integrity.
- Prepare signed statement certifying value of appraisal reviewed, including an explanation of the basis for recommendation.

ACQUISITION CONSULTANTS

To be used when rights are to be acquired, whether those rights are temporary, permanent, in fee, or easement, or compensable damage payments are to be made as a result of the project.

When selecting acquisition consultants, care must be exercised to ensure that the candidates have expertise with the conditions affecting the acquisition that are present in the contemplated project. These may vary, and some factors to be considered include property type, type of occupancy, and project design/impact on remainder.

Acquisition Consultants are required to possess:

- Real Estate Broker's or Salesperson's License (when under the direct supervision of a Real Estate Broker) as issued by the California Department of Real Estate (required by law). All Right of Way Contracts must be approved for content and signed or initialed by the Real Estate Broker.
- Minimum two (2) years' experience in the acquisition of rights for eminent domain purposes.
- Successful completion of courses in the Uniform Relocation and Real Property Acquisition Policies Act taught by recognized organizations.
- Specific knowledge and experience appropriate for the proposed project, including knowledge of State Eminent Domain Law.

It is **extremely important** for the local agency to be fully aware of the acquisition consultant's qualifications and knowledge of the Uniform Act. If there are violations by the acquisition consultant or consulting firm, the local agency could jeopardize a portion of, or all of the federal funding for the entire project.

If you have questions or concerns, please contact the Department's Right of Way Local Programs Coordinator in your area.

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Acquisition Consultants Responsibilities under the Uniform Act:

- Ensure establishment of just compensation by local agency prior to initiation of negotiations.
- Expeditious acquisition within 30 days of approved appraisal.
- First Written Offer should be presented in person when possible.
- Summary Statement (basis for the appraisal) to be included with the First Written Offer.
- Owner to be given reasonable time to consider offer and present material relevant to value determination (i.e., 30 days and a minimum of 3 contacts).
- Payment is required before taking possession [49 CFR 24.102(j)] Local agency is responsible for payment of all incidental expenses (title, escrow, surveys, prepayment penalties, etc.)
- Preparation of Administrative Settlements when it is reasonable and in the public interest [49 CFR 24.102(j)].
- Diary entries including, but not limited to, confirmation of delivering Title VI information if project is federally funded.
- By signing the Right of Way Contract, the Broker or Principal of the Company acknowledges responsibility for maintaining a complete file on each parcel.
- Follow record keeping requirements per 49 CFR 24.9

RELOCATION CONSULTANTS

To be used when there are occupants and/or personal property within the project area that must be relocated outside the project area. Occupancy may be residential or nonresidential, including agricultural uses. Relocation specialists may be used to prepare the relocation impact documents (part of the environmental clearance document) in the planning stage. A consultant proficient in both acquisition and relocation may be retained for both functions under the "caseworker" approach.

When selecting relocation consultants, care must be exercised to ensure that the candidates have expertise with types of occupancy affected by contemplated project, whether residential (owner-occupied), residential (tenant-occupied), personal property only, business, or nonprofit organization. The greater the complexity of the project, the greater the need for highly specialized and/or experienced relocation consultants.

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Relocation Consultants should possess:

- Minimum two (2) years' experience at the working level providing public agency relocation assistance.
- Successful completion of courses in the Uniform Relocation and Real Property Acquisition Policies Act taught by recognized organizations.
- Specific knowledge and experience appropriate for the proposed project, including State Eminent Domain Law.

UTILITY RELOCATION CONSULTANTS

Utility Consultants should be used when there are utilities within the project area that must be relocated. Utility Consultants may be used to prepare preliminary utility engineering documents as part of the environmental clearance document in the planning stage. When selecting Utility relocation consultants, a local agency must ensure that the candidates have expertise with Utility relocation. The greater the complexity of the project, the greater the need for highly specialized and/or experienced consultants. Local agencies are encouraged to include Caltrans District Right of Way Utility Coordinators on their selection panels.

Utility Consultants for all Local Agency Projects should possess the following:

- Training and experience in preparing utility relocation estimates based on construction in the manner proposed, coordinating work to positively locate underground utility facilities including all High/Low Risk utility facilities within the project limits.
- Understand the determination of liability for cost of utility relocation and responsibility. Obtain and analyze data to allocate cost between the utility owner and local agency for all required utility adjustment work and to clearly document, support and set forth the basis of this finding in a Report of Investigation.
- Training and experience in preparing Utility Agreements between the utility owner and local agency.
- Training and experience in preparing Notices to Owner for utility facility relocations.
- Knowledge of Local, State and Federal laws, policies and procedures that deal with Utility relocation, including but not limited to Chapter 14 of the Local Assistance Procedures Manual and Chapter 13 of the Caltrans Right of Way Manual.

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Utility Consultants for Local Agency Projects "On the State Highway System" should also possess the following:

- Knowledgeable in Caltrans Project Development process, Caltrans Encroachment Policy, Caltrans R/W Utilities policy and procedures, and local encroachment policy and procedures.
  - Understanding R/W Utility activities time lines and schedules
  - Caltrans Encroachment Permits Manual Chapter 6
  - Caltrans R/W Manual Chapter 13 – Utility Relocations
  - Project Procedures Manual Appendix LL-High and Low Risk Manual
- Training and experience in preparing utility estimates (data sheet) based on proposed construction and scopes of work.
- Experience in coordinating with utility companies and Project Engineers for all utility activities.
  - Utility Verification
  - Utility Conflict
  - Utility Relocation
  - Billings
- Knowledgeable in liability determination for cost of utility relocation.
  - Understanding Master Contracts between Caltrans and utility companies
  - State's Streets and Highways Code / Statutes relating to the Department of Transportation
  - Property rights
- Knowledgeable of the Utility relocation process.
  - Preparing Claim Letter, Report of Investigation, Notices to Owner, Utility Agreements
  - Requesting Encroachment Permits
- Knowledge of Local, State and Federal laws, policies and procedures that deal with Utility Relocation.

PROPERTY MANAGEMENT CONSULTANTS

To be used when tenants will be in occupancy of the right of way after the agency has acquired the property but prior to displacement.

When selecting property management consultants, care must be exercised to ensure that the candidates have expertise with types of tenancies affected by the contemplated project, whether residential, personal property only, business, or nonprofit organization. The greater the complexity of the project, the greater the need for highly specialized and/or experienced property management consultants.

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Property Management Consultants must possess:

- Real Estate Broker's or Salesperson's License (when under the direct supervision of a Real Estate Broker) as issued by the California Department of Real Estate (required by law).
- Minimum two (2) years' experience at the working level in management of rental properties.
- Knowledge of applicable sections of the Uniform Relocation and Real Property Acquisition Policies Act, State Eminent Domain Law, and Landlord Tenant Law.
- Specific knowledge and experience appropriate for the proposed project.

RIGHT OF WAY PROJECT MANAGEMENT CONSULTANTS

May be used to coordinate and direct the work of other consultants as well as local agency staff. Will have primary responsibility to ensure the work products for the project satisfy all requirements of applicable laws, statutes, regulations, policies, and procedures.

Project Management Consultants should possess:

- Minimum five (5) years' experience at a supervising, managerial, or oversight level in a right of way organization operating with the power of eminent domain.
- Knowledge of the Federal and State Uniform Relocation and Real Property Acquisition Policies Act and Article 1, Section 19, California Constitution (granting the power of eminent domain law).
- State Eminent Domain Law taught by recognized organizations. Successful completion of courses in the Uniform Relocation and Real Property Acquisition Policies Act and
- Familiarity with project management theories and techniques, including project scheduling, staff assignments, and coordination and communication with other project entities.

Project Management Consultant or Principal of the consulting firm's responsibilities:

- Ensure right of way process has been followed in accordance with the Uniform Act.
- Ensure consultants have appropriate licenses for the scope of work.
- Ensure Broker signs or initials all right of way contracts.
- Approval of all right of way files (signature in diary) that files are complete and in accordance to the Uniform Act with appropriate diary entries.

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TURNKEY RIGHT OF WAY CONSULTANTS

Multifunctional right of way organizations that may be used to provide all right of way services required of a given project. Should be competent in each individual functional area. Staff are required to meet the criteria listed above in each of the Right of Way functions involved in the project. Turnkey consultants must have sufficient staff to preserve separation of the appraisal, appraisal review, and acquisition functions. An individual may be technically proficient in multiple functions, but may not be used as a turnkey consultant. All appropriate licenses/certifications are required for the type of services performed.

17.06.03.01 Competitive Bidding

Competitive bidding is one of the cornerstones of a financially successful project. It should be stressed to LPAs that seeking bids from qualified firms will ensure that the agency is getting the most reasonable price. Prior to soliciting bids, careful consideration should be given to defining the scope of work for the consultant, estimating the cost of the consultant's work, determining the type of contract needed, and whether to seek bids on a project-by-project or time base method.

The project-by-project method is appropriate for use when an LPA has only one project or has an extensive project expected to last more than 36 months. Under this method, the consultant performs the tasks exclusively on the designated project until completion. All four commonly used contracts are suitable for use with the project-by-project method and include (a) Actual Cost plus Fixed Fee, (b) Cost per Unit of Work, (c) Specific Rates of Comparison, and (d) Lump Sum.

The time base method is appropriate for LPA's with multiple projects occurring simultaneously. This method is more cost effective as the LPA is not required to complete the competitive bid process for each individual project. Under this approach, the same consultant can perform right of way tasks on different projects during the contract term. The maximum contract length is 36 months. If the contract needs to be extended due to unforeseen circumstances, the LPA must complete a REQUEST FOR APPROVAL OF COST-EFFECTIVENESS/PUBLIC INTEREST FINDING [Exhibit 12-F of the Local Assistance Procedures Manual (LAPM)] and submit to the DLAE along with a written justification. The contract may be extended once with a maximum length of 12 months. Of the four types of contracts noted above, it is not appropriate to use the Lump Sum contract with the time base method.

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The LPA should be advised that caution must always be exercised in the choice of a consultant. Just because a particular consultant meets the threshold criteria, this should never be the only basis for retaining them. Other factors, such as experience on past projects as well as references, should be given careful consideration. Each project and each agency have unique demands; and just because a prospective consultant meets the broad qualifications contained in the Consultant Criteria, this does not also mean that the consultant can meet the LPA's requirements. The LPA is responsible for maintaining documentation concerning the consultant selection process. This information should be made available to the Department as part of the oversight process.

17.06.04.01 Local Public Agency Liability for Consultants

LPAs should be reminded that, as noted above, they are responsible and accountable for the actions of their consultants in properly executing their duties and activities in accordance with the Uniform Act. The LPA retains the ultimate responsibility for signing the Right of Way Certifications and is accountable for the actions and performance of their consultants.

The consultant's work products will be subject to oversight by the Department's Region/District R/W Local Programs staff.

The Department has established broad criteria for use in evaluating the qualifications in the respective right of way functions, but the Department is in no way liable either for devising such criteria or for the performance of the consultants selected by the LPA. **In the event the actions or performance of the consultant result in the loss of federal funds for the project, it is the sole responsibility of the local agency to repay these funds.**

17.06.04.02 Consultant Contracts

In entering into consultant contracts, it should be stressed to the LPA that consultants must perform right of way functions to the same standards, practices, rules, and regulations as the LPA. The following additional discussion about contracting responsibilities should also be clearly conveyed to the LPA.

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17.06.04.03 LPA Responsibilities

In each contract, the LPA responsibilities include the following:

1. Appraisal Review - As noted above, when state or federal funds are used for any portion of the project, a formal review of the appraisal by a review appraiser is required. When the parcel is on the State Highway System, a formal review must be done, whether or not federal funds are used.

2. Establishment of Just Compensation - In projects involving the acquisition of right of way, it will be necessary for the LPA to determine just compensation. **This cannot be delegated to a consultant.**

3. Assignment of a Contract Manager - The manager will serve as the contact person during the course of the project. The Contract Manager must be an employee of the LPA. The Contract Manager should be knowledgeable about all aspects of the project.

17.06.04.04 Contract Manager Responsibilities

The Contract Manager is responsible for the following:

1. Coordinating the review and approval of all consultant work products.

2. Approving requests for payment.

3. Coordinating all consultant activities for the project.

4. Providing interim and final contract completion reports.

5. Following the California Department of Transportation *Right of Way Manual* in the performance of any right of way activities.

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17.06.04.05 Contract Manager Qualifications

The Contract Manager ideally should have the following background:

1. Strong professional experience in the functional area under contract.
2. Familiarity with the project and contract objectives.
3. Understanding of management expectations.
4. Experience with the contract process.
5. The ability to communicate effectively.

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17.07.00.00 - COOPERATIVE AGREEMENTS

17.07.01.01 Introduction

A Cooperative Agreement is a formal, legally binding contract between the Department (Caltrans) and a Local Public Agency (LPA) through which the parties to the agreement outline their high-level responsibilities regarding an improvement project on the State Highway System (SHS), including identification of: project component(s); sponsor (project advocate and securer of financial resources), implementing agency (responsible for the performance of work), and funding commitments. An agreement is not effective until fully executed by all parties.

NOTE: Section 138 of the Streets and Highways Code requires that all legally binding contracts, including Cooperative Agreements, be approved by either the Attorney General or an attorney employed by the Department. All Cooperative Agreements must be approved by an attorney in the HQ Legal Division.

A Cooperative Agreement should not be used when the other party to the Agreement is not a public agency and project partner. The most common type utilized is the standard two-partner agreement between Caltrans and a public entity involving one or more project development and construction components of a design-bid-build project type. Other formal types of cooperative agreements, including relinquishments, are identified and discussed in Chapter 16 of the Project Development Procedures Manual and the Cooperative Agreement Handbook (internal Caltrans link).

A project may require Cooperative Agreements among the Department and more than one entity, e.g., with two cities, a city and county, or a city and a transportation authority, etc.

The focus of this chapter is Agreements with LPAs for projects on the SHS.

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17.07.01.02 Authority to Enter into Agreements

There are various legal authorities for the Department to enter into Agreements with LPAs. The primary authorities are the Streets and Highways Code Sections 114 and 130.

- **Reimbursed Work**

Section 114 allows for expenditure of state funds by LPAs for the construction, improvement, or maintenance of any portion of a state highway system. It is the legal authority for Cooperative Agreements with LPAs where the Department reimburses them to perform work at the Department's expense such as the preparation of the PS&E. This section is also the authority for Agreements for work on SHS projects that are 100% funded by an LPA when the state performs work and is then reimbursed by the LPA.

- **Cooperative Projects**

Section 130 is the legal authority for Agreements where the state and the LPA are jointly participating in projects on the SHS. It allows the state and the LPA to apportion the expenses of the acquisition, construction, or maintenance for these projects. It is also the authority for Agreements covering projects on the SHS which are 100% funded by the LPA where the LPA also performs the work.

17.07.01.03 Participation Policy

Participation in joint projects may either be financial or in the form of services, materials, equipment, or any combination thereof. The basic determination governing the extent of the state's participation in a cooperative project (financial or otherwise) is whether the cost is commensurate with the benefits. Expressed in another way, the state should never proceed if the costs will exceed those incurred if the state were to develop the project on its own. For additional detail, refer to the Cooperative Agreement Handbook (internal Caltrans link).

Some projects on the SHS such as a new interchange or an interchange modification may, however, obligate the state to participate in part or all of the costs. The extent of the state's participation may also be determined by the availability of funding and/or programming by the CTC, and may also be controlled by Statutes or prior Agreements.

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17.07.01.04 Authorizing Documents

Before a district can enter into a cooperative agreement with a public agency, an authorizing document, such as a Project Study Report (PSR), Project Report (PR), supplemental Project Report (supplemental PR) or Permit Engineering Evaluation Report (PEER), that includes information demonstrating a need for a cooperative agreement must be completed. All the reports contain a section in which the cooperative features are fully discussed and justified and which will be repeated in the Cooperative Agreement. The PR would describe all the work, including right of way activities, to be performed by the support staff, e.g., who will do what work and why, who will pay, etc. (Refer to Chapter 16 of the Project Development Procedures Manual for detailed discussion.)

Approval of the Project Report (or any of the other reports) constitutes formal authority for the Region/District to initiate negotiations with the LPA regarding contents and wording of the Draft Agreement.

There are unusual circumstances when a special resolution of the CTC will be the authorizing document. These resolutions, however, do not address support costs, which must be covered in a Project Report. There are also circumstances when the need for a cooperative effort arises while a project is under construction. In such cases, please refer to the Cooperative Agreement Handbook (internal Caltrans link) for guidance and/or contact the district or HQ Office of Development and Improvement Agreements for further assistance.

17.07.01.05 Development, Preparation and Processing the Agreement

A District Director, working through the district Project Development Team (PDT), is responsible for the development of a cooperative agreement. The headquarters Office of Delivery Improvement and Agreements (ODIA) provides tools, training, and guidance to support PDTs with the development and completion of consistent and responsible cooperative agreements. Pre-approved articles, cooperative agreement templates, and an automated cooperative agreement assembly for efficient completion of a cooperative agreement may be accessed by District through the Caltrans intranet (internal Caltrans link). Development of the draft Agreement should start at the earliest possible stage of the development process to ensure prompt delivery of the project. If possible, the Draft should be prepared while the authorizing document is also in the draft stage.

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Refer to the Cooperative Agreement Handbook (internal Caltrans link).

17.07.01.06 Use of Pre-Approved Articles

Districts have access to pre-approved articles, cooperative agreement templates, and an automated cooperative agreement assembly for efficient completion of a cooperative agreement. These clauses have been cleared by HQ and Legal Division for district use without any additional review and approval. Any proposed modification of the clauses will require prior approval from HQ Local Programs.

17.07.01.07 Special Articles

The use of preapproved articles is encouraged because the review and approval process is retained at the district level. Changes to pre-approved articles require a full review through HQ and Legal. There may be situations, however, where jointly developed or specifically "custom-tailored" articles are necessary, particularly for local measure projects. These voter-approved projects often have unique funding/performance features, depending on the priorities and timetables of the LPA.

In these situations, careful preparation is necessary to completely set forth the roles and requirements of the parties, including the proposed schedule of performance for completing the respective stages of the acquisition/clearance process and the R/W Certification dates. For example, when the Department is performing the R/W functions and/or will obtain the Resolutions of Necessity from the CTC or appropriate body, additional time must be built into the project schedule. As noted above, the CTC has established procedures for a series of hearings with the property owners where they are given the opportunity to contest the taking of their property for the project. These hearings, referred to as the Condemnation Evaluation Meeting and Condemnation Panel Review Meeting (formerly known as the First and Second Level Reviews, respectively), extend the time required to initiate the condemnation process. Department policy requires a Condemnation Evaluation Meeting, and if necessary, a Condemnation Panel Review Meeting prior to seeking a Resolution of Necessity (RW Manual Chapter 9). This policy applies regardless of whether the Department and/or a Local Agency perform the R/W effort, or what body hears the RON request.

Pursuant to the pre-approved Right of Way article in the standard Cooperative Agreement, when an LPA is the Implementing Agency for Right of Way, the LPA must obtain the Resolutions of Necessity from its own governing body or secure another public agency with eminent domain

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authority to do so. In such cases, the Local Agency will conduct the Condemnation Evaluation Meeting and Condemnation Panel Review Meetings, as necessary. LPA shall consult with the Caltrans Project Delivery Team (PDT) to determine which PDT team members shall participate as part of the decision-making team for these hearings.

17.07.01.08 Legal Opinions

The Department's Legal Division is responsible for providing all legal opinions in all matters relating to the need or right to acquire property for the project or to the valuation of any such property. The Region/District must coordinate with the LPA and Department's Legal to ensure any required legal opinions are secured on a timely basis. The cost of securing any legal opinions should be covered in the Cooperative or R/W Services Agreement and will be at expense of the LPA.

17.07.01.09 Fiscal Policy

The Department has no legal authority or obligation to incur expenses in the absence of a formal executed agreement. Except where authorized by statutes, the Department shall not assume any obligation in any project undertaken by an LPA, including oversight of right of way activities performed by the LPA, prior to execution of an Agreement. Further, no obligations shall be incurred prior to the appropriation of resources by the Legislature, the allocation of resources by the California Transportation Commission (CTC) and/or the Department, and certification of funds by the Region/District's Budget Manager with confirmation by the Accounting Administrator in HQ.

NOTE: A commitment should not be made in an Agreement which constitutes a loan of funds to an LPA unless specifically authorized by legislation. The Department should not advance or loan an LPA its share of a cooperative project due to a local funding problem. The Department should either require an advance deposit from the LPA or cancel the project if the LPA is unable to finance its share of the project costs. Advance deposits may be made either for all of the estimated costs of the work or in increments. For additional details, see the Cooperative Agreement Handbook (internal Caltrans link).

17.07.01.10 Region/District R/W Review

All Cooperative Agreements in which R/W is involved should be reviewed by the appropriate Region/District Branch to verify project right of way scope, cost and funding. Transmittal memos to the HQ Division of Local Assistance

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for proposed modifications to pre-approved or additional Right of Way articles must accompany the draft Agreement as recommended for approval by the Region/District R/W Division Chief. This is to assure that the Agreement is in conformance with policies and procedures applicable to R/W.

17.07.01.11 Utilities - Freeway Projects

The Department has entered into master agreements with a number of the larger utility owners for the apportionment of relocation costs on freeway projects. These agreements are to be applied in lieu of otherwise applicable Streets and Highways Code sections and are applicable to all freeway projects which are a part of the State Highway System, no matter what the source of project funds or agency responsibility for project design. The only exception is when the freeway or expressway improvement project is the result of a private development mitigation requirement, in which case the private developer will be responsible for all utility relocation costs in accordance with applicable case law.

The public agency responsible for project design shall assume the responsibility for the identification and location of all utility facilities within the area of project construction. All utility facilities not relocated or removed in advance of construction shall be identified on the project plans and specifications.

The terms of the Cooperative Agreement shall establish the responsibility of the LPA for the cost of protection, relocation, or removal of utility facilities located within the state highway right of way. Only those facilities that meet the state's encroachment policy shall be allowed to remain.

17.07.01.12 Positive Location of Underground Utilities (Pos-Loc)

In an effort to accelerate project delivery and eliminate discovered utility work, the Department has implemented the Positive Location ("Pos-Loc") Program. Pos-Loc is a project delivery activity using state administered contracts to expose underground utilities for state highway projects, using vacuum excavation methods.

The Department has entered into a standard "Agreement for the Positive Location of Underground Utilities" with willing utility companies that calls for the Department to pay 100% of all positive location (pothole) work for all projects on the State Highway System.

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Local Public Agencies responsible for delivering Utility Relocation Services for projects on the State Highway System are required to implement this policy.

If a Cooperative Agreement is necessary for the project, it shall include the terms of the Positive Location Agreement.

Please refer to the Right of Way Utilities website for information regarding utility companies that have executed Positive Location Agreements and names of the Department's Utility Coordinators in your area. Additional information regarding the Positive Location Agreement process can be found in Chapter 13, "Utility Relocation," of this Manual.

17.07.01.13 High and Low Priority Utility Facilities

All underground high and low priority utility facilities shall be handled in accordance with the Department's "Utility Policy" as referenced in the Project Development Procedures Manual Chapter 17, Encroachments and Utilities.

17.07.01.14 Agreements/Encroachment Permits Policy

For special funded projects, whether tax-measure or locally or developer-funded, that require a Cooperative Agreement or a Highway Improvement Agreement (see discussion below), an Encroachment Permit shall *not* be issued for work within the state highway right of way until the Region/District's Permit Office receives a copy of the fully executed Agreement.

17.07.01.15 Agreement Types and Usage

Agreements for R/W services generally fall into one or more of the following categories and are more fully described in later sections of this chapter:

A. Memoranda of Understanding
B. Project Cooperative Agreements – Roles and Responsibilities
C. Highway Improvement Agreements
D. Advanced Acquisition (Hardship and Protection) Agreements
E. Encroachment Permits (Occasionally)

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17.07.01.16 Agreement Preparation

Cooperative Agreements that provide for project development activities, including right of way, are usually initiated by either the appropriate District Project Development or Project Management Branch (see also 17.07.01.05). Certain Agreements, such as Advanced Acquisition Agreements (see below) that are part of an overall Master Agreement with the LPA, may be initiated by the Region/District R/W Division. They may be reviewed by HQ R/W Local Programs, which has the responsibility to coordinate the technical and legal review on all Agreements with right of way provisions.

The Region/District Cooperative Agreement Coordinator and HQ Office of Development and Improvement Agreement should be consulted when the Region/District is preparing a draft agreement for R/W services. Regardless of the type of agreement, many of the clauses covering right of way activities will be identical.

17.07.02.01 Memoranda of Understanding - General

A Memoranda of Understanding (MOU), also referred to as Letter of Understanding or Letter of Intent, is an informal non-binding agreement occasionally entered into between the Department and LPA or private entity that outlines understandings and responsibilities for various components of project development and construction. An MOU is not a cooperative agreement. Caltrans most often uses MOUs on locally funded projects to reach conceptual agreement on project scope, funding, staffing, and processing.

The MOU constitutes only a guide to the obligations, intentions and policies of the parties involved and not intended for use as a funding or programming commitment. The preface of an MOU should include language to this effect. (Refer to Cooperative Agreement Handbook [internal Caltrans link], Chapter 9).

17.07.02.02 Process and Approvals

MOUs are usually prepared, executed, and processed without HQ or Legal review because they are not binding contracts.

See Cooperative Agreement Handbook (internal Caltrans link), Section 9.4 for form and content of an MOU. When requested, the HQ R/W Local Programs staff is available for advice.

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The MOU is to be executed by the District Director (or his/her designee at the principal level) and an authorized representative of the other party.

In most cases, the MOU will be initiated, prepared, and processed by the Region/District Project Development Branch. If R/W issues are to be addressed, the Region/District's R/W section must be given the opportunity to provide input. It is important that the R/W Local Programs Coordinator establish and maintain liaison with Project Development to ensure that R/W is afforded that opportunity.

17.07.02.03 Sample MOUs

Cooperative Agreement Handbook (internal Caltrans link), Appendix I provides a sample MOU.

17.07.03.01 Cooperative Agreements – Roles and Responsibilities

The Department's policy is contained in Deputy Directive 23 (DD-23-R1) (see Exhibit 17-EX-7), Roles and Responsibilities for Development of Projects on the State Highway System, dated February 2007. It provides that the Department, as owner/operator of the State Highway System (SHS), has a statutory and inherent obligation to ensure that all modifications or additions to the SHS, regardless of project sponsor or funding source align with the State and Department's goals and objectives for development and delivery of sustainable highway improvement projects that add value to the public and meet or exceed stakeholder expectations for safety, operations and maintenance.

Based on the foregoing, a cooperative agreement requires its parties adhere to the standards, policies, and procedures (or have an approved exception) that Caltrans would normally follow when it plans, designs, and constructs projects on the SHS. A cooperative agreement will not commit Caltrans to any arrangement that it does not have legal authority to pursue or the financial capacity to fund. See Cooperative Agreement Handbook (internal Caltrans link).

17.07.03.02 Process and Approvals

The Cooperative Agreement(s) should be entered into as soon after the Project Approval stage as possible—certainly prior to commitment to perform oversight and/or agreeing to perform R/W services that will be reimbursable

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by the LPA. See Section 17.07.01.05 Development, Preparation and Processing.

17.07.04.01 Highway Improvement Agreements (Privately Funded Projects) – General

Highway Improvement Agreements (HIAs) are utilized on state highways for privately funded projects costing over $1,000,000. Frequently, these projects require that additional right of way be acquired by the developer and subsequently conveyed to the state to become part of the highway system. They are similar to a Cooperative Agreement in form, content, and legal commitment.

Once a privately funded project is identified, a decision must be made to designate the project sponsor. As noted above, the Department strongly encourages LPAs to sponsor these projects to demonstrate community acceptance and to improve coordination with other LPAs. If an LPA sponsors a privately funded project, it becomes a "Locally Funded Project" (see above) and is processed as such. Where an LPA will not sponsor the privately funded project, the Department will work directly with the private project sponsor.

A Highway Improvement Agreement will be required for all privately funded projects. Prior to the execution of the Agreement, the Region/District shall require the private project sponsor to pay an advance deposit to cover the state's oversight costs until the HIA is executed and an escrow account, if applicable, is established.

As the owner/operator responsible for assessing the impact of improvements on the existing State Highway System, the Department is responsible for preparing the PSR at Department's expense. It is the responsibility of the private project sponsor to provide suitable engineering data and technical and financial information needed for Department to prepare the PSR. If the Department is unable to comply with the schedule desired by the project sponsor, the private entity sponsor may prepare and submit a draft PSR at its own expense. The private sponsor is responsible for performing and funding all subsequent project development, right of way, and construction activities, with Department providing oversight *at the sponsor's expense*. If requested by the private project sponsor, the Department may perform some of the services for which the private project sponsor is responsible on a reimbursed basis if Department has sufficient staffing resources and reimbursed budget authority.

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17.07.04.02 Development, Process and Approvals

Highway Improvement Agreements are *usually* initiated by the Region/District Encroachment Permit Section, with input provided by all functional units, including RW. The formal process for authorization, development and approval of a Highway Improvement Agreement are the same as for all other types of cooperative agreements and discussed in detail in Section 17.07.01.04 and 17.07.01.05 of this chapter. As with all Agreements for projects on the SHS, it is imperative that the Local Programs Coordinator establish and maintain good communications with the Permit Section and other PDT members to ensure that all right of way issues, including utilities and railroads, are addressed.

The Agreements are executed prior to the issuance of an Encroachment Permit. R/W's *primary* concern is that an acceptable degree of title be conveyed to the State.

17.07.05.01 Agreements for Advance Acquisition – General

Agreements for Advance Acquisition (Hardship and Protection) between the Department and LPAs may be entered into as the need arises. They are generally entered into in advance of a formal Cooperative Agreement covering regular R/W services. The criteria required in order to establish a parcel's eligibility for hardship or protection acquisition is found in Chapter 5 of this Manual.

On locally funded and tax measure projects, the cost of all advance acquisition activities performed by the department will be borne by the LPA through the use of advance deposits. Refer to the Cooperative Agreement Handbook (internal Caltrans link) for further guidance.

17.07.06.01 Encroachment Permits – General

Encroachment Permit projects are projects on the SHS that are 100% funded by either an LPA or a private developer with construction cost under $1,000,000 and which are located within the existing or ultimate right of way. These projects follow established permit procedures. Normally no Cooperative Agreement is required.

On occasion, however, the sponsor requests the Department to perform project development work, such as right of way, for which the LPA is

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responsible. The Department may perform these activities on a reimbursed basis if there is sufficient staffing and reimbursed authority. A Cooperative Agreement will be required to set forth the responsibilities for the reimbursed services.

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17.08.00.00 - PROJECT CERTIFICATION

17.08.01.00 Definition

A Right of Way Certification is a written statement summarizing the status of all right-of-way-related matters with respect to a proposed construction project.

17.08.02.00 Purpose

The purpose of the Right of Way Certification is to document that real property interests have been or are being secured, and physical obstructions, including buildings, utilities, and railroads, have been or will be removed, relocated, or protected as required for the construction, operation, and maintenance of the proposed project. The Right of Way Certification also documents that right of way activities were conducted in accordance with applicable policies and procedures.

17.08.03.00 Projects on State Highway System Requiring a Right of Way Certification

When a Local Public Agency (LPA) performs right of way activities on a portion of a state highway, regardless of fund source, the LPA prepares the Certification as outlined in this chapter. Where an Encroachment Permit onto the state highway right of way is required for construction to commence, a Certification consistent with policies outlined in this chapter must first be prepared and accepted. See Caltrans Encroachment Permit Manual, Section 202 for Oversight Projects and Project Development Procedures Manual (PDPM), Article 8 and Appendix I.

NOTE: For projects off of the State Highway System that are administered through the Division of Local Assistance, please see the Local Assistance Procedures Manual (LAPM), Chapter 13 for guidance on right of way certification requirements.

17.08.04.00 Unusual Project Circumstances/Conflicts

"Unusual circumstances" are defined as any deviation from the requirements or standard practices outlined in this chapter. When there are unusual circumstances in a project, a full explanation shall be forwarded to the Region/District Division Chief, R/W, for approval. The request shall be forwarded to the Local Programs Coordinator at least three months prior to

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the project advertising date. The Approval should be included in the Certification or in an attachment and made a part of the Certification.

17.08.05.00 Time Requirement for Right of Way Certifications Requiring FHWA Approval

For a full discussion of R/W Certifications and their usage, see Chapter 14, "Project Certification," in this manual.

17.08.06.00 Updating the Right of Way Certification

Right of Way Certifications prepared for state-advertised projects shall be updated when:

A. The Certification is one year old and the project it was prepared for has yet to be advertised,

B. At the request of the Project Manager or Project Engineer,

C. When dates or anticipated actions are no longer consistent with the current date of the Certification,

D. Any changes in project scope or right of way requirements,

E. When project description is no longer consistent with the PS&E.

For a full discussion of R/W Certifications and their usage, Chapter 14, "Project Certification" in this manual.

17.08.07.00 Corrections, Additions, and Deletions to Certification

The Department shall not take action on verbal requests to alter significant, factual data in a Certification. There must be a written request from the LPA describing any change required. This request must then be attached to and made a part of the original Certification. Revised Certifications must have the word "Revised" clearly stamped in the upper center of the front page.

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17.08.08.00 Functional Monitoring and Record Retention

R/W functional monitoring of LPA projects must be documented in the Region/District R/W Local Programs Project Coordinator's files. Such monitoring information, together with the original LPA or developer Right of Way Certification and any pertinent correspondence, will be retained by the Region/District R/W Local Programs unit in accordance with the Standardized Records Disposition Schedule for R/W Project Files. Also, a copy of the original Certification should be retained in the Local Programs project files.

17.08.09.00 Procedures for Certification of Privately Funded Projects on the State Highway System

Government Code Section 14529.13 requires the Department to accept the completed project (tax-measure or locally or privately funded) into the State Highway System provided the project was Department-approved, and the right of way was acquired and the project constructed in accordance with Department practices. See Caltrans Encroachment Permit Manual, Section 202 for Oversight Projects and Chapter 14, "Project Certification" of this manual.

A. The developer provides the Encroachment Permits Engineer a Right of Way Certification (Exhibit 17-EX-16) prior to state's granting an Encroachment Permit to the developer. This is required regardless of whether there is a highway improvement or not.

B. The Encroachment Permits Engineer transmits the Certification to R/W for review and acceptance.

C. Prior to accepting the certification, the R/W Local Programs Coordinator verifies Certification statements and obtains a policy of title insurance where required from the developer prior to accepting the Certification. Title insurance policies are required prior to Caltrans acceptance of the certification for projects where property is being conveyed from the Developer to Caltrans.

D. The R/W Local Programs Coordinator reviews and accepts the Certification on behalf of the District.

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E. The R/W Local Programs Coordinator notifies the Permit Section the Certification has been accepted and sends copies to the Encroachment Permits Engineer.

F. The Encroachment Permit is then issued.

17.08.10.00 Prerequisites to Certification of a Project by an LPA

Prior to issuing a Right of Way Certification, the LPA shall review the draft PS&E to confirm pertinent data. Included in this review should be such items as project identification, location description, work description, and special provisions relating to utility, railroad and/or right of way clearance coordination. The Certification also includes confirmation that right of way construction contract obligations are properly included in the PS&E, and confirmation that the right of way as shown on the construction plans is consistent with the LPA's Certification.

Conflicts which could affect the construction contract such as utility, railroad, or clearance work to be done in coordination with construction must be identified in the Certification so that they can be called to the bidder's attention in the Bid Documents (Contract Special Provisions).

17.08.10.01 General Steps for an LPA Certification of a Project

A. LPA prepares the Right of Way Certification.

B. LPA transmits the Certification to the DLAE.

C. The DLAE sends the Certification, along with plans, maps, and other documents, to the Region/District R/W Local Programs Coordinator for review.

D. The Coordinator reviews the LPA Certification for compliance with all applicable laws and procedures. Region/District functional monitoring records are included in the review. Further monitoring/review may be performed, if required, to check Certification accuracy.

E. Staff time permitting, the R/W Coordinator conducts field reviews to confirm all occupants within the right of way have been relocated and

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arrangements for utility relocation are being completed in conformance with regulations.

F. When the R/W Coordinator confirms that the LPA Certification statements are correct, the authorized R/W Representative will accept the Certification.

G. The Coordinator returns the accepted original of the LPA Certification to the DLAE. A copy of the original Certification is kept in the Region/District Local Programs project file.

H. If the Department is advertising the project, the DLAE forwards four copies of the accepted Certification with the PS&E submittal to the District Office Engineer for bid package preparation. If the PS&E has already been processed, a copy of the original Certification will be submitted to the HQ Division of Local Assistance.

I. If any federal funds are involved in the project, HQ DLA processes the LPA Certification through the HQ Federal Aid Branch. In the event the project in question is on the Interstate System, the Federal Aid Branch forwards the Certification to the Federal Highway Administration.

17.08.10.02 Certification Levels

There are four levels of certification: Certification Nos. 1, 2, and 3, and Special Certification No. 3 With Work-Arounds. These levels correspond to the degree of control of the right of way that has been achieved for the project as outlined in 23 CFR Sections 635.309(c) l, 2, or 3, respectively.

For a full discussion of these Certifications and their usage, see Chapter 14, "Project Certification," in this Manual.

17.08.10.03 Right of Way Certification Process in the Region/District

Right of Way Certification on LPA projects that will be advertised by the state will be handled in accordance with Sections 14.02.07.01 and 14.02.07.02 of the R/W Manual.

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17.08.11.00 Certification Format

The method of Certification as specified under 23 CFR 635.309C entitled, "Physical Construction Authorization," is applicable to all federal-aid construction projects. The format also applies to all special-funded projects regardless of funding.

LPA Right of Way Certifications for all projects will be made using the Certification format shown in Exhibit 17-EX-18. The LPA should use only those portions of the format applicable to the certification level being prepared and the project being certified. The format contains specific wording required by the Federal Highway Administration. Changes made in the wording could invalidate the Certification. Any deviation from the format or the wording must be fully explained in the Certification and have prior Region/District R/W Local Programs' approval. Privately funded projects may be certified using the Certification format shown in Exhibit 17-EX-16.

17.08.11.01 Federal Aid in Right of Way and Utilities

When there is any federal aid in the right of way cost of a project to be advertised by the state, the Right of Way federal-aid project number(s) will be shown on the Right of Way Certification. If there is no federal aid in the right of way cost, the Right of Way Certification shall show "None." The Right of Way federal-aid project numbers are available from the Region/District's R/W Planning and Management unit.

Occasionally when the project is to be certified, the federal-aid project number for utility relocation may not have been received. In this case, put a note on the Certification stating, "Utilities Federal-Aid No. Pending."

The HQ or District Office of Office Engineer will add the Construction federal-aid project number to the Right of Way Certification at the time the project is listed for advertising as appropriate.

17.08.11.02 Required Right of Way

All property rights required for a project must be reflected in the Right of Way Certification. Parcels to be included in a Right of Way Certification are regular right of way parcels acquired by deed, Final Order of Condemnation, Order for Possession, Right of Entry, Agreement for Possession and Use, license, permit, or other acquisition documents used by certain governmental entities.

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Temporary rights must also be listed in the Certification. These include Temporary Easements, Temporary Permits to Enter (Or Enter and Construct), etc. It is important to include the expiration date of any temporary rights in the Certification so they may be evaluated in terms of the final construction schedule.

17.08.11.03 Certifications with Agreements for Possession and Use or Rights of Entry

Certifying a project where Agreements for Possession and Use or Rights of Entry are used to control right of way should be minimized to the greatest extent possible. Such Agreements may be used sparingly, and only after an appraisal has been completed and the initial offer of settlement has been presented to the Owner.

Agreements for Possession and Use or Rights of Entry obtained prior to making the first written offer can be used *only* to certify control of right of way in emergency or other justified situations. If an LPA believes it is necessary to solicit these types of agreements from an Owner prior to completion of the appraisal and making the first written offer, they must obtain the prior approval of Region/District R/W Local Programs Coordinator. Specific guidelines for the use of Agreements for Possession and Use and Rights of Entry are found in Chapter 8, "Acquisition," of this R/W Manual.

LPA requests to certify projects utilizing such Agreements should be submitted to Region/District R/W Local Programs Coordinator with the facts justifying the proposed action. The request may be made in writing, in person, or in emergency situations by telephone.

Region/District R/W can approve all standard form Agreements for Possession and Use or Rights of Entry. All nonstandard agreements shall be forwarded to the HQ R/W Local Programs for approval. The LPA will be notified of the acceptance of their request in writing. LPA Certifications containing such agreements should include a reference to the prior approval. Certifications where all or a major portion of the parcel are controlled through these types of agreements shall be avoided except when public safety or emergency projects are involved.

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17.08.11.04 Status of Affected Railroad Facilities

The "Affected Railroad Facilities" portion of the Right of Way Certification applies to a railroad's "operating property" only. The railroad determines which of their properties are "operating" or "nonoperating." Acquisition of railroad operating property will also be covered under Section 1 of the Certification, "Status of Required Right of Way."

A Clearance Letter from the Department's Office of Structures is required for ANY project with railroad involvement that is advertised by the State Office of the Office Engineer, even when the railroad arrangements were made by an LPA. Refer to Chapter 14, "Project Certification," in this Manual for additional information.

17.08.11.05 Material and Disposal Sites

List in the Right of Way Certification all optional or mandatory material or disposal sites which require a Local-Agency-secured agreement and which are being made available for use for the project being certified.

On some projects, bidders are advised of "available" sites that have been previously tested and approved for use. Contractors make their own arrangements for use of such sites. These sites are listed on the Right of Way Certification when the project does not require a previously secured agreement with the site Owner.

17.08.11.06 Status of Required Utility Relocations

An LPA Right of Way Certification is not to be issued until it can be stated that either there are no required utility relocations, the state will handle the utility relocation, or the LPA will handle the utility relocation. Use one or more of the clauses found in Chapter 14, "Project Certification," in this Manual to complete the Utility Portion of the Certification.

17.08.11.07 High and Low Priority Underground Facilities

A statement concerning High and Low Priority Underground Facilities is no longer required in the Certification. The Office of Project Planning and Design is responsible for administration of the High and Low Priority Utility Facilities policy.

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17.08.11.08 Right of Way Clearance

The LPA Right of Way Certification requires information concerning the disposition of improvements. Refer to Chapter 14, "Project Certification," of this Manual for appropriate clauses.

17.08.11.09 Compliance with Relocation Assistance Program Requirements

This section provides assurances that current policy and procedure have been followed relative to relocation advisory assistance payments. Detailed data regarding any remaining occupants and/or personal property are also provided. (See also requirements for Special Certification No. 3 With Work-Arounds.)

17.08.11.10 Cooperative Agreements

This is an optional section used as a check to ensure that needed Cooperative Agreements have been secured.

17.08.11.11 Certification - Authorized Signature

The LPA Right of Way Certification should be submitted with a resolution by the governing body that authorizes execution of the document. As an alternative, the appropriate agency, e.g., County Board of Supervisors or City Council, may adopt a resolution giving the Chairman of the Board, Mayor of the City, Public Works Director, Transportation or Traffic Authority or other responsible official a blanket authority to execute Right of Way Certifications. Certifications executed by this official would then be acceptable. If this second alternative is used, a copy of the original resolution need not accompany each Certification submitted to the Region/District. It will be sufficient to have a copy of the original resolution on file in the Region/District.

In the cases when the Region/District will recertify the project, e.g., the state is doing part of the work, the Region/District Right of Way Certification will be issued over the signature of the Region/District Division Chief, R/W, or designee.

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17.08.11.12 Indemnification by Local Agency for On-System Projects

The Department reviews and approves only those LPA Right of Way Certifications prepared for projects where Department advertises, awards, and administers the contract. As in the case with off-system projects, all other LPA-prepared Right of Way Certifications are "accepted" by the Department. It is, therefore, important that the LPA certify that any right of way acquired for a project which will subsequently be conveyed to the Department be acquired in accordance with our own policies and procedures. Use of this clause reaffirms that the LPA has overall responsibility and accountability for proper project certification.

Use of the "Indemnification by Local Agency" clause is required in all LPA Right of Way Certifications and has been incorporated into the Certification exhibits.

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17.09.00.00 - TRANSPORTATION ENHANCEMENT ACTIVITIES (TEA) AND ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM)

17.09.01.01 EEM/TEA - General

There are two programs where funding is made available for LPAs with environmental objectives: one is state-funded and the other federally funded. The R/W Local Programs Branch will generally have similar responsibilities for each program. The state-funded program is entitled the Environmental Enhancement and Mitigation (EEM) Program. The federally funded effort is the Transportation Enhancement Activities (TEA) Program. They are similar in objectives and operations, but have different project approvals and funding mechanisms. The Department administers both programs. The primary responsibility for processing agreements for the TEA Program lies with each District's Local Assistance Engineer (DLAE). The EEM agreements are processed initially by the EEM Program Coordinator in Headquarters, Division of Local Assistance (DLA) with assistance from the DLAE where the project is located.

For our purposes herein, both programs require matching funds from the recipient and both permit use of the funds to acquire land, which triggers the majority of the R/W involvement. The eligible costs of acquiring land, in addition to the purchase price, may include appraisals, surveys, preliminary title reports/title insurance and escrow fees, legal fees and clearance/demolition expenses.

There are other issues that may involve R/W such as utility relocation, modifications to railroad facilities, or access impairment. After the projects are approved and funding is in place, the R/W effort is generally the same for each program.

The policies and procedures for both programs are described in the DLA *Local Assistance Program Guidelines*. The TEA Program is dealt with in Chapter 8 and the EEM Program is found in Chapter 20.

NOTE: Both the existing TEA funding program and the recent legislation commonly referred to as TEA-21 have the same acronym. Care should be taken so as not to confuse textual references to local agency transportation enhancement projects with the 1998 federal legislation.

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17.09.02.01 EEM - General

The EEM Program was established by the Legislature in 1989 with the addition of Section 164.56 of the Streets and Highways Code. The program receives $10 million in annual funding, subject to appropriation in each year's state budget. The purpose is to provide grants to local, state and federal agencies and nonprofit entities to mitigate the environmental impact of transportation projects *in addition* to any requirements of the environmental document. When the funds are used for property acquisition, compliance with the State Government Code (State Uniform Act) Section 7260 *et seq.* is required. This does not apply to private entities.

The grants are available for use in three broad categories:

1. Highway Landscaping/Urban Forestry

2. Resource Lands

3. Roadside Recreational

For further information about the EEM Program, see Chapter 20 of the Local Assistance Program Guidelines.

17.09.03.01 TEA - General

The TEA Program was one of the components in the 1991 ISTEA. Funding for TEA projects has been reauthorized in TEA-21. TEA procedures allow R/W donations to count toward the local funding share of a project. Donations must be from private ownership to public ownership for project purposes. Acquired right of way is not eligible as the match. Land that has been acquired previously and is already intended or available for use by the public does not qualify for donation credit.

Anyone seeking information about the availability of TEA funds and/or how to apply for them should be referred to the TEA website.

The purpose of the TEA Program is to provide federal aid to local and state agencies for transportation-related projects that enhance the quality of life in or around the transportation facility. As with the EEM Program, the funds are to be used for projects *over and above* any required mitigation for the project. TEA projects must be directly related to the surface transportation system. There are 12 categories of eligible uses for the funds. Some examples of common projects are bikeways, scenic land preservation, historic

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preservation of transportation facilities, landscaping or other types of scenic beautification, and preservation of railroad corridors for trail use.

17.09.03.02 Environmental Clearance

Projects in both programs require environmental clearance prior to funding approval. TEA projects require compliance with NEPA and EEM projects require compliance with CEQA.

17.09.04.01 Restrictive Covenants

When any of the project funds are used for land acquisition, both Programs place restrictions on the subsequent use of the lands. These restrictions are embodied in an Agreement Declaring Restrictive Covenants (ADRC) which is recorded along with the Grant Deed conveying the subject property to the applicant. The ADRC for the TEA Program is similar to the ADRC for the EEM Program. (For a sample ADRC for the EEM Program, see Exhibit 17-EX-19.) The ADRC limits the uses of the land to the purposes intended by the Program and protects the investment in the land should it be sold or no longer used for the approved purposes. Any subsequent transfer of the acquired property from the applicant to another party must be approved by the Department. Each ADRC includes exhibits for the Legal Description, Management and Maintenance of the property and Notice of Revocation of Restrictive Covenants.

NOTE: The ADRC must be signed by the Right of Way District Division Chief, or designee.

When the project funds are used for acquisition of a Conservation Easement only, the ADRC is not used. Contact the HQ EEM or TEA Coordinator for further details.

17.09.05.01 R/W Responsibilities

The DLAE should forward grant applications involving acquisition of real property or a conservation easement to the District Right of Way Office for their early review and involvement in these acquisition projects. By the time R/W becomes involved, the projects have already been reviewed, a specific amount of funding has been approved, and the CTC has allocated the funds. Thus, the role of the R/W Local Programs Coordinator, after the early review, is limited to either assisting the applicant, the DLAE and/or the TEA/EEM Program Coordinator in approving reimbursement for the acquisition expenses *after* the close of escrow or to facilitate the purchase *beforehand* by depositing

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the project funds in escrow accompanied by the appropriate escrow instructions.

NOTE: Although possible, condemnation is very rarely used in the TEA/EEM Programs. Most land purchases are the result of negotiations between a willing buyer and seller. Often the land has been for sale on the open market and both parties have agreed to the price. The Department's charge in these cases is to determine that the purchase price *fairly* represents the value of the land and to assist the parties as needed in the conveyance of the property. If there is a discrepancy between the purchase price and the appraised value, there should be some reasonable justification why the two amounts are different.

17.09.05.02 Reimbursement Procedures

A substantial number of TEA/EEM projects involve reimbursing agencies for the expenses already incurred in connection with land acquisition and related costs. In these cases, the following documentation will be submitted to the DLAE who will forward them for R/W review:

1. An appraisal in support of the purchase price.

2. A copy of the Grant Deed conveying the property to the applicant.

3. A copy of Policy of Title Insurance showing title vested in the applicant.

4. An invoice for reimbursement.

If the documents are in order, the Local Programs Coordinator should approve the invoice for payment and return the package to the DLAE. Any questions about the transaction may be referred to HQ Local Programs.

17.09.05.03 Responsibilities for Purchase Escrows

When the applicant requests that the Department deposit the funds directly into escrow for the purchase of the land, opening the escrow is the responsibility of the applicant. On these projects, the applicant will *usually* submit the following documents to the DLAE who, in turn, will forward them to the R/W Coordinator for review and approval.

1. Two copies of the Applicant-State Agreement

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2. An executed Agreement Declaring Restrictive Covenants (ADRC) including Exhibits

3. A copy of a preliminary title report

4. A current appraisal in support of the purchase price

5. A copy of the escrow instructions
(See item "C" below for additions to the escrow instructions.)

6. An invoice for payment

The R/W responsibilities include the following:

A. Reviewing the Preliminary Title Report, including the legal description to confirm that it adequately describes the property, and that there are no adverse conditions affecting title.

B. Reviewing the appraisal to confirm that the agreed-upon purchase price "reasonably" reflects the fair market value for the property. For most projects, this can be accomplished by a "desk review" of the appraisal.

C. Preparing the necessary escrow instructions on how the funds are to be used (e.g., for the purchase of the subject property when all of the escrow requirements have been met). On EEM projects, the escrow instructions should state that the Agreement Declaring Restrictive Covenants (ADRC) must be signed, along with the Grant Deed prior to close of escrow, and the escrow agent should forward copies of the recorded grant deed and recorded ADRC to Caltrans Local Programs within 60 days after close of escrow.

D. Approving the invoice for payment for the purchase price of the land, plus escrow closing costs.

When the documents are in order, the invoice should be approved and the package returned to the DLAE.

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17.10.00.00 - FEDERAL REIMBURSEMENT REQUIREMENTS

17.10.01.01 Introduction

Federal funds may participate in capital outlay costs made by LPAs for real property purchases or interests therein acquired in accordance with applicable state and federal law and FHWA regulations. Federal funds may not participate in the costs of real property not incorporated into the final highway right of way.

LPAs claim reimbursement for authorized expenditures through the Department. This is accomplished through the Department's current billing system. The project claims are entered into Department's accounting system and become part of the current bill submitted to FHWA. Whenever possible, reimbursement for final right of way costs should be claimed at the time they are known rather than waiting for final project costs. All capital outlay costs must be charged to a specific project. In order to meet FHWA requirements, capital right of way costs must be recorded in sufficient detail to determine eligibility. This includes transactions for land, improvements, damages, utility relocation, demolition and clearance, relocation assistance, condemnation deposits, and income and expense relating to sale of improvements.

17.10.01.02 Eligible Right of Way Costs

The right of way property lines determine the eligibility for acquisition costs. Generally, costs for parcels inside the right of way lines are eligible; those outside are ineligible. Exceptions must be dealt with on an individual basis: e.g., an improvement straddling the right of way line would be eligible for reimbursement.

FHWA no longer requires reimbursement of the federal share of proceeds from the sale of excess real property. Local Public Agencies shall use these funds for subsequent Title 23 (US Code) projects. Excess real property is considered Highway assets under Title 23.

NOTE: Where State funds participate in right of way acquisition, either on or off the State Highway System, the proportionate share of proceeds from the sale of excess real property shall be returned to the Department. The LPA shall contact the Department's Right of Way Liaison in their area prior to the sale of excess property.

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17.10.01.03 Authorization Procedures

Federal participation in right of way costs requires authorization from FHWA.

Authorization is the Approval to Proceed with Right of Way Work (preliminary engineering, appraisals, acquisitions, etc.), which is given with approval of the "Request for Approval to Proceed" (E-76). Initiation of acquisition (first written offer) cannot begin until the E-76 has been approved by FHWA. Although costs are eligible for reimbursement and they have been obligated, they cannot be reimbursed until further authorization is received from FHWA. There may be more than one E-76 (e.g., appraisals only, and the acquisition and RAP later).

The District Local Assistance Engineer (DLAE) is responsible for obtaining these authorizations, with input from the LPA and the R/W Coordinator where necessary.

NOTE: The authorization procedures are discussed in considerable detail in Chapter 3, Project Authorization, in the *Local Assistance Procedures Manual*.

17.10.01.04 Reimbursement Procedures

The LPA submits progress payment invoices directly to Local Programs Accounting in the HQ Accounting Service Center. When project funds have been used for the acquisition of right of way, the Final Invoice with the Final Report of Right of Way Expenditures and a copy of the Closing Escrow Statement are sent to the DLAE for review and approval. They are then forwarded to Local Programs Accounting in HQ for payment. The payment process is discussed in considerable detail in Chapter 5, Accounting/Invoices, in the *Local Assistance Procedures Manual*.

17.10.02.01 Processing of Audits

If some right of way issue has surfaced during the course of the project, R/W is notified and asked to resolve the findings with the LPA. If there have been no such issues, a project-specific audit is not requested through Caltrans Audits and Investigations. Instead, the Right of Way portion of the audit is waived by the Audits Office through the Single Audit waiver process. (See below.)

17.10.02.02 Project Completion and Audits

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LPAs are responsible for establishing and maintaining records of project expenditures and reimbursements. Upon completion of a project, the LPA is responsible for preparing a final expenditure report for submittal to the Department.

LPAs receiving federal funds are subject to audit requirements of the Federal Office of Management and Budgets' (OMB) Circular A-133. A single audit is required if an entity annually receives more than $300,000 in federal funds. LPA project expenditures are subject to audits by the State Controller's Office and by Caltrans Audits and Investigations. Normally, project audits are not necessary if expenditures for a project are covered by the appropriate federal agency.

17.10.03.01 Final Vouchering

The last phase of a federal-aid participating project is final vouchering and closing the project. After the project has been completed, a final voucher must be prepared by the LPA and submitted to the FHWA. The Final Invoice, Final Detail Estimate, Final Right of Way Invoice, and the Final Report of Right of Way Expenditures are used as the basis for the total and participating final voucher costs which are submitted to FHWA.

17.10.04.01 Record Retention

Records pertaining to the federal-aid highway program shall be retained for a minimum period of three years after receipt of final payment by the LPA.

17.10.05.01 Financial Sanctions

The FHWA may withhold federal financial assistance if the certifying LPA fails to comply with the applicable State law and regulations implementing other provisions of the Uniform Act. FHWA will notify the Department at least 15 days prior to any decision to withhold funds pursuant to 49 CFR 24.603(b).

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17.11.00.00 - DEFINITIONS AND REFERENCES

17.11.01.01 Definitions

California Environmental Quality Act (CEQA) - The state environmental legislation that applies to all projects in California and which establishes procedures for conducting an environmental analysis.

Capital Outlay - Capital outlay includes costs necessary to acquire and clear the rights of way for construction of the project. All capital outlay costs must be charged to a specific project. FHWA requires that all right of way capital costs be recorded in sufficient detail to determine eligibility for reimbursement. This includes the costs for land, improvements, damages, utility relocation, demolition and clearance, RAP, condemnation deposits, and construction contract payments.

Capital Outlay Support - The personnel and operating expenses to support the right of way functions that produce capital outlay payments. In addition to Right of Way, it includes environmental studies, design, and construction management.

NOTE: FHWA uses a different term, "Incidental Costs," when referring to these expenses.

Combined Project Study Report/Project Report (PSR/PR) - A single engineering report expediting the project development process for noncomplex, noncontroversial state highway projects funded by others and costing over $1,000,000 for construction.

Cooperative Agreement - An executed contract that specifies the respective roles and responsibilities of the Department and local governmental entities involved in developing a special funded State highway project.

Donations - The voluntary conveyance of property without compensation for the improvement of a current or future public project.

Dedication - The setting aside of property for public use without compensation as a condition prior to the granting of a Permit to Construct, Zoning Variance, Conditional Use Permit, etc.

Draft Environmental Document (DEIS) - The draft of an environmental impact report (state) or environmental impact statement (federal) that is made available or circulated to the public for review and comment.

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Encroachments - An encroachment is defined as any object or structure (e.g., towers, pipes/pipe lines, poles/pole lines, billboards, fences, etc.) within the state's right of way, but not a part of the state's facility. The Department's general policy is to allow utilities within conventional rights of way subject to reasonable conditions to provide for the safety of the traveling public. The policy with regard to freeways is more restrictive. Utilities are excluded from within access-controlled rights of way to the extent practical.

Encroachment Permit - A permit issued by the Department and required for any activity proposed by a local or private entity within, under, or over a state highway right of way. The permits allow temporary use of a highway right of way and include temporary breaks in access to the right of way for grading, excavating, removal of materials, etc.

Encroachment Permit Projects - These are projects on the SHS constructed by others with an estimated construction cost of $1,000,000 or less.

Final Environmental Document - The document prepared in response to public review and comment of an initial study (state), environmental assessment (federal), environmental impact or environmental impact statement (federal).

Freeway Agreement - A document executed by the Department and a city or county which establishes the freeway location/route and the location of frontage roads, and identifies which streets and roads are to be relocated, closed, and separated from or connected with the freeway.

Highway Improvement Agreement - An executed document that specifies the respective roles and responsibilities of the Department and private entities involved in developing a special funded state highway project.

Highway Project - Includes improvement projects which alter the physical features of a highway or freeway.

Initial Project Report - A document required for projects financed by sales taxes which ties together the preliminary concepts of the Project Study Report with current engineering and fiscal constraints to identify the funding and schedule for a project.

Lead Agency - The governmental entity responsible for preparing environmental documents.

Local Public Agency (LPA) or Local Entity - A city, county, city and county, municipality, district, public transportation authority, or any other political

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subdivision or local government agency which may acquire right of way on the SHS or local assistance projects.

Local Assistance Projects - Within this chapter (to differentiate between these and Special Funded projects), Local Assistance projects are on local streets and roads and utilize Federal-aid funds in some portion of the project. They may also be referred to as local entity or local grant projects.

Note: There may also be other types of funds involved; e.g., state or local.

Local Nonsales-Tax-Measure Project - A state highway improvement project financed by local revenues obtained from sources other than the sales tax.

Local Sales-Tax-Measure Project - A state highway improvement project financed by revenues received from a **voter-approved** increase in the **retail** transactions-and-use tax.

Local Transportation Authority - A governmental body established by a county to develop and finance transportation improvements using sales tax revenues.

Metropolitan Planning Organization - The transportation organization in each urbanized area responsible for the comprehensive planning process resulting in programs for the development and operation of an integrated transportation system which facilitates the efficient and economic movement of people and goods.

National Environmental Policy Act (NEPA) - The National Environmental Law that establishes procedures for conducting an environmental analysis for a project involving federal action.

Oversight - (See also definition in Manual section.) Activities concerning a special funded project which are performed by the Department to ensure the safety and integrity of the state highway system through adherence to its standards and practices for development of transportation projects and improvements. Oversight does not include Encroachment Permit activities unless it is so stipulated in a Cooperative Agreement. Oversight is also known as "Quality Assurance."

Permit Engineering Evaluation Report (PEER) - A "short form" project report documenting the engineering and environmental analysis of permit actions which affect operations and maintenance of state highway projects. See Section 202 of the Caltrans Encroachment Permit Manual and Project Development Procedures Manual Article 8 and Appendix I.

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Plans, Specifications, and Estimate (PS&E) - The products of the final design phase which prepare a highway project for contract advertising.

Private Entity - Any nonpublic organization.

Project Development Team - An interdisciplinary group of managers, professionals, and technicians responsible for directing project studies; planning, developing and evaluating alternatives; and participating in community interaction regarding a proposed highway project.

Project Report - A report that summarizes detailed feasibility studies of the needs, alternatives, costs, and overall impacts of a proposed highway project, and includes an engineering decision document and the appropriate draft environmental document regarding the project.

Project Sponsor - The local or private entity with whom the Department works and negotiates an agreement for development of a special funded state highway project.

Project Study Report (PSR) - A feasibility study, including cost estimates, to develop project concept and scope that is used to obtain management conceptual approval before more detailed study is performed.

Public Projects - A public project is one which (1) utilizes public funds in any phase of the project regardless of the source of the funds, (2) includes LPA sponsorship through the use of a Cooperative Agreement between the LPA and the Department, or (3) involves the use of or threat to use the power of eminent domain by the LPA. All public projects require full compliance with all applicable laws and regulations.

Relocation Impact Study (RIS) - All projects that displace any persons or businesses. A Final Relocation Impact Study (FRIS) must be completed for the Preferred Alternative route and included in the final environmental document.

Regional Transportation Plan - The annual plan of transportation improvements for an urban area that is adopted by a regional agency responsible for areawide transportation planning.

Regional Transportation Planning Agency - The regional planning organization composed of representatives from its member cities/counties responsible for preparing a balanced, coordinated, regionwide transportation system, including mass transportation, highways, and rail and aviation facilities.

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Substantial Capacity Improvement - An increase of capacity on a state highway segment more than two miles long, or the construction or improvement of a major freeway-to-freeway interchange.

Strategic Plan - A plan developed by a local jurisdiction after passage of a sales tax ballot initiative that includes information on the description, priority, and delivery schedule of all projects proposed to be financed by sales tax revenues.

Special Funded Projects - A Special Funded project includes LPA sales-tax-measure projects, locally funded projects, privately funded projects, and public toll road projects (not the privatized toll roads) on the SHS that are developed and constructed using local or private funds. Other types of On-System projects include Encroachment-Permit and jointly funded or cooperative projects.

17.11.01.02 References

- 23 Code of Federal Regulations (23 CFR)
- 49 Code of Federal Regulations (24) (49 CFR 24)
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and Amendments 1987 (Uniform Act)
- Title VI of the 1964 Civil Rights Act
- Caltrans, *Right of Way Procedures for Developing Local Federal-aid Highway Projects*
- Caltrans, *Right of Way Manual*
- Caltrans, *Cooperative Agreements Manual*
- Caltrans, *Encroachment Permit Manual*
- Caltrans, *Local Assistance Procedures Manual*
- Caltrans, *Local Assistance Program Guidelines*
- Caltrans, *Project Development Procedures Manual*

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17.12.00.00 - FORMS AND EXHIBITS

17.12.00.01 Use of the Department's R/W Forms/Exhibits

As noted above, the Department "*has overall responsibility for the acquisition, management, and disposal of real property on Federal Aid projects.*" [23 CFR 710.201(b).] The Department is also required to "*fully inform political subdivisions (LPAs) of their responsibilities in connection with federally assisted highway projects*." [23 CFR 201(h).] This information is set forth in the Caltrans *R/W Manual*. The different chapters in this Manual establish procedures for all phases of right of way, including in particular, appraisal, acquisition, relocation assistance, property management, plus the other right of way functions and activities. This Manual is intended to assist both Department R/W Agents and LPA staff to comply with both federal and state laws, regulations, directives, and standards. Local agencies which use federal funds for their transportation projects do so with the understanding that they must conduct all right of way activities in accordance with the Caltrans R/W Manual.

This section contains all of the Exhibits referred to in this Local Programs Chapter. Our experience has shown us that one of the best practical means of assisting LPAs while performing the right of way portions of their projects is to provide standard forms and exhibits to accomplish most of the necessary functions/activities. In previous editions of this chapter, generic forms/exhibits for other chapters were included, ready for adaptation and use by LPAs. Providing these samples in this chapter is no longer practical because these forms have proliferated so extensively.

Therefore, users of this chapter seeking a particular form are hereby referred to the Forms and Exhibits Tables of Contents of Chapters 4 ("Estimating"), 7 ("Appraisals"), 8 ("Acquisition"), 9 ("Condemnation"), 10 ("Relocation Assistance"), and 11 ("Property Management") of this Manual. At the same time, users are encouraged to familiarize themselves with the contents of those chapters.

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CHAPTER 17

LOCAL PROGRAMS
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EXHIBITS

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17-EX-3	*Held for Future Use*
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17-EX-5	DRE Legal Opinion/1995 Transmittal Memo to Districts Checklists from Each of the R/W Functional Areas (6A-6F)
17-EX-6A	Appraisal Review Checklist
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17-EX-7	Roles and Responsibilities for Development of Projects on the State Highway System
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Exhibits are located online:

- External Exhibits site
- Internal Exhibits site (internal Caltrans link)

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