

CHAPTER 8

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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.” 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. (See “Statutes Relating to the California Department of Transportation.”)

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 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 the property involved is owner-occupied residential property and contains no more than four residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

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.

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.

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.
- 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, or national origin, 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 (43 USC 2000d, et seq.).
- 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 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 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 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

When warranted by cost and good business considerations, the Districts may accomplish acquisition through the 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 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 District Director 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, acquisition should be carried on through the 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 Relocation Assistance and Real Property Acquisition Policies 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 or Right of Entry. Bureau of Land Management Decisions, Forest Service Letters of Appropriation 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 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 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 Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended April 2, 1987 was not meant to be an 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. An Appraisal Summary Statement (8-EX-15A) and 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.

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.

All offers should be made within 30 days of the approval of the appraisal. If unusual 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, the 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, the 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), Information Sheet for Owner(s) Regarding Property Tax Relief (Exhibit 8-EX-49), and the Department's Brochure and Letter. 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 to establish eligibility for relocation benefits. Certifications obtained along with a copy of all RAP documents presented at the initiation of negotiations are to be forwarded to the RAP Senior within two working days of the initiation of negotiations (see Manual Section 10.01.11.05). Diary entries on the correct form are to be included with the above documents. Certification on vacant unimproved land is needed only if some personal property is stored on the property. If the property owner will not sign the occupancy certifications, a complete diary entry to that effect must be made.

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 Initiation of Negotiations (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 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, updated Summary Statements shall be provided. 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, as in the instances described in Section 8.01.04.01, "Acquisition by Mail," 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."

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 Review Department's Appraisal**

Government Code Section 7267.2 provides in part that:

"Where the property involved is owner-occupied residential property and contains no more than four residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based."

This statutory right will be complied with by giving each qualified property owner an Appraisal Summary Statement. The Summary Statement will advise the qualified owner of the right to review the appraisal upon which the offer on that property was based. A parcel diary entry is to be made indicating the qualified property owner was orally informed and given the Appraisal Summary Statement. See Section 8.02.01.00, et seq.

If the property owner wants to review the appraisal, the following conditions apply:

The right to review is restricted to the approved appraisal and any revisions on which the initial or any subsequent offers are based. It does not apply to independent or staff reports prepared for use in condemnation. Restrictions on disclosure of RAP valuation data are discussed in the RAP Chapter.

The right to review applies to those elements of the appraisal report relevant to the determination of the value estimate including narrative material relating specifically to subject property, comparable sales data, appraisal, and sales maps. Should the owner request that the copy be reviewed by an attorney or other representative, this request must be in writing.

The right to review applies to any type of acquisition as long as the property is an owner-occupied residential property containing four units or less.

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.

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, when required, submitted to HQ R/W 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 California Transportation Commission (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. The prior approval of HQ R/W must be obtained before noncontiguous excess real property or property yet to be acquired is proposed for exchange in a Contract. A copy of the authorization will be included in the MOS. Finding "A" or "B" situations are the most acceptable type exchange. It is Departmental 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 the abutting owner or if damages are minimized by an exchange and the grantor's property 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 60 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. See also Section 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 California Transportation Commission (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.

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 with the CTC to appear before them 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 Fact Sheet [http://www.dot.ca.gov/hq/oppd/pdpm/apdx_htm/apdx_jj/apdx_jj.htm] 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). 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 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.

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.

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-1), 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 will be responsible for 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 [<http://onramp/hq/transprog/>] for submittal of documents and presentations so book items can be finalized for the CTC's agenda.

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 [http://www.dot.ca.gov/hq/oppd/pdpm/chap_hm/chapt28/chapt28.htm].

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."

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 SPB 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 an audit 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 three copies of a "Claim for Payment of Expenses Actually Incurred." One copy should be retained by the owner, one copy for the District Right of Way files, and the third copy submitted by the District to the Audit Function, Office of Audits and Investigations with a request for an audit.
- B. The audit, in addition to verification of the expenses, 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 audit will also identify those items which are not reimbursable and the reasons therefor.
- C. During the course of the audit, Appraisal Branch personnel should assist in the review of 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.

- D. A nonsubstantial payment based on the total of the audit recommended expenses may be authorized by the District on an administrative basis. Agents must check the current R/W Planning and Management Delegation of Authority matrix to determine the maximum amounts Districts and Regions may authorize. A substantial payment requires prior approval of HQ R/W.

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. See Exhibit 8-EX-7.

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.

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.

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 \$2,500 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 Record Owner Guarantee. 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.

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 \$2,500 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 \$2,500 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 within ten days of issuance of the DPO.

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. Thereafter, they are sent to the Acquisition Branch so the necessary authorizations for their use may be secured. Independent or Staff Independent Appraisals are authorized for use by the DDC-R/W in amounts up to \$500,000. Authorizations over \$500,000 must be approved by HQ R/W. A memorandum recommending authorization should be secured from the attorney assigned to the case in which the appraiser will testify and made part of the file.

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, and it may be authorized by the DDC-R/W. 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 of HQ R/W.

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.
- 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.

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 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 site (for Department use only):
[http://pd.dot.ca.gov/row/offices/acquisition/memos/.](http://pd.dot.ca.gov/row/offices/acquisition/memos/)

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 Forms RW 6-1[X] and RW 6-1[Y].) 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**

Current practice in 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 State with additional relocation assistance payment costs and work that can delay project delivery.

In certain circumstances, vacant residential or nonresidential units may be rented by the State 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 State. 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 State.

8.01.31.02 **Initiating Rental Agreement**

Districts will offer to enter into rental agreements concurrently with initiation of negotiations 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 first call 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:

- 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. 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.

8.01.33.00 **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 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(b). A procedure is in place for reimbursement of expenses listed in 24.106(c). 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.

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 8.16.01.02, and be approved by the Deputy Director, Project Development and the Deputy Director, Planning.

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)

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

NOTES:

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. (Reference shall be made to Guideline Memorandum dated June 4, 2002 regarding Appraisal Summary Statements and Valuation Summary Statements.)

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.

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 M., 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.

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 and 8.04.16.00 must be reviewed prior to preparing summary statements.

Each 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 **Independent Appraisals or Staff Condemnation Reports**

Independent appraisals, whether prepared by staff condemnation agents or independent appraisers, are obtained for litigation purposes. These are privileged, and new Appraisal Summary Statements will not be required. An exception is an independent report secured in lieu of a staff report.

8.02.06.00 **Owner-Occupant's Right to Review Appraisal**

Since an owner-occupant of a residentially improved property containing four units or less has the right to review the State's appraisal, the following clause will be included in the Appraisal Summary Statement under the "Improvement" heading:

"An owner-occupant of a residential property containing four units or less, has a right to review the appraisal on which the written offer to purchase is based."

The Acquisition Agent must orally inform the owner-occupant of the right to review the appraisal and make a diary entry when that has been done. This does not preclude giving a copy of the approved appraisal to a qualified owner. The District shall have the option of providing a copy at the time of initiation of negotiations. See Section 8.01.12.00 for the conditions under which an appraisal may be reviewed by an owner-occupant qualified to do so under Government Code Section 7267.2.

NOTES:

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 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 Business and 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.

8.03.07.00 **Contracts Which Require Approval by HQ R/W**

There are three specific transactions which require HQ R/W approval. They are:

- Nonstandard railroad indentures.
- A commitment by the State to acquire private property for private use.
- Exchange of noncontiguous excess land.

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 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.

NOTES:

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 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.

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.

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 (A) of the Contract, use Clause 01, otherwise use Clause 02.

- A. “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.”

- B. “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. 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.

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.

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.
- 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.

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 the HQ R/W for review and advice before concluding the transaction.

A lessee may have a compensable interest in improvements which the lessee has 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 usually 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 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 **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 will normally identify those improvements of which ownership is in dispute.

8.04.15.02 **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.

8.04.15.03 **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.

8.04.15.04 **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.

8.04.15.05 **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.

8.04.15.06 **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.

8.04.15.07 **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 the State has made an initiation of negotiations to acquire the property. Occupants must be made aware that they may lose RAP eligibility if they move before the initiation of negotiations.

8.04.15.08 **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.

8.04.15.09 **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.

8.04.15.10 **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.

8.04.15.11 **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 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 RW 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 and be fully cognizant 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.

8.04.16.00 **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 Takings**

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.

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

In clearing these interests in easement takings, use the same procedure as in fee takings 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.

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.

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:

“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" 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 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.

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.

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 taken 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, a procedure impossible of fulfillment once the assessment area and rate have been established.

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 **Remaining Property Assessments**

The following statement may be included in the Contracts when requested by the grantor:

“The construction of the state highway as now proposed shall be done without assessment of any kind therefore being placed against the adjacent remaining portion of grantor’s property.”

8.04.33.00 **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 \$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.

8.04.34.00 **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).

8.04.35.00 **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).

8.04.36.00 **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 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.”

8.04.37.00 **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.

8.04.38.00 **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.”

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

8.04.39.01 **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.”

8.04.39.02 **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.

8.04.40.00 **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.

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.”

8.04.41.00 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 Federal Land Bank Office located at 3636 American River Drive, Sacramento, CA 95864.

8.04.42.00 **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 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.

8.04.43.00 **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.

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:"

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 maybe 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.)"

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 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, Administrator, 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).

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: ***"

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:"

NOTES:

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 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.

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).

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 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.”

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.”

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 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 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 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 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.”

“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.”

“\$_____ 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.

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 _____.”

8.06.21.00 **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.

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.)

NOTES:

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.

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 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."

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.

"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.

NOTES:

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.

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.”

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 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.”

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.”

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.

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 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.”

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, 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.”

NOTES:

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 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 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 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.

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.

**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 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 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.

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 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.

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 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.

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.

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.

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."

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 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.

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.

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).

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.

NOTES:

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 be 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.

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 Exhibit (8-EX-28) is to be used whenever signature is being directly acknowledged by a Notary.

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."

NOTES:

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 probably 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 together with the supplemental information sheet (Exhibit 8-EX-15B).

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 or sometimes industrial, enterprise;
- 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 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.

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.

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 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 or a business reestablishment expense claim."

8.15.05.00 **Payments Made Prior to In-Lieu 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 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 12):

"It is understood and agreed that payment for loss of goodwill herein includes, but is 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.
- "(3) Construction and installation costs for exterior signing to advertise the business.
- "(4) Provision of utilities from right-of-way improvements on the replacement site.
- "(5) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
- "(6) Licenses, fees and permits when not paid as part of moving expenses.
- "(7) Feasibility surveys, soil testing and marketing studies.
- "(8) Advertisement of replacement location.

- "(9) Professional services in connection with the purchase or lease of a replacement site.
- "(10) 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.
- "(11) Impact fees or one-time assessments for anticipated heavy utility usage.
- "(12) Other items that the Agency 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 twelve items specifically identified in a Goodwill report may make portions of such item(s) eligible for Federal participation.

Items (1) through (12) 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, \$1,000 is not. See the Appraisal Chapter.

Items 1 through 12, 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 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.

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 of the Deputy Director, Project Development and the Deputy Director, Planning (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.
- 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).
 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 of the Deputy Director, Project Development and the Deputy Director, Planning 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 \$200,000, and;
 - a) The estimated cost of remediation exceeds 50% of a parcel's appraised value compared to its uncontaminated value, or
 - b) The estimated cost of parcel remediation exceeds 10% of the total project costs (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 was previously a mining and/or milling site with associated tailings, drainage, and/or processing residues residing on the parcel, or a mine site which is subject to local, state, and/or federal reclamation requirements.

The project manager, in coordination with District Right of Way, Project Development, and Legal, shall prepare the request for Headquarters approval.

Requests for approvals should be sent to HQ Hazardous Waste Management Office, Environmental program for coordination of the Deputies' response. A minimum of 30 days is needed to process the approval request.

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.

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 Substances Disclosure Document**

R/W Engineering initiates the unsigned Certificate of Sufficiency upon submitting appraisal maps to Right of Way. 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 approved Hazardous Substances Disclosure Document attached. Certificate of Sufficiency will include the parcel numbers of all properties contained in the appraisal report and the Hazardous Substances Disclosure Document (HSDD) will identify any Hazardous Substance consideration pertaining to those parcels.

- A. A new HSDD 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. These clauses are not to be revised without prior approval of HQ R/W and Legal. New or special clauses drafted in the District or by an owner must also have prior concurrence 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.”

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.

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."

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.”

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.

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)."

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.)

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.

8.18.00.00 - FEDERAL LANDS

8.18.01.00 General

The Department may require a 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.

Title 23, United States Code (USC), Sections 317 and 107(d), provide for the transfer of lands, or interests in lands, owned by the United States (U.S.) to a State Highway Department (23 CFR 710.601). If lands or interest in lands owned by the United States are needed for highway purposes, the Department shall request the transfer of the property into the Department's control citing 23 CFR 710.610(b); and if the project is on the Interstate System, USC 107(d) will be cited.

The Department of Agriculture, United States Forest Service (USFS), and the Department of Interior's Bureau of Land Management (BLM) have the ability to transfer lands or interests under the Federal Lands Policy and Management Act of 1976. The transfer of land is processed through the Federal Highway Administration (FHWA) in accordance with procedures outlined in this section.

If the lands are controlled by the military, Veterans Administration, or Bureau of Indian Affairs, the Region/District shall make the requests directly to the agencies (see pertinent sections of Chapter 8).

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 General Services Administration (GSA). Functional replacement of real property in federal ownership shall be in accordance with these provisions.

The Federal statutes under which we acquire rights or interests in lands in public domain 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 Region FLT Coordinator will be responsible for assisting the district staff and coordinating final review and approval from the FHWA.

Region FLT Coordinator (Northern - Marysville, Central - Bishop, and Southern - San Bernardino),
with a District FLT Contact in Districts 1 and 2 (Northern), Districts 5, 6 and 10 (Central), Districts 7
and 12 (Southern)

District FLT Coordinator (Districts 4 and 11)

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 the Department. 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 the Department's proposed highway project so the impact of the transportation facility can be evaluated. 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. 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.

Prior to the submission to the FHWA of a request for a federal land transfer as outlined below, the Region/District FLT Coordinator should have had field discussions with personnel of the local or district office of the granting federal agency. The Region/District FLT Coordinator or Contact should request the attendance of the following people:

Department - 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 public domain. 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 have an effect on the R/W certification of the project.

8.18.04.00 **Compensation for Federal Land Transfers**

Transfers of U.S. lands to the Department for highway purposes are made without the payment of compensation. However, a few federal or quasi-federal agencies (e.g., Tennessee Valley or Bonneville Power Authorities) may require compensation because they have a fiduciary responsibility to bondholders or other creditors. In addition, the granting federal agency is entitled to compensation for those appurtenances on its facilities that will be removed or destroyed in connection with the highway project. Thus, a granting federal agency could require the Department provide substitute land and construct comparable facilities. The FHWA requires the granting federal agency prove that the substitute land and facilities must be essential for the continued operation of the remaining lands according to the agency purposes and are not an enhancement of the existing facilities. Refer to Section 7.13.70.00.

8.18.05.00 **Types of Rights of Interest from Federal Agencies**

The Department 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 patent.

Transfers can be obtained from any federal agency, but the majority of sites required for highway purposes are requested from the Department of Agriculture's (DA) United States Forest Service (USFS), Department of Interior's (DIA) Bureau of Land Management (BLM), or the United States Military Department.

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 the 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. The Department requires a federal land transfer on all federal-aid projects on public 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: the Department acquired a DOT Easement from USFS ten years ago for a two lane highway, and now the proposed four lane project requires the acquisition of more land. Since the Department is proposing to change the '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. The Department 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.

Letter of Consent: 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 in the Letter of Consent. The Department can certify the project as soon as the Letter of Consent is obtained from the FHWA.

8.18.07.00 **Perfection of Title**

The Department, the FHWA, and USFS have entered into a Memorandum of Understanding to perfect the title on all existing rights of way. The Perfection of Title process was designed so that the Department 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 Department of Transportation 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 public domain). 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 public 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 the Department to survey the construction area, but a detailed map will be required. The granting federal agency will obtain all environmental documents. The Department 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 and Free Use Permit)**

Sometimes, the Department only needs to obtain from the granting federal agency a temporary right to use their real property; e.g., material and disposal sites, or space for the disposal of construction materials, 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. The USFS issues a Special Use Permit and the BLM issues a Free Use Permit. The Department 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 the Department 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:

- Prepare 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

Material sites on *unpatented public lands* for State highway construction may be obtained under Use Permit (43 CFR 3612.2). The granting federal agency can issue such Free Use Permits for a period of up to ten years. Special Use Permits or Free Use Permits allow the Department to store and remove small quantities of materials for road purposes. The District should employ this simplified procedure in securing most material sites on unpatented Federal lands. The term of the permit shall be keyed to the expected life of the related construction project or projects. Selected sites needed for materials for continuing highway maintenance, stockpile and mixing table sites or maintenance station sites shall be applied for under provisions of Section 317 of the 1958 Act. Disturbances over one acre and/or 5,000 cubic yards may be considered as 'mining' and require a Surface Mining and Reclamation Act (SMARA) permit which can be obtained from the Region/District SMARA Coordinator. The District FLT Coordinator should contact the SMARA District Coordinator for all information about SMARA regulations. A SMARA document may take two years to obtain.

The permit is not ordinarily recorded and provides for the conditions under which the Department occupies or makes use of the property by the granting federal agency.

The materials located on federal land such as stone and earth belong to the granting federal agency. The Department should recognize that unless otherwise stated, no interest granted shall give the Department 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 the Department's Construction Specials. Also, the FLT Coordinator must ensure that the Department's 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, the Department 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. The Department 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 transverse across federal property for a highway or highway-related purpose. Though some federal agencies have their own statutory authority to transfer land to the Department 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. The Department 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. The Department's need to traverse lands under jurisdiction of the USFS will be made under provisions of the Federal Highway Act of 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. The Department 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. The Department also obtains material sites on privately owned lands when requested by the FHWA.

Section 104.4 of the Streets and Highways Code enables the Department 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 Department of Interior (DIA). The Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat 2766) United States Code, Title 43 Section 1737 (43 USC 1737) authorizes the execution of contracts and cooperative agreements involving the management, protection, development and sale of public lands. BLM and the FHWA executed an interagency agreement, which authorizes transfer of the rights of way at no cost under Section 317 of the Federal Highway Act. The purpose of the agreement is the appropriation of public lands for highway rights of way and sources of materials of the Federal-aid Highway System.

Applications for material sites or uses other than rights of way shall be independent of applications for right of way. Department of Interior regulations require the filing of exploration and mining plans by the applicant. Early consultation with the local BLM office is advisable. Road contractors using material sources in the public domain will be required to post a performance bond with the BLM.

8.18.15.00 **Military Reservations**

10 USC 2668 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.

The military will only issue 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 the Department 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.

The Department 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 the Department's 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 the Department for highway purposes is not compensable. Unusual issues related to the transfer of USPS lands should be referred immediately to the FHWA liaison.

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 the Department 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.

**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.

Table 8-18-A

National Park Service (NPS): Applications for rights of way or interests in lands of the NPS are submitted in the normal process except that the DOT Easement must be agreed to by the NPS Director prior to issuance. Submissions affecting NPS lands must conform to 36 CFR Part 14, Subpart D, which addresses transfers under 23 USC. The NPS will determine if use of the lands for highway purposes is consistent with its management program and if the Department agrees to measures necessary to maintain program values.

Power Sites: Section 24 of the Federal Power Act was amended to provide that if any lands reserved or classified as power sites are hereafter declared open to location, entry or selection by the Secretary of the Interior, notice of the intention to make such declaration shall be given to the Governor of the State within which the lands are located, and 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. Notices from the Secretary of the Interior, and/or the Federal Power Commission, of intention to make such declaration are sent from the Governor’s Office to the Office of the Director, Department of Transportation. The Director’s Office submits the notice to Headquarters Right of Way and Land Surveys (HQ R/W&LS), which will secure information from the Districts and prepare the required report for the federal agency involved.

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)].

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 the Department 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, the Department's Division of Environmental Analysis will need to prepare its analysis of the impacts to the natural resources which includes biological, 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 Game) 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 the Department's environmental branch and the granting federal agency's environmental office. It is important to note that the Department does not reimburse the granting federal agency for their time to review the environmental document.

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 based on 23 CFR 712.503(b) and 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 FHWA with the Federal Land Transfer (FLT) Package (8.18.19.02), in accordance with USC, Title 23, Section 317 (23 USC 317). The granting federal agency must approve the Department's 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 and Section 107(d).

Upon receiving the Department's application package, the FHWA will request the Letter of Consent from the granting federal agency listed in the Department's 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 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.

If the granting federal agency does not respond to the FHWA's 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. The FHWA will transmit the granting federal agency's Letter of Consent or the FHWA's appropriation letter directly to the Region/District FLT Coordinator.

Note: Generally, the granting federal agency's executed Letter of Consent authorizes immediate entry under the terms contained in the letter. At this time, the property is available to the State for certification and awarding for construction purposes. 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 Department's attorney certify 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 the Department's 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

8.18.19.01 Preparation of the DOT Easement

DOT Easement is prepared by the Department's Right of Way Engineering staff and shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(s), 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 Engineering 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 attorney's signature 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 [23 CFR 712.503(c)]. 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 FHWA.

The FLT Package that is transmitted with the request for a Letter of Consent includes:

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 FHWA returns the granting federal agency'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.
- 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, the Department 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 7132.503(d)].

The federal land transfer will automatically terminate if the Department 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 the Department).

The DOT Easement's stipulations and conditions make reference 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. The Department 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.

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 the Department of Transportation 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. The Department of Transportation 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 Letter of Consent from the USFS will make provisions for any trees ("marketable timber") that are within the real property required by the Department. Sometimes, the USFS wants to generate revenue from the timber and will make arrangements for a contractor to remove the marketable timber prior to the certification. The Department does not pay the USFS for the loss of timber that they do not have to remove. 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 either does not want or failed to remove. The Department is required to survey and mark the project area so the USFS can determine the timber that is impacted.

Timber is a very sensitive and complex issue. The USFS does not want to clear the timber prior to construction or R/W Certification because if the project does not move forward in a timely manner, or is cancelled, the National Forest Service Lands area is devoid of trees. This is a well-founded concern since USFS is often asked to remove timber prior to a CTC funds vote for construction. The preferred method is for USFS to sell and clear the trees themselves or cruise (estimate) the trees and enter into a Timber Contract with a contractor. This work can be coordinated with the project's construction schedule. The Department should not be a party to the Timber contract since it is not a licensed timber contractor. The USFS cost cruise (or estimate) is a right of way expense since an expert is required to do the work.

The USFS timber bid and removal process will require twelve months.

8.18.20.00 **Perfection of Title Procedure**

Each Region/District Deputy District Director for Planning will develop a prioritized list of routes and provide it to their designated USFS representative by January 20th of each calendar year. 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:

- Department: local Maintenance Superintendent and R/W surveyor.
- USFS: District Ranger and their engineering or survey representative.

The Department's 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 the Department's 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 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 the Department's Digital Highway Inventory Photography Program (DHIPP).

The Region/District FLT Coordinator will notify the FHWA Division Administrator of the Department's need for right of way across National Forest Service Land and prepare the appropriate documentation required by 23 CFR 710.601. The FHWA Division Administrator, or delegated representative, will notify the Regional Forester of the Department's request within 30 days of receiving the Region/District's documentation, with a statement that the request is reasonable and necessary for appropriation. If the FHWA Division Administrator does not find the Department's request reasonable, the documentation will be returned to the Region/District FLT Coordinator with an explanation.

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 FHWA Division Administrator. Under this expedited process, the Forest Service will provide the Letter of Consent to the FHWA within 30 days of the request date. FHWA will provide notice of the receipt of the Letter of Consent to the Department's Region/District FLTC.

The Department 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, the Department's attorney must review the DOT Easement and sign the statement certifying it meets State requirements for form and procedures (18.18.19.00). All Department actions will be completed within 30 days of receipt of the Letter of Consent from FHWA.

The FHWA Division Administrator will forward the DOT Easement to the FHWA Western Legal Services Office for review. Upon determination of legal sufficiency, the FHWA Division Administrator will 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 of the Department 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.

8.18.21.00 **Notice of Right of Way Commitments on Forest Service 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.

*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___.*

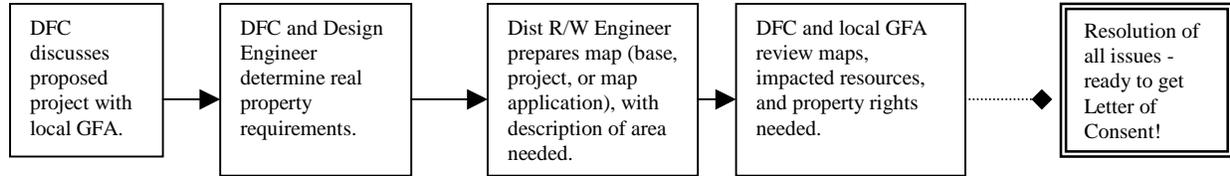
District Director of Transportation

*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.*

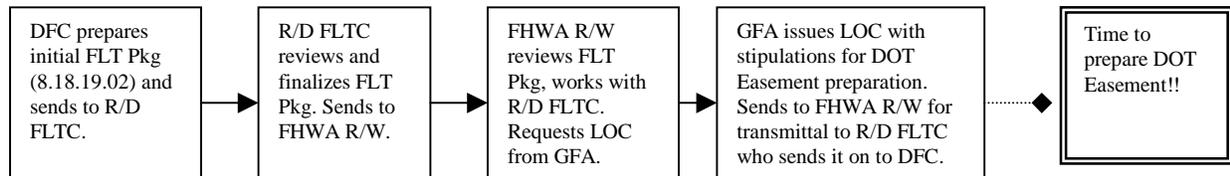
District Division Chief/Regional Manager for Right of Way

FEDERAL LAND TRANSFER (FLT) PROCESS - FLOWCHART
District FLT Contact (DFC) and Region/District FLT Coordinator (R/D FLTC) Responsibilities

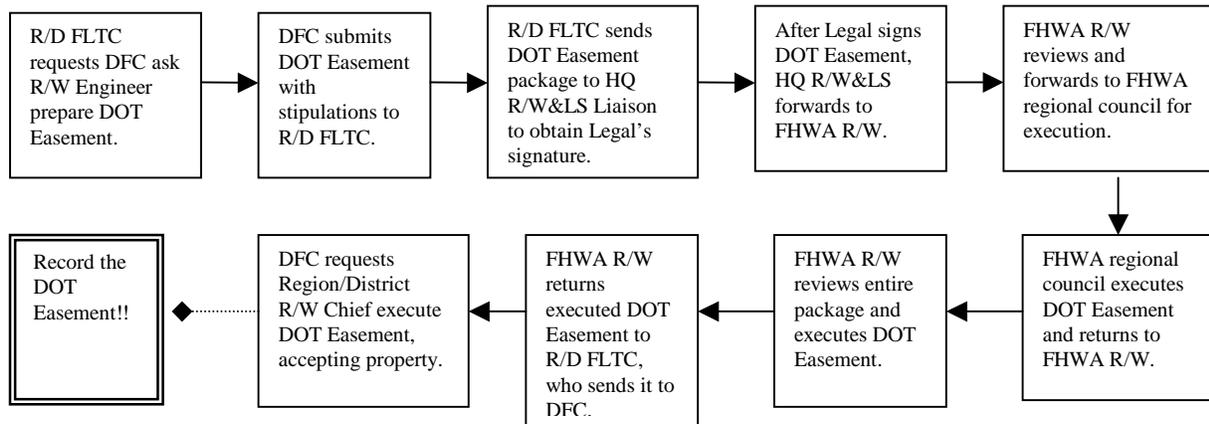
Phase 1 - Initial discussions with local granting federal agency (GFA)



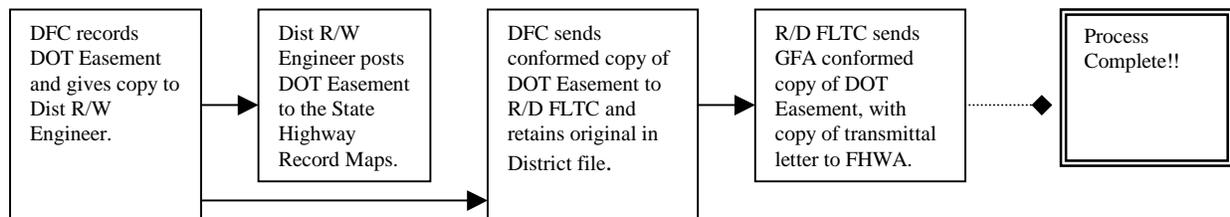
Phase 2 - Obtain Letter of Consent



Phase 3 - Obtaining a DOT Easement



Phase 4 - Recording the DOT Easement



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.

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.

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 (23CFR107(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)).

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."

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.

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.

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.

8.21.02.00 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.

8.21.03.00 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 Section 16 and 36 or designated in lieu lands). This is per Section 6210.3 of the Public Resources Code.

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.

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.

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.

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.

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.

Maps and description are transmitted to the Commission with a letter of explanation and an offer in the amount of the District's appraisal.

A minimum of 120 days is normally required by the Commission in the processing of an application and approval.

Upon approval, the State Lands Commission will authorize the issuance of a patent conveying the right of way to the Department of Transportation.

Upon approval, two of the tracings are returned with an executed permit granting the right of way.

8.21.03.03 Recordation

The patent will be transmitted to the District for recordation.

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.

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.

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. On 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 complain 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.

- 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 maybe 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, 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 **Procedure by District Office of Right of Way**

In cases where the land to be acquired for highway purposes falls in the category of the lands described in the preceding section, the acquisition 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, "Agreement for the Transfer of Control and Possession of Land Owned by the State for Highway Purposes" (see Exhibit 8-EX-32), functions as contract and deed. This instrument must contain all of the terms of the transaction including a sufficient legal description of the property being transferred, and shall be submitted to HQ R/W with an MOS.

The District is responsible for obtaining execution of the instrument by the other agency. If feasible, have the other agency execute the agreement before submission to HQ R/W for execution by Transportation.

Obtain the other agency's signature on sufficient copies of the agreement to enable final distribution as follows:

Original - Returned to District. If access rights are being acquired as part of the transaction, District should record original (agent must secure an acknowledgement of the execution of the document by the officer signing for the other agency).

First signed copy - This should be identified as the "Department of Transportation File Copy" and is to make provision for recommendations for approval as set out in Exhibit 8-EX-33. This copy, following signatures by all parties and approval by the Department of General Services, is also sent to the District.

Second signed copy - Retained by the Department of General Services.

Third signed copy - For distribution to "other agency" by District after return from the Division. Note: If the other agency requires more than one fully executed copy, the District should submit the necessary additional signed copies when requesting execution by Transportation.

Fourth signed copy - Returned to District by the Division for District Files.

In addition to the original and four signed copies, also submit two conformed copies to HQ R/W, one of which will be transmitted to the Department of General Services, Proprietary Lands, upon completion of the transaction. The other copy will be used for reference purposes during processing in HQ R/W and in the Department of General Services. Only the Department of Transportation file copy is to contain signatures of either the District Director, DDC-R/W, or other district personnel. The original document to be recorded, and the second, third, and fourth signed copies are to be signed only by the Chief, HQ R/W on behalf of the Department of Transportation and the person of the other agency authorized to execute the document.

8.21.05.02 Procedure by the Division of Right of Way

Upon receipt of the Agreement, the "File Copy" is reviewed as to form and procedure by the Legal Division. Based on the information contained in the MOS, a resume of the transaction will be directed to the Chief, HQ R/W, recommending execution of the Transfer of Control and Possession on behalf of the Department of Transportation.

Following execution, HQ R/W will submit the original and four signed copies, together with appraisal data and a resume of the elements of the transaction, to General Services, Office of Real Estate Services for approval pursuant to Section 14673 of the Government Code. (If the Transfer of Control and Possession has not been executed by the other agency prior to submission to HQ R/W all counterparts shall be returned to the District after execution by the Chief, HQ R/W. The District will then obtain the signature of the other agency and thereafter return the original, four signed copies and two conformed copies to HQ R/W for submission to General Services for approval.)

Following approval by General Services, distribution of all counterparts will be made in accordance with the preceding section. One fully executed counterpart shall be made available to the other agency by the District.

Except for transactions with Parks and Recreation, a certified copy of the agreement must be attached to

the schedule submitted to HQ R/W for payment. Parks and Recreation transactions are not scheduled for payment. District Accounting notifies Headquarters Office of Financial Operations and Control, Proprietary Unit, of the transaction including the appraised value so the Land Bank Account may be appropriately credited.

The following information is needed by OREDS to assure the appropriate District is billed for services rendered.

- Five-digit Agency Code
- Source District
- Source Unit
- E.A. number
- Name and telephone number to which any invoice should be mailed.

The five-digit Agency Codes are:

- District 1 60152
- District 2 60153
- District 3 60141
- District 4 60145
- District 5 60154
- District 6 60146
- District 7 60147
- District 8 60143
- District 9 60155
- District 10 60142
- District 11 60144
- District 12 60600

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.

NOTES:

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 or 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.

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.

NOTES:

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 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.

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. Present procedure provides that the title insurance may be waived, at District discretion, on parcels valued at \$2,500 or less.

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.

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 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. 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.

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.

NOTES:

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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 by-laws 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 by-laws 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?

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, determined 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 preliminary determination as to whether the stock certificate describes any property and if so whether the property described is that we proposed to acquire;
- B. Determine whether a certified copy of the articles or by-laws has been recorded; and
- C. Obtain a correct copy of the current articles and by-laws of the company and of the stock certificates involved; and
- D. Submit all of the information along with copies of the stock certificates, articles, by-laws and other information to HQ R/W for a determination as to whether or not the stock is appurtenant.

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.

NOTES:

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.

NOTES:

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.

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 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.
- 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.
- 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 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.

"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."

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."

"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 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:

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."

- 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.

NOTES:

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.)
- E. Dedications do not generally qualify under terms of Sections 104.2 and 104.12 S&H Code.

NOTES:

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 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].

NOTES:

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 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.

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 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.

NOTES:

8.50.00.00 - MEMORANDUM OF SETTLEMENT

8.50.01.00 General

All transactions concluded by Contract, stipulated, contested or default judgment, Transfer of Control and Possession, 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 a Memorandum of Settlement. Individual districts may find it internally desirable for others, i.e., Supervising R/W Agent, Acquisition Branch; District Directors, etc., to sign; however, as a minimum the memorandum 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.

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 Property Management Chapter (as written).

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 acquisition documents: Right of Way Contract, Amendment to Right of Way Contract, Judgment, Stipulation, Transfer of Control and Possession, 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 (TRAMS). 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.

The Acquisition section must review the signed copy from Accounting to determine its correctness. This is a vital step in the closing-of-the-loop process.

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 Accounting Weekly Report or equivalent. This will indicate if the deposit has been coded 6090 or 7090.

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.
- 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 is expected to make any necessary coding adjustments on an as-learned basis.

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.)
- D. If legally compensable under State Law, 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 and rental payments as outlined in Section 8.01.30.00. 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 (TRAMS) 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 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 inserting the withheld amount in the FAE 8 - Suspense column, and on the appropriate line, i.e., Improvements. The Withheld Funds box at the center of the form is marked "Yes" and the balance of the line completed. Coding of withheld transactions to FAE 8 – Eligibility Not Determined or Suspense 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., adjust the withheld amount from FAE 8 to charge either FAE 6 or FAE 7 depending on federal eligibility). 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 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 3.05.05.02 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 (3) & (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,” that is with FAE Code 6. The Accounting System (TRAMS) must record these hardship and protection acquisition costs as federally eligible so that the Current Billing and Reporting System (CBARS) (with special tracking of these Stage 1 Authorized R/W projects) 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.

- 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.
- L. Region/District Right of Way has the option to review how capital and support costs actually appear in the accounting system. The Right of Way History Report, FIS 867, will show the costs involved in acquiring a parcel and whether these costs have been coded participating or nonparticipating. In the event there might be some concern whether Federal funds have been charged, the history report will provide the answer.

NOTES:

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.

NOTES:

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.

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.

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.

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.

NOTES:

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.

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.

NOTES:

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.

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.

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.

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.

NOTES:

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.

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

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.

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.

Title reports shall be required for all parcels except the following:

- A. Parcels having a land value of \$2,500 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 \$10,000 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
- Right of Way Contracts
- Memoranda of Settlement
- Resolutions of Necessity Requests
- Summons, Complaint, and Lis Pendens
- Right of Way Schedules

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 the company. Title and Escrow contracts are sole source contracts and are exempt from competitive bidding.

- HQ R/W will furnish District Right of Way staff with a copy of the model contract approved for use by the Division of Procurement and Contracts.
- District Contract Manager will prepare a Service Contract Request Form 360 and secure approval of the District Division Chief (DDC). The DDC's approval is authority to enter into discussion with a title company. The Contract Manager is to select and obtain the rates from the title company, based on the standard rate schedule brochure of the title company and the agreed upon rates established in the model contract. Work is to be rotated among the title companies in the area willing to accept Caltrans work. The District Right of Way office should maintain a file and document the rejection by firms contacted.
- After having obtained the standard rate schedule from the Title Company and filling in the rates in the contract for items requested in the model contract that are not contained in the title company standard rate schedule, the Contract Manager will submit the Form 360 to R/W Planning and Management for completion of the coding boxes on the Form 360. Upon completion, the Contract Manager forwards 1) the Form 360, 2) five copies of the title company's standard rate schedule, and 3) the draft model contract to Division of Procurement and Contracts for processing.
- The Division of Procurement and Contracts will notify the Contract Manager of receipt and the number assigned the Contract.

Service contracts will be made for six-year periods to begin July 1 and end June 30, or for the remainder of any contract period when necessary. New orders can only be placed against a title contract during the first three years of the term. The last three years is available to close escrows for parcels that have had preliminary title work ordered during the first three years of the term. A new six-year contract must be created for new title services required after the first three years of an existing contract.

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.
- 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.

NOTES:

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.

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.

NOTES:

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.

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.

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 _____

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). District R/W 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 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.)

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.

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.
- 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. (See Exhibit 8-EX-84 and the Railroad Syllabus.)
- 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.

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.
- 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.
- 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.

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....”

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.

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.

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 in the table below.

LIAISON PROCEDURES	
Phase	Explanation
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.
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 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.

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 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.

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		
Type	Explanation	Clause
Mortgage Release-Reconveyance	When acquiring fee title, the railroad shall furnish a reconveyance or release of mortgage prior to close of escrow.	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.	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.
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 “Subordination” above.	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.	“...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.	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.

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		
Type	Explanation	Clause
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.	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.	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.

RAILROAD DEED CLAUSES (Continued)		
Type	Explanation	Clause
DM-1 Modification	<p>Delete the following portion of the DM-1 Clause from Form RW 6-1(C), Grant Deed (Corporation with DM-1 Clause).</p> <p>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).</p>	<p>“...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.”</p>
Modified DM-4 Clause	<p>Include the following clause where the State accepts a Grant Deed or Quitclaim Deed and the railroad reserves the oil, gas, and mineral rights.</p>	<p>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.</p>
Easement Reversion and Structure Removal Provisions for Separated Grade Crossings	<p>Provision for removal of improvements constructed by the State in the event highway use ceases.</p>	<p>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 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.</p>

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.

OBJECTIONABLE CLAUSES
<ul style="list-style-type: none">• 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.

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.

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 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 in the table below.

ACQUISITION OF ACCESS RIGHTS EXAMPLES		
Case No.	Factual Condition	Explanation
Case #1	Freeway to be constructed on new alignment; no public roadway previously existed; immediately adjacent to railroad operating or industrial property; no railroad property to be acquired.	The railroad has no legal right of access to the new facility and access rights need not be acquired from the railroad.
Case #2	Same factual condition as in Case #1, except that railroad property is to be acquired.	Access rights shall be acquired from the railroad using the applicable access clause in the conveyance documents. No payment should be made for the access rights.

ACQUISITION OF ACCESS RIGHTS EXAMPLES (Continued)		
Case No.	Factual Condition	Explanation
Case #3	Freeway to be constructed along an existing public roadway immediately adjacent to railroad operating property; no prior document or agreement between the State and railroad exists which establishes the railroad's right of access to the existing public roadway; no railroad property to be acquired.	Access rights need not be acquired.
Case #4	Same factual condition, but with a prior document or agreement.	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: <ul style="list-style-type: none"> • 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	Same factual condition as in Case #3, except that a new freeway is to be constructed immediately adjacent to railroad station ground, industrial, or nonoperating property.	Access rights should be acquired using the applicable access clause. Appraisal consideration should be given to payment of damages or other mitigating measures for the loss of access rights.
Case #6	Same factual conditions as in Case #3, except that a portion of railroad operating property is to be acquired.	Access rights should be acquired utilizing the applicable access clause in the conveyance documents. 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.

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 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.

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."

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, not withstanding processing fees.

CHAPTER 8

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FORMS

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RW 8-5	Contract Signature Sheet
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CHAPTER 8

Railroads Procedure Table of Contents

FORMS

Form No.

Title

RW 8-30

Railroad Memorandum of Settlements

RIGHT OF WAY CONTRACT - STATE HIGHWAY

RW 8-3 (Rev. 6/95)

_____, California
_____, 19 ____

Dist Co Rte Post Exp Auth

Grantor

Document No. _____ in the form of a _____,
covering the property particularly described in the above instrument has been executed and delivered to
_____, Right of Way Agent for the State of California.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

- 1. (A) The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve the State of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
- (B) Grantee requires said property described in Document No. _____ for State highway purposes, a public use for which Grantee has the authority to exercise the power of eminent domain. Grantor(s) is compelled to sell, and Grantee is compelled to acquire the property.

Both Grantor(s) and Grantee recognize the expense, time, effort, and risk to both parties in determining the compensation for the property by eminent domain litigation. The compensation set forth herein for the property is in compromise and settlement, in lieu of such litigation.

2. The State shall:

- (A) 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:
 - a. 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.
 - b. Covenants, conditions, restrictions and reservations of record, or contained in the above-referenced document.
 - c. Easements or rights of way over said land for public or quasi-public utility or public street purposes, if any.

RIGHT OF WAY CONTRACT - STATE HIGHWAY - TEMPORARY EASEMENT

RW 8-4 (Rev. 6/95)

_____, California

Dist Co Rte Post Exp Auth

_____, 19 ____

Grantor _____

THIS DOCUMENT NO. _____ in the form of a TEMPORARY EASEMENT, covering the property particularly described in Clause 3 below has been executed and delivered to _____, Right of Way Agent for the State of California.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve the State of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed improvement.
2. The State shall pay the undersigned grantor(s) the sum of \$_____ for this Temporary Easement.
3. Permission is hereby granted the State or its authorized agent to enter upon grantor's land where necessary within that certain area shown outlined in red on the map marked Exhibit "A" attached hereto and made a part hereof, for the purpose of
4. This Temporary Easement shall terminate upon completion of the project known as
5. The undersigned grantor(s) warrant(s) that they are the owner(s) in fee simple of the property affected by this Temporary Easement as described in Clause 3 above and that they have the exclusive right to grant this Temporary Easement.

CONTRACT SIGNATURE SHEET

RW 8-5 (4/93)

In Witness Whereof, the Parties have executed this agreement the day and year first above written.

Grantor

Recommended for Approval:

By _____
Right of Way Agent

By _____
Chief, Acquisition Branch

STATE OF CALIFORNIA
Department of Transportation

By _____

No Obligation Other Than Those Set Forth Herein Will Be Recognized

APPLICATION FOR PUBLIC HIGHWAY

RW 8-6 (Rev. 6/95)

Dist	Co	Rte	Post
Date	Parcel No.		Exp Auth

BUREAU OF INDIAN AFFAIRS
CALIFORNIA INDIAN AGENCY
SACRAMENTO, CALIFORNIA

Attention:

Gentlemen:

The Department of Transportation of the State of California, hereby petitions the Secretary of the Interior to grant permission in accordance with Act of February 5, 1948 (62 Stat. 17) to open and establish a public highway across Indian lands for a distance of _____ kilometers as shown on accompanying map of definite location.

All of the laws of the State of California with regard to the opening and establishment of a State highway have been complied with in this instance.

The right of way applied for has a minimum width of _____ meters, with greater widths where required for cuts, fills and channel changes. Said right of way conforms to the applicant's standards for highway of the type proposed to be constructed. The highway is a (relocation, improvement, or applicable term) of a portion of the existing State Highway (Co., Rte., Post) between _____ and _____ (nearest towns) in _____ County, California, and is a public necessity for the reason (state reasons and warrants in brief). The proposed construction project is (state if FAP, Forest highway or other cooperative project).

Tracings and blueline prints showing map of definite location are attached to this application.

The State of California hereby agrees to comply with the following stipulations in the event the right of way herein applied for is granted.

(A) To construct and maintain the highway in a workmanlike manner.

(B) To pay promptly all damages and compensation, in addition to the deposit made pursuant to Section 161.4 (U.S. Code Title 25-Indians), determined by the Secretary to be due to the landowners and authorized users and occupants of the land on account of the survey, granting, construction and maintenance of the right of way.



(C) To indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, its employees, contractors and their employees, or subcontractors and their employees.

(D) To restore the lands as nearly as may be possible to their original condition upon the completion of construction to the extent compatible with the purpose for which the right of way was granted.

(E) To clear and keep clear the lands within the right of way to the extent compatible with the purpose of the right of way; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project.

(F) To take soil and resource conservation and protection measures, including weed control, on the land covered by the right of way.

(G) To do everything reasonably within its power to prevent and suppress fires on or near the lands to be occupied under the right of way.

(H) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right of way.

(I) That upon revocation or termination of the right of way, the applicant shall, insofar as it is reasonably possible, restore the land to its original condition.

(J) To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.

(K) That the applicant will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right of way is granted.

Your favorable consideration is requested and, subsequently, it is expected that you will forward the approved grant of easement to this office.

STATE OF CALIFORNIA

BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION

By _____
District Director

AFFIDAVIT OF COMPLETION

RW 8-7 (Rev. 9/97)

Dist	Co	Rte	KP (P.M.)
------	----	-----	-----------

STATE OF _____ }
 COUNTY OF _____ } §

_____, being first duly sworn, says that he/she is the _____
 Engineer of _____; that the right of way has been constructed under his/her supervision a
 distance of _____ kilometers/miles across a portion of the _____ Indian Reservation,
 _____; that this construction began on _____, 19____, and
 completed on _____, 19 ____; that the right of way does not materially deviate from the approved plans, notes,
 and maps filed _____, 19____.

 Construction Engineer

Subscribed and sworn to before me this _____ day of _____, 19 ____.

CERTIFICATE

RW 8-8 (Rev. 6/95)

_____ _____ _____ _____
Dist Co Rte KP (P.M.)

I, _____, do hereby certify that I am _____ for _____, hereinafter designated the “applicant”; that _____, who subscribed the foregoing affidavit, is employed by the “applicant”; that in its construction of the right of way does not deviate from the approved plans, notes, and maps filed _____, 19____; and that the “applicant” has in all things complied with the requirements of the Act of February 5, 1948, and applicable regulations pursuant to which the “applicant” has been granted the right of way.

District Director

AGREEMENT FOR PURCHASE - TAX DEEDED PROPERTY

(Cont.)

RW 8-9 (Rev. 6/95)

- 3. That as provided by Section 3800 of the Revenue and Taxation Code of the State of California, the cost of giving notice of this agreement shall be paid by the State of California.

IN WITNESS WHEREOF, The parties hereto have caused their respective names to be hereunto subscribed and their respective seals to be hereunto affixed by their respective proper officers thereunto duly authorized.

BOARD OF SUPERVISORS OF COUNTY OF

(SEAL)

by _____

ATTEST: _____

**County Clerk and ex-officio
Clerk of the Board of Supervisors**

APPROVAL RECOMMENDED:

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

by _____

**District Division Chief
Right of Way**

by _____

District Director of Transportation

AGREEMENT FOR PURCHASE - TAX DEEDED PROPERTY

(Cont.)

RW 8-9 (Rev. 6/95)

Pursuant to Section 3775 and 3795 of the Revenue and Taxation Code, the State Controller agrees to the selling price hereinbefore set forth.

State Controller

By _____

Pursuant to Section 3775 of the Revenue and Taxation Code, the governing body of the City of _____ hereby agrees to the selling price as provided in the above agreement.

CITY COUNCIL OF THE CITY OF

By _____

ATTEST: _____
City Clerk

By _____
Deputy

This agreement was submitted to me on the _____ day of _____, 19____, and it has been compared with the records of the County relating to the real property described therein.

Tax Collector of the County of _____ **State of**
California

APPROVED THIS _____ **day of** _____, **19**____,
State Controller,

By _____

(Cont.)

RW 8-9 (Rev. 6/95)

EXHIBIT "A"

(Sample)

DESCRIPTION	Year Delinquent	Deed No.	Assessment Valuation	Selling Price
SE 4.8 m of NW 55 m of NE 12.2 m of Lot 14, Block 64, City of Burbank, as per map recorded in Book 17, pages 19 to 22 of Miscellaneous Records of Los Angeles County.....	1976	453824	1975-Land \$200.00	\$100.00

AGREEMENT FOR PURCHASE - TAX DEEDED PROPERTY

(Cont.)

RW 8-9 (Rev. 6/95)

_____	_____	_____	_____
Dist	Co	Rte	Post
_____		_____	
Parcel No.		Name	

TAX DEED

THIS INDENTURE, Made this _____ day of _____, 19____, between _____ as Tax Collector of the County of _____, State of California, first party, and the State of California, purchaser, second party;

WITNESSETH THAT:

The real property hereinafter described was duly sold and conveyed to the State of California for non-payment of taxes which has been legally levied and were a lien upon said property;

That said first party does hereby grant to said second party the hereinafter described real property situated in the County of _____, State of California:

(description)

IN WITNESS WHEREOF, Said first party has hereunto set his hand the day and year first above written.

Tax Collector of the County of

State of California

ACKNOWLEDGMENT:

GRANT OF RIGHT TO TAKE MATERIAL

RW 8-10 (Rev. 6/95)

PERSONAL INFORMATION NOTICE

Pursuant to the Federal Privacy Act (P.L. 93-579) and the Information Practices Act of 1977 (Civil Code Sections 1798, et seq.), notice is hereby given for the request of personal information by this form. The requested personal information is voluntary. The principal purpose of the voluntary information is to facilitate the processing of this form. The failure to provide all or any part of the requested information may delay processing of this form. No disclosure of personal information will be made unless permissible under Article 6, Section 1798.24 of the IPA of 1977. Each individual has the right upon request and proper identification, to inspect all personal information in any record maintained on the individual by an identifying particular. Direct any inquiries on information maintenance to your IPA Office.

Dist	Co	Rte	Post
Materials Agreement No.			Exp Auth

**GRANT OF RIGHT TO TAKE MATERIAL
FOR HIGHWAY PURPOSES**

THIS AGREEMENT, dated _____, between _____, hereinafter called "Owner", and the State of California, acting by and through the Department of Transportation, hereinafter called "State".

WITNESSETH THAT:

For and in consideration of the sum of One Hundred Fifty Dollars (\$150.00), receipt of which is hereby acknowledged, and of the covenants hereinafter set forth, the parties hereto agree as follows:

- Owner(s) represent(s) and warrant(s) that he/she/they (is)(are) the owner(s) in fee simple of the following described lands situated in the County of _____, State of California.

And that _____ (has)(have) the exclusive right to enter into this agreement and to receive for _____ own use and benefit any royalty or other consideration payable, or that may become payable hereunder.

- Owner grants to State or its contractor the right, at any time and from time-to-time during the period of _____ year(s) from and after date of this Agreement, and for such further periods of the aforesaid land and to excavate and remove therefrom materials, if, as, and when desired by State or its contractor, such materials to be excavated and removed at such times and in such quantities as the State may deem necessary, but not to exceed the maximum quantity of _____.

The portion of the aforesaid land referred to above is described as follows:

(Description of material site and type of material.)

3. Owner grants to State or its contractor the right of ingress and egress to and from the area described in paragraph 2 hereof, over and across the following route:

(Description of access route.)

4. Owner grants to State or its contractor the right to erect, operate, and maintain at said material location, or on land adjacent thereto, such equipment or plant as may be necessary for handling or sorting the excavated material or manufacturing road building material therefrom, together with the right to use the water of any stream to which Owner has a right. The right to remove such equipment or plant at any time is hereby reserved to State or its contractor.

5. State agrees to pay, or cause to be paid, to Owner for all rights herein granted a royalty of:

_____ ¢ per cubic meter

_____ ¢ per tonne

for materials removed from said property and used in the work. State shall have the option of electing one of the following methods of measuring the amount of materials excavated: (a) By cubic meter measured in excavation; (b) by cubic meter in vehicle at point of delivery; (c) by cubic meter measured in place at State's construction site; or (d) by weight.

In the event State elects to pay on the basis of weight, such payment shall be exclusive of any weight of water in said material in excess of 6% of the dry weight of said material. Payment of royalty shall be based on the amount of materials removed from said property as determined by the method of measurement the State elects to utilize. 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 a monthly statement showing the estimated amount of material removed 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.

6. Any fences removed or relocated will be replaced as nearly as reasonably possible in their original location on termination of this Agreement.
7. State is obligated to pay royalty only for material actually removed.
8. If State's contractor exercises any of the rights and privileges granted herein such contractor will be required to execute a document agreeing to hold the Owner harmless from all claims for injury to persons or damage to property resulting from their operation on Owner's property.
9. The within grant is not and shall not be construed as an agreement for the sale of tangible personal property.
10. The rights and privileges hereby granted or reserved to State, may, at the option of State, be exercised by any agent or contractor _____ of _____ the _____ State.
-
-

GRANT OF RIGHT TO TAKE MATERIAL (Cont.)

RW 8-10 (Rev. 6/95)

- 11. If, at the expiration of the term of this Agreement, State’s contractor has commenced but has not completed removal of material as described herein, then this Agreement shall not terminate. It shall remain in full force and effect until such contract has been accepted by the State, or until State’s contractor notifies Owner of completion of operations on Owner’s property, whichever shall first occur.
- 12. State or its contractors shall obtain approvals of all necessary permits and reclamation plans.
- 13. State will comply, where necessary, with “Special Publication 51, State Policy for Surface Mining and Reclamation Practices”.
- 14. State may terminate this Agreement at any time by giving written notice to Owner and paying all royalties due and this Agreement may otherwise be amended or modified with the mutual consent of the parties hereto.

RECOMMENDED FOR APPROVAL

By _____
Right of Way Agent

(Owner)

(Social Security Number)

District Materials Engineer
District Construction Engineer

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____
District Division Chief
Right of Way

GRANT OF RIGHT TO DISPOSE OF MATERIAL

RW 8-11 (Rev. 6/95)

Dist	Co	Rte	Post	Exp Auth
				Disposal Agreement No.

THIS AGREEMENT, Dated _____, between _____, hereinafter called "Owner," and the State of California, acting by and through the Department of Transportation, hereinafter called "State".

WITNESSETH THAT:

For and in consideration of the sum of One Hundred Fifty Dollars (\$150.00), receipt of which is hereby acknowledged, and of the covenants hereinafter set forth, the parties hereto agree as follows:

1. Owner(s) represent(s) and warrant(s) that he/she/they (is)(are) the Owner(s) in fee simple of the following described lands situated in the County of _____, State of California, Assessor's Parcel Number _____ and more specifically that property outlined in red on the map marked "Exhibit A" attached hereto and made a part hereof, and that he/she/they (has)(have) the exclusive right to enter into this agreement and to receive for his/her/their own use and benefit any royalty or other consideration payable, or that may become payable, hereunder.

2. Owner(s) grant(s) the State the right, at any time, and from time to time during the period of _____ years from and after the date of this Agreement, and for such further period as may be required under paragraph 11 hereof, to enter upon the following described portion of the aforesaid land and to dispose of excess materials, if, as, and when desired by State, such materials to be deposited at such times and in such quantities as the State may deem necessary, but not to exceed the maximum quantity of _____ cubic meters. Said materials shall consist of _____ and shall be compacted as dumped in order to preclude sliding at the disposal site. The portion of the aforesaid land referred to above is described as follows: Assessor's Parcel Number _____ and more specifically that property outlined in red on the map marked "Exhibit B" with the indicated priorities for use as disposal sites attached to and made a part hereof.

3. Upon delivery of excess materials, said property owner(s) become the sole and exclusive owner(s) of those excess materials for all purposes and will indemnify and hold CALTRANS harmless from any claims or injuries occurring as a consequence of that storage and any subsequent reuse of the materials.

GRANT OF RIGHT TO DISPOSE OF MATERIAL (Cont.)

RW 8-11 (Rev. 6/95)

4. Owner(s) grant(s) to State the right of ingress and egress to and from the area described in paragraph 2 hereof over and across the following route:

 5. The consideration of One Hundred Fifty Dollars (\$150.00) as heretofore agreed, shall represent the total payment for the materials placed on the disposal site insofar as State is concerned.

 6. The State, its agents, or any subcontractor shall ensure that only authorized personnel are allowed on the property and the State's contractor shall agree with the State to indemnify Owner(s) against loss of any kind sustained by Owner(s) or any personal injury or property damage to others occasioned by or as a direct result of State's contractor's operations under this agreement.

 7. Owner(s) waive(s) any and all claims by reason of the State not disposing the maximum quantities of materials hereinabove stated. Further, this agreement becomes operative when any additional permits that may be required by the County of _____ are secured. Each party shall render such reasonable assistance to the other as is necessary to obtain any such permits as may be required.

 8. State agrees that, if any of the rights and privileges granted herein shall be exercised, then State agrees to hold the Owner(s) harmless from all claims for injury to persons, damage to property, and/or loss or damage to the State's equipment resulting from aforementioned disposal operations on Owner('s)(s') property.

 9. Either party hereto may terminate this Agreement at any time upon giving the other party sixty (60) days written notice, or said Agreement may be otherwise amended or modified upon the mutual written consent of the parties hereto.

 10. The rights and privileges hereby granted or reserved to State, may, at the option of the State, be exercised by any agent or contractor of State.

 11. It is agreed that the State shall conduct disposal operations on the property between the hours of ____ a.m. and ____ p.m., Monday through Friday, except in case of emergencies requiring such disposal at other times. Owner(s) shall be given as much advance notification of such emergency disposal as is possible under the circumstances.

 12. If, at the expiration of the terms of this Agreement, State has commenced but has not completed operations in connection with disposal of materials on the portion of Owner('s)(s') property described in paragraph 2 hereof, then this Agreement shall not terminate on said expiration date but shall remain in full force and effect until such disposal operations have been completed by the State or until State notifies Owner(s) that State has completed operation on Owner('s)(s') property, whichever shall first occur, provided, however, anything herein to the contrary notwithstanding, this Agreement shall terminate no later than ____ years after the date of this Agreement unless such termination date is extended in writing by mutual agreement between the State and Owner(s).
-

GRANT OF RIGHT TO DISPOSE OF MATERIAL (Cont.)

RW 8-11 (Rev. 6/95)

IN WITNESS WHEREOF, This Agreement has been executed.

RECOMMENDED FOR APPROVAL:

Right of Way Agent

Chief, Maintenance Branch
Chief, Construction Branch

(Owner)

ACCEPTED
:
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____
District Division Chief,
Right of Way, District _____

CONFIDENTIAL

This document contains personal information and pursuant to Civil Code 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

Parcel Count _____

Appraisal Report No _____
 Book _____
 Date _____

Federal Project No.
 # _____
 Interstate
 Yes _____ No _____

Dist	Parcel No	Co	Rte	Post	Exp Auth	Program No.
------	-----------	----	-----	------	----------	-------------

To:

Date:

From:

Right of Way Agent

Acquired for:

SUBJECT: Acquisition of property from

1. Normal R/W _____
2. Hardship _____
3. Other _____

Address of property

DOCUMENTS IN FILE

- | | |
|--|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> R/W Contract <input type="checkbox"/> Grant Deed <input type="checkbox"/> Quitclaim Deed <input type="checkbox"/> Easement Deed <input type="checkbox"/> Title Report <input type="checkbox"/> Map <input type="checkbox"/> Right of Entry <input type="checkbox"/> Appraisal with Photograph(s) <input type="checkbox"/> Parcel Information Sheet <input type="checkbox"/> Statement of Information <input type="checkbox"/> Copy of Letter to Beneficiary <input type="checkbox"/> RAP Valuation Summary <input type="checkbox"/> <input type="checkbox"/> | <ul style="list-style-type: none"> <input type="checkbox"/> Inventory and Disposal Record <input type="checkbox"/> Parcel Diary <input type="checkbox"/> Appraisal Summary Statement <input type="checkbox"/> Summary Statement Relating to Purchase of Real Property <input type="checkbox"/> Excess Land Parcel Summary <input type="checkbox"/> Excess Property Valuation <input type="checkbox"/> Data Sheet in Duplicate <input type="checkbox"/> Rental-Escrow Instructions <input type="checkbox"/> Occupancy Certification <input type="checkbox"/> Owner-Occupant Residential Entitlement Form <input type="checkbox"/> Federal Participation Memorandum <input type="checkbox"/> Notice of Acquired Excess Land <input type="checkbox"/> <input type="checkbox"/> |
|--|---|

1. **TYPE OF TRANSPORTATION FACILITY:** Freeway Expressway Conventional
 Certification Date
 Construction Project

2. **ACCESS:**
 Acquired in accordance with the Certificate of Sufficiency Frontage Road Yes _____ No _____
 None-Entire Acquisition None-not required

3. **DEED CLAUSES:**
 Description checked against area being acquired.
 Form RW
 Standard Clauses:
 Special Clauses: (See Page No. _____)

Do the subject exceptions and/or reservations have material affect on the market value of the property being acquired? Yes _____ No _____

Parcel No. _____

4. DESCRIPTION OF PROPERTY ACQUIRED:

LAND:

Partial Acquisition Area _____

Total Acquisition Area _____

Remainder Area _____

Area of Excess _____

Area in R/W:

Area of Remnant _____

Fee _____

Other Area _____

Easement _____

Areas calculated by _____ hectare _____ sq. meter

Substitute Utility or Access Easement Area _____

IMPROVEMENTS: All _____ Part _____ None _____

(See Page No. _____)

5. CONSTRUCTION CONTRACT OBLIGATIONS:

None

Clause No.

Appraisal

Settlement

(See Explanation-Item 8-for variation from appraisal)

6. EXCHANGE OF LAND: Yes _____ No _____

See Explanation-Item 8-and map

MEMORANDUM OF SETTLEMENT (Cont.)

RW 8-12 (Rev. 6/95)

Parcel No. _____

7. CONDEMNATION INFORMATION: None

Peo v. _____ SCC No. _____ Date Filed _____

O.P.* Effective Date _____

Independent Appraiser Employed? Yes _____ No _____

* Grantor has withdrawn or made application for withdrawal of deposit Yes _____ No _____

8. SETTLEMENT: By Contract Other

COMPARISON WITH APPRAISAL:

<u>Item</u>	<u>Appraisal</u>	<u>Settlement</u>
Land	\$	\$
Improvements	\$	\$
Damages/Loss of Goodwill	\$	\$
Total	\$ _____	\$ _____
Rounded to:	\$	\$
a. Subtotal	\$	\$
LESS Credit for		\$ < _____ >
Subtotal		\$
b. Interest Payment		\$ _____
Cash to Grantor		\$
c. CCW Obligations	\$ _____	\$ _____
Total Consideration (a+b+c)	\$	\$

Funds withheld in the amount of \$ _____ to cover

EXPLANATION:

(See Page _____)

MEMORANDUM OF SETTLEMENT (Cont.)

RW 8-12 (Rev. 6/95)

Parcel No. _____

T.R. No. _____ dated _____

Grantor _____

9. TITLE EXCEPTIONS:

TAKEN SUBJECT TO:

<u>T.R.</u>	<u>Contract</u>	<u>Description and Explanation</u>
---	2(A)a	<p>Precurrent taxes, if any, for the fiscal year following the fiscal year in which this escrow closes.</p> <p>Any taxes due will be paid from the funds deposited into escrow pursuant to Section 5086 of the Revenue and Taxation Code.</p>

Do the subject exceptions have material effect on the market value of property being acquired? Yes _____ No _____

MEMORANDUM OF SETTLEMENT (Cont.)

RW 8-12 (Rev. 6/95)

T.R. No. _____ dated _____
Grantor _____

Parcel No. _____

9. TITLE EXCEPTIONS:

NOT TAKEN SUBJECT TO:

<u>T.R.</u>	<u>Contract</u>	<u>Description and Explanation</u>
-------------	-----------------	------------------------------------

(See Page No. _____)

MEMORANDUM OF SETTLEMENT (Cont.)

RW 8-12 (Rev. 6/95)

Parcel No. _____

10. UNRECORDED INTERESTS:

_____ Investigation indicates none involved.

_____ Handled as follows:

11. SPECIAL CLAUSES IN CONTRACT: [] NONE

<u>Clause No.</u>	<u>Explanation</u>
-------------------	--------------------

(See Page No. _____)

12. POSSESSION AND OCCUPANCY:

Property to be delivered:

_____ Vacant on _____

_____ On Close of Escrow

_____ 15-Day Grace Period

Present Possession:

_____ Grantor

_____ State

_____ Tenant

_____ Vacant

Lease Quitclaimed Yes _____ No _____

Rentable Land: _____ None

_____ Unimproved

_____ With Improvements

Grantor (Lessee) to Remove Improvements Yes _____ No _____

Rental or Lease Provisions in Contract Yes _____ No _____ Rate \$ _____

Comments:

13. DATE OF VESTING IN GRANTOR: During last 5 years Yes _____ No _____

Acquisition data within 5 years:

Date _____ Consideration \$ _____

From Whom Acquired:

Pertinent information regarding purchase:

MEMORANDUM OF SETTLEMENT (Cont.)

RW 8-12 (Rev. 6/95)

Parcel No. _____

14. ADVERTISING STRUCTURES: _____ None

Lease: Yes _____ No _____ Structure(s) owned by _____

Cancellation clause in lease Yes _____ No _____

COST OF:

Removal _____ Relocation _____ Cost to be borne by _____

Comments:

15. MISCELLANEOUS INFORMATION:

- a. The attached right of way contract embodies all of the considerations agreed upon between the undersigned and the property owner.
- b. The attached right of way contract was obtained without coercion, promises other than those shown in the contract, or threats of any kind whatsoever by or to either party.
- c. I understand that the rights being secured may be used in connection with a Federal-aid highway project.
- d. I have no direct or indirect present or contemplated future personal interest in the property being acquired or in any benefit from the acquisition of subject property.

RECOMMENDED FOR APPROVAL:

By _____
Right of Way Agent

Date _____

By _____
Chief, Acquisition Branch
District _____

Date _____

APPROVED:

By _____
District Division Chief
Right of Way, District _____

Date _____

INSTRUCTIONS FOR COMPLETING FORM 8-12

The Memorandum of Settlement is used to explain the agreement reached with the property owner as contained in the Right of Way Contract and is completed as follows:

UPPER PORTION PAGE 1

Enter the Appraisal Supplement Number and date, whether or not the project is Interstate, the Federal Project Number, if applicable, and the Parcel Count. Below this, enter the District, Parcel No., County, Route, Post, E.A. and Program Number. The next line contains to whom the Memorandum is sent (DDC-RW, for instance), Date of preparation and Name of agent preparing. This is followed by the names of the Grantors, Address and location of the property being acquired and the purpose of the acquisition. The next section contains boxes to be checked to describe all of the documents in the file.

This is followed by a series of numbered sections as follows:

1. **Type of transportation facility.** The type of improvement involved, its construction limits and the proposed certification date as contained in the current report of Status of Unadvertised Projects.
2. **Access.** If access rights are being acquired, confirm that they are being acquired in accordance with the Certificate of Sufficiency. If not acquired, indicate whether it is a total acquisition or access rights are not required.
3. **Deed Clauses.** The Acquisition Agent must ensure the conveying instrument correctly describes the area for which payment is being made. If it is necessary to revise a standard deed clause, the reason for such revision must be stated with a copy of the clause included. List all clauses contained in the Deed to State such as DFA, DM-4, DM-9, etc.

Exceptions such as retention of water or other mineral rights in the Deed to State, shall be explained under "Deed Clauses" as to their effect, if any, on the market value of the property being acquired.

4. **Description of Property Acquired.** A description (by hectare or square meter) of land being acquired, including areas within the right of way, remainders, area acquired for utility relocation and excess, as appropriate.

Improvements which are accountable on Right of Way Improvements and Personal Property Inventory and Disposal Record (see Property Management Chapter) must be listed.

5. **Construction Contract Obligations.** Construction items which have been included in the Contract must be shown in a comparison with the construction items listed in the approved appraisal. In some instances, grantors may request cash in lieu of the State's contractor performing the work, e.g., constructing fencing or a road approach. In these cases the portion of the payment covering the item(s) shall be shown as damages. If such payment is made, then the construction obligation is to be removed from the construction plans or "job book." These variations shall be explained here, and the Contract must contain appropriate clause(s) covering the situation. See Section 8.50.04.01 L.
-

6. **Exchange of Land.** Where an exchange of land is proposed, it is necessary to provide the following material:
 - A. A market-value appraisal of the excess land as described in the Appraisal Chapter.
 - B. A map delineating the property being acquired, the remaining property of the grantor, the excess land proposed to be conveyed and any remaining State-owned excess land either contiguous to the land to be exchanged or to grantor's remaining land.
 - C. Where improvements are located on the excess land to be exchanged, their disposition must be explained.
 - D. If the credit received by State for the excess land varies from its market-value appraisal, the difference should be explained or justified.
 - E. The retention or release of access rights by the State is to be discussed and explained as necessary. Where the land is to be burdened with easements for slopes, drainage channels, or utilities, etc., discuss the effect these rights may have on the value of the property being conveyed unless they have already been accounted for in the market-value appraisal of the excess.
 - F. For exchanges which must have the prior approval of the Program Manager, RW&AM, see Section 8.01.16.00.
7. **Condemnation Information.** Where the State has filed a condemnation action, include the suit name, number and condemnation parcel number. If an OP has been secured, show the effective date of the Order as well as an indication that the grantor has or has not made application for withdrawal of State's deposit.

If acquisition is completed by stipulated judgment, contested judgment, or default, Page 3 (alternate A) will be used in lieu of Page 3 and the MOS shall include a brief narrative explanation of the pertinent portions of the negotiations and subsequent condemnation proceedings and should be accompanied by any or all of the following documents which are applicable: Trial Report, copy of memorandum authorizing use of condemnation appraisals and a copy of the attorney's recommendation.

8. **Settlement.** A comparison of the settlement figures with the approved staff appraisal, segregated into land, improvements, and damages.

Where the settlement varies from the amount in the approved staff appraisal, complete justification shall be included. Where an Administrative Settlement is involved, the authorization letter and the requesting letter shall be included in the schedule submitted to RW&AM. If an independent or staff independent appraisal has been authorized for use, include the authorization letter and a copy of the requesting letter.

- A. The Appraisal Branch shall be responsible for preparation of revised Appraisal Reports, Appraisal Sheets, or Memoranda of Adjustment where valuation premises are involved.
-

- B. If an independent appraiser has been employed by the State, list name, date of report, and amount of appraisal.
 - C. If the settlement varies from the appraisal and excess land is being acquired, the MOS shall contain appropriate proration of land, improvements, damages, and rent or interest between right of way and excess. The MOS will constitute the basis for preparation of the Federal Participation Memorandum. See Section 8.50.04.00.
 - D. In cases involving payment of interest for possession of the property, this amount shall be set forth separately after the total for land, improvements and damages. The calculations used in arriving at the interest payment shall also be shown.
 - E. If improvements are retained by the property owner, justification including the amount of credit received by State shall be included. If settlement is based on payment for the improvement less its salvage or retention value, include the memorandum establishing such salvage or retention value.
 - F. Where payment is to be made to owner in lieu of the State directly assuming responsibility of moving improvements, the payment for moving and rehabilitation shall be substantiated and supported by a statement of the names of bidders, the bids received and the items which were covered by such bids. These bids shall be retained in the District Office of Right of Way file. If the District has made its own detailed estimate to substantiate the contract amount, include a copy or summary of this estimate. Show the other items of cost and value allowed to the owner over and above those set forth in such bids and estimates.
 - G. Whenever the grantor is to perform work or is to remove improvements, a portion of the total payment should be withheld either to ensure performance or as liquidated damages in the event State must perform the work. It must be sufficient to cover State's total expense.
 - H. When excess lands are acquired, the inventory value (value of excess after the acquisition) and net damages to the excess land as shown on Excess Property Inventory Valuation are to be listed under "EXPLANATION."
9. **Title Exceptions.** Each title exception appearing in the Preliminary Title Report shall be explained in sufficient detail for accurate determination as to the nature and effect of such encumbrance. If a given encumbrance is to be eliminated after close of escrow, the method and approximate time of its elimination shall be clearly explained. All explanations shall include a reference to the exception number in the title report and its corresponding paragraph number in the Contract.

Where title is to be taken subject to an exception, a statement shall be included under "Title Exceptions-Taken Subject To" as to the effect of the subject exception on the State's title. If title encumbrances are to be eliminated in connection with the transaction, this fact and the proposed means of elimination shall be clearly explained.

If the property is being acquired without the benefit of a title report, include a statement that district personnel made the title search, or if an ownership statement was secured from an escrow company, such statement is to be included.

-
10. **Unrecorded Interests.** Describe all unrecorded interests in or affecting the parcel being acquired, and the method of their elimination
 11. **Special Clauses in Contract.** Any alteration of standard contract clauses must be described and justified. All clauses used, other than standard clauses, must be explained.
 12. **Possession or Occupancy.** Indicate who is in possession of the property, and, if a lessee, whether a quitclaim deed has been obtained. Indicate how and when property will be delivered. All rental provisions must be explained. If the amount of rent is specified in the Contract, justify that amount. This may consist of the inclusion of data from the appraisal or memorandum from Property Management establishing the rate.
 13. **Date of Vesting in Grantor.** If grantor acquired title within the five-year period immediately preceding the date of the Contract, the MOS must show the date acquired, the consideration which grantor paid, the person(s) from whom grantor acquired the property, and any other pertinent information available regarding the purchase price. A mere statement as to the amount of transfer tax stamps is not sufficient.
 14. **Advertising Structures.** Indicate whether advertising structures are involved. Complete information should be given concerning any structure leases affecting the property, together with a statement as to the disposition of the structures and the responsibility for payment for their removal.
 15. **Miscellaneous Information.** Any pertinent information (complaints, legislative inquiries) not presented elsewhere should be included here. How the complaint was handled should be included.

If the grantor is an employee of the Business, Transportation and Housing Agency, a statement to that affect giving Civil Service or other title and the Department or Division in which employed, will be included here.

A. When acquisition is completed by Contract, the following statements will be included under Item 15:

- (a) The attached Right of Way Contract embodies all of the consideration agreed upon between the undersigned and the property owner.
 - (b) The attached Right of Way Contract was obtained without coercion, promises other than those shown in the contract, or threats or any kind whatsoever by or to either party
 - (c) I understand that the rights being secured may be used in connection with a Federal-aid highway project.
 - (d) I have no direct or indirect present or contemplated future personal interest in the property being acquired or in any benefit from the acquisition of subject property.
-

- B. When acquisition is completed by condemnation, the following statements should be included under Item 15.
- (a) I understand that the rights being secured may be used in connection with a Federal-aid highway project.
 - (b) I have no direct or indirect present or contemplated future personal interest in the property being acquired or in any benefit from the acquisition of subject property.
-

CONFIDENTIAL
This document contains personal information and pursuant to Civil Code 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

Appraisal
Report No _____
Date _____

Parcel Count _____

Federal Project No.

Interstate
Yes _____ No _____

_____ Dist _____ Parcel No _____ Co _____ Rte _____ Post _____ Exp Auth _____ Program No.

To: _____ Date: _____
From: _____ Right of Way Agent Acquired for
SUBJECT: Acquisition of property from 1. Normal R/W _____
Address of property 2. Other _____

Cash settlement on the referenced parcel is in the amount of \$_____
Construction contract obligations, if any, total \$_____.

The parcel file documents that this transaction conforms to the requirements of the Right of Way Manual.
Unless otherwise noted, eminent domain action has not been instituted and there have not been any complaints to Headquarters.

ADDITIONAL INFORMATION:

The attached Right of Way Contract embodies all of the considerations agreed upon between the undersigned and the property owner. The attached Right of Way Contract was obtained without coercion, promises other than those shown in the Contract, or threats of any kind whatsoever by or to either party.

I understand that the rights being secured may be used in connection with a Federal-Aid highway project. I have no direct or indirect present or contemplated future personal interest in the property being acquired or in any benefit from the acquisition of subject property.

RECOMMENDED FOR DISTRICT APPROVAL:

Chief, Acquisition Branch, Dist ____

Right of Way Agent

APPROVED:

District Division Chief,
Right of Way, Dist ____

Date

CERTIFICATION OF TITLE

RW 8 -14 (REV 4/2002)

Parcel: _____

CERTIFICATION OF TITLE

On _____, I inspected the _____ records and hereby certify to the best of my knowledge that:

A. The vesting of the subject property is:

B. There are no delinquent county taxes affecting the subject property.

C. There are no Notices of Default, liens, and/or other encumbrances affecting the subject property which will jeopardize State's title to the property to be acquired.

D. The State's standard indemnity clause has been included as Clause _____ of the Right of Way Contract, and pursuant to Clause _____ of the Right of Way Contract, the above listed grantors warrant ownership in fee simple and the exclusive right to execute the _____ Deed.

Comments:

Right of Way Agent

MEMORANDUM OF FINAL TITLE

RW 8-15 (Rev. 6/95)

Dist	Co	Rte	Post	Exp Auth
Date			Parcel No.	AR No.

To: **Right of Way and Asset Management Program, Acquisition Branch**

Transaction With _____

1. Retained in the District Files are the Following:

- | | |
|---|--|
| <input type="checkbox"/> Grant Deed | <input type="checkbox"/> Relinquishment Resolution No. _____ |
| <input type="checkbox"/> Quitclaim Deed | <input type="checkbox"/> Vacation Resolution No. _____ |
| <input type="checkbox"/> Easement Deed | <input type="checkbox"/> Special Use Permits |
| <input type="checkbox"/> Final Order of Condemnation | <input type="checkbox"/> Map Filing |
| <input type="checkbox"/> Relinquishment of Access Rights | <input type="checkbox"/> (Joint)(Common) Use Agreement |
| <input type="checkbox"/> Policy of Title Insurance
No. _____ | <input type="checkbox"/> Judgment in Condemnation |

Schedule No.(s)

2. Supporting Information

- | | |
|---|-----------------------------------|
| <input type="checkbox"/> Donation | <input type="checkbox"/> Exchange |
| <input type="checkbox"/> Access rights involved | |
| <input type="checkbox"/> Entry made on District right of way record maps | |
| <input type="checkbox"/> Title conditions in the Policy (are)(are not) in accordance with schedule letter dated _____ | |

If not, explain:

Documents have been accepted on behalf of the State and recorded _____ Volume _____, Page _____, Official Records, _____ County.

**DISTRICT DIRECTOR
OF TRANSPORTATION**

By _____
District Division Chief
Right of Way, Dist. ____

Federal Project #			
FEDERAL PARTICIPATION			
On the project	<input type="checkbox"/>	YES	<input type="checkbox"/>
On the parcel	<input type="checkbox"/>	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
		NO	<input type="checkbox"/>

TO: 1) R/W Planning & Management
 2) R/W Accounting Section

FROM: R/W ACQUISITION

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

Dist	Co	Rte	Post Mile
Parcel		Project ID/Phase	
Grantor			

An agreement has been reached with the owner of the referenced parcel, which creates an encumbrance or obligation of capital funds. Following is a segregation of funds indicating whether they are eligible for Federal reimbursement or reportable to the IRS/FTB.

	Eligible	Ineligible	Suspense	Sub-Obj
LAND: Right of Way/Right of Entry	(050)	(050N)	(050N)	P
Early Acquisition		(083N)	(083N)	P
Excess		(080N)	(080N)	P
Mitigation Site or Credits	(081)	(081N)	(081N)	P
TEMPORARY EASEMENT(S)	(050)	(050N)	(050N)	R
Early Acquisition		(083N)	(083N)	R
IMPROVEMENTS: Right of Way	(050)	(050N)	(050N)	P
Early Acquisition		(083N)	(083N)	P
Excess		(080N)	(080N)	P
PERSONALTY	(059)	(059N)	(059N)	P
MACHINERY & EQUIPMENT	(050)	(050N)	(050N)	P
DAMAGES to Remainder(s)				
Cost-to-Cure Damages (Reportable-see instructions)	(050)	(050N)	(050N)	P
Other Damages (Reportable-see instructions)	(050)	(050N)	(050N)	P
DAMAGES to Excess Parcel(s)				
Cost-to-Cure Damages	(050)			G
Other Damages	(050)			G
GOODWILL	(050)	(050N)	(050N)	P
INTEREST	(053)	(053N)	(053N)	I
COURT COSTS	(130)	(130N)	(130N)	P
RENT	(050)	(050N)	(050N)	R
OTHER:	(050)	(050N)	(050N)	
SUBTOTALS TO GRANTOR	\$	\$	\$	
TOTAL TO GRANTOR	\$			
TOTAL TO DAMAGES to Excess Parcel(s)	\$			

I certify that FWO/ION was issued to the grantor(s) for amount shown on _____ (date)

INFORMATION MUST BE PROVIDED FOR ACCOUNTING TO PROCESS THIS TRANSACTION:

A) CONDEMN DEPOSIT	<input type="checkbox"/> Yes <input type="checkbox"/> No	Total of Deposits: \$	(090) (N)	\$
B) CONDEMN WITHDRAWAL	<input type="checkbox"/> Yes <input type="checkbox"/> No	CDF -	Amount	\$
C) Withheld Funds	<input type="checkbox"/> Yes <input type="checkbox"/> No		()	\$
D) Excises Exchanged	<input type="checkbox"/> Yes <input type="checkbox"/> No	DD# of Parcel Given:	Mkt value	\$
E) Right of Entry	<input type="checkbox"/> Yes <input type="checkbox"/> No	Date:	Prev. Enc.	\$
F) Settled by:	<input type="checkbox"/> R/W Contract <input type="checkbox"/> Court Order <input type="checkbox"/> Not yet settled			FFY:

R/W ACQUISITION AGENT:

Sign: _____ Date: _____

Print: _____ Telephone: _____

SR. R/W ACQUISITION AGENT APPROVAL:

Sign: _____ Date: _____

Print: _____ Telephone: _____

Add a coding line for any amounts in the "DAMAGES to Excess Parcel(s)" section.

RIGHT OF WAY PLANNING AND MANAGEMENT TO COMPLETE UNSHADED FIELDS

CT DOCUMENT	EVENT TYPE	DEPT	UNIT	PROJECT ID	PHASE	REPORTING	OBJ CODE	(N)	SUB OBJ	BFY	AMOUNT
	C501	2660				1					
	C501	2660				1					
	C501	2660				1					

VCUST#

PLANNING & MANAGEMENT APPROVAL:

Sign: _____ Date: _____

Print: _____ Telephone: _____

CERTIFICATION OF FUNDS

I hereby certify that budgeted funds are available for the period and purpose of the expenditures shown.

ITEM: _____ CHAP: _____ STAT: _____ FFY: _____ \$: _____

Signature: _____

INSTRUCTIONS

INSTRUCTIONS FOR COMPLETING THE FEDERAL PARTICIPATION MEMORANDUM (RW 8-16)

The RW 8-16 form is completed for settlements or agreements such as Right of Way Contracts, condemnation settlements (executed with a Right of Way Contract) or court judgments (executed with court documents), temporary easements, rental payments, release of contract retention, etc. When properly completed, the form provides essential information to ensure that Federal reimbursement is maximized.

The form is forwarded to Planning and Management (P&M) for coding and funding review prior to sending to R/W Accounting for payment. The **original** is included as part of the Acquisition Claim Schedule Package for payment request. A **copy** is included in the official parcel file maintained in the Region/District.

Right of Way Acquisition identifies R/W costs for Federal Aid eligibility and completes the following fields:

- Federal project number, Federal participation on project and parcel
(Consult R/W Planning and Management for eligibility of Federal participation on both parcel and project or if parcel is being acquired under the Early Acquisition guidelines. Early Acquisition parcels are INELIGIBLE. Advance Acquisitions (e.g. Hardship and Protection parcels) are ELIGIBLE.
- District, County, Route
- Post Mile (PM), Parcel, Project ID, Phase
- Grantor Name
- Apply appropriate charges to the Eligible, Ineligible, and Suspense columns, subtotals and total.

Eligible/Ineligible refers to Federal participation

Reportable/non-reportable refers to IRS tax reporting. Reportable does not mean taxable.

LAND: Right of Way/Right of Entry - Acquisition Cost - enter value of land in R/W as indicated in the appraisal.

Early Acquisition - enter value of land within R/W acquired under early acquisition process.

Excess - pro rata value of land in acquired Excess. (Excess land is not eligible for FHWA participation.

While damages to remaining land outside the right of way are eligible, the residual value of remainder property acquired as excess is not eligible.)

Mitigation Site or Credits - enter value of mitigation site or credits.

TEMPORARY EASEMENT(S) - value of the temporary easement - enter the amount paid to the grantor for use of land associated with (any) temporary easement. This amount is *reportable* to the IRS/FTB as rental income.

Early Acquisition - enter value of the temporary easement acquired under early acquisition process.

IMPROVEMENTS: Right of Way - enter value of improvements in R/W.

Early Acquisition - enter value of improvements within R/W acquired under early acquisition process.

Excess - enter value of improvements in the Excess. (Excess land is not eligible for FHWA participation.

While damages to remaining improvements outside the right of way are eligible, the residual value of remainder property acquired as excess is not eligible.

PERSONALTY - insert the settlement amount of personal property acquired pursuant to manual section 8.06.05.

MACHINERY & EQUIPMENT - enter value of acquired items pertaining to realty.

NOTE ON REPORTABILITY: Reportable does not mean taxable. Cost-to-cure damages will be reportable if the amount is greater than \$600.00.

DAMAGES to Remainder(s):

Cost-to-Cure Damages - in partial acquisitions, enter the amount of curative damages included in the acquisition price paid to the Grantor. These costs are normally eligible.

Other Damages - in partial acquisitions, enter the amount paid to the Grantor for permanent loss in value to the remainder. These damages are normally eligible.

INSTRUCTIONS**INSTRUCTIONS FOR COMPLETING THE FEDERAL PARTICIPATION MEMORANDUM (con't)
(RW 8-16)**

DAMAGES to Excess Parcel(s): These calculations are to capture federal participation only. They are not included in payment to Grantor.

Cost-to-Cure Damages - enter the amount of curative damages included in the partial acquisition appraisal, either primary or alternate, that is attributed to the excess parcel(s) acquired as either an uneconomic remnant or excess acquisition.

Other Damages - enter the amount of damages for permanent loss value to the excess parcel(s) included in the partial acquisition appraisal, either primary or alternate, that is attributed to the excess parcel(s) acquired as either an uneconomic remnant or excess acquisition.

GOODWILL - eligible for Federal participation.

INTEREST - eligible for Federal participation.

COURT COSTS - eligible for Federal participation.

RENT - rental amounts required to hold property vacant until acquisition is completed. Eligible for participation.

OTHER - are expenses paid to the Grantor such as Notary Fees.

NOTE ON INVERSE CONDEMNATION: Payment for inverse actions are generally ineligible unless individually approved for reimbursement by FHWA.

- **SUBTOTALS TO GRANTOR** - enter amounts for each column. Do not include amounts from the "DAMAGES to Excess Parcel(s)" section.
- **TOTAL TO GRANTOR** - enter total amounts in Eligible, Ineligible, and Suspense columns. Do not include amounts from the "Damages to Excess Parcel(s)" section.
- **TOTAL TO DAMAGES to Excess Parcel(s)** - total amounts for the two boxes in the "DAMAGES to Excess Parcel(s)" section.
- Complete all Yes and No boxes in Rows A through E and mark appropriate box in Row F. Complete corresponding boxes to the right.
- ***I certify FWO/ION was issued to the grantor(s) for amount shown on _____.**
To be filled out only when the Region/District chooses to encumber funds at the time of the First Written Offer (Initiation of Negotiation). Insert the date the First Written Offer was issued to the grantor(s).
- Acquisition Agent will sign, date, print name and enter telephone number.
- Acquisition Senior will sign, date, print name and enter telephone number.

Right of Way - Planning & Management completes the following fields:

- Unshaded area of coding box.
- Add a coding line for any amounts in the "DAMAGES to Excess Parcel(s)" section.
- *Codes the reference document prefix "FW" with the parcel number (i.e. FW parcel#) when encumbering funds at the time of the First Written Offer (Initiation of Negotiation).
- Planning and Management will sign the form indicating that the Project ID and FFY are set up in Advantage and that funding is available. Also date, print name and telephone number.
- Planning and Management will sign and date in Certification of Funds box indicating that they have confirmed through Advantage that the Project ID is set-up appropriately and that funding is available.

*Region/Districts have the ability to encumber funds at the time of the First Written Offer, subject to the procedures and criteria outlined in the Department's memorandum, entitled "Encumbering Right of Way Capital Funds at the First Written Offer a.k.a. Initiation of Negotiation, dated November 29, 2005 issued by the Office of Planning and Management.

ACQUISITION INVOICE

RW 8-17 (REV 6/2012)

To: **Right of Way Accounting Section**

Date: _____

From: **Right of Way - District** _____

District	County	Route	Post Mile	Project ID	Phase	Parcel No.

Payment for:

Execution of Deed Number: _____

Temporary Easement: _____

Release of Contract Retention – (FE 'N') _____

Rental Month(s): _____

Other: _____

Right of Entry: _____

PROPERTY ADDRESS OF PARCEL

Address _____

City _____ State _____

Zip _____

If no street address: _____

APN: _____

(If more than one parcel, put addresses in explanation)

Invoice Field:

- Payment Identifier _____

- Escrow No. _____

(Required if payable to a title company)

REQUIRED CLAIM SCHEDULE DOCUMENTS

ACQUISITION

- Invoice for property acquired (RW 8-17) + 1 copy
- Certified copy of the Right of Way Contract (RW 8-3) + 1 copy
- Certified copy of Deed (RW 6-1) + 1 copy, if applicable
- Federal Participation Memorandum (RW 8-16)
- Interest computation worksheet, if applicable
- Payee Data Record (STD 204), if not already on file

PAYMENTS FOR REAL PROPERTY; RENTAL

- Invoice for property rented (RW 8-17) + 1 copy
- Right of Way Rental Agreement + 1 copy
- Federal Participation Memorandum (RW 8-16)
- Payee Data Record (STD 204), if not already on file

Warrant/Check to be made payable to:
(Include mailing address if different from above)

Check Amount \$ _____

Prior payments on Acquisition, Rental or Withheld Funds Paid on: (if applicable)

Schedule(s) # _____

*Explanation:

Requested by:

Signature _____

Senior Right of Way Agent _____ Date _____

**INSTRUCTIONS FOR COMPLETING THE ACQUISITION INVOICE
(RW 8-17)**

The RW 8-17 form is completed for settlements or agreements such as Right of Way Contracts, temporary easements, rental payments, release of contract retention, etc. (Condemnation - court judgments are to use Form RW 9-20, CONDEMNATION CHECK REQUEST - INVOICE.) The completed RW 8-17 becomes a part of the payment package described under the CLAIM SCHEDULE GUIDELINES section of the form.

The payment package is forwarded to Planning and Management for funding review, coding accuracy, and tracking before it is sent to R/W Accounting for payment.

Right of Way Acquisition Agent completes the following fields:

- Date the form is being completed.
- District, County, Route, Post Mile, Project ID, Phase and Parcel Number. These coding boxes should be identical to the RW 8-16.
- Left side columns provide information for cutting check/warrant. (If there is more than one payee, it is advised to use a separate RW 8-17.)
 - Rental month(s) - include the month or months the check is to cover.
 - Invoice Field - this is to be used to identify what the check is to cover. This field imprints on both the warrant and remittance advice sheet that is attached to the warrant. Up to 14 characters are available to be used.
 - Payment Identifier - enter client's name or trust fund name if a warrant is issued to an attorney.
 - Escrow Number - enter escrow number if the warrant is issued to a Title and Escrow Company.
 - Warrant/Check to be made payable to - include name and address (should be the same as the STD 204).
 - Include mailing address if it is different from the property address of the parcel. When a warrant is payable to a title company, include a STD 204 from the title company, if it has not been previously submitted.
 - Check Amount - amount being paid to above payee.
- Right side columns provide information on property address of the parcel and claim schedule documents.
 - Property Address of parcel - this is the address of the parcel being acquired. If there is no street address enter the APN number.
 - Required Claim Schedule Documents - for Acquisition or Real Property include the documents listed to complete package.
 - Prior payments - complete if applicable.
- Explanation - use this area for multiple parcel addresses, special funding, or other instructions.

Right of Way Senior Acquisition Agent completes the following fields:

- Acquisition Senior will sign and date the form verifying that the form is correct and the payment is valid.
- The Acquisition Senior will forward the package onto Planning and Management Office.

Planning and Management:

- Review funding, coding accuracy and tracking.
- Forward completed package to Right of Way Accounting.

Right of Way Accounting:

- Review form for completion and signature of Senior Right of Way Agent.
-

STATE OF CALIFORNIA
 BUSINESS, TRANSPORTATION AND HOUSING
 DEPARTMENT OF TRANSPORTATION

**RAILROAD MEMORANDUM OF SETTLEMENT
 TRANSVERSE CROSSING INDENTURE
 OR
 RIGHT OF ENTRY (CONSTRUCTION PERMIT)**

APPRAISAL

Report No. _____ Date _____

FEDERAL-AID

Yes _____	No _____
Project No. _____	

District	Parcel No.	County	Rte.	KP (P.M.)	Expenditure Authorization	Date
----------	------------	--------	------	-----------	---------------------------	------

TO: District Director

FROM: Railroad Agent

Cost Center

SUBJECT: Acquisition of Property from

Address of Property

1. This acquisition completed at no cost to the State.
2. Executed copy of indenture or right of entry attached.
3. () No subparcels under this parent parcel number remain outstanding.
() The following subparcels remain outstanding (list by number-type).
4. ADDITIONAL INFORMATION:

I UNDERSTAND THAT THE RIGHTS BEING SECURED MAY BE USED IN CONNECTION WITH A FEDERAL AID HIGHWAY PROJECT.

I HAVE NO DIRECT OR INDIRECT PRESENT OR CONTEMPLATED FUTURE PERSONAL INTEREST IN THE PROPERTY BEING ACQUIRED OR IN ANY BENEFIT FROM THE ACQUISITION OF SUBJECT PROPERTY.

I HEREBY RECOMMEND THE APPROVAL OF THIS TRANSACTION

RECOMMENDED FOR APPROVAL:

By _____
BRANCH SENIOR/CHIEF

By _____
DISTRICT DIVISION CHIEF, RIGHT OF WAY

RAILROAD AGENT

APPROVED

DISTRICT DIRECTOR

CHAPTER 8

Acquisition Table of Contents

EXHIBITS

<u>Exhibit No.</u>	<u>Title</u>
8-EX-1	Housing and Community Development Guidelines
8-EX-2	Title III–Uniform Real Property Acquisition Policy (Sections 301 and 302)
8-EX-3	Rental Escrow Instructions
8-EX-4	Rental Agreement
8-EX-5	Request for Confirmation of Market Value
8-EX-6	Hold for Future Use
8-EX-7	Claim for Payment of Expenses Actually Incurred
8-EX-8	Pre-escrow Rent Schedule Instructions
8-EX-9	Withdrawal Letter - Owner in Occupancy
8-EX-10	Withdrawal Letter - Eligible Tenant in Occupancy
8-EX-11	Withdrawal Letter - Tenant No Longer in Occupancy
8-EX-12	Acquisition Management Review Checklist
8-EX-13	Permit to Enter for Underground Tank Testing for Hazardous Waste
8-EX-14	Permit to Enter for Other Testing for Hazardous Waste
8-EX-15A	Appraisal Summary Statement
8-EX-15B	Appraisal Summary Statement-Loss of Goodwill
8-EX-15C	Valuation Summary Statement
8-EX-16	Summary Statement Relating to the Purchase of Real Property or an Interest Therein
8-EX-17	Hold for Future Use
8-EX-18A	Full Acquisition Offset Statement
8-EX-18B	Partial Acquisition Offset Statement
8-EX-19	Amendment to Right of Way Contract
8-EX-20	Assignment of Lease-To State
8-EX-21	Request for Information - Form UCC3 (Financing Statement)
8-EX-22	Form UCC2
8-EX-23	Right of Entry - Long Form
8-EX-24	Right of Entry - Short Form
8-EX-25	Possession and Use Agreement
8-EX-26	Construction Permit
8-EX-27	Permit to Enter and Construct
8-EX-28	All-Purpose Acknowledgement
8-EX-29	Hold for Future Use
8-EX-30	Goodwill Information Sheet
8-EX-31	Interagency Agreement
8-EX-32	Transfer of Control and Possession
8-EX-33	Approved as to Form
8-EX-34	Summary of Estimates or Actual Costs-Functional Replacement

Exhibit No.**Title**

8-EX-35	Memorandum of Possession and Use Agreement
8-EX-36	Escrow Instructions - Sample
8-EX-37	Parcel Progress Record
8-EX-38	Warrant to Escrow Agent
8-EX-39	Warrant to District
8-EX-40	Hold for Future Use
8-EX-41	Certificate of Acceptance
8-EX-42	Notice of Removal of Property from Taxrolls
8-EX-43	Tax Cancellation Letter - Page 2 Total Take City
8-EX-44	Tax Cancellation Letter - Page 2 Total Take County
8-EX-45	Tax Cancellation Letter - Page 2 Partial Take City
8-EX-46	Tax Cancellation Letter - Page 2 Partial Take County
8-EX-47	Tax Cancellation Condemnation Letters - Order for Possession
8-EX-48	Change in Ownership of Real Property Acquired to Replace Property taken by Governmental Action or Eminent Domain Proceedings
8-EX-49	Information Sheet for Owner(s) Regarding Property Tax Relief
8-EX-50	Administrative Settlement/Statutory Offer
8-EX-51	Public School District Lands
8-EX-52	Request for Declaratory Relief Action
8-EX-53	Highway Easement Deed - Perfection of Title (USFS Only)
8-EX-54	Highway Easement Deed - New Construction

CHAPTER 8

Railroads Procedure Table of Contents

EXHIBITS

STANDARD INDENTURES SOUTHERN PACIFIC TRANSPORTATION COMPANY

<u>Exhibit No.</u>	<u>Title</u>
8-EX-69	Conduit Indenture
8-EX-70	Existing Drainage Facilities Covered by Rights of Entry
8-EX-71	Modification of Existing Drainage Facility
8-EX-72	New Drainage Facility
8-EX-73	Longitudinal Slope Easement with Retention of Rights
8-EX-74	Longitudinal Slope Easement without Retention of Rights
8-EX-75	Longitudinal Drainage Easement with Retention of Rights
8-EX-76	Longitudinal Drainage Easement without Retention of Rights
8-EX-77	Transverse Crossing at Separated grade
8-EX-78	Crossing at Grade
8-EX-79	Straight Highway Easement

STANDARD INDENTURES THE ATCHISON, TOPEKA, AND SANTA FE RAILWAY COMPANY

8-EX-80	Transverse Crossing
8-EX-81	Transverse Drainage Easement
8-EX-82	Drilling Permit
8-EX-83	License

GENERAL

8-EX-84	P.U.C. Requirements, Rules, and Regulations
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Article 6. Acquisition Policies

6182. Acquisition

- (a) A public entity shall make its first written offer as soon as feasible following mailing or service of the Notice to Appraise and shall make every reasonable effort to acquire property by agreement and to do so expeditiously.
 - (b) Before negotiations are initiated, a public entity shall:
 - (1) Have the property appraised, except when donated, giving the owner or owner's representative who has been designated in writing an opportunity, by reasonable notice, to accompany the appraiser during the inspection of the property;
 - (2) If the owner of real property is also the owner of a business conducted on the real property to be acquired or on the remainder, inform such owner of the right of compensation for the loss, if any, of goodwill. The public entity should explain the pertinent provisions of the Eminent Domain Law dealing with goodwill.
 - (3) Establish an amount it believes to be just compensation for the property. In no event shall such amount be less than the public entity's approved appraisal of the fair-market value of the property.
 - (c) The entity shall base its determination of just compensation upon consideration of:
 - (1) The highest and best use of the real property being acquired;
 - (2) Where the real property being acquired is a part of a larger parcel, the damages, if any, and benefits, if any, to the remainder; and
 - (3) Loss of goodwill, where the owner of the real property is also the owner of a business conducted on the real property to be acquired or on the remainder and where the provisions of the Eminent Domain Law pertaining to compensation for loss of goodwill are satisfied. 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. Loss of goodwill is established through tax returns provided by owner. Owner also must show loss was not preventable.
 - (d) As soon as feasible after the amount of just compensation is established, the public entity shall offer to acquire the property for the full amount so established and shall provide the owner with a written statement of the basis for determination is just compensation.

The statement shall include the following:

 - (1) A general statement of the public use for which the property is to be acquired.
 - (2) A description of the location and extent of the property to be acquired, with sufficient detail for reasonable identification, and the interest to be acquired.
 - (3) An identification of the buildings, structures, fixtures, or other improvements.
 - (4) A recital of the amount of the offer and a statement that such amount:
 - (A) Is the full amount believed by the public entity to be just compensation for the property to be acquired.
 - (B) Is not less than the approved appraisal of the fair market value of the property;
 - (C) Disregards any decrease or increase in the fair-market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired for such public improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant; and
 - (D) Does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which the owner is entitled to receive under an agreement with the public entity, except for an amount to compensate the owner for that portion of loss of goodwill provided in accordance with Section 6100.
 - (5) If the real property is a portion of a larger parcel, the statement shall include an apportionment of the total estimated just compensation for the partial acquisition between the value of the property to be acquired and the amount of damage, if any, to the remainder of the larger parcel from which such property is taken.
-
-

- (6) If the owner of the real property to be acquired is also the owner of a business conducted upon the property or the remainder, the statement shall include an indication of the amount of compensation for loss of goodwill, if any, and if established at that time. (Loss of goodwill in most situations will occur, if it occurs, after the acquisition is completed and owner has either relocated or continues in same location with diminished business.)
- (e) At the initiation of negotiations, a public entity shall provide written notification to the owner of a business conducted on the real property to be acquired or on the remainder, who is not also the owner of the real property, concerning the right to compensation for loss, if any, of goodwill. The public entity should explain pertinent provisions of the Eminent Domain Law.
- (f) If after receiving the public entity's offer the owner requests additional information regarding the determination of just compensation, and if an eminent domain proceeding has not been commenced, the public entity shall provide the following information to the extent that the determination of just compensation is based thereon:
- (1) The date of valuation used.
 - (2) The highest and best use of the property.
 - (3) The applicable zoning.
 - (4) Identification of some of the sales, contracts to sell and purchase, and leases supporting the determination of value.
 - (5) If the property is a portion of a larger parcel, a description of the larger parcel, with sufficient detail for reasonable identification.
- (g) With respect to each sale, contract, or lease provided in accordance with subdivision (f), the following data should be provided:
- (1) The names and business or residence addresses, if known, of the parties to the transaction. If such information was provided confidentially, it shall not be included.
 - (2) The location of the property subject to the transaction.
 - (3) The date of transaction.
 - (4) The price and other significant terms and circumstances of the transaction, if known. In lieu of stating the other terms and circumstances, the public entity may, if the document is available for inspection, state the place where the times when it is available for inspection.
- (h) Whenever a part of a 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 constitute an uneconomic remnant, the public entity shall offer to acquire the remnant if the owner so desires. For the purposes of this subchapter an "uneconomic remnant" is defined as a parcel of real property in which the owner retains an interest after a partial acquisition and which has little or no utility or value to such owner. (Nothing in this subdivision is intended to limit a public entity's authority to acquire real property.)
- (i) Nothing in this section shall be construed to deprive a tenant of the right to obtain payment for any to be acquired property interest otherwise provided for by law.
- (j) Prior to commencement of an eminent domain proceeding, the public entity shall make reasonable efforts to discuss with the owner its offer to purchase the owner's real property. The owner shall be given a reasonable opportunity to present material which such owner believes to be relevant as to the issue of value and to suggest modification in the proposed terms and conditions of the purchase, and the public entity shall carefully consider the material submitted by the owner.
- (k) Prior to commencement of an eminent domain proceeding, if the data presented by an owner or if a material change in the character or condition of the property indicates need for a new or revised appraisal or if a delay which could affect the value has occurred since the determination of just compensation, the public entity shall have its appraisal updated. If a modification in the public entity's determination of just compensation is warranted, it shall make an appropriate price adjustment and promptly offer the new amount determined to be just compensation in writing to the owner.
- (l) 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 or misleading in nature, in order to compel or induce an agreement on the price to be paid for the property.
-

- (m) If any interest in property is to be acquired by exercise of the power of eminent domain, the public entity shall promptly 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 such owner's real property.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety Code Section 50460. Reference: Government Code Section 7267-7267.7.

6184. Notice of Decision to Appraise

The public entity shall provide the owner with written notice of its decision to appraise the real property as soon as feasible after it makes the decision to appraise. The notice shall state, as a minimum, that:

- (a) A specific area is being considered for a particular public use;
- (b) The owner's property has been determined to be located within the area; and
- (c) The owner's property, which shall be described generally, may be acquired for the public use.

NOTE: Authority Cited: Government Code Section 7267.8; Health and Safety Code Section 50460. Reference Government Code Section 7267

6188. Notice of Land Acquisition Procedures

- (a) At the time the public entity notifies an owner of its decision to appraise real property, it shall furnish the owner a written explanation of its land acquisition procedures, describing in non-technical, understandable terms the public entity's acquisition procedures and the rights and options available to the owner.
- (b) The notice shall include at least the following:
 - (1) A description of the basic objective of the public entity's land acquisition program and a reference to the availability of the public entity's statement covering relocation benefits for which an owner-occupant may be eligible;
 - (2) A statement that the owner or owner's representative who has been designated, in writing, shall be given the opportunity to accompany any appraiser during inspection of the property.
 - (3) A statement that if the acquisition of any part of real property would leave the owner with an uneconomic remnant, the public entity will offer to acquire the uneconomic remnant if the owner so desires;
 - (4) A statement that if the owner is not satisfied with the public entity's offer of just compensation, such owner will be given a reasonable opportunity to present relevant material, which the public entity will carefully consider; and that if a voluntary agreement cannot be reached, the public entity, as soon as feasible, will either institute a formal condemnation proceeding or abandon its intention to acquire the property, giving notice of the latter as provided in Section 6190.
 - (5) A statement that construction or development of a project shall be so scheduled that no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by this subchapter will be available) or to move such person's business or farm operation without at least 90 days written notice from the public entity of the date by which the move is required; and
 - (6) A statement setting forth the requirements of Section 6194.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety code Section 50460. Reference: Government Code Section 7267.

6190. Notice of Public Entity's Decision Not to Acquire

Whenever a public entity decides not to acquire a property after it has forwarded a Notice of Decision to Appraise or has made a firm offer, the public entity shall serve a notice in writing on the owner, all persons occupying the property and all other persons potentially eligible for relocation payments and assistance which shall state that the public entity has decided not to acquire the property. It shall be served not later than 10 days following the date of the public entity decision not to acquire.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety code Section 50460. Reference: Government Code Section 7267.

6192. Incidental Expenses

If the public entity acquires the real property by purchase, it shall pay all reasonable expenses incident to transfer. These expenses include recording fees, transfer fees and similar expenses incident to the conveyance of real property, and the pro rata portion of charges for public service such as water, sewage and trash collection which are allowable to a period subsequent to the date of transfer of title to the public entity, or the effective date of possession of such property by the public entity, whichever is earlier. The public entity shall inform the owner that such owner may apply for a rebate of the pro rata portion of any real property taxes paid.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety code Section 50460. Reference: Government Code Section 7267.

6194. Short Term Rental

- (a) 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 lesser of the fair rental value to a short-term occupier or the pro rata portion of the fair-rental value for a typical rental period;

If the owner or tenant is an occupant of a dwelling, the rental for the dwelling shall be within such owner or tenant's financial means.

- (b) A port-acquisition tenant who occupies real property acquired on a rental basis for a short-term and who is informed that the property has been acquired for a public use shall be given not less than 30 days' notice of termination of the tenancy.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety code Section 50460. Reference: Government Code Section 7267 and 7267.4.

6196. Service of Notice

Service of all notices required by this article shall be made either by first class mail or by personal service upon the person to be notified.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety code Section 50460. Reference: Government Code Section 7267.

619 Nonpossessory Interest Exception

The provisions of subdivisions (b), (c), (d) (4), (f) and (g) of Section 6182 and Section 6188 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 sub-surface sewers, water lines or appurtenance, drains, septic tanks, or storm water drains.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety code Section 50460. Reference: Government Code Section 7267.

6199. Preemption

This Article does not preempt any other provision of law which provides greater protection to tenants or occupants subject to acquisition.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety code Section 50460. Reference: Government Code Section 7272

NOTE: The foregoing Housing and Community Development Guidelines are included in this handbook as an exhibit for informational purposes. They are not to be used to revise, modify, alter or otherwise qualify any policy or procedure of the Department of Transportation as set forth in its policy or procedural handbooks.

**Uniform Policy on Real Property
Acquisition Practices**

SEC. 301. 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 many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

- (1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.
- (2) 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 his inspection of the property.
- (3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair-market value of such property. Any decrease or increase in the fair-market value of real property prior to the date of valuation 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. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he 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.
- (4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 1 of the Act of February 26, 1931 (46 Stats. 1421; 40 U.S.C. 258a), for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair-market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.
- (5) 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 as required by Title II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.
- (6) If the head of a Federal agency 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 Government on short notice, the amount of rent required shall not exceed the fair-rental value of the property to a short-term occupier.
- (7) In no event shall the head of a Federal agency 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) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.
- (9) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property.

BUILDINGS, STRUCTURES, AND IMPROVEMENTS

Sec. 302. (a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b) (1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be part of the real property to be acquired notwithstanding the right of obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his

TITLE III-UNIFORM REAL PROPERTY ACQUISITION POLICY

EXHIBIT

(Cont.)

(Form #)

8-EX-2

Page 2 of 2

term, and the fair-market value which such building, structure, or improvement contributes to the fair-market value of the real property to be acquired, or the fair-market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his rights, title and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

CONFIDENTIAL
*This document contains personal information and pursuant
to Civil Code 1798.21 it shall be kept confidential in order to protect against
unauthorized disclosure.*

Parcel No. _____

Escrow No. _____

In order that rents for the property I am conveying may be correctly prorated through escrow, I hereby state that the rentals as to amounts and dates due are as follows:

Address	Full Name of Tenant	Monthly Rate	Due Date	Paid Through	Security Money	Prorate

Unless prior to date of recording I have notified you in writing of some change in tenancy, you are to consider that I will collect all rents which fall due according to the foregoing statement prior to the close of this escrow, and you will make the adjustments of rents as of the date following the date of recordation of the deed conveying title to the State up to and including the day preceding the due date. All rents shall be prorated in accordance with chart on reverse side, based on a 30-day month. You will also pay the State the above security money (if any) charging my account.

DATED: _____

MONTHLY PERCENTAGE TABLE FOR PRORATION OF RENT

DAYS	30-DAY MONTH
1	.0333
2	.0667
3	.1000
4	.1333
5	.1667
6	.2000
7	.2333
8	.2667
9	.3000
10	.3333
11	.3667
12	.4000
13	.4333
14	.4667
15	.5000
16	.5333
17	.5667
18	.6000
19	.6333
20	.6667
21	.7000
22	.7333
23	.7667
24	.8000
25	.8333
26	.8667
27	.9000
28	.9333
29	.9667
30	

Examples of using the 30-day proration chart for months with other than 30 days.

New Rental - Rent of \$100/mo. starts on February 20

28 day month	9 days on 30 day chart =	.3000	
<u>-19</u> (date minus 1 day)		<u>x \$100</u>	
9 days rent owed		\$30.00 rent owed	

Termination - Rent of \$100/mo. ends on January 30

31 day month	1 day on 30 day chart =	.0333	
<u>-30 day</u>		<u>x \$100</u>	
1 day refund		\$3.33 refund	

RENTAL AGREEMENT

(Form #)

This Agreement is made and entered into this ____ day of _____, 19 ____ by and between _____ hereafter called Owner and the State of California, Department of Transportation, hereafter called Transportation.

Whereas, it is the intent of Transportation to acquire that certain property in the County of _____, State of California, described as: _____ for use

as rights of way for its transportation project; and

Whereas, it is the desire of Transportation to minimize relocation costs that may mature for future occupants of the above-described property or to otherwise reduce future relocation problems; and

Whereas, Owner is agreeable to the accomplishment of this objective by allowing Transportation to pay rent for those units within the described property as they may now be or will become vacant during the life of this Agreement.

Now, Therefore, It Is Hereby Agreed As Follows:

1. Transportation will pay rent for the following identified currently vacant units at the monthly rental rate shown:

Unit Identification

Rental Rate

2. Owner will notify Transportation, in writing, immediately upon the vacation of any other units and their applicable rental rates, and Transportation further agrees to the payment of rent at the agreed upon rate. The written notification to Transportation of any additional unit vacancy shall constitute a mutually acceptable amendment to this Agreement.

3. In consideration for the rent to be paid under this Agreement, Owner will not re-rent or allow any occupancy of the previously vacated unit by any person or persons.

4. Owner will allow Transportation to inspect Owner's books and records to ascertain the vacancy date and rental rates for all units on which rent is being paid by Transportation under this Agreement.

5. The rent to be paid by Transportation shall be the same monthly rental rate as paid by the existing or last occupant except where the existing rental rate includes utility cost, furniture rental, or other service costs which are not applicable to Transportation's payment for the unit since the intent is to keep all units vacant. All such other monthly rent amounts shall be deducted from the existing rental rate to arrive at the rental to be paid by Transportation.

6. Payment of rent under this Agreement shall terminate upon transfer of ownership of the herein described property to Transportation.

7. (Alternate) The total rental for all units being rented in accordance with Clause 1 and 2 above shall be paid in arrears on the last day of each month.

8. Transportation shall not call on Owner to make any improvements or repairs on the property, but Owner hereby specifically covenants and agrees to keep the property in good order and condition at Owner's cost and expense.

9. Owner reserves the right to enter, inspect the premises, and make any necessary repairs to the premises.

10. In the event the rented premises or any essential part thereof shall be destroyed by fire or other casualty, this Agreement, shall, in the case of total destruction of the rented premises, immediately terminate and, in case of partial destruction or damage, shall terminate at the option of Transportation upon giving notice, in writing, to Owner within fifteen (15) days after such fire or casualty, and no rent shall accrue or be payable to Owner after such termination. In the event of any such destruction, the rental as herein provided shall be reduced by the number of units destroyed or by the same ratio as the floor space Transportation is precluded from renting bears to the total floor space of the rented premises, whichever is more applicable.

11. Rental payable hereunder for any period of time less than one month shall be determined by prorating the monthly rental rate herein specified on the actual number of days in the month.

RENTAL AGREEMENT(Cont.)

(Form #)

EXHIBIT

8-EX-4

Page 2 of 2

12. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when mad in writing and deposited in the United States mail certified and postage prepaid, and addressed as follows:

To the Owner at:

and to Transportation at:

Nothing shall preclude the giving of any such written notice by personal service.

13. Transportation may terminate this Agreement by giving notice to Owner at least thirty (30) days prior to the date when such termination shall become effective.

14. No alterations or variations of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on either of the parties hereto.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first above written.

OWNER

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

REQUEST FOR CONFIRMATION OF MARKET VALUE

(Form #)

1. Appraisal Branch

	Dist.	Co.	Rte.	Exp. Auth.
--	--------------	------------	-------------	-------------------

2. Acquisition/Condemnation Branch

	Parcel No.	AR No.
--	-------------------	---------------

Request for Confirmation of Market Value

People v. _____ (Pending)

Owner _____

To: Appraisal Branch

Acquisition must soon initiate condemnation proceedings in order to protect an impending certification date on the referenced project. The process will commence with the mailing of the Notice of Intent. Prior to taking such action, we must be assured that the approved appraisal represents current market value. We expect to submit a Resolution of Necessity request for Transportation Commission action at the _____, 20__ meeting. The Notice of Intent will be mailed on or about _____. Your response is required by _____.

[] Attached are pertinent, factual data or related information of which the acquisition agent has learned and/or verified which may affect your appraiser's opinion of the current market value of the required property.

Acquisition Agent

Chief, Acquisition/Condemnation Branch

To: Acquisition/Condemnation Branch

STAFF APPRAISAL REVIEW PRIOR TO REQUESTING A RESOLUTION OF NECESSITY

1. [] An analysis and review of current market data, a search and review of data available from other sources, as well as an analysis and review of the data, if any, supplied by the Acquisition Branch, indicate a revision of the current appraisal. The revised appraisal represents current market value in the amount of \$_____ as of _____ (new date of value).

2. [] An analysis and a review of the staff appraisal, current market data, the data, if any, supplied by the Acquisition Branch, as well as data available from recognized real estate data sources have been reviewed and analyzed. Based upon this review, it is my opinion that the value conclusions in the staff appraisal remain valid and the appraisal represents current market value in the amount of \$_____ as of _____ (updated date of value).

Chief, Appraisal Branch

Date

REQUEST FOR CONFIRMATION OF MARKET VALUE (Cont.)

(Form #)

EXHIBIT

8-EX-5 (REV 7/2008)

Page 2 of 2

1. Appraisal Branch

_____ **Dist.** _____ **Co.** _____ **Rte.** _____ **Exp. Auth.**

2. Acquisition/Condemnation Branch

_____ **Parcel No.** _____ **AR No.**

People v. _____

To: Appraisal Branch

Employment of Independent Staff or Fee Appraiser

There is a minimal expectation this ownership will close without an increased offer and we therefore need to arrange for the services of (an) expert witness for the referenced pending litigation:

Is there a staff appraiser available to handle this assignment under the following conditions?

1. Estimated appraisal due date _____
2. Special requirements applicable to witness or appraisal format: _____

See attached sheet for additional requirements, comments, or information. If there is no staff appraiser available, we propose to hire the following fee appraiser(s): _____

Acquisition Agent

Chief, Acquisition/Condemnation Branch

To: Acquisition/Condemnation Branch

Date _____

Staff appraiser available and qualified to meet the need: Yes / No

If "Yes," appraiser's name: _____

If "No," (a) Name(s) of other prequalified appraiser(s): _____

(b) Appraisal Branch's estimate of time required to perform assignment: _____ days.

(See attached page for additional comments.)

Chief, Appraisal Branch

CLAIM FOR PAYMENT OF EXPENSES ACTUALLY INCURRED

(Form #)

PERSONAL INFORMATION NOTICE

Pursuant to the Federal Privacy Act (P.L. 93-579) and the Information Practices Act of 1977 (Civil Code Sections 1798, et seq.), notice is hereby given for the request of personal information by this form. The requested personal information is voluntary. The principal purpose of the voluntary information is to facilitate the processing of this form. The failure to provide all or any part of the requested information may delay processing of this form. No disclosure of personal information will be made unless permissible under Article 6, Section 1798.24 of the IPA of 1977. Each individual has the right upon request and proper identification, to inspect all personal information in any record maintained on the individual by an identifying particular. Direct any inquiries on information maintenance to your IPA Office.

PRINT OR TYPE ALL INFORMATION

To: STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION	Dist.-Co.-Rte.-Post	
	Parcel No.	
	Exp Auth	S.A.R. No.

1. Full name of claimant 2. Claimant's Address and Phone No.

3. Location and Description of Proposed Development

4. Itemization of Expenses

<u>To Whom Paid</u>	<u>Purpose</u>	<u>Date</u>	<u>Amount</u>
---------------------	----------------	-------------	---------------

5. Location Where Records may be examined	6. Amount of Claim
	\$ _____

7. Payment of this claim in the amount shown above is required.

I CERTIFY that all information submitted herewith or included herein is true and correct. I understand that, in addition to the penalty provided by Penal Code Section 72, falsification of any item in this claim as submitted herewith may result in forfeiture of the entire claim. (NOTE: Section 72 of the Penal Code provides: "Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, town, city, district, ward or village boards or officer authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of a felony.")

CLAIM FOR PAYMENT OF EXPENSES ACTUALLY INCURRED (Cont.)

(Form #)

EXHIBIT

8-EX-7 (Rev. 6/95)

Page 2 of 2

It is understood and I (we) agree that all my (our) cost records and construction plans pertaining to work to be paid for pursuant to this claim shall be open to inspection or audits by representatives of the State of California, Department of Transportation, Claimant shall make every effort to ensure that the cost records will be open to inspection and audits by said representatives and that claimant will be given a reasonable notice of time when such audits are to commence.

DATE OF CLAIM _____

CLAIMANTS' SIGNATURE(S)

PRE-ESCROW RENT SCHEDULE INSTRUCTIONS

(Form #)

The Memorandum will contain the following information:

Interstate/Federal Project Number
District, County, Route, Post
Expenditure Authorization
Right of Way Parcel Number
Rental Agreement Number
Identification of the Memorandum in large capital letters "PRE-ESCROW RENT"
Name and Location of Payee
Schedule Number for Schedule being transmitted
Amount of Payment
Number of payments made under this Rental Agreement, including this payment
Total amount paid under this rental Agreement, including this payment

So long as the accompanying Schedule package contains a copy of the Rental Agreement and bill for payment, it is not necessary to attach a copy to the Memorandum.

Dist	Co	Rte	Post
Parcel No.		Exp Auth	

Dear _____:

This refers to our earlier offer to purchase your property for the proposed highway, State Route _____.

Since our funding is determined by the Legislature, we are permitted to purchase properties only on designated routes. This procedure allows for the orderly purchase of properties for highway routes in order of priority on a statewide plan.

At the present time, the highway route which affects your property has not been budgeted for purchases of right of way. Therefore, since we have not been allocated monies to purchase your property, the offer previously made for such purchase and any associated offer for relocation benefits are hereby withdrawn. It is not possible at this time to say when, if ever, your property will be acquired.

You, however, have the right to appeal this withdrawal of any previously offered relocation benefits to the Director of the Department of Transportation if this withdrawal will cause you a financial hardship by reason of a previous relocation commitment.

If you have any questions concerning this withdrawal, please do not hesitate to contact me. Kindly call or write me. My address and phone number are included for your convenience.

Sincerely,

District Division Chief, Right of Way

By _____
Acquisition Agent

WITHDRAWAL LETTER - ELIGIBLE TENANT IN OCCUPANCY

(Form #)

(Tenant still in occupancy)

(To be sent concurrently with the withdrawal of acquisition offer)

Dist	Co	Rte	Post
Parcel No.		Exp Auth	

Dear _____:

Due to the present unavailability of funding for State Route _____, State's offer to purchase the property you occupy at _____ (address) has been withdrawn. Accordingly, you will not be required to move and all relocation assistance and benefit offers previously made to you are hereby withdrawn.

You have the right to appeal the withdrawal of these benefits to the Director of the Department of Transportation if this withdrawal will cause you a financial hardship by reason of a previous relocation commitment.

If you have any questions concerning this withdrawal, please do not hesitate to contact the undersigned.

Sincerely,

(Name/Telephone Number)

(Tenant no longer in occupancy)

(To be sent concurrently with the withdrawal of acquisition offer)

Dist	Co	Rte	Post
Parcel No.		Exp Auth	

Dear _____:

Due to the present unavailability of funding for State Route _____, State's offer to purchase the property you formerly occupied at _____ (address) has been withdrawn.

Accordingly, all relocation assistance and benefit offers previously made to you are hereby withdrawn. You have the right to appeal the withdrawal of these benefits to the Director of Transportation if this withdrawal will cause a financial hardship by reason of a previous relocation commitment.

If you have any questions concerning this withdrawal, please do not hesitate to contact the undersigned.

Sincerely,

(Name/Telephone Number)

_____ Improved _____ Unimproved _____
 Dist _____ Co _____ Rte _____ Parcel No. _____
 Appraisal Approved _____ Revised? _____ Appraised Value _____
 Date _____
 Assigned to Acquisition Agent _____ First Written offer _____ Settlement \$ _____
 Date _____ Date _____

	<u>Manual Section</u>	YES	NO
1. Acquisition agent did not appraise if value exceeds \$10,000?	8.01.03.00	_____	_____
2. Just compensation established prior to acquisition discussion?	8.01.03.00	_____	_____
3. Signed, initialed and dated parcel diary maintained at all stages of acquisition?	8.01.03.00	_____	_____
4. Prompt offer of appraised value? No evidence of coercion? All offers in writing?	8.01.10.00	_____	_____
5. Right of Entry solicited/secured Date (_____) prior to First Written Offer: Type _____ Authorized By _____ Reason _____	8.09.09.00	_____	_____
6. Acquisition discussion by personal contact? Exceptions?	8.01.04.01	_____	_____
7. Summary statements given to owners/lessees providing (1) compensation (2) interest acquired, (3) improvements identified, and (4) damages, if any, separately stated. Diary Entries?	8.01.11.00	_____	_____
8. Diary entry indicating owner/occupant advised of Title VI program at First Written Offer? Delivery by appraiser verified?	8.01.11.00	_____	_____
9. Occupancy certifications secured?	8.01.11.00	_____	_____
10. Owner disclaimed any and all interest in tenant-owned improvements? Tenant conveyed all interest in improvements?	8.01.11.00	_____	_____
11. Tenant paid the value improvements contribute to the property or their salvage value, whichever is greater?	8.04.15.00	_____	_____
12. Qualified owner advised of right to review appraisal?	8.01.12.00	_____	_____
13. If donation, was owner advised of right to an appraisal and compensation offered?	8.28.02.00	_____	_____
14. File reflects appropriate disposition of any hazardous waste on property?	8.16.01.00	_____	_____
15. Hazardous waste investigation completed by Project Development prior to appraisal and acquisition?	7.04.12.01	_____	_____
16. Acquisition of uneconomic remnant(s) offered to owner?	8.06.22.00	_____	_____

ACQUISITION MANAGEMENT REVIEW CHECKLIST

(Form #)

EXHIBIT

8-EX-12 (Rev. 9/97)

Page 2 of 3

	<u>Manual Section</u>	YES	NO
17. If an administrative settlement was made, were all phases fully documented/memo in file?	8.01.28.00	_____	_____
18. All offers and settlement supported by an appraisal, memorandum of adjustment, Administrative Authorization, or Administrative Settlement?	8.01.27.00 8.01.28.00	_____	_____
19. Parcel submitted for CTC only after offer of full amount of appraisal and adequate acquisition discussion? Personal call within the 30-day period immediately prior to mailing of Notice of Intent? Confirmation of Market Value in file?	9.01.09.00	_____	_____
20. Acquisition file reflects no evidence of discrimination?	8.01.03.00	_____	_____
21. All fiscal documents in file have a Federal Aid number?	8.01.32.00	_____	_____
22. Federal Participation Memo (8-EX-35 or 8-EX-36), Request for Resolution, and TRAMS Tag in file? Federal charges correct?	8.50.04.00	_____	_____
23. Did settlement include compensation for loss of goodwill? Properly coded?	8.15.02.00	_____	_____
24. Was escrow closed/payment made in reasonable time after contract signed?	8.61.02.00	_____	_____
25. If interest was part of the settlement, was it credited/segregated properly?	8.50.04.01	_____	_____
26. File reflects professional effort was made to acquire the property by agreement?	8.01.13.00	_____	_____
27. Request to Legal for Dismissal/Release of Deposit. TRAMS tag in file reversing 6090 charges?	8.50.04.00	_____	_____
28. Data entered into IRWS?		_____	_____
29. Acquisition by Hardship or Protection? Reason?	5.03.04.03	_____	_____

The following documentation should be contained in each file:

Hardship Files

30. Written request from owner.	_____	_____
31. Owner's signed application.	_____	_____
32. Financial statement, if required.	_____	_____
33. Evidence of attempt to market property.	_____	_____
34. Signed authorization to obtain State and Federal income tax returns, if required.	_____	_____
35. Doctor's statement for medical hardships.	_____	_____
36. Letter from employer if transfer is reason.	_____	_____
37. Index map of project and parcel map.	_____	_____
38. Environmental clearance (categorical exemption/exclusion determination and required statement).	_____	_____
39. Stage 1 Authorization from FHWA; (FNM-76), if required.	_____	_____
40. Resource Management approval letter.	_____	_____
41. Written approval of Regional Legal Office if project is not environmentally cleared.	_____	_____

ACQUISITION MANAGEMENT REVIEW CHECKLIST

(Form #)

EXHIBIT

8-EX-12 (Rev. 9/97)

Page 3 of 3

YES NO

Protection Files

- 42. Written request from owner. _____
- 43. Approval of protection acquisition by District or Division of Resource Management. _____
- 44. Protection Acquisition Savings Estimate (Exhibit 5-EX-1). _____
- 45. Resume of Protection Request (Exhibit 5-EX-2). _____
- 46. Strip map and parcel map. _____
- 47. Environmental clearance (categorical exemption/exclusion determination and required statement). _____
- 48. Stage 1 Authorization from FHWA; FNM-76, if required. _____
- 49. Written approval of Regional Legal office if project is not environmentally cleared. _____

RAILROADS

- 50. Operating right of way? (Railroad checklist N/A if No)..... _____
 - 51. Plans _____
- DATE
- Received by Right of Way _____
 - Sent to Railroad _____
 - Sent to Structures _____
 - 52. Rights of Entry _____
 - Received _____
 - RW&AM _____
 - or, in C & M Agreement _____
 - 53. Construction and Maintenance Agreement..... _____
 - C & M cross-referenced with Right of Way Contract _____
 - to verify no double payment _____
 - C & M Agreement to Railroad _____
 - C & M Agreement accepted by Structures _____
 - 54. Right of Way Contract..... _____
 - Offer to Railroad _____
 - Railroad reply _____
 - Settlement _____
 - 55. Deed/Indenture _____
 - To Railroad _____
 - Received _____
 - 56. Service Contract _____
 - Request estimate from Railroad _____
 - Railroad estimate received _____
 - Estimate to Structures _____
 - 57. Railroad Clearance _____
 - Railroad clearance from Structures _____
 - Status _____

Overall comment: _____

**PERMIT TO ENTER FOR UNDERGROUND TANK TESTING FOR
HAZARDOUS WASTE**

(Form #)

Date _____

Co

Rte

Post

Parcel No.

State of California
Department of Transportation
District _____

Gentlemen:

It is my (our) understanding that the following facts pertain to the property I (we) own located at _____
_____ and shown outlined in _____ on the attached map(s):

1. The property or a portion thereof is needed for construction of a transportation project identified as:

2. The Department of Transportation finds it necessary to enter upon the property previously described for gathering data needed to complete final project design and appraisals for right of way acquisition for the transportation project noted previously.
3. The purposes for such entry onto the property are to conduct precision testing of the integrity of underground storage tanks and associated piping used for the storage of petroleum products or other hazardous materials and if Petro-Tite test is used, borings to determine the level of the groundwater table immediately adjacent to each such underground storage tank.

I also understand that in return for granting permission to enter my property, the Department of Transportation will:

1. Retain a qualified contractor to leak test underground tanks and associated piping situated on the property by use of the Hunter Lake Lokater (formerly SUN), Heath Petro-Tite (formerly Kent-Moore), Horner Ezy-Chek Leak Detector Test or equivalent precision tank testing method which meets the requirements of National Fire Protection Association (NFPA) Standard 329, is capable of detecting a loss of 190 ml per hour, and is approved by the State Department of Health Services or other appropriate regulatory agencies as well as by the Department of Transportation's contract manager.

**PERMIT TO ENTER FOR UNDERGROUND TANK TESTING FOR
HAZARDOUS WASTE (Cont.)**

(Form #)

EXHIBIT

8-EX-13 (Rev. 6/95)

Page 2 of 3

Said tanks to be tested are as follows:

<u>Tank</u>	<u>Volume</u>	<u>Content</u>	<u>Location</u>
1			
2			
3			

2. Require the contractor either to make arrangements with the owner/occupant to fill the tank to be tested with owner/occupant's product or otherwise ensure that the product used to fill a tank is compatible with the tank's usage and will not contaminate the owner/operator's product in the tank. Should the Department of Transportation contractor be supplying the product to run the test, it will be necessary to bring tank trucks onto the property to fill and recover the product used for testing.
3. Require the contractor to coordinate the tank test with the owner/operator of the tank. If by the nature of the business it is impractical to remove any tank(s) from operation during business hours, then the tank(s) will be tested after business hours or from _____ to _____.

Forty-eight (48) hours' notice will be given to the owner/operator of the tank prior to entry upon the property.

4. In accepting this Permit to Enter, agree, insofar as it may legally do so, that it will repair and restore or pay the cost of repairing and restoring any property damaged as a result of work done by the Department of Transportation or the Department of Transportation's contractor and will insofar as it may legally do so, indemnify and save harmless the undersigned against all claims, demands, suits, judgments, expenses and costs on account of injury to or death of persons or loss of or damage to property arising out of the performance of such work by the Department of Transportation or the Department of Transportation's contractor(s). The agreement of indemnification does not extend to any property damage the undersigned may have suffered by reason of hazardous waste on the property. Nor does it indemnify the owner(s) from any liability as a consequence of the presence of hazardous waste on the property.
 5. Pay the operator of the property to be tested the amount of _____ to compensate for the interference with the possession and use of the property.
-
-

**PERMIT TO ENTER FOR UNDERGROUND TANK TESTING FOR
HAZARDOUS WASTE (Cont.)**

(Form #)

EXHIBIT

8-EX-13 (Rev. 6/95)

Page 3 of 3

It is understood that if the Department of Transportation discovers the presence of contamination on the property through the tests described herein or from other sources, further testing may be required to determine the extent of the contamination. That testing may be required by the Water Quality Control Board or the Department of Health Services and if performed by the Department of Transportation's contractor, will require a further Permit to Enter either by owner permission or by court order.

If no contamination is found, the Department of Transportation will proceed to negotiate without any unnecessary delay with the owner(s) to agree upon the terms of compensation, and if agreement cannot be reached, to promptly commence eminent domain proceedings.

On the basis of the above, a Permit to Enter is hereby granted to enter the property previously described for the purposes states with the understanding that this Permit to Enter is not a waiver of the right to compensation for such property or any remedy authorized by law to secure payment therefor.

Date _____

By _____

Accepted:

District Division Chief
Right of Way

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
**PERMIT TO ENTER FOR OTHER TESTING FOR
HAZARDOUS WASTE**
(Form #)

EXHIBIT
8-EX-14 (Rev. 6/95)
Page 1 of 2

Date _____

Co

Rte

Post

Parcel No.

State of California
Department of Transportation
District _____

Gentlemen:

It is my (our) understanding that the following facts pertain to the property I (we) own located at _____
_____ and shown outlined in _____ on the attached map(s):

1. The property or a portion thereof is needed for construction of a transportation project identified as:

2. The Department of Transportation finds it necessary to enter upon the property previously described for gathering data needed to complete final project design and appraisals for right of way acquisition for the transportation project noted previously.
3. The purposes for such entry onto the property is to take samples of soil and groundwater to determine whether the site has been contaminated by hazardous substances.

I also understand that in return for granting permission to enter my property, the Department of Transportation will:

1. Retain a qualified contractor to perform such above-described test and to determine whether or not further site testing must be done. The substances to be tested consist of:

located at _____

2. Require the contractor to coordinate the testing with the owner/operator's schedule. Unless objected to by the owner/operator, the testing will be performed during normal business hours.

Forty-eight (48) hours notice will be given to the owner/operator of the property prior to entry upon the property.

**PERMIT TO ENTER FOR OTHER TESTING FOR
HAZARDOUS WASTE (Cont.)**

(Form #)

EXHIBIT

8-EX-14 (Rev. 6/95)

Page 2 of 2

-
-
3. In accepting this Permit to Enter, agree, insofar as it may legally do so, that it will repair and restore or pay the cost of repairing and restoring any property damaged as a result of work done by the Department of Transportation or the Department of Transportation's contractor(s); further that it will insofar as it may legally do so, indemnify and save harmless the undersigned against all claims, demands, suits, judgments, expenses and costs on account of injury to or death of persons or loss of or damage to property arising out of the performance of such work by the Department of Transportation or the Department of Transportation's contractor(s). This agreement of indemnification does not extend to any property damage the undersigned may have suffered by reason of hazardous waste on the property. Nor does it indemnify the owner(s) from any liability as a consequence of the presence of hazardous waste on the property.

 4. Pay the operator of the property to be tested the amount of \$ _____ to compensate for the interference with the possession and use of the property.

It is understood that if the Department of Transportation discovers the presence of contamination on the property through the tests described herein or from other sources, further testing may be required to determine the extent of the contamination. That testing may be required by the Water Quality Control Board or the Department of Health Services and if performed by the Department of Transportation's contractor, will require a further Permit to Enter either by owner permission or by court order.

If no contamination is found, the Department of Transportation will proceed to negotiate without any unnecessary delay with the owner(s) to agree upon the terms of compensation, and if agreement cannot be reached, to promptly commence eminent domain proceedings.

On the basis of the above, a Permit to Enter is hereby granted with the understanding that this Permit to Enter is not a waiver of the right to compensation for such property or any remedy authorized by law to secure payment therefor.

Date _____

By _____

Accepted:

District Division Chief
Right of Way

APPRAISAL SUMMARY STATEMENT

(Form #)

CONFIDENTIAL

This document contains personal information and pursuant to Civil Code 1798.21, it shall be kept confidential in order to protect against unauthorized disclosure.

EXHIBIT

8-EX-15A (REV 6/2010)

Page 1 of 7

Dist.	Co.	Rte.	P.M.	Parcel No.	Federal Aid Project No.	Date / Revised Date

Owner:

Date Acquired:

Property Address:

Property to be acquired: Part All

Locale:

Total Property Area:

Including Access Rights Yes No

STATUTORY BASIS OF VALUATION

The market value for the property to be acquired by the State is based upon an appraisal prepared in accordance with accepted appraisal principles and procedures.

Code of Civil Procedure Section 1263.320 defines Fair Market Value as follows:

- 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.

Code of Civil Procedure Section 1263.321 defines the Value for Nonprofit, Special Use Property as follows:

A just and equitable method of determining the value of nonprofit, special use property for which there is no relevant, comparable market is as set forth in Section 824 of the Evidence Code, but subject to the exceptions set forth in subdivision (c) of Section 824 of the Evidence Code.

The market value for the property to be acquired by the State is based upon Code of Civil Procedure Section _____ as defined above.

BASIC PROPERTY DATA

Interest valued:

Date of valuation:

Original Updated

Applicable zoning:

Area to be acquired:

Highest and best use:

Current use:

AREAS WITHIN THE RIGHT OF WAY

Sub-parcel

Area

Total Area =

IMPROVEMENTS WITHIN THE RIGHT OF WAY

Item

Size

Lump Sum Total = \$

APPRAISAL SUMMARY STATEMENT (Cont.)

(Form #)

EXHIBIT
8-EX-15A (REV 6/2010)

Page 3 of 7

Value of the Entire Property \$ _____

Value of the property being acquired
including the following improvements:

Land: \$ _____

Imps: \$ _____

\$ _____

Value of the remainder as part of the
whole before the State's acquisition

\$ _____

Value of the remainder as a separate parcel (cured)

\$ _____

Severance Damages (see page 4):

Cost to Cure Damages: \$ _____

Incurable Damages: \$ _____

Total Damages: \$ _____

Benefits (see page 4): \$ _____

Net Damages: \$ _____

The amount of any other compensation: \$ _____

JUST COMPENSATION FOR ACQUISITION \$ _____

Rounded To \$ _____

Construction Contract Work \$ _____

SEVERANCE DAMAGES

COST TO CURE DAMAGE ITEMS

Item

Size

Lump Sum Total \$ _____

INCURABLE DAMAGES

(Narrative explanation and calculations, if applicable)

Lump Sum Total \$ _____

TOTAL DAMAGES \$ _____

BENEFITS

(Narrative explanation and calculations, if applicable)

Lump Sum Total \$ _____

NET DAMAGES (Total Damages less Benefits) \$ _____

CONSTRUCTION CONTRACT WORK ITEMS

- 1.
 - 2.
 - 3.
 - 4.
 - 5.
 - 6.
 - 7.
 - 8.
 - 9.
 - 10.
-

LIST OF PRINCIPAL TRANSACTIONS - VACANT

ADDRESS:
APN:
SALE DATE:
SALE PRICE:

ADDRESS:
APN:
SALE DATE:
SALE PRICE:

ADDRESS:
APN:
SALE DATE:
SALE PRICE:

LIST OF PRINCIPAL TRANSACTIONS - IMPROVED

ADDRESS:
APN:
SALE DATE:
SALE PRICE:

ADDRESS:
APN:
SALE DATE:
SALE PRICE:

ADDRESS:
APN:
SALE DATE:
SALE PRICE:

**GUIDELINE INSTRUCTIONS
FOR
EXHIBIT 8-EX-15A “APPRAISAL SUMMARY STATEMENT”**

The purpose of this exhibit is to comply with modifications to the State Uniform Act and to fully inform the grantor of pertinent elements to the valuation process. When you place the pointer on one of the gray boxes and click, a line of text should show across the bottom of the screen. The line of text will give direction concerning completion of the form.

Only include lump sum totals in (do not include individual dollar amounts):

- Improvements Within the Right of Way
- Cost to Cure Damage Items
- Construction Contract Work

When listing comparables, list only comparable address, APN, sale date, and sale price. When relying on other market data for analysis of value, you need to indicate the basis of the Appraiser’s analysis. Insert Appraiser’s Summary of the Basis for Just Compensation on the bottom of page 6.

It is **ONLY** allowable to delete options that are not contained in the appraisal, i.e., for the Comparison Approach, you may delete the Cost Approach and Income Approach blocks of information. However, if more than one approach is addressed in the Valuation, you must include the information on all the approaches used.

Attach the appropriate version of the Summary Statement Relating to the Purchase of Real Property (Exhibit 8-EX-16), based on whether you are using a Valuation Summary Statement or an Appraisal. For use with the Valuation Summary Statement, Item 4 should refer to the “Valuation Summary Statement” and the word “valuation” should appear in Items 4.a. and 4.b. For use with an Appraisal, Item 4 should refer to “Appraisal” and the word “appraisal” should appear in Items 4.a. and 4.b.

VALUATION SUMMARY STATEMENT

(Form #)

CONFIDENTIAL

This document contains personal information and pursuant to Civil Code 1798.21, it shall be kept confidential in order to protect against unauthorized disclosure.

EXHIBIT

8-EX-15C (REV 6/2010)

Page 1 of 8

Dist.	Co.	Rte.	P.M.	Parcel No.	Federal Aid Project No.	Date

Owner:

Date Acquired:

Property Address:

Property to be acquired:

Locale:

Part All

Total Property Area:

Including Access Rights

Yes No

BASIS OF VALUATION

Code of Civil Procedure Section 1263.320 defines Fair Market Value as follows:

- 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.

Recent sales of comparable properties and income data are utilized as appropriate. Full consideration is given to zoning, development potential and the income the property is capable of producing.

BASIC PROPERTY DATA

Interest valued:

Date of valuation:

Applicable zoning:

Area to be acquired:

Highest and best use:

Current use:

VALUATION SUMMARY STATEMENT (Cont.)

(Form #)

EXHIBIT

8-EX-15C (REV 6/2010)

Page 2 of 8

BASIS OF VALUATION

- 1. The Sales Comparison approach is based on the consideration of comparable land and improved sales.

Indicated value by Sales Comparison Approach
See attached sheet for principal transactions.

\$ _____

- 2. The cost approach is based in part on a replacement cost new of improvements less depreciation. Cost information was obtained from cost service publications and/or knowledgeable vendors.

Total Replacement Cost New

\$ _____

Depreciation from all causes

\$ _____ (_____)

Value of Improvements in Place

\$ _____

Land (estimated by direct sales comparison)

\$ _____

Indicated value by Cost Approach

\$ _____

- 3. The income approach is based on an analysis of income and expenses to the property.

Overall Capitalization Rate

_____ %

Net Operating Income

\$ _____

Indicated value by Income Approach

\$ _____

Value of the property being acquired including the following improvements:

Land: \$ _____

Imps: \$ _____

\$ _____

VALUATION SUMMARY STATEMENT (Cont.)

(Form #)

Damages:

Severance Damages: \$ _____

Cost to Cure Damages: \$ _____

Total Damages: \$ _____

Benefits: \$ _____

The amount of any other compensation: \$ _____

JUST COMPENSATION FOR ACQUISITION \$ _____

Rounded To \$ _____

Construction Contract Work

LIST OF PRINCIPAL TRANSACTIONS - VACANT

ADDRESS:
APN:
SALE DATE:
SALE PRICE:

VALUATION SUMMARY STATEMENT (Cont.)

(Form #)

EXHIBIT

8-EX-15C (REV 6/2010)

Page 5 of 8

LIST OF PRINCIPAL TRANSACTIONS - IMPROVED

ADDRESS:
APN:
SALE DATE:
SALE PRICE:

AREAS WITHIN THE RIGHT OF WAY

Sub-parcel

Area

Total Area =

IMPROVEMENTS WITHIN THE RIGHT OF WAY

Item

Size

Lump Sum Total = \$

COST TO CURE DAMAGE ITEMS

Item

Size

Lump Sum Total = \$

VALUATION SUMMARY STATEMENT (Cont.)

(Form #)

EXHIBIT

8-EX-15C (REV 6/2010)

Page 8 of 8

CONSTRUCTION CONTRACT WORK ITEMS

- 1.
 - 2.
 - 3.
 - 4.
 - 5.
 - 6.
 - 7.
 - 8.
 - 9.
 - 10.
 - 11.
 - 12.
-
-

**GUIDELINE INSTRUCTIONS
FOR
EXHIBIT 8-EX-15C “VALUATION SUMMARY STATEMENT”**

The purpose of this exhibit is to comply with modifications to the State Uniform Act and to fully inform the grantor of pertinent elements to the valuation process. When you place the pointer on one of the gray boxes and click, a line of text should show across the bottom of the screen. The line of text will give direction concerning completion of the form.

Only include lump sum totals in (do not include individual dollar amounts):

- Improvements Within the Right of Way
- Cost to Cure Damage Items
- Construction Contract Work

When listing comparables, list only comparable address, APN, sale date, and sale price. When relying on other market data for analysis of value, you need to indicate the basis of the Appraiser’s analysis. Insert Appraiser’s Summary of the Basis for Just Compensation paragraph following Item 3, under “Basis of Valuation.”

It is ONLY allowable to delete options that are not contained in the appraisal, i.e., for the Comparison Approach, you may delete the Cost Approach and Income Approach blocks of information. However, if more than one approach is addressed in the Valuation, you must include the information on all the approaches used.

Attach the appropriate version of the Summary Statement Relating to the Purchase of Real Property (Exhibit 8-EX-16), based on whether you are using a Valuation Summary Statement or an Appraisal Summary Statement. For use with the Valuation Summary Statement, Item 4 should refer to the “Valuation Summary Statement” and the word “valuation” should appear in Items 4.a. and 4.b. For use with the Appraisal Summary Statement, Item 4 should refer to Appraisal Summary Statement.

**SUMMARY STATEMENT RELATING TO THE PURCHASE OF
REAL PROPERTY OR AN INTEREST THEREIN**

(Form #)

The California Department of Transportation is proposing to _____[brief description of the project]_____.

Your property located at _____[address of the subject]_____ is within the project area, and is also identified by your county assessor as Parcel No. _____[APN of subject]_____.

Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the California Relocation Assistance and Real Property Acquisition Guidelines require that each owner from whom the Department of Transportation purchases real property or an interest therein or each tenant owning improvements on said property be provided with at a minimum, a summary of the appraisal of the real property or interest therein, as well as the following information:

1. You are entitled to receive full payment prior to vacating the real property being purchased unless you have heretofore waived such entitlement. You are not required to pay recording fees, transfer taxes, or the pro rata portion of real property taxes which are allocable to any period subsequent to the passage of title or possession.
2. The State will offer to purchase any remnant(s) considered by the State to be an uneconomic unit(s) which is/are owned by you or, if applicable, occupied by you as a tenant and which is/are contiguous to the land being conveyed.
3. All buildings, structures and other improvements affixed to the land described in the referenced document(s) covering this transaction and owned by the grantor(s) herein or, if applicable, owned by you as a tenant, are being conveyed unless other disposition of these improvements has been made. The interest acquired is _____[describe requirement degree of title]_____. The property being purchased comprises _____[area of the acquisition: ___ acres/square feet]_____ and is described in the attached deed and outlined in color on the attached map.
4. The market value of the property being purchased is based upon a market value valuation which is _____[included in the attached Appraisal OR summarized on the attached Valuation Summary Statement]_____ and such amount:
 - a. Represents the full amount of the _____[appraisal OR valuation]_____ of just compensation for the property to be purchased;
 - b. Is not less than the approved _____[appraisal OR valuation]_____ of the fair market value of the property as improved;
 - c. Disregards any decrease or increase in the fair market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired or by the likelihood that the property would be acquired for such public improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant; and
 - d. Does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which the owner is entitled to receive under an agreement with the Department of Transportation.
5. Pursuant to Code of Civil Procedure Section 1263.025 should you elect to obtain an independent appraisal, the Department will pay for the actual reasonable costs up to five thousand dollars (\$5,000) subject to the following conditions:
 - a. You, not the Department of Transportation (Department), must order the appraisal. Should you enter into a contract with the selected appraiser, the Department will not be a party to the contract;

**SUMMARY STATEMENT RELATING TO THE PURCHASE OF
REAL PROPERTY OR AN INTEREST THEREIN (Cont.)**

(Form #)

EXHIBIT
8-EX-16 (REV 1/2008)
Page 2 of 2

-
-
- b. The selected appraiser is licensed with the Office of Real Estate Appraisers (OREA);
 - c. Appraisal cost reimbursement requests must be made in writing, and submitted to the Department of Transportation at _____[insert appropriate address]_____ within ninety (90) days of the earliest of the following dates: (1) the date the selected appraiser requests payment from you for the appraisal; or, (2) the date upon which you, or someone on your behalf, remitted full payment to the selected appraiser for the appraisal. Copies of the contract (if a contract was made), appraisal report, and the invoice for the completed work by the appraiser must be provided to the Department of Transportation concurrent with submission of the Appraisal Cost Reimbursement Agreement. The costs must be reasonable and justifiable.
6. The owner of a business conducted on a property to be acquired, or conducted on the remaining property which will be affected by the purchase of the required property, may be entitled to compensation for the loss of goodwill. Entitlement is contingent upon the _____[insert appropriate reference]_____ ability to prove such loss in accordance with the provisions of Sections 1263.510 and 1263.520 of the Code of Civil Procedure.
 7. If you ultimately elect to reject the State's offer for your property, you are entitled to have the amount of compensation determined by a court of law in accordance with the laws of the State of California.
 8. You are entitled to receive all benefits that are available through donation to the State of California of all or part of your interest in the real property sought to be acquired by the Department of Transportation as set out in Streets and Highways Code Sections 104.2 and 104.12.
-
-

PERSONAL INFORMATION NOTICE

Pursuant to the Federal Privacy Act (P.L. 93-579) and the Information Practices Act of 1977 (Civil Code Sections 1798, et seq.), notice is hereby given for the request of personal information by this form. The requested personal information is voluntary. The principal purpose of the voluntary information is to facilitate the processing of this form. The failure to provide all or any part of the requested information may delay processing of this form. No disclosure of personal information will be made unless permissible under Article 6, Section 1798.24 of the IPA of 1977. Each individual has the right upon request and proper identification, to inspect all personal information in any record maintained on the individual by an identifying particular. Direct any inquiries on information maintenance to your IPA Office.

Co	Rte	Post	Parcel No.
Grantor			

WHEREAS, The State of California seeks to acquire the fee-simple title to certain lands and buildings, including that certain building known as

_____; and,
(Address)

WHEREAS, The State of California and the owner of said building are negotiating a sale of said building.

NOW, THEREFORE, The undersigned makes the following statement of facts and represents to the State of California that each of said facts is true and correct in every detail.

That the undersigned are the tenants in possession under the terms of:

1. An oral lease from month-to-month
 A written lease for a term ending _____ at a monthly rental of \$_____ and that the undersigned has paid all rents to and including the _____ day of _____, 19____, and has paid no rents beyond said date except _____.

2. That the last rental payment was made to and that the next rental payment of \$_____ will be due and payable on the _____ day of _____, 19____.

3. That no offsets are claimed by the undersigned tenants and/or lessees against any rents which have been paid or which may hereafter become due.

That the following offsets are claimed by the undersigned tenants (), lessees (), against future rents:

FULL ACQUISITION OFFSET STATEMENT (Cont.)

(Form #)

EXHIBIT

8-EX-18A (Rev. 6/95)

Page 2 of 2

4. That it is understood and agreed between the undersigned that the following items are considered part of the realty and are owned by the:

LESSOR None

LESSEE None TENANT None

Dated this _____ day of _____, 19 ____

TENANT () or LESSEE ()

GRANTOR (LESSOR)

PERSONAL INFORMATION NOTICE

Pursuant to the Federal Privacy Act (P.L. 93-579) and the Information Practices Act of 1977 (Civil Code Sections 1798, et seq.), notice is hereby given for the request of personal information by this form. The requested personal information is voluntary. The principal purpose of the voluntary information is to facilitate the processing of this form. The failure to provide all or any part of the requested information may delay processing of this form. No disclosure of personal information will be made unless permissible under Article 6, Section 1798.24 of the IPA of 1977. Each individual has the right upon request and proper identification, to inspect all personal information in any record maintained on the individual by an identifying particular. Direct any inquiries on information maintenance to your IPA Office.

WHEREAS, The State of California seeks to acquire certain improvements located at _____

_____; and,
(Address)

WHEREAS, The State of California and the owner of said improvements are negotiating a sale of said improvement.

NOW, THEREFORE, The undersigned makes the following statement of facts and represents to the State of California that each of said facts is true and correct in every detail.

That the undersigned are the tenants in possession under the terms of:

1. An oral lease from month-to-month
 A written lease for a term ending _____.

2. That it is understood and agreed between the undersigned that the following items are considered realty and are owned by the:

LESSOR None

LESSEE None TENANT None

Dated this _____ day of _____, 19 ____

TENANT or LESSEE

GRANTOR (LESSOR)

Dist	Co	Rte	Post
Parcel No.		Exp Auth	

WHEREAS, _____ and the State of California, acting by and through the Department of
(Grantor)
Transportation, have heretofore entered into that certain right of way contract dated _____, which
contract sets forth the terms and conditions under which the State acquired certain rights for State transportation purposes described in
(type of document and number);

WHEREAS, Subsequent to entering into said contract the grantor now desires to perform the work of relocating the irrigation
lines as provided in paragraph 5 of said right of way contract.

WHEREAS, By reasons of the foregoing it is now the desire of the parties hereto to amend said right of way contract.

NOW, THEREFORE, It is agreed by and between the parties hereto as follows: "In lieu of the State's relocating grantor's
irrigation lines as provided in paragraph 6 of said right of way contract, the State shall pay the grantor the additional sum of
\$ _____ and in consideration thereof, grantor shall assume the entire responsibility of relocating the irrigation lines to a
new location outside of the new highway right of way as described in Grant Deed No. _____ on or before _____;
(Date)
and grantor hereby releases and forever discharges the State from all further responsibility regarding the relocation of said irrigation
lines.

All other terms and conditions of contract remain unchanged.

IN WITNESS WHEREOF, The parties hereto have executed this _____ day of _____ 19____.

RECOMMENDED FOR APPROVAL:

(Grantor)

Right of Way Agent

(Grantor)

STATE OF CALIFORNIA
Department of Transportation

Chief, Acquisition Branch

By _____
District Division Chief
Right of Way

ASSIGNMENT OF LEASE-TO STATE

(Form #)

<u>CONFIDENTIAL</u>
<i>This document contains personal information and pursuant to Civil Code 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.</i>

EXHIBIT
8-EX-20

FOR VALUE RECEIVED, the undersigned _____, Lessor, does hereby sell, transfer, and assign unto the State of California, Department of Transportation, all lessor's right, title, and interest in and to that certain attached lease made and entered into on the _____ day of _____, 19__ by and between _____ as Lessor, and _____ as Lessee, covering that certain real property located at _____ in the City of _____, County of _____, State of California.

(OPTIONAL)

Further, said Lessor agrees that all rents shall be prorated as of close of escrow number _____ with _____ Title Company, _____ (Address)

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 Lessor for any period beyond said close of escrow, the undersigned Lessor shall immediately refund such rentals to the State.

LESSOR AND ASSIGNOR

Dated: _____, 19 _____

**INSTRUCTIONS FOR COMPLETING
REQUEST FOR INFORMATION - FORM UCC3**

(Form #)

EXHIBIT

8-EX-21 (New 9/97)

Page 2 of 2

1. Please type or print clearly when completing this form.
2. Please show the name and address of the debtor for whom the information is requested.
 - a. Only one (1) debtor name per UCC3 will be accepted. Please show the debtor name exactly as it should appear in our records. If a personal name is requested, type or print the LAST NAME first.
 - b. Please show only (1) debtor address. "Any Address" may be stated rather than a specific address.
 - c. A social security number (SSN) and/or federal tax number (FTN) is optional. If stated, it will be used to further identify the debtor in our records.

PLEASE NOTE: If you want a very broad search of our records, do not show an SSN/FTN or a specific address for the debtor.
3. Please check the appropriate type of information requested. At least one type must be marked.
4. The signature of the requesting party is required.
5. The RETURN INFORMATION TO section of the UCC3 form must be completed and legible.
6. Please send the original and one copy to the Filing Officer. The original will be retained by the Filing Office and the copy returned with the requested information.

FORM UCC2

(Form #)

This STATEMENT is presented for filing pursuant to the California Uniform Commercial Code

1. FILE NO. OF ORIG. FINANCING STATEMENT	1A. DATE OF FILING OF ORIG. FINANCING STATEMENT	1B. DATE OF ORIG. FINANCING STATEMENT	1C. PLACE OF FILING ORIG. FINANCING STATEMENT
2. DEBTOR (LAST NAME FIRST)			2A. SOCIAL SECURITY NO. OR FEDERAL TAX NO.
2B. MAILING ADDRESS		2C. CITY, STATE	3D. ZIP CODE
3. ADDITIONAL DEBTOR (IF ANY) (LAST NAME FIRST)			3A. SOCIAL SECURITY NO. OR FEDERAL TAX NO.
3B. MAILING ADDRESS		3C. CITY, STATE	3D. ZIP CODE
4. SECURED PARTY NAME MAILING ADDRESS CITY STATE ZIP CODE			4A. SOCIAL SECURITY NO., FEDERAL TAX NO. OR BANK TRANSIT AND A.B.A. NO.
5. ASSIGNEE OF SECURED PARTY (IF ANY) NAME MAILING ADDRESS CITY STATE ZIP CODE			5A. SOCIAL SECURITY NO., FEDERAL TAX NO. OR BANK TRANSIT AND A.B.A. NO.

6. CONTINUATION--The original Financing Statement between the foregoing Debtor and Secured Party bearing the file number and date shown above is continued. If collateral is crops or timber, check here and insert description of real property on which growing or to be grown in item 7 below.

A

RELEASE--From the collateral described in the Financing Statement bearing the file number shown above, the Secured Party releases the collateral described in Item 7 below.

B

ASSIGNMENT--The Secured Party certifies that the Secured Party has assigned to the Assignee above named, all the Secured Party's rights under the Financing Statement bearing the file number shown above in the collateral described in item 7 below.

C

TERMINATION--The Secured Party certifies that the Secured Party no longer claims a security interest under the Financing Statement bearing the file number shown above.

D

AMENDMENT--The Financing Statement bearing the file number shown above is amended as set forth in Item 7 below. (Signature of Debtor required on all amendments.)

E

OTHER

F

7.

8.	(Date) _____ 19____	C O D E	9. This Space for Use of Filing Officer (Date, Time, Filing Office)
			1
By:	SIGNATURE(S) OF DEBTOR(S) (TITLE)		2
			3
By:	SIGNATURE(S) OF SECURED PARTY(IES) (TITLE)		4
			5
		6	

10. Return Copy to

NAME		
ADDRESS		
CITY AND STATE		

INSTRUCTIONS - FORM UCC2

(Form #)

EXHIBIT

8-EX-22 (New 9/97)

Page 2 of 2

INSTRUCTIONS (Rev. 1/90)

1. PLEASE TYPE THIS FORM USING BLACK TYPEWRITER RIBBON.
2. IF THE SPACE PROVIDED FOR ANY ITEM IS INADEQUATE:
 - a. Note "contd." in the appropriate spaces,
 - b. Continue the item(s) preceded by the item No. on an additional 8.5" x 11" sheet,
 - c. Head each additional sheet with the Debtor's name (Last Name First) appearing in item No. 2 of this form. Be sure to attach a copy of the additional sheet to each copy of the form.
3. NUMERICAL IDENTIFICATION: Social Security, Federal Tax, Transit/ABA Numbers and ZIP Codes are to be included if possible, so that Statements may be more readily indexed and information rapidly retrieved through the use of electronic data processing equipment in the Secretary of State's Office.
 - a. If the Debtor, Secured Party or Assignee is an individual, include Social Security Number in the appropriate space.
 - b. If the Debtor, Secured Party or Assignee is other than an individual or a bank, show Federal Taxpayer Number in the appropriate space.
 - c. If the Secured Party or Assignee is a bank, show Transit and ABA Number in the appropriate space.
4. Be sure to indicate type of Statement being filed by checking the appropriate box in item No. 6.
5. Remove Secured Party and Debtor copies.

Send the ORIGINAL AND FIRST COPY with interleaved carbon paper to the Filing Officer with the correct filing fee. The original will be retained by the Filing Officer. The copy will be returned with the filing date and time stamped thereon. Indicate the name and mailing address of the person or firm to whom the copy is to be returned in Item No. 10.
6. FILING FEE: Enclose filing fee* payable to the appropriate Filing Officer.
7. **SIGNATURES:** Before mailing be sure that the Statement has been properly signed. Continuation, Release, Assignment, or Termination Statements require only the signature of the Secured Party of Record. An Amendment requires the signatures of both the Debtor and Secured Party of Record.

* For current fee to the Secretary of State call (916) 445-8061

RIGHT OF ENTRY - LONG FORM

(Form #)

Date: _____

Dist	Co	Rte	Post
Parcel No.		Exp Auth	
Project ID No.			

State of California
Department of Transportation

Mr./Ms. _____

District Director of Transportation
District ____
(Address)

Permission is hereby granted to enter upon our land, _____ for the purpose of constructing or improving a public highway and accomplishing all necessary incidents thereto.

It is understood that this permission is not a waiver in any way of the right of compensation for such land or of any remedy authorized by law to secure payment therefor. It is the intent of the State of California, Department of Transportation, to pay just compensation to the Owner(s) for permission to enter the subject property and to construct the project.

This permission is granted in consideration of the location, improvement and construction of such highway and incidents thereto, which it is understood is required by the State of California, Department of Transportation, with the understanding that you will hereafter without unnecessary delay, negotiate with the undersigned, and any other person, if any, having any right, title or interest in said property, to agree upon terms of compensation and that, if any agreement cannot be reached you will promptly commence eminent domain proceedings, including a deposit of funds to support an Order for Possession, to have such a compensation determined.

Section 1245.235 of the Code of Civil Procedure requires the State of California, Department of Transportation, to give each person whose property is to be acquired by eminent domain notice and a reasonable opportunity to appear before the California Transportation Commission and be heard on the matters referred to in Section 1240.030 of the Code of Civil Procedure, which provides:

The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

- (1) The public interest and necessity require the project.
- (2) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- (3) The property sought to be acquired is necessary for the project.
- (4) The offer required by Section 7267.2 of the Government Code has been made to the owner or others of record. (If an offer has not been made, an appraisal will be prepared as soon as practicable and an offer made of the full amount of such appraisal.)

RIGHT OF ENTRY - LONG FORM (Cont.)

(Form #)

EXHIBIT

8-EX-23 (REV 2/2016)

Page 2 of 2

By granting this irrevocable right to possession and use of the parcels to State, Owner agrees to the following: (1) Owner specifically waives the notice required by Code of Civil Procedure Section 1245.235 of the hearing of the matter referred to in Code of Civil Procedure Section 1240.030 and the adoption of the resolution of necessity by the California Transportation Commission authorizing the taking of the property described in Exhibit A; (2) Owner shall not object to the filing of an eminent domain proceeding to acquire the property described in Exhibit A; and (3) in any eminent domain action filed by State to acquire the property described in Exhibit A, Owner shall not challenge State's right to take such property, and the only issue shall be the amount of just compensation for the property.

It is understood that the State of California, Department of Transportation, will pay interest from _____ on the just compensation paid by the State of California, Department of Transportation. The rate of interest will be the rate of earnings of the Surplus Money Investment Fund and computation will be in accordance with Section 1268.350 of the Code of Civil Procedure. Interest will be computed to and including the date of deposit of compensation.

Sincerely,

RECOMMENDED FOR APPROVAL:

By _____
Right of Way Agent

By _____
Chief, Acquisition Branch

ACCEPTED:

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

By _____
**District Division Chief
Right of Way**

RIGHT OF ENTRY - SHORT FORM

(Form #)

Date: _____

_____	_____	_____	_____
Dist	Co	Rte	Post
_____		_____	
Parcel No.		Exp Auth	

		Project ID No.	

State of California
Department of Transportation

Mr./Ms. _____

District Director of Transportation
District ____
(Address)

Permission is hereby granted to enter upon my (our) land as outlined on the attached map which is part of this Right of Entry, for the purpose of _____.

It is understood that this permission is not a waiver in any way of the right of compensation for such land or of any remedy authorized by law to secure payment therefor. It is also the intent of the State of California, Department of Transportation, to pay just compensation to the Owner(s) for permission to enter the subject property and to construct the project.

If an agreement for the purchase of the required property cannot be reached, you will commence eminent domain proceedings including a deposit of funds to support an Order for Possession to have my compensation determined.

It is understood that the State of California, Department of Transportation, will pay interest from _____ which will be computed on the final compensation for the property described herein. The rate of interest will be the rate of earnings of the Surplus Money Investment Fund and computation will be in accordance with Section 1268.350 of the Code of Civil Procedure. Interest will be computed to and including the date of deposit of compensation.

Sincerely,

RECOMMENDED FOR APPROVAL:

By _____
Right of Way Agent

By _____
Chief, Acquisition Branch

ACCEPTED:

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

By _____
**District Division Chief
Right of Way**

POSSESSION AND USE AGREEMENT

(Form #)

POSSESSION AND USE AGREEMENT

DATE		
CO	RTE	POST
PARCEL NO.	EXP AUTH	PROJECT ID NO.
APN		

This Possession and Use Agreement (“Agreement”) is made on _____, 20____, by and between the State of California, acting by and through the Department of Transportation (“State”), and _____ (“Owner”), who shall be collectively referred to as the “Parties.”

RECITALS

A. State requires immediate possession and use of Owner’s real property to construct a State highway project. Owner’s property is located in _____ County, California, legally described in the attached Exhibit “A” and identified on the Right of Way map in the attached Exhibit “B.”

B. Property is designated by State as Parcel No[s]. _____ (the “Parcel”). The Parcel is required for the purpose of constructing a portion of State Highway Route ____ (the “Project”). The purpose of this Agreement is to allow the State to proceed with construction of the Project without delay.

C. The Parties acknowledge and agree that any delay in the start of construction of the Project is contrary to public interest. It is the intent of State to offer fair-market compensation to Owner for permission to enter the Parcel and to construct the Project, and as consideration for the rights set forth in the paragraph entitled “Possession,” below. State has made a firm written offer to pay the total sum of \$_____ to Owner and any other persons having an interest in the Parcel. This amount does not include compensation for any loss of business goodwill, pre-condemnation damages, loss of rent or any other claims for just compensation except for the State’s appraised fair market value of the Parcel (and, if applicable, severance damages). This amount does not include reimbursement for relocation benefits which will be handled pursuant to state and federal regulations and policies. The Owner has not accepted this offer.

OPERATIVE PROVISIONS

In consideration of the sum to be paid to Owner and in consideration of the foregoing recitals and the promises, covenants and any other conditions set forth in this Agreement, State and Owner agree as follows:

Possession

1. Owner grants to State and its contractors, agents, representatives, employees and all others deemed necessary by State, the irrevocable right to exclusive possession and use of the Parcel, including but not limited to, the right to remove and dispose of any and all improvements within and/or straddling the right of way. In consideration for this irrevocable grant of possession and use, State will tender into escrow the sum of \$_____. State shall have the right to possess the Parcel and begin construction of the Project on the date the sum is paid into escrow.

Just Compensation and Appraisal

2. Owner acknowledges that the sum referenced in paragraph 1 represents the full amount of the State-approved appraisal of what State believes is just compensation owed for the acquisition of the Parcel. Should the Parties fail to reach a settlement and it becomes necessary for State to file a condemnation action to acquire the Parcel, the Parties agree the amount deposited into escrow shall not be admissible as evidence of value in such condemnation proceeding. The Parties agree that the deposit and payment under this Agreement shall be equivalent to a deposit and payment under California Code of Civil Procedure section 1255.010 and that the basis for such deposit and payment, including but not limited to any appraisal, shall be governed by Code of Civil Procedure section 1255.060. Accordingly, the Parties agree that the amount deposited or withdrawn under this Agreement may not be given in evidence or referred to in any trial on the issue of compensation and further agree that any appraiser who prepared any report or statement concerning the deposit may not be called to testify at any such trial.

Escrow

3. This transaction will be handled through an escrow with _____, Escrow No. _____. State shall pay all escrow fees incurred in this transaction. Owner shall be entitled to interim disbursement of \$_____ from the sum referred to in paragraph 1, less any amounts payable to any other persons having an interest in the Parcel. Any unearned rents will be prorated in escrow and State shall be credited with any outstanding security deposits. Owner shall not be entitled to receive any proceeds until:

- a. All holders of liens and encumbrances on the Parcel have received full payment for all principal and interest due to them and have executed a reconveyance of their interests in the Parcel; and
- b. All other parties having interests in the Parcel have received payment or have consented to a payment to Owner; and
- c. State has acknowledged in writing that it concurs that all other parties having interests in the Parcel have received full payment or have consented to Owner's withdrawal.

**** See *Optional Paragraph Checklist*.**

4. This escrow shall remain open until either a final settlement, or until termination of this Agreement, or until a Final Order of Condemnation under section 1268.030 of the California Code of Civil Procedure is entered by the court and recorded by State. Any sum disbursed to Owner from this escrow shall be deducted from the ultimate amount received by Owner as a result of any settlement, award, or verdict of just compensation for the Parcel.

Effective Date

5. This Agreement is effective as of _____ (the "Effective Date"). From and after the Effective Date, Owner shall not assign, sell, encumber or otherwise transfer all or any portion of their interest in the Parcel, or the property, without first obtaining State's prior written consent.

Taxes

6. Owner agrees to submit payment, when due, to the County tax collector for all taxes and special assessments on the Parcel that are due during the period from the date of possession (as set forth in paragraph 1 of this Agreement) to the date title transfers to the State. Title transfers to the State on the date the Grant Deed or Final Order of Condemnation is recorded in the office of the County recorder. Owner shall not be required to pay taxes or special assessments on the Parcel on or after the date title transfers to the State. After the date title transfers to the State, the State will request that the County tax collector cancel taxes and/or special assessments for the period from the date of possession to the date title transferred to the State. After the tax cancellation request is made by the State, Owner may file a claim with the County tax collector for a refund of any tax overpayment. Notwithstanding any other provision of this Agreement, no cancellation shall be made of all or any portion of any taxes that were due prior to the date of possession but which were unpaid; escrow shall pay in a timely manner all delinquent property taxes due from the sums deposited into escrow. (California Revenue and Taxation Code section 5084.)

Eminent Domain Proceedings

7. This Agreement is made with the understanding that State will continue to negotiate in good faith with Owner to acquire its interest in the Parcel by direct purchase. It is further understood that in the event an agreement for purchase is not reached within _____ (***Insert: # of months*) of the Effective Date of this Agreement, such failure will be an acknowledgement that the negotiations to acquire the Parcel have proved futile, and State shall have the right to file a complaint in eminent domain to acquire title to the Parcel. Such complaint shall be filed within a reasonable time after the time period provided in this paragraph has expired.

8. If State begins proceedings in eminent domain, it is understood and agreed that this Agreement shall continue in effect until either a settlement is reached or a Final Order of Condemnation under section 1268.030 of the California Code of Civil Procedure is entered by the court and recorded by the State.

Waiver Notice Pursuant to Code of Civil Procedure Section 1245.235

9. Section 1245.235 of the California Code of Civil Procedure requires the State of California, Department of Transportation, to give each person whose property is to be acquired by eminent domain notice and a reasonable opportunity to appear before the California Transportation Commission and be heard on the matters referred to in section 1240.030 of the Code of Civil Procedure, which provides:

The power of eminent domain may be exercised to acquire property for a proposed project only if all of the following are established:

- a. The public interest and necessity require the project.
 - b. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
 - c. The property sought to be acquired is necessary for the project.
 - d. The offer required by section 7267.2 of the Government Code has been made to the Owner or others of record.
10. By granting this irrevocable right to possession and use of the Parcel to State, Owner agrees to the following:
- a. Owner specifically waives the notice required by Code of Civil Procedure section 1245.235 of the hearing on the matters referred to in Code of Civil Procedure section 1240.030, and Owner shall not object to the adoption of the resolution of necessity by the California Transportation Commission authorizing the taking of the property described in Exhibit "A."
 - b. Owner shall not object to the filing of an eminent domain proceeding to acquire the property described in Exhibit "A."
 - c. In any eminent domain action filed by State to acquire the property described in Exhibit "A," Owner shall not challenge State's right to acquire such property, and the only issue shall be the amount of just compensation for the property.
-

Refund

11. Owner agrees that in the event the ultimate amount of any settlement, award, or verdict is less than the total of the sums paid to and withdrawn by Owner, the Owner shall refund the difference including interest at the apportionment rate of interest as provided in Code of Civil Procedure section 1268.350 to State.

Waiver

12. Owner waives any right to challenge State's right to possess and use the Parcel in any subsequent eminent domain proceedings filed by State. Owner also waives all claims and defenses in its favor in any subsequent eminent domain proceeding, except a claim for greater compensation.

Date of Valuation

13. In the event proceedings in eminent domain are begun, the date of valuation for determining the amount of just compensation for the Parcel shall be _____ ***【**Insert: the date State takes possession of the Parcel OR the date which State files the complaint in such proceedings.】***

Interest

14. Compensation awarded in an eminent domain proceeding shall draw interest as prescribed by section 1268.350 of the California Code of Civil Procedure. Owner shall be entitled to receive interest on any sum received as compensation for its interest in the Parcel, whether pursuant to this Agreement, a subsequent settlement or court judgment, beginning on the date State takes possession of the Parcel pursuant to this Agreement and ending on the earliest of the dates as provided in Code of Civil Procedure section 1268.320.

Hazardous Materials

15. If any hazardous materials or waste (as defined by California Health and Safety Code section 25100, et. seq., and/or 42 U.S.C. §9601, et. seq.) are present on the Parcel on the date State takes possession of the Parcel, Owner shall be responsible for and bear the entire cost of all removal, disposal, cleanup and decontamination which may be required because of these hazardous materials.

Owner shall further hold State, its officers and employees harmless from all responsibility, liability and claims for damages to persons or property resulting from the existence or use of hazardous materials which are present on the Parcel on the date State takes possession under this Agreement.

Abandonment of Proceeding

16. Under section 1268.510 of the California Code of Civil Procedure, at any time after the commencement of proceedings in eminent domain, State reserves the right to abandon the proceeding in whole or in part.

***** See Optional Paragraph Checklist re Ceasing Business Operations and Rental Units.***

Authority to Execute and Bind

17. Each of the Parties represents and warrants that each of the persons executing this Agreement has full and complete legal authority to do so and thereby binds the party to this Agreement.

Entire Agreement

18. This Agreement reflects the entire agreement between the Parties and shall supersede all prior or contemporaneous oral or written understandings, statements, representations or promises between the Parties concerning the matters contained herein.

Governing Law

19. This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said state. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the Parties.

Successors in Interest

20. This Agreement shall be binding upon and inure to the benefit of the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the Parties.

Understanding of Agreement

21. This Agreement has been negotiated in good faith and each party warrants and represents that in executing this Agreement, they are not relying upon any representation, promise, inducement or statement made in negotiation that has not been included in the terms of this Agreement.

Fees and Costs

22. Except as otherwise provided in this Agreement, each party shall bear all costs (including expert and appraisal fees) (excluding appraisal fees not to exceed \$5,000 pursuant to section 1263.025 of the California Code of Civil Procedure) and attorneys' fees individually incurred in connection with negotiating the matters described in this Agreement.

Severability

23. In case any part, term, portion or provision of this Agreement is determined to be illegal, invalid or unenforceable, the remaining parts, terms, portions and provisions shall remain valid, enforceable, and in full force and effect.

Amendment to Agreement

24. This Agreement may only be amended by written agreement, executed by all Parties.

Counterparts

25. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

POSSESSION AND USE AGREEMENT (Cont.)

(Form #)

EXHIBIT

8-EX-25 (REV 9/2011)

Page 6 of 6

Memorandum of Agreement

26. State shall record a memorandum of this Agreement.

**** See Optional Paragraph Checklist re Indemnification.**

DATED: _____
OWNER _____

RECOMMENDED FOR APPROVAL [per delegations]:

DATED: _____ By: _____
[Name]
Right of Way Agent

DATED: _____ By: _____
[Name]
Chief, Acquisition Branch

APPROVED BY:

DATED: _____ STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
[Name]
Deputy District Director, Right of Way

POSSESSION AND USE AGREEMENT CHECKLIST

(Form #)

EXHIBIT

8-EX-25 (REV 9/2011)

Page 1 of 2

POSSESSION AND USE AGREEMENT CHECKLIST

1. Fill in the “blanks” in the opening paragraph and in paragraphs A, B, C under “Recitals.”
2. Fill in the “blanks” with the appropriate information for each paragraph listed below:
 - 1 - **Possession**
 - 3 - **Escrow**
 - 5 - **Effective Date**
 - 7 - **Eminent Domain Proceedings** (**INSERT:** # of months State will have to file a complaint in eminent domain if an agreement cannot be reached. ****IMPORTANT: DO NOT USE # OF DAYS.** Use # of months (*i.e., three months, six months, etc.*). This will avoid confusion as to “working days” or “business days,” etc.
 - 13 - **Date of Valuation** (**INSERT:** \in the date State takes possession of the Parcel **OR** \notin the date which State files the complaint in such proceedings.)
 - 22 - **Fees and Costs.**
3. Review the list of **Optional Paragraphs** and decide if any apply. Search for ** in the Agreement and insert the appropriate Optional Paragraph(s).
4. Search for and delete all ** and instructions with **.
5. Review Agreement to ensure all issues (blanks) have been addressed.
6. Renumber paragraphs if necessary.
7. Consult with the Legal Department if there are questions.
8. Insert names for signature blocks.
9. Prepare a Memorandum of Possession and Use Agreement; must be notarized and recorded immediately after execution.

OPTIONAL PARAGRAPHS

- Escrow**
¶ 3 To confirm there is no lease or tenancy **INSERT:**
- d. Owner represents and warrants to State that neither the Parcel nor the property is subject to any lease or tenancy, and there is no party other than Owner who is entitled to any proceeds for the acquisition or damaging of the Parcel.
-

POSSESSION AND USE AGREEMENT CHECKLIST (Cont.)

(Form #)

EXHIBIT

8-EX-25 (REV 9/2011)

Page 2 of 2

Ceasing Business Operations *(Use this title.)*

¶# - If there is a business operating on the property, INSERT PARAGRAPH, PARAGRAPH # & FILL IN DATES & TIMES:

#. Owner shall cease all business operations and related activities on the Parcel no later than _____ a.m. / p.m. on _____, 20____, and shall fully vacate and remove any and all fixtures, equipment and personal property from the Parcel no later than _____ a.m. / p.m. on _____, 20____. If Owner has not fully vacated the Parcel by _____ a.m. / p.m. on _____, 20____, State may obtain an immediate Writ of Possession pursuant to California Code of Civil Procedure sections 512.010 and 1230.050.

Rental Units *(Use this title.)*

¶# - If there is a tenant on the parcel, INSERT PARAGRAPH, PARAGRAPH # & FILL IN appropriate information:

#. State agrees to pay Owner lost rental for the tenancy from the date vacated until the date State acquires possession under this Agreement. The Parties agree that the monthly rental for tenancy is/are as follows:

[list rental]

The Parties further agree that payment to Owner of lost rental hereunder is in addition to and does not constitute just compensation, severance damages, or any other damages allowable under Part 3, Title 7 of the Code of Civil Procedure (the Eminent Domain Law). In addition, the Parties agree that payment for lost rental hereunder is made solely for purposes of leaving the tenancy vacant until the date of possession, at which time the leases/rental of such tenancy terminate by operation of law pursuant to Code of Civil Procedure section 1265.140. Owner shall not claim nor be entitled to any additional lost rental under this Agreement or in any eminent domain proceedings.

Indemnification *(Use this title.)*

¶# - If Owner requests indemnification, INSERT:

#. State agrees to indemnify, defend, and hold harmless _____ [Owner] 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.

- REVIEW AGREEMENT.
- HAVE ALL ISSUES BEEN ADDRESSED?
- IS ALL THE APPROPRIATE INFORMATION FILLED IN?
- ARE ALL PARAGRAPHS SEQUENTIALLY NUMBERED?
- HAVE PAGES FROM THE CHECKLIST BEEN REMOVED FROM THE AGREEMENT?

CONSTRUCTION PERMIT

(Form #)

_____, California

_____, 19 ____

_____ Grantor _____

_____	_____	_____	_____
Dist	Co	Rte	Post
_____		_____	
Parcel No.		Exp Auth	

It is mutually agreed by the undersigned and the State of California as follows:

1. The undersigned represent(s) and warrant(s) that they are (he/she is) the owner(s) of the property shown in red on the map attached hereto and made a part hereof, and that they have (he/she has) the exclusive right to give this permit.
2. It is understood and agreed by and between the parties hereto that this construction permit will terminate upon the completion of the highway construction project.
3. The State of California, or its agent, is granted the right to enter upon the grantor's property as necessary for the purposes of _____

RECOMMENDED FOR APPROVAL:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____
Right of Way Agent

By _____
District Division Chief
Right of Way

By _____
Chief, Acquisition Branch

PERMIT TO ENTER AND CONSTRUCT

(Form #)

Date: _____

Dist	Co	Rte	Post
Exp Auth			

Mr.
 District Director of Transportation
 State of California
 Department of Transportation
 P. O. Box
 CA

Dear Mr.

Permission is hereby granted the State, or its authorized agent, to enter upon my property as shown on the attached map for purposes of

This permission is granted in consideration of the benefits which may accrue to my property.

This permission shall terminate upon completion of the project known as “ _____ .”

This permission is granted in consideration of the location, improvement, and construction of such highway and incidents thereto, which it is understood is required by the State of California, Department of Transportation.

RECOMMENDED FOR APPROVAL:

By _____
Right of Way Agent

By _____
Chief, Acquisition Branch

ACCEPTED:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____
District Division Chief
Right of Way

GOODWILL INFORMATION SHEET

(Form #)

(Loss of and Compensation for Such Loss)

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 may be compensated for the loss of goodwill. That law states:

1263.510(a) 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 all of the following:

1. The loss is caused by the taking of the property or the injury to the remainder.
 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 payments under Section 7262 of the Government Code.
 4. Compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.
- (b) 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.

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 of proof on the business owner to prove the loss.

You may agree to sell the real property rights to the State and reserve the right to make a claim for the loss of goodwill at a later date when your business records, tax returns, or other documents reflect that a loss has occurred.

At this stage of the process of acquiring your business property rights it cannot be reasonably determined what compensation will be due you for loss, if any, of goodwill.

The Department of Transportation requests, therefore, that you assist the Acquisition Agent in providing information so that the Agent may in turn provide you with appropriate assistance.

If you have any questions regarding this or other items relating to the acquisition of your property please call me at _____.

Right of Way Agent

Bureau of Land Management**and****Federal Highway Administration**

- I. Purpose.** This Interagency Agreement provides procedures by which the Secretary of Transportation acting through the Federal Highway Administration (FHWA) may appropriate public lands for highway rights of way and sources of materials for the Federal-aid Highway System and those classes of highways provided for in Chapter 2, 23 U.S.C. The lands appropriated are for use by the states for highways and/or highway material purposes. The appropriation is subject to conditions the Secretary of the Interior acting through the Bureau of Land Management (BLM) may deem necessary for adequate protection and utilization of the public lands and protection of the public interest.
- II. Authority.**
- A. The Federal Land Policy and Management Act of 1976, 90 Stat. 2766 43 U.S.C. 1737.
 - B. The Act of August 27, 1958, as amended, 23 U.S.C., Sections 107(d) and 317.
- III. Procedures.** BLM and FHWA recognize the need for streamlined procedures by which the FHWA may appropriate BLM-administered public lands for highway and highway materials for the Federal-aid System and those classes of highways provided for in Chapter 2, 23 U.S.C. To accelerate the appropriation process, FHWA and BLM agree to the following procedures:
- A. FHWA will notify BLM, as far in advance as possible, of any highway project being contemplated and arrange a meeting with the BLM authorized officer and the participating State agency to discuss the proposed project to ascertain whether or not the appropriation of the lands for highway or highway materials is consistent with BLM resource management programs and develop a plan of action to complete the appropriation within a reasonable time.
 - B. It will be the responsibility of FHWA to comply with the National Environment Policy Act and other legal requirements in arriving at its determination that the lands are necessary for the project.
 - C. FHWA shall submit to the authorized officer of BLM a written request for appropriation, accompanied by a map showing the location of lands it desires to appropriate, a statement of its determination that the lands are necessary for the project, a copy of the environmental assessment, and/or a copy of the environmental impact statement.
 - D. The authorized officer of the BLM, after receipt of the request and attachments, shall review the material and, within a period of four months, notify FHWA, in writing, either (a) that the appropriation would be contrary to the public interest or inconsistent with the purposes for which the public lands or materials are being managed or (b) that BLM is in agreement with the appropriation subject to conditions of adequate protection and utilization of the public lands. If within a period of four months, the Bureau of Land Management has not responded, in writing, to the request for appropriation, such lands may be considered appropriated by FHWA and transferred to the State for right of way purposes as requested.
 - E. Disagreement to the appropriation will be in the form of a letter, from BLM to FHWA, clearly stating the reasons why such an appropriation would be contrary to the public interest or inconsistent with the purposes for which the public lands or materials are being managed.

INTERAGENCY AGREEMENT (Cont.)

(Form #)

EXHIBIT

8-EX-31

Page 2 of 2

- F. Agreement to the appropriation will be in the form of a "Letter of Consent" which clearly states the conditions under which the agreement is given. These conditions involve the following:
 - 1. Resolution of existing valid claims and use authorizations.
 - 2. Granting authority to FHWA within the appropriation is limited to rights of way for the Federal-aid Highway System and those classes of highways provided for in Chapter 2, 23 U.S.C.
 - 3. BLM retains the authority to grant additional right of way uses within and across the appropriated highway or material site right of way. Such additional uses include, but are not limited to, transportation and utility systems for water, power, communications, oil and gas, or any other facilities which are in the public interest, are not directly associated with highway use, operation and related highway purposes and are not inconsistent with Title 23 of the U.S. Code. The FHWA shall be consulted prior to the issuance of such authorizations.
 - 4. The appropriation will automatically terminate if construction is not started within ten (10) years or sooner if agreed upon.
 - 5. Conditions providing for development and use of the adjacent public lands, such as, reasonable access and signing.
 - 6. Conditions protecting the adjacent public lands from right of way construction and maintenance activities which may cause off right of way adverse effects, such as, wildfire, chemical control of vegetation and animals, runoff drainage and revegetation with non-native species.
- G. FHWA, when transferring the highway right of way or highway material appropriation to the State, will make it subject to BLM's conditions as contained in the "Letter of Consent". FHWA will administer these conditions. BLM will work with or through FHWA when they observe non-compliance to the appropriation "Letter of Consent" conditions.
- H. When the need for the appropriation no longer exists and the State has reasonably rehabilitated the area to protect the public and environment, FHWA will notify BLM in writing. Upon receipt of this notice and acceptance of the rehabilitation, the lands appropriated shall revert to the BLM.
- I. A copy of the right of way use document from FHWA to the respective state shall be furnished to the BLM authorized officer.
- J. Amendments to or modifications of this Interagency Agreement may be initiated by either party, but shall not become effective or binding until agreed upon by both parties.

IV. Tenure. This document shall become effective upon the revocation of 43 CFR 2820. Roads and Highways and shall remain in effect unless terminated by mutual agreement or one agency after giving the other agency thirty (30) days' prior written notice.

Robert F. Burford
Director
Bureau of Land Management

R. A. Barnhart
Administrator
Federal Highway Administration

Date _____

Date _____

**Agreement for the Transfer of Control and Possession
of Land Owned by the State for Highway Purposes**
Road _____

THIS AGREEMENT, made and entered into this _____ day of _____, 19 ____ by and between _____, a State agency, hereinafter called "_____" existing pursuant to the provisions of the Government Code of the State of California, and the Department of Transportation organized and exercising functions pursuant to the provisions of the Streets and Highways Code of the State of California, hereinafter called "Transportation",

WITNESSETH:

WHEREAS, "_____" has control and possession of certain lands owned by the State of California located in the County of _____, said lands being hereinafter particularly described; and

WHEREAS, "Transportation" proposes to widen and otherwise improve the existing State highway located adjacent to said lands, and for such purposes proposes that the control and possession of said land hereinafter described be transferred from "_____" to "Transportation", to facilitate the widening and improvement of said highway, and has applied to "_____" for such transfer of the control and possession thereto; and

WHEREAS, "_____" desires to cooperate with "Transportation" and to transfer the control and possession of said lands for such highway purposes.

NOW, THEREFORE, In consideration of the foregoing and pursuant to the provisions of Section 14673 of the Government Code of the State of California, "_____" hereby transfers unto "Transportation" and "Transportation" accepts, for the construction of a public highway and for all purposes incident thereto, the control and possession of the following described land owned by the State of California, situated in the County of _____, State of California:

(description)

Transportation will pay _____ the sum of \$ _____ which is the appraised value of the property transferred.

IN WITNESS WHEREOF, The parties hereto, by their respective officers thereunto duly authorized, have executed this agreement the day and year first above written.

By _____
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____
STATE OF CALIFORNIA
DEPARTMENT OF _____

APPROVED AS TO FORM

(Form #)

RECOMMENDED FOR APPROVAL:

District Division Chief
Right of Way

District Director of Transportation

By _____
Right of Way Agent
Right of Way

APPROVED AS TO FORM AND PROCEDURE

By _____
Attorney

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____
Chief, Division of Right of Way

**APPROVED:
DEPARTMENT OF GENERAL SERVICES**

By _____
Senior Real Estate Officer
Office of Real Estate and Design Services

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
**SUMMARY OF ESTIMATES OR ACTUAL COSTS-
 FUNCTIONAL REPLACEMENT**
 (Form #)

EXHIBIT
 8-EX-34 (Rev. 9/97)

A summary should be prepared to show applicable cost items. A suggested format is as follows:

<u>Cost Items</u>	<u>Acquisition Based On Market Value Concept</u>	<u>Cost to Acquire Substitute Property</u>	
Land	\$ _____	\$ _____	\$ _____
Buildings	_____	_____	
Facilities	_____	_____	
Damages	_____	_____	
Moving Costs	_____	_____	
Replacement Housing	_____	_____	
Other Items	_____	_____	\$ _____
Total	\$ _____		
		Cost to Cure or Functionally Replace	
Buildings		\$ _____	
Facilities		_____	
Other Items		_____	(+) _____
SUBTOTAL			_____
		Nonparticipating Items (Betterments)	
(Identify Items)		\$ _____	
		_____	(-) _____

TOTAL			\$ _____

NOTE: Exact breakdowns need not be given if property estimates are appropriate. Moving costs, replacement housing and incidental expenses may be on averages or percentages.

MEMORANDUM OF POSSESSION AND USE AGREEMENT

(Form #)

MEMORANDUM OF POSSESSION AND USE AGREEMENT

This Memorandum of Possession and Use Agreement is made on _____, 20____, by and between the State of California, acting by and through the Department of Transportation (“State”), and _____ (“Owner”), who shall be collectively referred to as the “Parties.”

The Parties acknowledge and agree as follows:

1. **Premises:** Owner grants State the permission to enter and use Owner’s real property to construct a State Highway project. Owner’s property is located in _____ County, California, legally described in the attached Exhibit “A” and identified on the Right of Way map in the attached Exhibit “B.” The property is designated by State as Parcel No[s]. _____ (the “Parcel”).

2. **Term:** Owner grants to State and its contractors, agents, representatives, employees and all others deemed necessary by State, the irrevocable right to exclusive possession and use of the Parcel, including but not limited to, the right to remove and dispose of any and all improvements within and/or straddling the right of way. This Agreement shall be binding and inure to the benefit of the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the Parties.

3. **Other Terms and Conditions:** The effective date of the Possession and Use Agreement is _____. All covenants, promises and conditions set forth in the unrecorded Possession and Use Agreement are incorporated by reference into this Memorandum.

4. **Purpose of Memorandum of Possession and Use Agreement:** The purpose of this Memorandum is for recordation and it in no way modifies the terms and conditions of the Possession and Use Agreement.

DATED: _____

STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION

By: _____
[Name]
Deputy District Director, Right of Way

DATED: _____

OWNER

ESCROW INSTRUCTIONS - SAMPLE

(Form #)

ESCROW INSTRUCTIONS

MAIL TO: Title Company

Date: _____

Dist/Co/Rte/PM: _____

EA: _____

Project ID No.: _____

Attn: Your No.

Parcel: _____

We are enclosing an original and one copy of a Possession and Use Agreement for Parcel No. _____ from _____ (Owner).

Pursuant to General Instructions on the reverse side of this letter, you are authorized to disburse the sum of \$_____ as follows:

Pay:

1. Any delinquent general and/or specific County taxes (or assessments) as specified in Item 8 of General Instructions.

Balance to:

Address:

Possession to be taken subject only to current taxes as covered in Item 7 of General Instructions and those exceptions in your report dated _____, and numbered as follows: _____, Title Report No. _____.

Special Instructions: This is a Possession and Use Agreement of (an improved) (an unimproved) (a commercial) (a residential) property. The property address is _____. There are (no) trust deeds on the property. When funds are received and ready for disbursement, please notify this office by Fax at (619) 688-2570. Also, please notify _____, Owner. Owner's telephone number is _____.

NOTE: Owner may elect to leave funds in escrow pending acquisition of his property. Also, escrow instructions may be amended within 120 days.

The State's negotiator for this transaction is: _____.

PARCEL PROGRESS RECORD

(Form #)

PARCEL NO. _____

Grantor _____ Agt. _____

Vesting Change _____ Date _____

E.A. _____ Co. _____ Rte. _____

Full Take _____ 4 Part Take _____ ACLTA _____

Settlement Amount: \$ _____

Date Contract Signed _____ Date Contract Approved _____

Sched. to Acctg. _____ To HQ _____

Deed Recorded _____

Serial No. _____ Book _____ Page _____

Tax Cancelled _____ O.P. Date _____

Policy Received _____ To R/W Eng. _____

Memo of Final Title To HQ _____

PREMIUM-Policy of Title
Over 36 Months \$ _____

Escrow Fee \$ _____

Recon. Fees..... \$ _____

CLTA Endorsement..... \$ _____

Date Paid _____ Amount Paid..... \$ _____

CONDEMNATION

People vs. _____

S.C.C. No. _____ Parcel No. _____

WITHHELD--DIRECT PAYMENT

PAYEE _____

\$ _____

Sch. No. _____ H.O.S. No. _____

To Acctg. _____ To HQ _____

ASSESSORS to _____

Prelim. TR Ordered by _____ Date _____

Escrow No. _____ Title Co. _____

Prelim. Ordered _____ Rec'd _____
Date _____

Fee: _____ Per Contract 19__/19__ Paid _____

Vesting Date _____

Continuation TR Updates Ordered

By _____ Date _____

Fee \$ _____ Paid _____

By _____ Date _____

Fee \$ _____ Paid _____

Instructn. & Deed to Title Co. _____ Recorder _____

Q.C.D./Doc. to Title Co. _____ Recorder _____

Certified Closing Statement Received _____

WARRANT TO ESCROW AGENT

(Form #)

ABC Escrow Company

Dist	Co	Rte	Post
Parcel No.			

ESCROW INSTRUCTIONS

Litigation Guarantee No. _____

Escrow No. _____

Service Contract No. _____

Grantor(s) _____

The State of California, Department of Transportation, has entered into a contract with the grantor(s), listed above, for the acquisition of property required for transportation purposes. Enclosed for deposit into Escrow No. _____ is the original grant deed and statements of information applicable to these grantors.

You will receive a warrant in the amount of \$_____, which is the consideration in this transaction. When you close escrow, you are authorized to release the funds to those persons legally entitled to such sums. Concurrently, you should record all instruments necessary to vest title in the State and thereafter and as soon as feasible issue your policy of title insurance. (Please attach an endorsement to the policy to cover access rights which have been relinquished to the State.)

Current taxes shall be processed pursuant to Section 5086 of the Revenue and Taxation Code, which reads in part, "The portion of the current taxes and any penalties and costs that are allocable to the part of the fiscal year that ends 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." Notice to the Tax Collector will be given by the State to cancel taxes effective with the close of escrow.

You are authorized to deduct from the amount due grantor an amount sufficient to pay any delinquent taxes, together with penalties and interest thereof, for any fiscal year prior to the fiscal year in which this escrow closes.

You are further authorized to deduct from the amount due grantor an amount sufficient to pay any delinquent taxes, together with penalties and interest thereof, for any fiscal year prior to the fiscal year in which this escrow closes.

You are further authorized to pay demands of beneficiaries under deeds of trust, and of mortgages under mortgages, affecting the property described in said deed. The remainder of the money deposited with you is to be paid to our grantors. (Obtain a copy of each promissory note secured by either a mortgage or deed of trust and forward the note(s) to undersigned after close of escrow.)

Title is to be vested in the State, free of all liens and encumbrances, except for Exception Nos. _____ in Litigation Guarantee No. _____ dated _____.

No prepayment penalties on note secured by trust deeds or mortgages shall be made from the proceeds of this escrow.

Immediately upon close of escrow, please furnish a certified copy of the escrow closing statement submitted to the grantor on the date of recordation.

Immediately upon close of escrow, please insert recording date on the card which has been provided for this purpose and return it to this office.

Right of Way Agent

Telephone _____

Enclosures

WARRANT TO DISTRICT

(Form #)

ABC Escrow Company

Dist	Co	Rte	Post
Parcel No.			

ESCROW INSTRUCTIONS

Litigation Guarantee No. _____

Escrow No. _____

Service Contract No. _____

Grantor(s) _____

The State of California, Department of Transportation, has entered into a contract with the grantor(s), listed above, for the acquisition of property required for transportation purposes. Enclosed for deposit into Escrow No. _____ is the original grant deed and statements of information applicable to these grantors.

A warrant in the amount of \$_____, which is the consideration in this transaction, is in our Accounting Office. Please notify me when you are in a position to close escrow. We will arrange for delivery of the warrant to you within 24 hours after such notification. Please call _____, () ____-____, to arrange for delivery of the warrant into Escrow No. _____.

When you close escrow, you are authorized to release the funds to those persons legally entitled to such sums. Concurrently, you should record all instruments necessary to vest title in the State and thereafter and as soon as feasible issue your policy of title insurance. (Please attach an endorsement to the policy to cover access rights which have been relinquished to the State.)

Current taxes shall be processed pursuant to Section 5086 of the Revenue and Taxation Code, which reads in part, "The portion of the current taxes and any penalties and costs that are allocable to the part of the fiscal year that ends 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." Notice to the Tax Collector will be given by the State to cancel taxes effective with the close of escrow.

You are authorized to deduct from the amount due grantor an amount sufficient to pay any delinquent taxes, together with penalties and interest thereof, for any fiscal year prior to the fiscal year in which this escrow closes.

You are further authorized to deduct from the amount due grantor an amount sufficient to pay any delinquent taxes, together with penalties and interest thereof, for any fiscal year prior to the fiscal year in which this escrow closes.

You are further authorized to pay demands of beneficiaries under deeds of trust, and of mortgages under mortgages, affecting the property described in said deed. The remainder of the money deposited with you is to be paid to our grantors. (Obtain a copy of each promissory note secured by either a mortgage or deed of trust and forward the note(s) to undersigned after close of escrow.)

Title is to be vested in the State, free of all liens and encumbrances, except for Exception Nos. _____ in Litigation Guarantee No. _____, dated _____.

No prepayment penalties on note secured by trust deeds or mortgages shall be made from the proceeds of this escrow.

Immediately upon close of escrow, please furnish a certified copy of the escrow closing statement submitted to the grantor on the date of recordation.

Immediately upon close of escrow, please insert recording date on the card which has been provided for this purpose and return it to this office.

Right of Way Agent

Telephone _____

Enclosures

CERTIFICATE OF ACCEPTANCE

(Form #)

(CERTIFICATE OF ACCEPTANCE, GOVERNMENT CODE SECTION 27281)

THIS IS TO CERTIFY, That the State of California, grantee herein, acting by and through the Department of Transportation hereby accepts for public purposes the real property, or interest therein, conveyed by the attached instrument and consents to the recordation thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 19 ____.

Director of Transportation

By _____

_____ and Attorney in Fact

NOTICE OF REMOVAL OF PROPERTY FROM TAXROLLS

(Form #)

Dear Sir:

By deed dated _____, executed by _____ and recorded _____, in volume _____, Page _____ of Official Records in the Office of the County Recorder of _____ County, the State of California, acting by and through the Department of Transportation acquired by negotiated purchase and sale fee title to the property described as follows:

The purpose of such acquisition was for State highway and therefore constitutes a public use and is now exempt from taxation.

In consideration of the foregoing facts, It is respectfully requested that you take appropriate action under Section 4986 of the Revenue and Taxation Code.

-2-

Sincerely,

DIRECTOR OF TRANSPORTATION

By _____
District Division Chief
Right of Way

I hereby consent to the
foregoing cancellation.

Date: _____, 19 ____

Attorney for City of _____
State of California

I hereby certify that the foregoing request was granted by an order of the City Council of the City of _____, State of California, duly made and entered in its minutes on the _____ day of _____, 19 ____.

Attest: _____
Clerk

Chairman of said City Council

By _____
Deputy

(Total Take--City)

TAX CANCELLATION LETTER - PAGE 2 TOTAL TAKE COUNTY

(Form #)

-2-

Please present this letter to the Auditor with the request that the Board of Supervisors furnish this office with a copy of their resolution cancelling taxes.

Sincerely,

DIRECTOR OF TRANSPORTATION

By _____
District Division Chief
Right of Way

I hereby consent to the foregoing cancellation.

Date: _____, 19 ____

County Council or District Attorney
for County of _____
State of California

I hereby certify that the foregoing request was granted by an order of the Board of Supervisors of _____ County, State of California, duly made and entered in its minutes on the _____ day of _____, 19 ____.

Attest: _____
Clerk

Chairman of said Board of Supervisors

By _____
Deputy

(Total Take--County)

-2-

Since the property described in said deed to the State of California is only a portion of the grantor's holding, it is requested that a segregation be made to exclude the area so conveyed to the State.

Sincerely,

DIRECTOR OF TRANSPORTATION

By _____
District Division Chief
Right of Way

I hereby consent to the foregoing cancellation.

Date: _____, 19 ____

Attorney for City of _____
State of California

I hereby certify that the foregoing request was granted by an order of the City Council of the City of _____, State of California, duly made and entered in its minutes on the _____ day of _____, 19 ____.

Attest: _____
Clerk

Chairman of said City Council

By _____
Deputy

(Partial Take--City)

**TAX CANCELLATION LETTER - PAGE 2 PARTIAL TAKE
COUNTY**

(Form #)

-2-

Since the property described in said deed to the State of California is only a portion of the grantor's holding, it is requested that a segregation be made to exclude the area so conveyed to the State.

Please present this letter to the Auditor with the Request that the Board of Supervisors furnish this office with a copy of their resolution cancelling taxes.

Sincerely,

DIRECTOR OF TRANSPORTATION

By _____
District Division Chief
Right of Way

I hereby consent to the
foregoing cancellation.

Date: _____, 19 ____

County Council or District Attorney
for County of _____
State of California

I hereby certify that the foregoing request was granted by an order of the Board of Supervisors of the _____ County, State of California, duly made and entered in its minutes on the _____ day of _____, 19 ____.

Attest: _____
Clerk

Chairman of said Board of Supervisors

By _____
Deputy

(Partial Take--County)

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
**TAX CANCELLATION CONDEMNATION LETTERS -
ORDER FOR POSSESSION**
(Form #)

EXHIBIT
8-EX-47 (Rev. 6/95)

Dist	Co	Rte	Post
Parcel No.			

Dear Sir:

By Order for Possession, the State of California, acting by and through the Department of Transportation, will acquire title to property owned by _____, on _____, Parcel No. _____ in the Condemnation Suit, People vs. _____, SCC No. _____ filed, _____, described as follows:

The purpose of such acquisition is for State highway and therefore constitutes a public use and will be exempt from taxation upon the effective date of possession.

In consideration of the foregoing facts, it is respectfully requested that you take appropriate action under Section 4986 of the Revenue and Taxation Code.

Sincerely,

DEPARTMENT OF TRANSPORTATION

By _____
**District Division Chief
Right of Way**

**CHANGE IN OWNERSHIP OF REAL PROPERTY ACQUIRED TO
REPLACE PROPERTY TAKEN BY GOVERNMENTAL ACTION OR
EMINENT DOMAIN PROCEEDINGS**(Form #)

**RULE 462.5. CHANGE IN OWNERSHIP OF REAL PROPERTY ACQUIRED TO REPLACE PROPERTY
TAKEN BY GOVERNMENTAL ACTION OR EMINENT DOMAIN PROCEEDINGS.****References: Section 68 Revenue and Taxation code.
Article XIII A, Section 2(d), California Constitution.**

- (a) **GENERAL.** The term "change in ownership" shall not include the acquisition of comparable real property as replacement for property taken if the person acquiring the replacement real property has been displaced from property in this state by:
- (1) Eminent domain proceedings instituted by any entity authorized by statute to exercise the power of eminent domain, or
 - (2) Acquisition by a public entity, or
 - (3) Governmental action which has resulted in a judgment of inverse condemnation.
- (b) **DEFINITIONS.** The following definitions govern the construction of the words or phrases used in this section:
- (1) "Property taken" means both property taken and property acquired as provided in (a).
 - (2) "Replaced property" means real property taken.
 - (3) "Replacement Property" means real property acquired to replace property taken.
 - (4) "Award of purchase price" means the amount paid for "replaced property" but shall not include amounts paid for relocation assistance or anything other than the replaced real property.
- (c) **COMPARABILITY.** Replacement property, acquired by a person displaced under circumstances enumerated in (a), shall be deemed comparable to the replaced property if it is similar in size, utility, and function.
- (1) Property is similar in function if the replacement property is subject to similar governmental restrictions, such as zoning.
 - (2) Both the size and utility of property are interrelated and associated with value. Property is similar in size and utility only to the extent that the replacement property is, or is intended to be, used in the same manner as the property taken (i.e., single-family residential and duplex, multi-family residential other than duplexes, commercial, industrial agricultural, vacant, etc.) and its full cash value does not exceed 120 percent of the award or purchase price paid for the replaced property.
 - (A) A replacement property or portion thereof used or intended to be used for a purpose substantially different than the use made of the replaced property, shall to the extent of the dissimilar use by considered not similar in utility.
 - (B) A replacement property or portion thereof which satisfies the use requirement but has a full cash value which exceeds 120 percent of the award or purchase price shall, be considered, to the extent of the excess, not similar in utility and size.
 - (3) To the extent that replacement property, or any portion thereof, is not similar in function, size and utility, the property, or portion thereof, shall be considered to have undergone a change in ownership.

EXAMPLE: A home is replaced by a combination dwelling and commercial property. Relief is applicable to only the dwelling portion of the replacement property; the commercial portion shall be considered as having changed ownership.

EXAMPLE: A combination dwelling and commercial property is replaced with a home. Only the dwelling portion of the property taken shall be considered in determining the comparability and the amount of relief. The right to relief on the commercial portion of the property taken is waived unless comparable replacement commercial property is acquired after the date of displacement and a timely request is made for assessment relief.

**CHANGE IN OWNERSHIP OF REAL PROPERTY ACQUIRED TO
REPLACE PROPERTY TAKEN BY GOVERNMENTAL ACTION OR
EMINENT DOMAIN PROCEEDINGS (Cont.)**

(Form #)

EXHIBIT

8-EX-48 (Rev. 6/95)

Page 2 of 4

EXAMPLE: A combination dwelling and commercial property is replaced with a home, and later the displaced person also acquired a separate comparable replacement commercial property. Pro-rata relief shall be granted on both the replacement home and commercial property to the extent provided in subdivision (b) (1).

- (d) **BASE YEAR VALUE OF REPLACEMENT PROPERTY.** The following procedure shall be used by the assessor in determining the appropriate adjusted base year value of comparable replaced property.
- (1) Compare the award or purchase price paid by the acquiring entity for the property taken or acquired with the full cash value of the comparable replacement property.
 - (2) If the full cash value of the comparable replacement property does not exceed 120 percent of the award or purchase price of the property taken, then the adjusted base year value of the property taken shall become the replacement property's base year value.
 - (3) If the full cash value of the replacement property exceeds 120 percent of the award or purchase price of the property taken, then the amount of the full cash value over 120 percent of the award or purchase price paid shall be added to the adjusted base year value of the property taken. The sum of these amounts shall become the replacement property's base year value.
 - (4) If the full cash value of the comparable replacement property is less than the adjusted base year value of the property taken, then that lower value shall become the replacement property's base year value.
 - (5) If there is no award or purchase price paid by the acquiring entity (i.e., an exchange) for the property taken, then the full cash value of the acquired property and the full cash value of the replacement property shall be determined by the assessor of the county in which each property is located for the purpose of applying the other provisions of this subdivision. The procedure set forth in subdivision (d) (1) through (d) (4) shall then be applied to determine the replacement property's base year value.
- (e) **OWNERSHIP REQUIREMENTS.** Only the owner or owners of the property taken, whether one or more individuals, partnerships, corporations, other legal entities, or a combination thereof, shall receive property tax relief under this section. Relief under this section shall be granted to an owner(s) of replaced property obtaining title to replacement property. The acquisition of an ownership interest in a legal entity which directly or indirectly, owns real property is not an acquisition of comparable property.

EXAMPLE: A & B each own an undivided 50 percent interest as joint tenants in a home which is taken through eminent domain proceedings by the state. A purchases a replacement home which is comparable to the replaced property. B contributes his share of the award or purchase price to a limited partnership which owns a home which is comparable replacement property. A's relief under this section is limited to 120 percent of one-half of the award or purchase price of the property taken. B is entitled to no relief.

EXAMPLE: A partnership composed of two corporations owns commercial property which is taken through eminent domain proceedings. The partnership distributes the award or purchase price to acquire comparable commercial property. The partnership is entitled to relief under this section.

EXAMPLE: A partnership composed of two corporations owns commercial property which is taken through eminent domain proceedings. The partnership distributes the award or purchase price to the partner corporations in the same percentage as their ownership interests and the corporations separately or jointly acquire comparable replacement property retaining the same percentage of ownership interest in the partnership. No tax relief may be granted under this section.

For the purposes of this section, owner means the fee owner or life estate owner of the real property taken and excludes the lessee thereof unless the lessee owns improvements located on the land owned by another, in which case, the lessee shall be entitled to property tax relief for comparable replacement improvements.

**CHANGE IN OWNERSHIP OF REAL PROPERTY ACQUIRED TO
REPLACE PROPERTY TAKEN BY GOVERNMENTAL ACTION OR
EMINENT DOMAIN PROCEEDINGS (Cont.)**

(Form #)

EXHIBIT

8-EX-48 (Rev. 6/95)

Page 3 of 4

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- (f) **NEW CONSTRUCTION.** Any new construction required to make replacement property comparable to the property taken shall, to that extent, be eligible for property tax relief, if such new construction is completed after March 1, 1975, and if it is completed on or after the earliest of the dates listed in subdivision (g) (3), and if a timely request is made for assessment relief.
- (g) **TIME LIMITS FOR QUALIFICATION.**
- (1) The provisions of this section shall apply to property acquired after March 1, 1975, as replacement property for property taken after March 1, 1975, by eminent domain proceedings, public acquisitions, or judgments of inverse condemnation, and shall affect only those assessments of the replacement property on the 1983-84 assessment roll and thereafter, provided the person acquiring replacement property makes a timely request for such assessment with the assessor. No reassessments and no refunds shall be made for any years prior to the 1983-84 fiscal year because of decreases made to assessments for the 1983-84 fiscal year or fiscal years thereafter as a result of the provisions of this section. Reassessments and refunds shall be made retroactively to the date of acquisition of replacement property for property taken in fiscal years commencing with 1983-84, provided a timely request is made therefor.
 - (2) For purposes of this section, a request made by January 1, 1987, shall be deemed timely for replacement property acquired after March 1, 1975, and before January 1, 1983. For replacement property acquired on or after January 1, 1983, a request shall be deemed timely if made within four years after one of the following dates, whichever is applicable:
 - (A) The date final order of condemnation is recorded or the date the taxpayer vacates the replaced property, whichever is later, for property acquired by eminent domain; or
 - (B) The date on conveyance or the date the taxpayer vacates the replaced property, whichever is later, for property acquired by a public entity by purchase or exchange; or
 - (C) The date the judgment of inverse condemnation becomes final or the date the taxpayer vacates the replaced property, whichever is later, for property taken by inverse condemnation.
 - (3) Replacement property shall be eligible for property tax relief under this section if it is acquired after March 1, 1975, and if it is acquired on or after the earliest of the following dates:
 - (A) The date the initial written offer is made for the replaced property by the acquiring entity;
 - (B) The date the acquiring entity takes final action to approve a project which results in an offer for or the acquisition of the replaced property; or
 - (C) The date, as declared by the court, that the replaced property was taken.
 - (4) No property tax relief shall be granted to replacement property; however, prior to the date of displacement. The date of displacement shall be the earliest of the following dates:
 - (A) The date the conveyance of the replaced property to the acquiring entity or the final order of condemnation is recorded.
 - (B) The date of actual possession by the acquiring entity of the replaced property.
 - (C) The date upon or after which the acquiring entity may take possession of the replaced property as authorized by an order for possession.
- (h) **ADMINISTRATION.**
- (1) The assessor shall only consider the following documents as proof of actual displacement of a taxpayer when a request has been made for the assessment relief provisions under this section:
 - (A) A certified recorded copy of the final order of condemnation, or, if the final order has not been issued, a certified recorded copy of the order for possession showing the effective date upon or after which the acquiring entity is authorized to take possession of the replaced property;
 - (B) A copy of a recorded deed showing acquisition by a public entity; or
 - (C) A certified copy of a final judgment of inverse condemnation.
-

**CHANGE IN OWNERSHIP OF REAL PROPERTY ACQUIRED TO
REPLACE PROPERTY TAKEN BY GOVERNMENTAL ACTION OR
EMINENT DOMAIN PROCEEDINGS (Cont.)**

(Form #)

EXHIBIT

8-EX-48 (Rev. 6/95)

Page 4 of 4

- (2) Upon receipt of a taxpayer request and proof of actual displacement, the assessor shall forward to the Board such information regarding the identification of a displaced property as the Board may require. The Board shall review such information to determine whether more than one request for assessments relief has been made as a result of a single taking or governmental acquisition and if so shall advise the appropriate assessor(s).

HISTORY: Adopted September 13,1984, effective February 18,1985.
Amended November 18, 1987, effective February 14,1988.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
**INFORMATION SHEET FOR OWNER(S) REGARDING
PROPERTY TAX RELIEF**
(Form #)

EXHIBIT
8-EX-49

Section 2(d) of Article XIII A of the California Constitution and the 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.

If the full cash value of the comparable replacement property does not exceed 120 percent of the award or purchase price of the property taken or acquired, then the adjusted base year value of the property taken or acquired shall be transferred to the comparable replacement property.

Example

Purchase Price	120%	Replacement Property	Old Tax Basis	Replacement Tax Basis
\$100,000	\$120,000	\$120,000	\$50,000	\$50,000

If the full cash value of the replacement property exceeds 120 percent of the award or purchase price of the property taken or acquired, then the amount of the full cash value over 120 percent of the award or purchase price paid shall be added to the adjusted base year value of the property taken or acquired. The sum of these amounts shall become the replacement property's base year value.

Example

Purchase Price	120%	Replacement Property	Old Tax Basis	Replacement Tax Basis
\$100,000	\$120,000	\$130,000	\$50,000	(130,000 - 120,000) = \$60,000

Worksheet

Purchase Price	120%	Replacement Property	Old Tax Basis	Replacement Tax Basis
-----------------------	-------------	-----------------------------	----------------------	------------------------------

This worksheet is only an approximation. You must see your County Tax Assessor for a final determination. You should see the tax assessor before acquiring a replacement property and as soon as possible after the close of escrow on your property being acquired by the State of California.

**ADMINISTRATIVE
SETTLEMENT/STATUTORY OFFER**

CONFIDENTIAL

This document contains personal information and pursuant to Civil Code 1798.21 it shall be kept confidential in order to protect against unauthorized disclosure.

EXHIBIT
8-EX-50
(Rev. 9/97)
Page 1 of 2

(Form #)

DATE:

Grantor/Defendant:

Dist Co Rte Post Exp Auth

Acquisition Agent:

Acquisition Senior:

Parcel No. AR No. Revised

	Dates	State	Owner
Project Certification			
Attorneys			
Suit Filed			
Order for Possession Effect.			
Trial Date			
Settlement Conference		\$	\$
Exchange of Appraisals		\$	\$
Statutory Offer		\$	\$

Appraisal Data	State		Grantor/Defendant		
Date					
Land	\$	\$	\$	\$	\$
Improvements					
Damages					
Curable					
Incurable					
Loss of Goodwill					
Machinery/Equipment					
Lease Bonus Value					
Const. Contract Work					
Other					
Total					

Estimated Litigation costs: \$ _____

	Recommended Settlement	Approved Amount/Range
Owner		
Lessee		

Approved

Explanation: _____

**INSTRUCTIONS FOR COMPLETING ADMINISTRATIVE
SETTLEMENT/STATUTORY OFFER**

(Form #)

EXHIBIT

8-EX-50 (New 9/97)

Page 2 of 2

1. This form is to be included in all requests for approval of statutory offers and substantial administrative settlements. Use for non-substantial administrative settlements is at District discretion.
 2. Completion of this form by hand (legibly, in ink) is acceptable.
 3. A written request for approval of the statutory offer or administrative settlement must also be included. This request can be in the form of a memorandum, electronic mail, or fax.
 4. All applicable portions of the form shall be completed.
 5. Explanation beyond what will fit on the form may be required. Such explanation can be included in the request memorandum, or on additional attached pages.
 6. Approved Administrative Settlements and/or statutory offers are to be incorporated into the Memorandum of Settlement.
-
-

PUBLIC SCHOOL DISTRICT LANDS

Section 39540 - Education Code - Dedication for Streets and Easements

"The governing board of any school district may, pursuant to this article, dedicate or convey to the State, or any political subdivision or municipal corporation thereof, for public street or highway purposes, either with or without consideration and without a vote of the electors of the district first being taken, any real property belonging to the district, either in fee or any lesser estate or interest therein, including abutter's right of access to any public street or highway; and may dedicate or convey to any public corporation, or private corporation engaged in the public utility business, without a vote of the electors of the district first being taken, an easement to lay, construct, reconstruct, maintain, and operate water, sewer, gas, or storm drain pipes or ditches, electric or telephone lines, and access roads used in connection therewith, over and upon any land belonging to the school district, upon such terms and conditions as the parties thereto may agree."

Section 39541 - Education Code - Resolution of Intention

"Before ordering the dedication or conveyance of any property the governing board shall in regular open meeting by a two-thirds vote of all its members adopt a resolution declaring its intention to dedicate or convey the property. The resolution shall describe the property proposed to be dedicated or conveyed in such a manner as to identify it, and shall specify the purposes for which and the terms upon which it will be dedicated or conveyed, and shall fix a time not less than 10 days thereafter for a public meeting of the governing board to be held at its regular place of meeting for a public hearing upon the question of making the dedication or conveyance."

Section 39542 - Education Code - Notice of Resolution and Public Meeting

"Notice of adoption of the resolution and of the time and place of holding the meeting shall be given by posting copies of the resolution signed by the members of the board, or by a majority thereof, in three public places in the district not less than 10 days before the date of the meeting, and by publishing the notice once not less than five days before the date of the meeting in a newspaper of general circulation, published in the district, if there is one, or, if there is no such newspaper published in the district, then in a newspaper published in the county in which the district or any part thereof is situated and having a general circulation in the district."

Section 39543 - Education Code - Public Hearing and Adoption of Resolution

"At the time and place fixed in the resolution for the meeting of the governing board the public hearing shall be held, and the governing board may at the meeting, or at any other meeting of the governing board held within 60 days thereafter, unless a protest is entered, adopt a resolution by a two-thirds vote of all its members authorizing and directing the president of the governing board, or any other presiding officer, or the secretary, or the members thereof, to execute a deed of dedication or conveyance of the property and deliver it. Upon the delivery and acceptance of the deed the dedication or conveyance is fully effective."

Section 39544 - Education code - Protest Against Dedication or Conveyance and Notice of Intention to Convey

"A petition protesting against the proposed dedication or conveyance signed by at least 10 percent of the qualified electors of the district as shown by the affidavit of one of the petitioners, may be filed with the governing board at the meeting held at the time and place fixed in the resolution. If a protest is filed, the governing board shall, before taking any further action on the proposed dedication or conveyance, submit the question of whether the proposed dedication or conveyance should be made, to the superintendent of schools of the county having jurisdiction over the district, whose decision is final. If the superintendent approves the proposed dedication or conveyance, the board may proceed as provided in Section 39543. If the superintendent of schools does not approve the proposed dedication or conveyance, no further proceedings shall be had thereon."

PUBLIC SCHOOL DISTRICT LANDS

(Form #)

EXHIBIT

8-EX-51 (New 6/95)

Page 2 of 2

Section 39545 - Education Code - Notice of Intention Provides

"Whenever school districts are required to improve and dedicate real property to the centerline of streets or highways adjacent to a school site or forming an intersection at a school site location, and when such street or highway rights of way are being conveyed to the city or county or by the city or county to the school district, the requirements of this article shall be deemed satisfied solely by posting a notice of intention to convey in an appropriate location before conveyance."

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
REQUEST FOR DECLARATORY RELIEF ACTION

(Form #)

EXHIBIT
8-EX-52 (New 9/97)

Date: _____

To: Legal Service Center

From: District _____
Right of Way

_____ Dist Co Rte Post

Parcel _____
EA _____

Business Name _____

Owner's Name _____ Phone _____

Attorney _____ Phone _____

Property Address and APN _____

Mailing Address _____

R/W Condemnation Agent _____ Phone _____

R/W Acquisition Agent _____ Phone _____

Goodwill Appraiser _____ Phone _____

Acquisition Amount \$ _____ Escrow Closed _____

Partial Acquisition O.P. Filed _____

Full Acquisition Total Personal Calls _____

Goodwill Appraisal Date _____ Date of Last Personal Call _____

Goodwill Offer Date _____ Total Telephone Calls _____

Goodwill Offer Amount \$ _____ Date of Last Offer _____

Counteroffer (if any) \$ _____ Amount of Last Offer \$ _____

Date shown on R/W Contract Goodwill Clause _____

Remarks:

Chief, Right of Way Acquisition Office

- Enclosures: Legal Description R/W Contract Loss of Goodwill Appraisal
 Appraisal Summary Statement Summary Statement Relating to Purchase of Real Property
 R/W Diary Entries Pertaining to Goodwill Issues

cc: (2) Legal Service Center, Condemnation, Acq. Chief, Agent

HIGHWAY EASEMENT DEED - Perfection of Title (USFS Only)

(Form #)

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO:

California Department of Transportation

_____, CA

STATE BUSINESS - NO RECORDING FEE

(Gov. Code 27383)

BY: _____
Region/District Right of Way Chief

Space above this line for Recorder's Use

HIGHWAY EASEMENT DEED - Perfection of Title (USFS Only)

THIS DEED, made this ____ day of _____, 20____, by and between the UNITED STATES OF AMERICA, acting by and through the DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, hereinafter referred to as the Grantor, and the STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the Grantee:

WITNESSETH:

WHEREAS, the Grantee has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (23 U.S.C. Section 317 and/or Section 107), for the right-of-way of a highway over certain federal land in the State of California under the jurisdiction of the United States Department of Agriculture, Forest Service, hereinafter referred to as Forest Service, and

WHEREAS, this transfer is further authorized under the provisions of the Act of Congress approved October 15, 1966, (80 Stat. 931, 937, Section 6 (a)(1)(A)).

WHEREAS, the Federal Highway Administrator, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for a right-of-way for the operation and maintenance of existing _____ (*describe highway*), hereinafter referred to as an existing Highway, and

WHEREAS, the Forest Service has agreed to the transfer by the Grantor of an easement over the land to the Grantee, and

WHEREAS, the Grantee with respect to activities related to the Property, agrees that (a) no person shall, on the grounds of race, color, national origin, sex, age, disability, or religion be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to the Grantee's operations, programs, or activities conducted on the Property, (b) that the Grantee shall use said

land so conveyed in compliance with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d to 2000d-4) and all applicable civil rights provisions of other Federal statutes, and

WHEREAS, Grantee, Grantor, and Forest Service agree that the Terms, Conditions and Descriptions contained herein are superior to and shall supersede any previous rights granted for the existing Highway either by Statute, Special Use Permit, implied right, or any other right.

NOW THEREFORE, the Grantor does hereby grant to the Grantee an easement for a right-of-way for the operation and maintenance of an existing highway, and 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 following described federal land of the United States within the _____(*USFS name*) National Forest, in the County of _____, State of California:

DESCRIPTION

As the land is more particularly described and shown on the attached Exhibit "A" Sheets _ through _ and shown as those certain Parcel Numbers _____, _____ attached and made a part hereof.

ENTER THE LEGAL DESCRIPTION HERE (Legal description, signature block and seal of the Registered Land Surveyor who prepared the description must all be on the same page. The legal description must not contain any incomplete "fill in the blanks" references. Use townships, parcels, and/or metes and boundaries.)

Add as appropriate:

TOGETHER WITH THE HEREINABOVE DESCRIBED PARCELS:

Any and all man-made features and drainages adjacent to and appurtenant to said existing Highway.

Add as appropriate:

EXCEPTING THEREFROM THE HEREINABOVE DESCRIBED PARCELS:

All frontage roads, trails, and waterways adjacent to and parallel with the roadbed of said existing Highway.

This easement is made subject to all matters of record and is limited by and shall not exceed the right, title and interest of the Grantor in and to the federal lands herein described.

If any subsequent survey of said existing Highway shows that any portion of said existing highway crossed lands of the Grantor not described herein, this easement shall be amended to include the additional lands traversed.

Post Miles are based on the list attached hereto, which by this reference is made a part hereof, labeled as **Exhibit A** identifying Forest Service and California Department of Transportation landmarks upon which the herein above described parcels can be further referenced by odometer reading.

State Route _____, as it existed on _____ (*date*), is depicted on the map attached hereto, which by this reference is made a part hereof, labeled as **Exhibit B**.

This real property description has been prepared by us, or under our direction, in conformance with the Professional Land Surveyors Act.

Signature _____

(**name of signator**)
Caltrans, Transportation Surveyor

SEAL

Date _____

Grantee is not responsible for the maintenance and the liability associated with forest roads or trails and/or forest development roads and trails (23 U.S.C. 101(a)) within Grantee's easement.

This transfer being subject to the following terms and conditions:

- (1) If outstanding valid claims exist on the date of this grant, the Grantee shall obtain such permission as may be necessary on account of any such claims.
 - (2) The easement herein granted is limited to use of the described right-of-way and the space above and below the established grade line of the highway pavement for the purpose of operation and maintenance of an existing Highway and does not include the grant of any rights for nonhighway purposes or facilities: Provided, that the right of the Forest Service to use or authorize the use of any portion of the right-of-way for nonhighway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration Regulations issued pursuant thereto or would interfere with the free flow of traffic or impair the full use and safety of the highway, and in any case the Federal Highway Administration and the State Department of Transportation shall be consulted prior to the exercise of such rights; and Provided further, That nothing herein shall preclude the Forest Service from locating National Forest and other United States Department of Agriculture information signs on the portions of the right-of-way outside of construction clearing limits.
 - (3) Consistent with highway safety standards, the Grantee shall:
 - (a) Protect and preserve soil and vegetative cover and scenic and esthetic values on the right-of-way outside of construction limits.
 - (b) Provide for the prevention and control of soil erosion within the right-of-way and adjacent lands that might be affected by the construction operation, maintenance of the existing highway, and shall vegetate and keep vegetated with suitable species, all earth cut or fill slopes feasible for revegetation or other areas on which ground cover is destroyed. The Grantee shall maintain all terracing, waterbars, lead-off ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides which occur during or after construction.
 - (4) The Grantee shall establish no borrow, sand, or gravel pits, stone quarry, or permanent storage areas, sites for highway operation and maintenance facilities, camps, supply depots or disposal areas within the right-of-way unless shown on approved construction plans without first obtaining approval.
 - (5) The Grantee shall maintain the right-of-way and highway facilities to acceptable standards of repair, orderliness, neatness, sanitation, and safety.
 - (6) The Grantee shall maintain the right-of-way clearing by means of chemicals, only after consultation with the Forest Supervisor. Consultation must address the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated.
-

- (7) The Grantee will notify the Forest Service when the need for the appropriation no longer exists. Upon notification Forest Service will either (1) accept the highway as is, or (2) require rehabilitation standards that the Grantee must complete. Upon completion of the rehabilitation and acceptance of same by the Forest Service, the Grantee will notify the Grantor, in writing, of the relinquishment. Upon receipt of this notice of relinquishment, by the Grantee, the lands appropriated will immediately revert to the Forest Service without further legal action.

I, _____, Attorney, 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

In compliance with the conditions set forth in the foregoing deed, the State California, Department of Transportation, certifies, and by the acceptance of this deed, accepts the right-of-way over certain land herein described and agrees for itself, its successors and assigns forever to abide by the conditions set forth in said deed.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____

(name of signator)

(title of signator)

STATE OF CALIFORNIA)
 :
COUNTY OF _____)

On _____ before me, _____,
personally appeared _____,
 personally known to me **-OR-** proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

HIGHWAY EASEMENT DEED - New Construction

(Form #)

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO:

California Department of Transportation

_____, CA

STATE BUSINESS - NO RECORDING FEE

(Gov. Code 27383)

BY: _____
Region/District Right of Way Chief

Space above this line for Recorder's Use

HIGHWAY EASEMENT DEED - New Construction

THIS DEED, made this ____ day of _____, 20____, by and between the UNITED STATES OF AMERICA, acting by and through the DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, hereinafter referred to as the **Grantor**, and the STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the Grantee:

WITNESSETH:

WHEREAS, the Grantee has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (23 U.S.C. Section 317 and Section 107(d)), for the right-of-way of a highway over certain federal land in the State of California under the jurisdiction of the United States (name of federal agency), which land has been appropriated by **Grantor**, and

WHEREAS, the Federal Highway Administrator, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for a right-of-way for the construction, operation and maintenance of _____(*describe highway*), post mile _____/_____, and

WHEREAS, the United States (name of federal agency), acting by and through the (name of federal agency), in its consent to the appropriation of the federal land, has agreed to the transfer by the **Grantor** of an easement over the land to the Grantee, and

WHEREAS, the Grantee with respect to activities related to the Property, agrees that (a) no person shall, on the grounds of race, color, national origin, sex, age, disability, or religion be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to the Grantee's operations, programs, or activities conducted on the Property, (b) that the Grantee shall use said land so conveyed in compliance with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d to 2000d-4) and all applicable civil rights provisions of other Federal statutes.

HIGHWAY EASEMENT DEED - New Construction (Cont.)

(Form #)

EXHIBIT

8-EX-54 (NEW 6/2004)

Page 2 of 6

NOW THEREFORE, the **Grantor** does hereby grant to the Grantee an easement for a right-of-way for the construction, operation, and maintenance of a highway, (*add where appropriate - "including control of access thereto from adjoining lands"*), and 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 following described federal land in the County of _____, State of California:

DESCRIPTION

As the land is more particularly described and shown on the attached Exhibit "A" Sheets _ through _ and shown as those certain Parcel Numbers _____, _____ attached and made a part hereof.

ENTER THE LEGAL DESCRIPTION HERE (Legal description, signature block and seal of the Registered Land Surveyor who prepared the description must all be on the same page. The legal description must not contain any incomplete "fill in the blanks" references.)

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act in the State of California.

Signature _____
Licensed Land Surveyor

Date _____

SEAL

This transfer being subject to the following terms and conditions (*list stipulations*):

- (1) If outstanding valid claims exist on the date of this grant, the Grantee shall obtain such permission as may be necessary on account of any such claims.
 - (2) Construction of the highway facility is to be undertaken by the Grantee in compliance with the Act entitled "An Act for the preservation of American antiquities" approved June 8, 1906 (34 Stat. 225, 16 U.S.C. 432-433), and state laws where applicable. (*not to be used for Perfection of Title DOTE*)
 - (3) The easement herein granted shall terminate **twenty (20)** years from the date of the execution of this deed by the United States of America in the event construction of a highway on the right-of-way is not started during such period. (*not to be used for Perfection of Title DOTE*)
 - (4) The easement herein granted is limited to use of the described right-of-way and the space above and below the established grade line of the highway pavement for the purpose of construction, operation, and maintenance of a highway in accordance with the approved plans and does not include the grant of any rights for nonhighway purposes or facilities: provided, that the right of the (name of federal agency) to use or authorize the use of any portion of the right-of-way for nonhighway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration Regulations issued pursuant thereto or would interfere with the free flow of traffic or impair the full use and safety of the highway, and in any case the Federal Highway Administration and the State Department of Transportation shall be consulted prior to the exercise of such rights: and provided, further that nothing herein shall preclude the (name of federal agency) from locating (name of federal agency) information signs on the portions of the right-of-way outside of construction clearing limits, except that such signs shall not be located on the right-of-way of an interstate system..
 - (5) The design and construction of highway projects situated on this right-of-way will be in accord with the provisions of Title 23, United States Code - Highways, and amendments; the provisions of Title 23, Code of Federal Regulations; and the construction specifications of the state highway department as approved by the Federal Highway Administration for use on federal-aid projects. (*not to be used for Perfection of Title DOTE*)
 - (6) Consistent with highway safety standards, the Grantee shall:
 - (a) Protect and preserve soil and vegetative cover and scenic and esthetic values on the right-of-way outside of construction limits.
 - (b) Provide for the prevention and control of soil erosion within the right-of-way and adjacent lands that might be affected by the construction operation, or maintenance of the highway, and shall vegetate and keep vegetated with suitable species, all earth cut or fill slopes feasible for revegetation or other areas on which ground cover is destroyed. The Grantee shall maintain all terracing, waterbars, lead-off ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides which occur during or after construction.
-

HIGHWAY EASEMENT DEED - New Construction (Cont.)

(Form #)

EXHIBIT

8-EX-54 (NEW 6/2004)

Page 4 of 6

- (7) The Grantee shall establish no borrow, sand, or gravel pits, stone quarry, or permanent storage areas, sites for highway operation and maintenance facilities, camps, supply depot or disposal areas within the right-of-way unless shown on approved construction plans without first obtaining approval.
- (8) The Grantee shall maintain the right-of-way and highway facilities to acceptable standards of repair, orderliness, neatness, sanitation, and safety. *(not to be used for Perfection of Title DOTE)*
- (9) When need for the easement herein granted shall no longer exist and the area has been reasonably rehabilitated to protect the public and environment, the Grantee shall give notice of that fact to the Secretary of Transportation and the rights herein agreed shall terminate and land shall immediately revert to the full control of the (name of federal agency).
- (10) The Grantee shall maintain the right-of-way clearing by means of chemicals, only after consultation with the Regional Forester. Consultation must address the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated. *(for USFS only)*
- (11) Use of pesticides shall comply with the applicable Federal and State laws. Pesticides shall be used only in accordance with their registered uses within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the holder shall obtain from the authorized officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Emergency and use of pesticides shall be approved in writing by the authorized officer prior to such use. *(for BLM only)*

I, _____, Attorney, 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

HIGHWAY EASEMENT DEED - New Construction (Cont.)

(Form #)

EXHIBIT

8-EX-54 (NEW 6/2004)

Page 5 of 6

IN WITNESS WHEREOF, I, _____(*type name of signator*), Division Administrator, pursuant to delegations of authority from the Secretary of Transportation and the Federal Highway Administrator, by virtue of authority in me vested by law, have hereunto subscribed my name as of the day and year first above written.

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

By _____
_____ (*type name of signator*)
California Division Administrator

STATE OF CALIFORNIA)
 :
COUNTY OF SACRAMENTO)

On _____ before me, _____,
personally appeared _____,
 personally known to me **-OR-** proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

HIGHWAY EASEMENT DEED - New Construction (Cont.)

(Form #)

EXHIBIT

8-EX-54 (NEW 6/2004)

Page 6 of 6

In compliance with the conditions set forth in the foregoing deed, the State of California, Department of Transportation, certifies, and by the acceptance of this deed, accepts the right-of-way over certain land herein described and agrees for itself, its successors and assigns forever to abide by the conditions set forth in said deed.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____

(name of signator)
(title of signator)

STATE OF CALIFORNIA)
 :
COUNTY OF _____)

On _____ before me, _____,
personally appeared _____,

personally known to me **-OR-** proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

CONDUIT INDENTURE

THIS INDENTURE, made this ___ day of ___, 199_, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, A corporation of the State of Delaware, herein termed "Railroad," and the STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, herein termed "State";

WITNESSETH:

1. Railroad hereby grants to State the right to install, remove, replace and maintain electrical conduits, hereinafter collectively termed "structures," upon, along, across and beneath the property of Railroad, at _____, in the County of _____, State of California, as more particularly described in the Annex "A" attached.
2. This grant is made subject to the prior and continuing right and obligation of Railroad, its successors and assigns, to use all the property described herein in the performance of its duty as a common carrier and for that purpose there is reserved unto Railroad, its successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use existing and future railroad tracks, facilities and appurtenances and existing and future transportation communication and pipeline facilities and appurtenances in, upon, over, across and along said property.
3. This grant is also made subject to all prior licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, and claims of title which may affect said property, and the word "grant," as used herein, shall not be construed as a covenant against the existence of any thereof.
4. If the construction or reconstruction of said structures upon said property is not commenced within one (1) year from the date herein written, State shall immediately request abandonment of said rights in accordance with law.
5. State shall bear the entire cost and expense of constructing, reconstructing, and maintaining said structures upon said property. State agrees that all work upon or in connection with said structures shall be done at such times and in such manner as not to interfere unreasonably with the operations of Railroad. The plans for and the construction or reconstruction of said structures shall be subject to the approval of Railroad, which approval shall not be unreasonably withheld or delayed. State agrees to give Railroad five (5) days written notice prior to commencement of any work of construction or reconstruction.
6. State agrees to reimburse Railroad for expense necessarily incurred in protecting its facilities during the period of construction as provided in a Department of Transportation Service Contract to be executed by the parties.
7. State, its agents and employees, shall have the privilege of entry upon said property for the purpose of installing, removing, replacing, maintaining, and making necessary repairs to said structures. State agrees to maintain said property and said structures in a good and safe condition.
8. Should State at any time abandon the use of said property or any part thereof, or fail to use same for said purpose for a continuous period of one (1) year, State shall immediately review its plans for the utilization of said easement, and should State not propose to utilize such easement nor have plans for such utilization, State shall request abandonment in accordance with applicable statutes and laws of the State of California.
9. The provision of this indenture shall inure to the benefit of and be binding upon the successors and assigns of Railroad and the assigns of State.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate the day and year first herein written.

[S.P.T.Co. 1-27-83, STATE 11-17-82]
[(Rev. 12-87) 76346-P]

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By _____

Attest _____
Assistant Secretary

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

By _____
District Director of Transportation

By _____
District Division Chief, Right of Way

EXISTING DRAINAGE FACILITIES COVERED BY RIGHTS OF ENTRY

THIS INDENTURE, made this ___ day of ____, 199_,and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation of the State of Delaware, herein called "Railroad," and the STATE OF CALIFORNIA, acting by and through its Department of Transportation, herein called "State";

WITNESSETH:

1. The Railroad hereby grants to State an easement for public highway purposes to be used for a drainage facility hereafter called "structure," in, under, along, upon, over and across that certain property more particularly described in Annex "A" attached and hereby made a part hereof.
2. This grant is subject to all prior licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word GRANT as used herein shall not be construed as a covenant against the existence of any thereof.
3. This grant is made subject to the prior and continuing right and obligation of Railroad, its successors and assigns, to use all the property described herein in the performance of its duty as a common carrier, and there is reserved unto Railroad, its successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use existing and future railroad tracks, facilities and appurtenances and existing and future transportation, communication and pipeline facilities and appurtenances in, upon, over, under, across and along said property. Any such construction by Railroad, or its subsidiary or affiliated companies, shall be subject to the approval of the State as to safety and compatibility with highway purposes, which approval shall not be unreasonably withheld. Railroad, or its subsidiaries or affiliated companies shall be subject to the issuance of encroachment permits which will be issued for the purpose of providing the State with notice and a record of work, and for the terms and conditions relating to public safety and compatibility with highway purposes. No new or different rights or obligations shall be created by the permit in such cases, and all such prior rights shall be fully protected. Encroachment permits issued to Railroad or its subsidiaries or affiliated companies, shall have designated across the face thereof, "For Notice and Record Purposes Only."

Any construction by other parties in, under or over the highway easement shall be subject to State's issuance of a Standard Encroachment Permit.

4. That at all times during the progress of the work of constructing or reconstructing said drainage facilities State shall permit a representative of Railroad to inspect such work, and that such work shall be done in a satisfactory manner so as not to cause any damage to Railroad's facilities, and that the design and construction or reconstruction shall have previous approval of the Railroad. The cost of railroad work will be covered by a separate agreement, i.e., Service Contract or Construction and Maintenance Agreement.
5. That State shall at all times maintain and keep said drainage facilities in good condition and repair.
6. If the construction of said structure upon the aforesaid-described property is not commenced within two (2) years of the date first herein written, or if, after construction, State should blockade said structure or otherwise cause it to be unused or unusable for a continuous period of two (2) years and if thereafter Railroad shall so request, State shall immediately review its plans for the utilization of said easement, and should State not propose to utilize such easement nor have plans for such utilization, State shall request abandonment in accordance with the applicable statutes or laws of the State of California, and, subject to appropriations being made for the purpose by the California Transportation Commission, State shall, at the time of abandonment and upon Railroad's written request, remove said structure and restore Railroad's premises to the condition existing prior to construction of said structure.

The State will not, after original construction, give or consent to any right, privilege or easement upon, across or within the easement granted herein, which will interfere with the existing operation and maintenance for railroad purposes of Railroad's property and Railroad shall have the right to approve plans for such installations as State may authorize

insofar as they affect installations of Railroad, its subsidiary or affiliated companies, which approval shall not be unreasonably withheld or delayed.

7. The performance of any work on Railroad's premises by State Contractors shall be in conformance with State Contract Special Provisions agreed upon by State and Railroad.
8. State shall obtain any necessary authority and permission required to construct, reconstruct, maintain and use said structure upon said property from the governmental body or bodies having jurisdiction thereover.
9. The provisions of this indenture shall inure to the benefit of and be binding upon the successors and assigns of Railroad and the assigns of State.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

[S.P.T.Co. 2-11-75, STATE 5-20-75]

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**SOUTHERN PACIFIC
TRANSPORTATION COMPANY**

By _____
District Director of Transportation

By _____

By _____
District Division Chief, Right of Way

Attest _____
Assistant Secretary

MODIFICATION OF EXISTING DRAINAGE FACILITY

THIS INDENTURE, made this __ day of _____, 199_, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation of the State of Delaware, herein called "Railroad," and the STATE OF CALIFORNIA, acting by and through its Department of Transportation, herein called "State";

WITNESSETH:

1. The Railroad hereby grants to State an easement for public highway purposes to be used for a drainage facility hereinafter called "structure," in, under, along, upon, over and across that certain property more particularly described in Annex "A" attached and hereby made a part hereof.
2. This grant is subject to all prior licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word GRANT, as used herein shall not be construed as a covenant against the existence of any thereof.
3. This grant is made subject to the prior and continuing right and obligation of Railroad, its successors and assigns, to use all the property described herein in the performance of its duty as a common carrier, and there is reserved unto Railroad, its successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use existing and future railroad tracks, facilities and appurtenances and existing and future transportation, communication and pipeline facilities and appurtenances in, upon, over, under, across and along said property. Any such construction by Railroad, or its subsidiary or affiliated companies, shall be subject to the approval of the State as to safety and compatibility with highway purposes, which approval shall not be unreasonably withheld. Railroad, or its subsidiaries or affiliated companies shall be subject to the issuance of encroachment permits which will be issued for the purpose of providing the State with notice and a record of work, and for the terms and conditions relating to public safety and compatibility with highway purposes. No new or different rights or obligations shall be created by the permit in such cases, and all such prior rights shall be fully protected. Encroachment permits issued to Railroad or its subsidiaries or affiliated companies, shall have designated across the face thereof, "For Notice and Record Purposes Only."

Any construction by other parties in, under or over the highway easement shall be subject to State's issuance of a Standard Encroachment Permit.

4. That at all times during the progress of the work of constructing or reconstructing said drainage facilities, State shall permit a representative of Railroad to inspect such work, and that such work shall be done in a satisfactory manner so as not to cause any damage to Railroad's facilities, and that the design and construction or reconstruction shall have previous approval of the Railroad. The cost of railroad work will be covered by a separate agreement, i.e., Service Contract or Construction and Maintenance Agreement.
5. That State shall maintain the facility at no cost to Railroad for a period of 10 years after completion of the construction. During the 10 year period, if Railroad should install additional tracks or other railroad facilities which would require the extension of the culvert or the reinforcing of the culvert to withstand greater loads, State shall bear the cost of such extension or reinforcing provided funds for that purpose are provided by the California Transportation Commission. Upon expiration of the 10 year period after completion of the construction, Railroad shall assume full responsibility for the facility and maintenance thereof and State's rights and obligations under this indenture shall cease in their entirety.
6. If the construction of said structure upon the aforesaid-described property is not commenced within two (2) years of the date first herein written, or if, after construction, State should blockade said structure or otherwise cause it to be unused or unusable for a continuous period of two (2) years and if thereafter Railroad shall so request, State shall immediately review its plans for the utilization of said easement, and should State not propose to utilize such easement

nor have plans for such utilization, State shall request abandonment in accordance with the applicable statutes or laws of the State of California, and, subject to appropriations being made for the purpose by the California Transportation Commission, State shall, at the time of abandonment and upon Railroad's written request, remove said structure and restore Railroad's premises to the condition existing prior to construction of said structure.

The State will not, after original construction, give or consent to any right, privilege or easement upon, across or within the easement granted herein, which will interfere with the existing operation and maintenance for railroad purposes of Railroad's property, and Railroad shall have the right to approve plans for such installations as State may authorize insofar as they affect installations of Railroad, its subsidiary or affiliated companies, which approval shall not be unreasonably withheld or delayed.

7. The performance of any work on Railroad's premises by State Contractors shall be in conformance with State Contract Special Provisions agreed upon by State and Railroad.
8. State shall obtain any necessary authority and permission required to construct, reconstruct, maintain and use said structure upon said property from the governmental body or bodies having jurisdiction thereover.
9. The provisions of this indenture shall inure to the benefit of and be binding upon the successors and assigns of Railroad and the assigns of State.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

[S.P.T.Co. 2-11-75, STATE 5-20-75]

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**SOUTHERN PACIFIC
TRANSPORTATION COMPANY**

By _____
District Director of Transportation

By _____

By _____
District Division Chief, Right of Way

Attest _____
Assistant Secretary

NEW DRAINAGE FACILITY

THIS INDENTURE, made this __ day of ____,199_, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation of the State of Delaware, herein called "Railroad," and the STATE OF CALIFORNIA, acting by and through its Department of Transportation, herein called "State";

WITNESSETH:

1. The Railroad hereby grants to State an easement for public highway purposes to be used for a drainage facility hereinafter called "structure," in, under, along, upon, over and across that certain property more particularly described in Annex "A" attached and hereby made a part hereof.
2. This grant is subject to all prior licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word "grant," as used herein shall not be construed as a covenant against the existence of any thereof.
3. This grant is made subject to the prior and continuing right and obligation of Railroad, its successors and assigns, to use all the property described herein in the performance of its duty as a common carrier, and there is reserved unto Railroad, its successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use existing and future railroad tracks, facilities and appurtenances and existing and future transportation, communication and pipeline facilities and appurtenances in, upon, over, under, across and along said property. Any such construction by Railroad, or its subsidiary or affiliated companies, shall be subject to the approval of the State as to safety and compatibility with highway purposes, which approval shall not be unreasonably withheld. Railroad, or its subsidiaries or affiliated companies shall be subject to the issuance of encroachment permits which will be issued for the purpose of providing the State with notice and a record of work, and for the terms and conditions relating to public safety and compatibility with highway purposes. No new or different rights or obligations shall be created by the permit in such cases, and all such prior rights shall be fully protected. Encroachment permits issued to Railroad or its subsidiaries or affiliated companies, shall have designated across the face thereof, "For Notice and Record Purposes Only."
Any construction by other parties in, under or over the highway easement shall be subject to State's issuance of a Standard Encroachment Permit.
4. That at all times during the progress of the work of constructing or reconstructing said drainage facilities State shall permit a representative of Railroad to inspect such work, and that such work shall be done in a satisfactory manner so as not to cause any damage to Railroad's facilities, and that the design and construction or reconstruction shall have previous approval of the Railroad. The cost of railroad work will be covered by a separate agreement, i.e., Service Contract or Construction and Maintenance Agreement.
5. State shall maintain the facility at no cost to Railroad. If at any time within a 20-year period, after completion of construction, Railroad should install additional tracks or other railroad facilities which will require the extension of the culvert or the reinforcing of the culvert to withstand greater loads, State shall bear the cost of such extension or reinforcing provided funds for that purpose are provided by the California Transportation Commission. Upon expiration of the 20-year period after completion of construction, Railroad shall assume the obligation for such extension or reinforcing but State shall continue to maintain the facility at no cost to Railroad.
6. If the construction of said structure upon the aforesaid-described property is not commenced within two (2) years of the date first herein written, or if, after construction, State should blockade said structure or otherwise cause it to be unused or unusable for a continuous period of two (2) years and if thereafter Railroad shall so request, State shall immediately review its plans for the utilization of said easement, and should State not propose to utilize such easement nor have plans for such utilization, State shall request abandonment in accordance with the applicable statutes or laws of the State of California, and subject to appropriations being made for the purpose by the California Transportation

Commission, State shall, at the time of abandonment and upon Railroad's written request, remove said structure and restore Railroad's premises to the condition existing prior to construction of said structure.

The State will not, after original construction, give or consent to any right, privilege or easement upon, across or within the easement granted herein, which will interfere with the existing operation and maintenance for railroad purposes of Railroad's property, and Railroad shall have the right to approve plans for such installations as State may authorize insofar as they affect installations of Railroad, its subsidiary or affiliated companies, which approval shall not be unreasonably withheld or delayed.

7. The performance of any work on Railroad's premises by State Contractors shall be in conformance with State Contract Special Provisions agreed upon by State and Railroad.
8. State shall obtain any necessary authority and permission required to construct, reconstruct, maintain and use said structure upon said property from the governmental body or bodies having jurisdiction thereover.
9. The provisions of this indenture shall inure to the benefit of and be binding upon the successors and assigns of Railroad and the assigns of State.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

[S.P.T.Co. 2-11-75, STATE 5-20-75]

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**SOUTHERN PACIFIC
TRANSPORTATION COMPANY**

By _____
District Director of Transportation

By _____

By _____
District Division Chief, Right of Way

Attest _____
Assistant Secretary

Space above for recorder's use only

LONGITUDINAL SLOPE EASEMENT WITH RETENTION OF RIGHTS

THIS INDENTURE, made this __ day of ____,199__, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation of the State of Delaware, herein called "Railroad," and the STATE OF CALIFORNIA, acting by and through its Department of Transportation, herein called "State";

WITNESSETH:

1. The Railroad hereby grants to State an easement for public highway purposes to be used for construction and maintenance of highway slopes, hereinafter called "highway," in, upon, over, under, across and along the following described property of Railroad, more particularly described in Annex "A" attached and hereby made a part hereof.
2. This grant is subject to all prior licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word GRANT as used herein shall not be construed as a covenant against the existence of any thereof.
3. This grant is made subject to the prior and continuing right and obligation of Railroad, its successors and assigns, to use all the property described herein in the performance of its duty as a common carrier, and there is reserved unto Railroad, its successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use existing and future railroad tracks, facilities and appurtenances and existing and future transportation, communication and pipeline facilities and appurtenances in, upon, over, under, across and along said property. Any such construction by Railroad, or its subsidiary or affiliated companies, shall be subject to the approval of the State as to safety and compatibility with highway purposes, which approval shall not be unreasonably withheld. Railroad, or its subsidiaries or affiliated companies shall be subject to the issuance of encroachment permits which will be issued for the purpose of providing State with notice and a record of work, and for the terms and conditions relating to public safety and compatibility with highway purposes. No new or different rights or obligations shall be created by the permit in such cases, and all such prior rights shall be fully protected. Encroachment permits issued to Railroad or its subsidiaries or affiliated companies, shall have designated across the face thereof, "For Notice and Record Purposes Only."
Any construction by other parties in, under or over the highway easement shall be subject to State's issuance of a Standard Encroachment Permit.
4. Reserving unto Railroad its successors or assigns, the right at any time to remove such slopes or portion 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 State for the protection and support of said highway.
5. Should State, its successors or assigns, at any time abandon said property or any part thereof, the rights granted shall cease to the extent so abandoned and Railroad, its successors or assigns, shall have the right to resume possession of said property or the part thereof which has been abandoned.
6. The performance of any work on Railroad's premises by State Contractors shall be in conformance with State Contract Special Provisions agreed upon by State and Railroad.
7. The provisions of this indenture shall inure to the benefit of and be binding upon the successors and assigns of Railroad and the assigns of State.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

[S.P.T.Co. 2-11-75, STATE 5-20-75]
[(Rev. 12-87) 76346-P]

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**SOUTHERN PACIFIC
TRANSPORTATION COMPANY**

By _____
District Director of Transportation

By _____

By _____
District Division Chief, Right of Way

Attest _____
Assistant Secretary

Space above for recorder's use only

LONGITUDINAL SLOPE EASEMENT WITHOUT RETENTION OF RIGHTS

THIS INDENTURE, made this __ day of ____,199__, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation of the State of Delaware, herein called "Railroad," and the STATE OF CALIFORNIA, acting by and through its Department of Transportation, herein called "State";

WITNESSETH:

1. The Railroad hereby grants to State an easement for public highway purposes to be used for construction and maintenance of highway slopes, hereinafter called "highway," in, upon, over, under, across, and along the following described property of Railroad, more particularly described in Annex "A" attached and by this reference made a part hereof.
2. This grant is subject to all prior licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word GRANT as used herein shall not be construed as a covenant against the existence of any thereof.
3. Reserving unto Railroad, its successors or assigns, the right at any time to remove such slopes or portions thereof upon removing the necessity for maintaining such slopes or portion thereof or upon providing in place thereof other adequate lateral support, the design and construction of which shall be first approved by State for the protection and support of said highway.
4. Should State, its successors or assigns, at any time abandon said property or any part thereof, the rights granted shall cease to the extent so abandoned and Railroad, its successors or assigns, shall have the right to resume possession of said property or the part thereof which has been abandoned.
5. The provisions of this indenture shall inure to the benefit of and be binding upon the successors and assigns of Railroad and the assigns of State.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

[S.P.T.Co. 2-11-75, STATE 5-20-75]

[(Rev. 12-87) 76346-P]

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**SOUTHERN PACIFIC
TRANSPORTATION COMPANY**

By _____
District Director of Transportation

By _____

By _____
District Division Chief, Right of Way

Attest _____
Assistant Secretary

LONGITUDINAL DRAINAGE EASEMENT WITH RETENTION OF RIGHTS

THIS INDENTURE, made this __ day of _____,199_, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation of the State of Delaware, herein called "Railroad," and the STATE OF CALIFORNIA, acting by and through its Department of Transportation, herein called "State";

WITNESSETH:

1. The Railroad hereby grants to State an easement for public highway purposes to be used for a drainage facility hereinafter called "structure," in, under, along, upon, over and across that certain property more particularly described in Annex "A" attached and hereby made a part hereof.
2. This grant is subject to all prior licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word GRANT as used herein shall not be construed as a covenant against the existence of any thereof.
3. This grant is made subject to the prior and continuing right and obligation of Railroad, its successors and assigns, to use all the property described herein in the performance of its duty as a common carrier, and there is reserved unto Railroad, its successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use existing and future railroad tracks, facilities, and appurtenances and existing and future transportation, communication and pipeline facilities and appurtenances in, upon, over, under, across and along said property. Any such construction by Railroad, or its subsidiary or affiliated companies, shall be subject to the approval of the State as to safety and compatibility with highway purposes, which approval shall not be unreasonably withheld. Railroad, or its subsidiaries or affiliated companies shall be subject to the issuance of encroachment permits which will be issued for the purpose of providing the State with notice and a record of work, and for the terms and conditions relating to public safety and compatibility and highway purposes. No new or different rights or obligations shall be created by the permit in such cases, and all such prior rights shall be fully protected. Encroachment permits issued to Railroad or its subsidiaries or affiliated companies, shall have designated across the face thereof, "For Notice and Record Purposes Only."
Any construction by other parties in, under, or over the highway easement shall be subject to State's issuance of a Standard Encroachment Permit.
4. That at all times during the progress of the work of constructing or reconstructing said drainage facilities State shall permit a representative of Railroad to inspect such work, and that such work shall be done in a satisfactory manner so as not to cause any damage to Railroad's facilities, and that the design and construction or reconstruction shall have previous approval of the Railroad. The cost of railroad work will be covered by a separate agreement, i.e., Service Contract or Construction and Maintenance Agreement.
5. That State shall at all times maintain and keep said drainage facilities in good condition and repair.
6. Should State, its successors or assigns, at any time abandon said property or any part thereof, the rights granted shall cease to the extent so abandoned and Railroad, its successors or assigns, shall have the right to resume possession of said property or the part thereof which has been abandoned.
7. The performance of any work on Railroad's premises by State Contractors shall be in conformance with State Contract Special Provisions agreed upon by State and Railroad.
8. State shall obtain any necessary authority and permission required to construct, reconstruct, maintain, and use said structure upon said property from the governmental body or bodies having jurisdiction thereover.
9. The provision of this indenture shall inure to the benefit of and be binding upon the successors and assigns of Railroad and the assigns of State.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

[S.P.T.Co. 2-11-75, STATE 5-20-75]

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**SOUTHERN PACIFIC
TRANSPORTATION COMPANY**

By _____
District Director of Transportation

By _____

By _____
District Division Chief, Right of Way

Attest _____
Assistant Secretary

Space above for recorder's use only

LONGITUDINAL DRAINAGE EASEMENT WITHOUT RETENTION OF RIGHTS

THIS INDENTURE, made this __ day of ____,199__, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation of the State of Delaware, herein called "Railroad," and the STATE OF CALIFORNIA, acting by and through its Department of Transportation, herein called "State";

WITNESSETH:

1. The Railroad hereby grants to State an easement for public highway purposes to be used for a drainage facility hereinafter called "structure," in, under, along, upon, over and across that certain property more particularly described in Annex "A" attached and hereby made a part hereof.
2. This grant is subject to all prior licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word GRANT as used herein shall not be construed as a covenant against the existence of any thereof.
3. That at all times during the progress of the work of constructing or reconstructing said drainage facilities, State shall permit a representative of Railroad to inspect such work, and that such work shall be done in a satisfactory manner so as not to cause any damage to Railroad's facilities, and that the design and construction or reconstruction shall have previous approval of the Railroad. The cost of railroad work will be covered by a separate agreement, i.e., Service Contract or Construction and Maintenance Agreement.
4. That State shall at all times maintain and keep said drainage facilities in good condition and repair.
5. Should State, its successors or assigns, at any time abandon said property or any part thereof, the rights granted shall cease to the extent so abandoned and Railroad, its successors, or assigns, shall have the right to resume possession of said property or the part thereof which has been abandoned.
6. State shall obtain any necessary authority and permission required to construct, reconstruct, maintain and use said structure upon said property from the governmental body or bodies having jurisdiction thereover.
7. The provisions of this indenture shall inure to the benefit of and be binding upon the successors and assigns of Railroad and the assigns of State.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

[S.P.T.Co. 2-11-75, State 5-20-75]

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**SOUTHERN PACIFIC
TRANSPORTATION COMPANY**

By _____
District Director of Transportation

By _____

By _____
District Division Chief, Right of Way

Attest _____
Assistant Secretary

TRANSVERSE CROSSINGS AT SEPARATED GRADE

THIS INDENTURE, made this __ day of _____,199_, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation of the State of Delaware, herein called "Railroad," and the STATE OF CALIFORNIA, acting by and through its Department of Transportation, herein called "State";

WITNESSETH:

1. The Railroad hereby grants to State easements for public highway purposes by means of an _____ hereinafter called "highway," in, under, along, upon and across that certain property more particularly described in Annex "A" attached and hereby made a part hereof.
2. This grant is subject to all prior licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word GRANT as used herein shall not be construed as a covenant against the existence of any thereof.
3. This grant is made subject to the prior and continuing right and obligation of Railroad, its successors and assigns, to use all the property described herein in the performance of its duty as a common carrier, and there is reserved unto Railroad, its successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use existing and future railroad tracks, facilities and appurtenances and existing and future transportation, communication and pipeline facilities and appurtenances in, upon, over, across and along said property. Any such construction by Railroad, or its subsidiary or affiliated companies, in, under or over the highway easement shall be subject to the approval of the State as to safety and compatibility with highway purposes, which approval shall not be unreasonably withheld. Railroad, or its subsidiaries or affiliated companies shall be subject to the issuance of encroachment permits which will be issued for the purpose of providing State with notice and a record of work, and for the terms and conditions relating to public safety and compatibility with highway purposes. No new or different rights or obligations shall be created by the permit in such cases, and all such prior rights shall be fully protected. Encroachment permits issued to Railroad or its subsidiaries or affiliated companies, shall have designated across the face thereof "For Notice and Record Purposes Only."
Any construction by other parties in, under or over the highway easement shall be subject to State's issuance of a Standard Encroachment Permit.
4. The easement herein granted is expressly limited vertically to a plane parallel with and 30 feet above the roadway surface of the highway as originally constructed; except that lighting fixtures and similar highway appurtenances may extend above said plane; provided that such lighting fixtures and appurtenances shall not be installed above said plane if prior to the granting of this easement the Railroad, its assigns or lessees, shall have installed facilities of any type, in which latter case installation above said plane is permitted but only if said installation and construction of lighting fixtures and similar appurtenances shall not interfere with such existing facilities.
5. If the construction of said highway upon the aforesaid-described property is not commenced within two (2) years of the date first herein written, or if, after construction, State should blockade said highway or otherwise cause it to be unused or unusable for a continuous period of two (2) years and if thereafter Railroad shall so request, and should State shall immediately review its plans for the utilization of said easement, and should State not propose to utilize such easement nor have plans for such utilization, State shall request abandonment in accordance with the applicable statutes or laws of the State of California, and, subject to appropriations being made for the purpose by the California Transportation Commission, State shall, at the time of abandonment and upon Railroad's written request, remove said highway and restore Railroad's premises to the condition existing prior to construction of said highway.
The State will not, after original construction, give or consent to any right, privilege or easement upon, across, or within the easement granted herein, which will interfere with the existing operation and maintenance for railroad purposes of Railroad's property and Railroad shall have the right to approve plans for such installations as State may

authorize insofar as they affect installations of Railroad, its subsidiary or affiliated companies, which approval shall not be unreasonably withheld or delayed.

6. The construction-maintenance of said highway is the subject of a separate agreement between parties hereto.
7. The performance of any work on Railroad's premises by State Contractors shall be in conformance with State Contract Special Provisions agreed upon by State and Railroad.
8. State shall obtain any necessary authority and permission required to construct, reconstruct, maintain and use said highway upon said property from the governmental body or bodies having jurisdiction thereover.
9. The provisions of this indenture shall inure to the benefit of and be binding upon the successors and assigns of Railroad and the assigns of State.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

[S.P.T.Co. 2-11-75, STATE 5-20-75]
[Rev. 12-87) 76346-P]

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**SOUTHERN PACIFIC
TRANSPORTATION COMPANY**

By _____
District Director of Transportation

By _____

By _____
District Division Chief, Right of Way

Attest _____
Assistant Secretary

CROSSING AT GRADE

THIS INDENTURE, made this __ day of _____,199_, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation of the State of Delaware, herein called "Railroad," and the STATE OF CALIFORNIA, acting by and through its Department of Transportation, herein called "State";

WITNESSETH:

1. The Railroad hereby grants to State an easement for public highway purposes, by means of a crossing at grade, hereinafter called "highway," in, under, along, upon, over and across that certain property more particularly described in Annex "A" attached and hereby made a part hereof.
2. This grant is subject to all prior licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word GRANT as used herein shall not be construed as a covenant against the existence of any thereof.
3. This grant is made subject to the prior and continuing right and obligation of Railroad, its successors and assigns, to use all the property described herein in the performance of its duty as a common carrier, and there is reserved unto Railroad, its successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain, and use existing and future railroad tracks, facilities, and appurtenances and existing and future transportation, communication and pipeline facilities and appurtenances in, upon, over, across, and along said property. Any such construction by Railroad, or its subsidiary or affiliated companies, in, under or over the highway easement shall be subject to the approval of the State as to safety and compatibility with highway purposes, which approval shall not be unreasonably withheld. Railroad, or its subsidiaries or affiliated companies shall be subject to the issuance of encroachment permits which will be issued for the purpose of providing the State with notice and a record of work, and for the terms and conditions relating to public safety and compatibility with highway purposes. No new or different rights or obligations shall be created by the permit in such cases, and all such prior rights shall be fully protected. Encroachment permits issued to Railroad or its subsidiaries or affiliated companies, shall have designated across the face thereof: "For Notice and Record Purposes Only."

Any construction by other parties in, under or over the highway easement shall be subject to State's issuance of a Standard Encroachment Permit.

4. The easement herein granted is expressly limited vertically to a plane parallel with and 30 feet (9.144 m) above the roadway surface of the highway as originally constructed; except that lighting fixtures and similar highway appurtenances may extend above said plane, provided, that such lighting fixtures and appurtenances shall not be installed above said plane if prior to the granting of this easement the Railroad, its assigns or lessees, shall have installed facilities of any type, in which latter case installation above said plane is permitted but only if said installation and construction of lighting fixtures and similar appurtenances shall not interfere with such existing facilities.
5. If the construction of said highway upon the aforesaid described property is not commenced within two (2) years of the date first herein written, or if, after construction, State should blockade said highway or otherwise cause it to be unused or unusable for a continuous period of two (2) years and if thereafter Railroad shall so request, State shall immediately review its plans for the utilization of said easement, and should State not propose to utilize such easement nor have plans for such utilization, State shall request abandonment in accordance with the applicable statutes or laws of the State of California, and subject to appropriations being made for the purpose by the California Transportation Commission, State shall, at the time of abandonment and upon Railroad's written request, remove said highway and restore Railroad's premises to the condition existing prior to construction of said highway.

The State will not, after original construction, give or consent to any right, privilege or easement upon, across or within the easement granted herein, which will interfere with then existing operation and maintenance for railroad purposes of Railroad's property and Railroad shall have the right to approve plans for such installations as State may authorize insofar as they affect installations of Railroad, its subsidiary or affiliated companies, which approval shall not be unreasonably withheld or delayed.

6. State shall maintain said highway at grade of track existing at the time of construction of said highway; provided that Railroad shall maintain that portion between lines two (2) feet outside the rails of each track. Such obligation on Railroad to maintain shall

terminate in the event Railroad shall abandon its tracks leading to said highway, and the rails, ties and track appurtenances may remain in place, subject to State's right to remove or cover such rails, ties and appurtenances.

7. The performance of any work on Railroad's premises by State Contractors shall be in conformance with State Contract Special Provisions agreed upon by State and Railroad.
8. State shall obtain any necessary authority and permission required to construct, reconstruct, maintain and use said highway upon said property from the governmental body or bodies having jurisdiction thereover.
9. The provision of this indenture shall inure to the benefit of and be binding upon the successors and assigns of Railroad and the assigns of State.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

[S.P.T.Co. 2-11-75, STATE 5-20-75]
[(Rev. 12-87) 76346-P]

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**SOUTHERN PACIFIC
TRANSPORTATION COMPANY**

By _____
District Director of Transportation

By _____

By _____
District Division Chief, Right of Way

Attest _____
Assistant Secretary

Space above for recorder's use only

STRAIGHT HIGHWAY EASEMENT

THIS INDENTURE, made this __ day of ____,199_, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation of the State of Delaware, herein called "Railroad," and the STATE OF CALIFORNIA, acting by and through its Department of Transportation, herein called "State";

WITNESSETH:

1. Grantor hereby grants to State an easement for public highway purposes, hereinafter called "highway," in, upon, over, under, across and along the following described property of Grantor, more particularly described in Annex "A" attached and hereby made a part hereof.
2. This grant is subject to all prior licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word GRANT as used herein shall not be construed as a covenant against the existence of any thereof.
3. Should State, its successors or assigns, at any time abandon said property or any part thereof, the rights granted shall cease to the extent so abandoned and Grantor, its successors or assigns, shall have the right to resume possession of said property or the part thereof which has been abandoned.
4. The provisions of this indenture shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

[S.P.T.Co. 2-11-75, STATE 5-20-75]
[(Rev. 12-87) 76346-P]

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**SOUTHERN PACIFIC
TRANSPORTATION COMPANY**

By _____
District Director of Transportation

By _____

By _____
District Division Chief, Right of Way

Attest _____
Assistant Secretary

Space above for recorder's use only

TRANSVERSE CROSSING

EASEMENT
FROM
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO
STATE OF CALIFORNIA

Covering certain real property

situate in

State of California

Dated: _____, 19 ____

Easement, Made this __ day of _____ 199_, by THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation, hereinafter called "Santa Fe," first party, to STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "State," second party.

SANTA FE hereby donates and grants to the State an easement for the construction of a highway in, under, along, upon and across that certain property of Santa Fe, more particularly described in Annex "A" attached hereto and by this reference made a part hereof.

This easement is subject and subordinate to the prior and continuing right and obligation of Santa Fe, its successors and assigns, to use all of the land described herein in the performance of its public duty as a common carrier and for that purpose Santa Fe expressly reserves for itself, its successors and assigns, the right to construct, reconstruct, maintain, and operate existing or any additional railroad tracks, facilities and appurtenances thereto upon, along, and across the land described herein in such manner as may be consistent with the enjoyment, safety, and compatibility of the easement for highway purposes herein granted to State.

Santa Fe also reserves for itself, its successors, assigns, lessees and licensees, the right to construct, reconstruct, maintain and operate pipelines, pole lines and like facilities upon, along and across said parcel of land provided that in doing so Santa Fe, such successors, assigns, lessees or licensees shall first have obtained from the State such appropriate encroachment permit as may be required by law. Encroachment permits issued to Santa Fe or its subsidiaries or affiliated companies, shall have designated across the face thereof "For Notice and Record Purposes Only"; provided, however, that in case of any subsequent conveyance by Santa Fe, its subsidiaries or affiliated companies, such facilities and installations shall be subject to a standard encroachment permit.

Santa Fe also reserves for itself, its successors and assigns, lessees and licensees all rights in and to the airspace above the roadway surface of the highway as originally constructed at an elevation higher than a plane parallel with and 30 feet (9.144 m) above the roadway surface of said highway, provided, that such use shall not interfere with the enjoyment, safety and compatibility of the easement for highway purposes herein granted, provided further, that Santa Fe, its lessees and/or licensees shall first secure such encroachment permits as may be required by law, which permit shall not be reasonably withheld. Encroachment permits issued to Santa Fe or its subsidiaries or affiliated companies, shall have designated across the face thereof "For Notice and Record Purposes Only"; provided, however, that in case of any subsequent conveyance by Santa Fe, its subsidiaries or affiliated companies, such facilities and installations shall be subject to a standard encroachment permit.

TO HAVE AND TO HOLD above-described easement from the date hereof, subject, however, to all valid and existing contracts, leases, licenses, easements and encumbrances which may in anywise affect the premises.

By its acceptance of this easement the State covenants, for itself, its successors and assigns, as follows:

1. That said parcel of land shall be used for no other purpose than that of a public highway.
2. That if said parcel of land is not entered upon and appropriated by the State within a period of two (2) years from the date hereof, and upon request by Santa Fe, State shall review its plans for the utilization of said easement and should State not propose to utilize such easement nor have plans for such utilization within a period of three years, then if so requested by Santa Fe the Director of Transportation shall petition to the California Transportation Commission for the abandonment of the highway easement herein conveyed pursuant to the applicable provisions of the California Streets and Highways Code or such other statutes as shall apply to such abandonment at that time.
3. That the State insofar as it may legally do so shall repair and restore any improvements or equipment belonging to Santa Fe that may be damaged by the State or, at State's option pay to Santa Fe the market value of such improvements or equipment.
4. State shall, insofar as it may legally do so, save harmless and indemnify Santa Fe against all claims, demands, suits, judgements, expenses, and costs on account of injury to or death of persons or loss of or damage to property of others incurred during or proximately caused by acts or omissions of the State or the State's contractor in the performance of any work by the State or the State's contractor upon the herein-described parcel.
5. That if the land herein-described or any portion thereof shall cease to be a public highway, then and in that event the right hereby given shall as to such portion or portions, as the case may be, thereupon cease and determine and Santa Fe, its successors and assigns, shall resume possession thereof the same as though this instrument had not been executed.
6. That State will not give or consent to any franchise, right, privilege, or easement upon, across or within the highway for which the easement is granted which interferes in any manner with the operation or maintenance of Santa Fe property.

This instrument is given without warranty of title of any kind, express or implied, and no covenant of warranty of title shall be implied from the use of any word or words herein contained.

All of the covenants herein contained shall be binding upon the assigns of State and shall inure to the benefit of the successors and assigns of Santa Fe.

IN WITNESS WHEREOF, Santa Fe has duly executed this instrument the day and year first above written.

[A.T.&S.F. 9-20-73, STATE 8-27-73]

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

By _____
Vice President

ATTEST:

By _____
Assistant Secretary

STATE OF CALIFORNIA }
 } §
COUNTY OF LOS ANGELES }

On this ____day of _____ in the year one thousand nine hundred and ninety _____ before me, _____, a Notary Public in and for said County of Cook, State of Illinois, personally appeared _____, known to me to be the Vice President of the corporation that executed the within and foregoing instrument, and known to me to be one of the persons who executed the said instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

Notary Public in and for said
County of Los Angeles
State of California

(SEAL)

TRANSVERSE DRAINAGE EASEMENT

EASEMENT, Made this __ day of _____, 199_, by THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation, hereinafter called "Santa Fe," first party, to STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter called "State", second party.

SANTA FE hereby donates and grants to the State an easement for the construction, maintenance, operation, inspection, repair and reconstruction of _____ hereinafter called "drainage facilities," in, under, along, upon and across that certain property of Santa Fe, more particularly described in Annex "A" attached hereto and by this reference made a part hereof.

EXCEPTING AND RESERVING the right, to be exercised by the Santa Fe and by any others who have obtained permission or authority from Santa Fe so to do, consistent with the rights herein granted: (a) to operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipes and other facilities of like character upon, over and under the surface of the premises herein described; and (b) from time to time to construct, operate, maintain, renew and/or relocate upon, over or under the surface of said premises additional facilities of the character described in Clause (a) of this paragraph.

TO HAVE AND TO HOLD the herein described easement unto State solely for the aforesaid purposes together with the right to enter upon and to pass and repass over and along said premises for the purpose of constructing, maintaining, operating, inspecting and repairing said drainage facilities, subject, however, to all prior licenses, leases, easements, restrictions, reservations, conditions, covenants, encumbrances, rights and rights of way, liens and claims of title which may in anywise affect the said premises.

By acceptance of this easement the State covenants for itself, its successors and assigns as follows:

- (a) (See example page 5 of 5)
- (b) That if said parcel of land is not entered upon and appropriated by the State within a period of two (2) years from the date hereof, and upon request by Santa Fe, State shall review its plans for the utilization of said easement and should State not propose to utilize such easement nor have plans for such utilization within a period of three years, then if so requested by Santa Fe the Director of Transportation shall petition to the California Transportation Commission for the abandonment of the easement herein conveyed pursuant to the applicable provisions of the California Streets and Highways Code at that time.
- (c) That State shall at all times keep said drainage facilities in good condition and repair.
- (d) That at all times during the progress of the work of constructing said drainage facilities State shall permit a representative of Santa Fe to inspect such work, and that such work shall be done in a satisfactory manner so as not to cause any damage to Santa Fe's facilities, and that the type of such construction shall have previous approval of the Assistant General Manager-Engineering of Santa Fe.
- (e) State shall, insofar as it may legally do so, save harmless and indemnify Santa Fe against all claims, demands, suits, judgments, expenses and costs on account of injury to or death of persons or loss of or damage to property incurred during or proximately caused by acts or omissions of the State or the State's contractor in the performance of any work by the State or the State's contractor upon the herein described parcel.
- (f) That if the land herein described or any portion thereof shall cease to be used for drainage facilities, then and in that event the Director of Transportation shall petition to the California Transportation Commission for the abandonment of that portion of the easement herein conveyed, pursuant to the applicable provisions of the California Streets and Highways Code or such other statutes as shall apply to such abandonment at the time.

This instrument is given without warranty of title of any kind, express or implied, and no covenant of warranty or title shall be implied from the use of any word or words herein contained.

IN WITNESS WHEREOF, Santa Fe has duly executed this instrument the day and year first above written.

[A.T.&S.F. 9-20-73, STATE 8-27-73]

[(Rev. 12-87) 76346-P]

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

By _____
Vice President

ATTEST:

By _____
Assistant Secretary

STATE OF CALIFORNIA }
 } §
COUNTY OF LOS ANGELES }

On this ____day of _____ in the year one thousand nine hundred and ninety _____ before me, _____, a Notary Public in and for said County of Cook, State of Illinois, personally appeared _____, known to me to be the Vice President of the corporation that executed the within and foregoing instrument, and known to me to be one of the persons who executed the said instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

Notary Public in and for said
County of Los Angeles
State of California

(SEAL)

Example for use in Drainage Transverse Crossing Indenture - (a)

- (a) That said drainage facilities shall consist of a fifty-one (51) inch (1295.4mm) diameter reinforced concrete pipe not less than thirteen (13) feet (3.9624 m) below base of rails; and shall be constructed and thereafter maintained in a manner which will not interfere with the operation of Santa Fe's trains, locomotives, motors, and cars. After construction is completed the State shall restore the surface of the property as near as possible to its prior existing condition. (This paragraph will be modified to conform to the type of facility State proposes to construct.)

LICENSE

DRILLING PERMIT

THIS LICENSE, made this __ day of ____, 199__, by THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called "Licensor)," and STATE OF CALIFORNIA, (hereinafter called "Licensee").

WITNESSETH, that the parties hereto for the consideration hereinafter expressed covenant and agree as follows:

1. Licensor hereby licenses licensee to use, subject to the rights and easements hereinafter excepted and reserved and upon the terms and conditions hereinafter set forth, the land (hereinafter called "Premises") situated at or near _____, County of _____, State of California, as shown on the print hereto attached, C.E. Drawing No. _____, dated _____, marked "Exhibit A" and made a part hereof, for a term beginning on _____, and ending when this License shall be terminated as hereinafter provided, but not later than _____ or completion of project. This License is personal to Licensee and shall not be enjoyed by others.
2. Licensor hereby excepts and reserves the right to be exercised by Licensor and by any others who have obtained or may obtain permission or authority from Licensor, (a) to operate, maintain, renew and relocate any and all existing Railroad tracks, and pipe, power, and communication lines and appurtenances and other facilities of like character upon, over or under the surface of the Premises; and (b) from time to time to construct, operate, maintain, renew, and relocate such additional facilities of the same character.
3. Licensee shall use the Premises exclusively as a site for drilling test holes or other investigation of foundation conditions. In case Licensee shall use the Premises for any other purpose whatsoever other than above mentioned, then Licensor may declare this License at an end and prevent Licensee from using or remaining upon the Premises, with or without process of law. Licensee shall not have the exclusive possession of the Premises as against Licensor.
4. Licensee, in connection with Licensee's work, shall keep and maintain the Premises in a safe, sanitary and sightly condition.
5. In using the Premises, Licensee shall comply with any and all requirements imposed by any governmental body having jurisdiction thereover.
6. In the exercise of the license herein given, Licensee shall not occupy or use any portion of Licensor's premises within fifteen (15) feet (4.572 m) from the centerline of any railroad track.
7. Licensee, insofar as it may legally do so pursuant to Section 14662.5 of the Government Code of the State of California or such other statute or statutes as may be in effect from time to time, agrees to indemnify and save harmless Licensor against all loss, damage or expense which Licensor may sustain, incur or become liable for, including loss of or damage to property or injury to or death of persons, arising out of the use of the Premises by Licensee, and Licensee further agrees to repair or pay for any damages proximately caused by reasons of the uses authorized by this License.
8. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, Licensor shall not be liable to Licensee for any damage of any nature whatsoever. This License is made expressly subject to any and all leases and licenses which may affect the Premises, and the rights of Licensor's lessees or licensees on the Premises in the exercise of the rights herein licensed.
9. *This License may be terminated at any time by either party upon thirty (30) days' notice in writing to be served upon the other party, stating therein the date that such termination shall take place, and upon the expiration of the time specified in such notice this License and all rights of Licensee hereunder shall absolutely cease and determine provided however Licensor may terminate this License upon two (2) days' notice in writing for any violation by Licensee of the terms or conditions stated herein.*

10. All notices to be given hereunder shall be given in writing, by depositing same in the United States mail duly registered or certified, with postage prepaid, and addressed to the Licensee or Licensor as the case may be at the address shown on the signature page hereof, or addressed to such other address as the parties hereto may from time to time designate.
11. Upon the termination of this License in any manner herein provided, Licensee shall forthwith surrender to Licensor the possession of the Premises and shall restore the Premises to substantially the state in which they were prior to the effective date hereof. If Licensee fails to restore Premises to substantially the same state, as aforesaid, Licensor is authorized to make such restoration as is necessary up to the sum of \$200.00 and Licensee will reimburse Licensor for the cost so incurred, provided that if the cost of such restoration exceeds the sum of \$100.00, payment for the excess thereof is subject to the appropriation of funds by the California Transportation Commission.
12. Licensee will transmit to Licensor the drilling test results upon completion of testing.
13. If Licensee fails to surrender to Licensor the Premises, upon any termination of this License, all the liabilities and obligations of license hereunder shall continue in effect until the Premises are surrendered; and no termination hereof shall release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination.
14. If it is determined by the Licensor that flagging or inspection is necessary, Licensee shall cease drilling any test holes and all activity under this License until a separate service contract is executed between the parties to provide for such flagging or inspection.
15. All the covenants and agreements of Licensee herein contained shall be binding upon the Licensee, and shall inure to the benefit of the successors and assigns of Licensor.

IN WITNESS WHEREOF, this License has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

[A.T.&S.F. 9-20-73, STATE 8-27-73]
 [(Rev. 12-87) 76346-P]

**THE ATCHISON, TOPEKA AND SANTA FE
 RAILWAY COMPANY**

**STATE OF CALIFORNIA
 DEPARTMENT OF TRANSPORTATION**

By _____

By _____

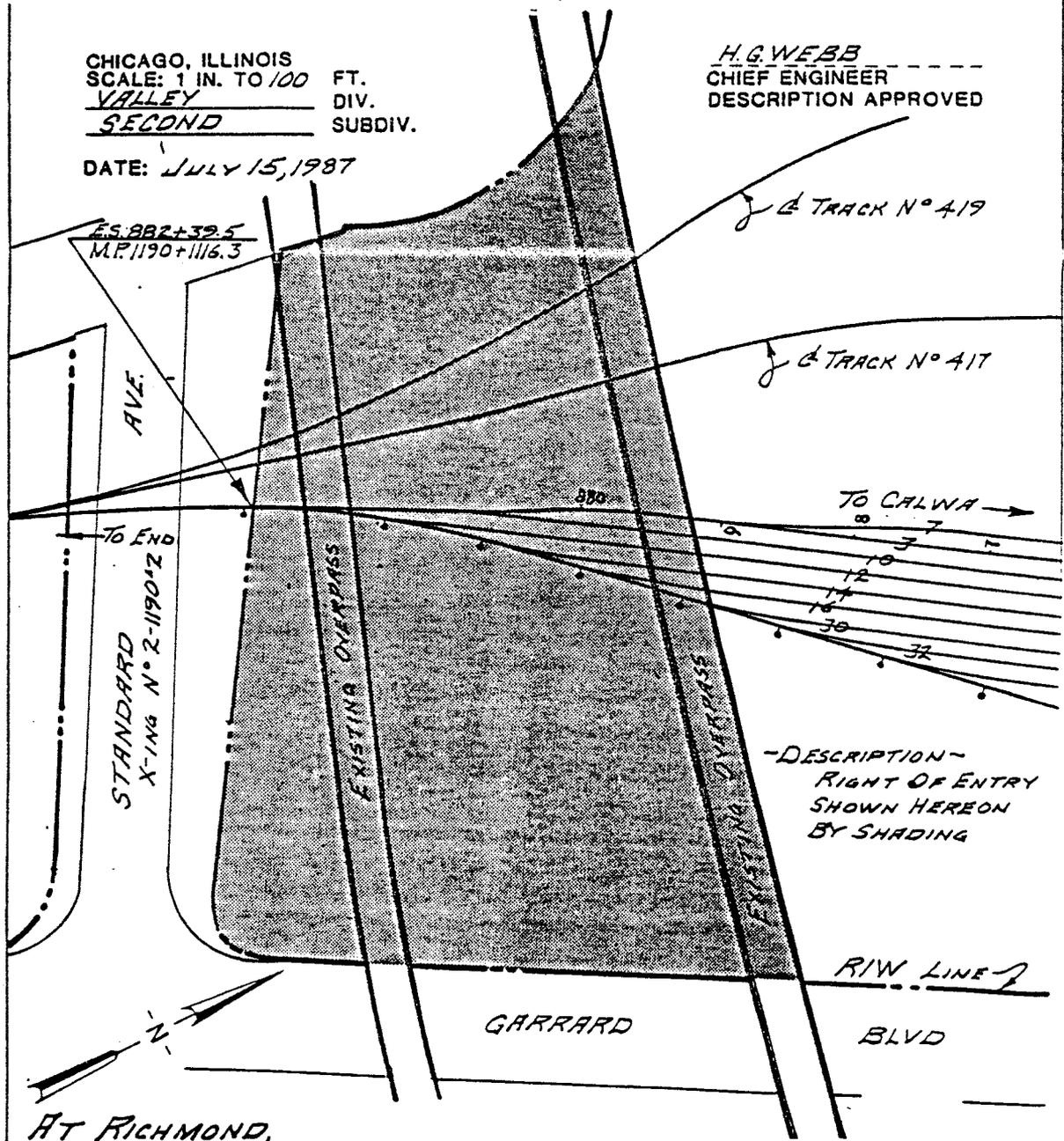
 (Licensor)

EXHIBIT "A"
 ATTACHED TO CONTRACT BETWEEN
 THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
 AND
 STATE OF CALIFORNIA

CHICAGO, ILLINOIS
 SCALE: 1 IN. TO 100 FT.
VALLEY DIV.
SECOND SUBDIV.

H. G. WEBB
 CHIEF ENGINEER
 DESCRIPTION APPROVED

DATE: JULY 15, 1987



-DESCRIPTION-
 RIGHT OF ENTRY
 SHOWN HEREON
 BY SHADING

AT RICHMOND,
 CONTRA COSTA COUNTY, CALIFORNIA C.E. DRAWING NO. 1-07512

DIV. DWG. NO. _____ DIV. FILE NO. _____ G. M. FILE NO. 05000183
 CEM

LICENSE

THIS LICENSE, made as of the _____ day of _____, 19 ____ between THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called "Santa Fe") and STATE OF CALIFORNIA (hereinafter whether one party or more called "Licensee").

WITNESSETH, that the parties hereto for the considerations hereinafter expressed covenant and agree as follows:

1. In consideration of the sum of _____ dollars (\$ _____) in hand paid by Licensee to Santa Fe, the receipt whereof is hereby acknowledged, and of the covenants and agreements of Licensee hereinafter set forth, and of the faithful performance by Licensee of the same, Santa Fe licenses and permits Licensee or Licensee's contractor to construct, maintain and use an electric supply line containing a maximum of ____ (___) conductors across or along the premises of Santa Fe at or near the station of _____, the kind and gauge of said conductors, the phase, frequency and voltage of the electric circuit carried thereon and the location of said electric supply line being more particularly shown upon the print hereto attached, No. _____ dated _____, marked "Exhibit A," and relation with railroad company clauses marked "Exhibit B" and both made a part hereof. For convenience, the said electric supply line, with conductors and their supporting or containing structures insofar as they relate to said electric supply line upon said premises, is hereinafter called the "Facility".
2. Licensee shall, at licensee's own cost, construct and at all times maintain the Facility in accordance with the Specifications, for said Facility across or along Railway Property, currently adopted by the Association of American Railroads, if any, or any successor agency, except where by statute or order of competent public authority a different type of construction or a different degree of maintenance is required or permitted, in which case such construction or maintenance shall be in accordance with such statute or order; provided, however, the plans for construction of the Facility shall be subject to the approval Santa Fe.
3. Licensee shall, at licensee's own cost, remove combustible material from around Licensee wooden poles, if any, and will at all times keep the space around such poles free of such material, and if removal of such combustible material shall not be attended to within fifteen (15) days after having been requested by Santa Fe to do so, Santa Fe shall have the right itself to perform the work and Licensee hereby agrees to reimburse Santa Fe for the expense so incurred. If the cost of said work exceeds \$200.00, payment for the excess thereof is subject to the appropriation of funds by the California Transportation Commission.
4. During construction and while repairing, renewing or changing the Facility, Licensee shall exercise reasonable care to the end that no damage shall occur to the property of Santa Fe, and that there shall be no unreasonable interference with the operation of its railroad. Upon completion of the Facility or after the making of any changes, repairs or renewals, Licensee shall, at Licensee's own cost, restore said premises to their approximate former state. Pursuant to a service contract been Licensee and Santa Fe, Licensee shall within ninety (90) days after receipt of bill thereof pay to Santa Fe the reasonable cost incurred in employing watchmen or such other means of protection as in the judgment of Santa Fe may be required during the construction, maintenance, repair, renewal or changing of the Facility.
5. If at any time during the term hereof Santa Fe shall desire to make (any) use of its property with which the Facility will in any way interfere, including the relocation of existing or the construction of new lines of poles, wires, conduits and other improvements in which it shall have an interest, Licensee shall, at Licensee's own cost, within a reasonable time not to exceed six (6) months, after receiving written notice from Santa Fe to such effect, make such changes in the Facility as in the judgment of Santa Fe may be necessary to avoid interference with the proposed use of its property for railroad operations. In the event the said premises are abandoned and Santa Fe proposes to sell the property, Santa Fe shall notify Licensee of its intent.
6. Santa Fe shall have the right at its election to construct the Facility and at any time to make such repairs, renewals, relocations or changes therein as it may deem necessary. In the event Santa Fe shall decide to exercise such right, Licensee shall enter into a service contract with Santa Fe for performing any work.

7. Licensee shall, insofar as it may legally do so, save harmless and indemnify Santa Fe against all claims, demands, suits, judgments, expenses and costs on account of injury to or death of persons or loss of or damage to property incurred during or approximately caused by acts or omissions of Licensee or Licensee's contractor in the performance of any work by the Licensee or the Licensee's contractor upon said premises.
8. If Licensee shall at any time fail or refuse to comply with or carry out any of the covenants herein contained, and such failure or refusal shall continue for a period of thirty (30) days after written demand for such performance or compliance shall have been made upon Licensee by Santa Fe, Santa Fe may, at its election, without notice, forthwith revoke this license, and in case of such election, or upon any termination hereof, Licensee shall, upon request, remove the Facility and restore said premises to the approximate condition which existed prior to the construction of the Facility. In case Licensee shall fail to make such removal or restoration within thirty (30) days, Santa Fe may proceed with such work, and Licensee shall within ninety (90) days after receipt of bill pay to Santa Fe the cost thereof. No waiver by Santa Fe of any default or defaults, or the right to terminate this license, shall be deemed or held to be a waiver of the right to terminate the same for any subsequent default or defaults, but notwithstanding such waiver Santa Fe may terminate this license upon any subsequent default or defaults which may occur; nor shall any termination hereof release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or such later date when the Facility may be removed and said premises restored as hereinabove provided.
9. Licensee shall at all times, during construction and maintenance operations at Licensee's own cost, maintain and protect the lines, wires and service of Santa Fe and of any licensee of Santa Fe whose permission to use said premises antedates the license and permission herein to Licensee, from interference and physical hazard, and if necessary in order to prevent such interference or hazard, Licensee shall, at Licensee's own cost, transpose Licensee's circuits or make such changes in the construction or location of the Facility as may be specified by Santa Fe.
10. In case of the eviction of Licensee by any one owning or claiming title to or any interest in said premises, or any part thereof, Santa Fe shall not be liable to Licensee for any damage of any nature whatsoever, or to refund any moneys paid hereunder.
11. Any notice to be given by Santa Fe to Licensee hereunder shall be deemed to be properly served if the same be delivered to Licensee or if deposited in the Post Office, postpaid, addressed to Licensee at _____

12. In the event Licensee herein consists of two or more parties, all the covenants and agreements of Licensee herein contained shall constitute the joint and several covenants and agreements of such parties.
13. This license may be terminated by either party hereto upon twelve (12) months notice in writing to be served upon the other party, stating therein the day of the month that such termination will take place; and upon the expiration of the time specified in such notice this license, and all rights and privileges of Licensee thereunder, shall absolutely cease.
14. This license shall be binding upon and inure to the benefit of the successors and assigns of Santa Fe and the assigns of Licensee; provided, however, no assignment hereof by Licensee, its assigns, nor any subsequent assignee, shall be binding upon Santa Fe without the written consent of Santa Fe in each instance, and at the option of Santa Fe this license shall be forfeited by any such voluntary assignment or by any assignment thereof by operation of law.
15. Any work performed on Santa Fe premises by Licensee or Licensee's contractor shall be done in a satisfactory workmanlike manner and in accordance with plans and specifications approved by Santa Fe, including plans covering any suspension cables, falsework, bracing or cribbing that may be necessary to use over, under or adjacent to Santa Fe's track, and no work shall be permitted on said premises until said plans and specifications have been approved by Santa Fe.
16. Licensee or Licensee's contractor shall not be permitted to commence work on said premises without first receiving written notification from Santa Fe's Division Superintendent. Such permission shall not be unreasonably withheld.
17. Licensee shall, pursuant to a service contract, reimburse Santa Fe for any and all reasonable expense incurred by Santa Fe on account of Facility.
18. The performance of any work on Santa Fe's premises by Licensee's contractors shall be in conformance with State contract special provisions agreed upon by Licensee and Santa Fe.
19. Licensee's contractor shall furnish and keep in force insurance of the kinds and in the amounts as specified in "Exhibit B" attached and made a part hereof.
20. Licensee's contractor shall not be permitted to commence work on said premises until notified by Santa Fe that the insurance furnished pursuant to Section 19 hereof is satisfactory to Santa Fe.
21. Insurance will not be required when any work is performed by Licensee's forces.

IN WITNESS WHEREOF, the parties have executed this license in duplicate as of the day and year first above written.

[A.T.&S.F. 10-22-87, STATE 10-1-87]
[(Rev. 12-87) 76346-P]

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

APPROVED:

As to Description:

Chief Engineer

As to specifications:

Superintendent of Communications

By _____

Its _____

ACCEPTED THIS _____ DAY OF
_____, ON
BEHALF OF THE _____

By _____
Deputy Director
Project Development

APPENDIX "A"

Detailed instructions covering Preparation of Plans and Data for use in making Application to Public Utilities Commission for Construction, Alteration or Abandonment of Railroad Crossings

These instructions supersede the circular letter of January 5, 1953, on "Railroad Crossing Data", revise the form in which data is to be submitted, and are intended to amplify and bring together in one place the necessary information and instructions covering preparation of data for applications to the Public Utilities Commission for work at railroad grade crossings.

The great majority of applications or notices filed by the Department of Transportation with the PUC for construction or alteration of railroad grade crossings, are made in connection with highway construction projects. Large numbers of highway projects include construction and/or alteration of two or more railroad crossings. In order to reduce the work in the District offices, in our Headquarters office, and also the handling by the Commission, and further, in order to give the Commission a better understanding of what is proposed, it is, in general, desirable to include in one application to the Commission all of the railroad crossings which are to be constructed, altered or abandoned on any one particular highway construction project.

The following instructions have been prepared on the assumption that a project includes a number of railroad crossings. In cases where only one crossing is involved, only the applicable sections will apply.

The data for use in preparing the application to the PUC shall be submitted in the form of a typed sheet marked Exhibit "A," giving general description of proposed work and detailed information for each individual crossing; including particularly, the information required by PUC regulations, together with drawings marked Exhibit "B," "C," "D," etc., showing location of proposed project, existing and proposed State highways, local roads, railroad tracks, and crossings in the vicinity, also plan, section and profile for each individual crossing, all as called for in PUC Rules.

Following are detailed instructions covering the data to be shown in the various exhibits:

Typed Sheet Marked "EXHIBIT A" shall include:

(I) GENERAL INFORMATION

- (A) Statement describing the proposed project, indicating the nature and limits of the project, that is, whether it is relocation of existing highway on new alignment, reconstruction of existing two-lane highway as a four-lane divided limited access freeway, resurfacing job, or other brief description to give a clear idea of proposed improvement.
- (B) Statement of the number of new railroad crossings included within the limits of the project to be constructed, the number of existing crossings to be altered and number of existing crossings to be abandoned, giving the names of railroads crossed.
- (C) Statement of when the work is proposed for advertising and for approximate time required for completion (that is, whether the work will be completed within say six months, one year or two years).
- (D) Statement that location map and vicinity sketch showing roads, railroad tracks, and crossings in vicinity of proposed work are attached.
- (E) Statement in regard to status of the Environmental Impact Statement.

(II) DETAILED INFORMATION

(A) NEW CROSSINGS TO BE CONSTRUCTED

- (1) Crossing of _____ Railroad Company at highway station _____ and railroad milepost _____
 - (a) A legal description of the location of the proposed crossing.
 - (b) Crossing number of the nearest existing public crossing on each side of the proposed crossing.
 - (c) Statement showing the public need to be served by the proposed crossing.
 - (d) Statement showing why a separation of grades is not practicable. The Statement: "Sufficient funds are not available for this project to finance the cost of separating grades at this location at this time" will suffice.
 - (e) Statement of estimated vehicular traffic per day, the amount of rail traffic, speed of traffic and visibility at crossings. Statements showing the signs, signals or other warning devices recommended.
 - (f) Plan of proposed crossing, typical section and profiles are shown on Exhibit C or D.
- (2),(3), etc. List separately each new crossing proposed giving information listed under (1), (a) to (f), inclusive above.

(B) EXISTING CROSSINGS TO BE ALTERED

- (1) Crossing of _____ Railroad at highway station _____.
 - (a) The assigned P.U.C. and U.S.D.O.T.- AAR numbers of the crossing proposed to be altered are _____ and _____.
 - (b) A statement describing the proposed alteration(s).
 - (c) Statement showing the public benefit obtained by the proposed alteration.
 - (d) Statement showing why a separation of grades is not practicable under the circumstances.
 - (e) Statement of the existing protection, number of vehicles per day, trains per day using crossing, speed of traffic, visibility, and statement of proposed protection.
 - (f) Plan of crossing, typical sections and approach profiles are shown on Exhibit C or D.
 - (g) Evidence of agreement between the parties relative to proposed alteration.
(This may be copy of an agreement in cases where an agreement has been executed or is in process of execution, or copy of correspondence between the district and the Railroad in cases where formal agreement has not been completed.)
- (2), (3), etc. List separately each railroad crossing proposed to be altered in connection with the project, giving the information listed under (1), (a) to (g), inclusive above.

Minor Alteration

PUC General Order No. 88-A "Rules for Altering Public Railroad-Highway Grade Crossings" provides, "where the alteration of the crossings is of a minor nature, such as change of elevation of eight (8) inches or less, or total widening of six (6) feet or less and no additional warning devices or change in existing warning devices are proposed, notice to Commission may be handled informally by letter and Items (c), (d), (e), and (f) may be omitted from the notice". Therefore, for a *minor alteration*, where State and Railroad are in agreement, the necessary information is:

- (1) the assigned number of the crossing
- (2) brief and self-explanatory statement of existing conditions which are to be altered and the alterations proposed
- (3) statement showing the public benefit to be obtained by the proposed alteration and
- (4) evidence of agreement

(C) EXISTING CROSSING TO BE ABANDONED

- (1) Crossing of _____ Railroad at highway station _____.
 - (a) The assigned P.U.C. and U.S.D.O.T.-AAR numbers of the crossing to be abandoned are _____ and _____.
 - (b) Brief paragraph of explanation giving location of crossing, the manner in which crossing is to be closed or abandoned, that is, by removal of tracks, or by rerouting or closing of road.
 - (c) Relation of the crossing to be closed with respect to other existing or proposed crossings in the immediate vicinity, approximate volume of traffic now using crossing to be abandoned, and route said traffic will use after abandonment.
 - (d) (1) Evidence of agreement with the railroad if track is to be removed.
(2) Evidence of agreement with local body having jurisdiction over road, if road is to be closed.
 - (e) Vicinity map illustrating location of crossing to be abandoned in relation to other crossings in vicinity is shown on Exhibit B.

General data regarding the project should be shown under Item (I) "General Information". "Detailed Information", as listed under Item (II), (A), (1) (a) to (g), inclusive, should, in general, be shown for each crossing separately, but to avoid duplication, where a number of crossings are involved and certain information required to be furnished is the same for all of the crossings, such as public need and benefit from proposed work and statement why separation of grades is not practicable, the answers to these questions can well be included under "General Information" and omitted from "Detailed Information" for each individual crossing.

It is necessary to have a correct idea of the approximate volume of traffic in order to determine the need or warrant for additional warning devices. Sufficiently accurate highway traffic data is usually available in District office and it seldom should be necessary to make a special traffic count for this purpose. Rail traffic can be secured from the Railroad.

Drawings Marked Exhibits "B," "C," etc.

Drawings shall be prepared to show clearly location and work proposed at the crossing except in the case of a minor alteration of an existing crossing as hereinbefore defined. Said drawings shall be submitted to Sacramento on tracing cloth or tracing paper, signed by the District Director.

Drawings may be prepared on standard 20" x 30" sheets, or on double letter size or triple letter size sheets. Multiple letter size sheets are easier to fold for attachment to the application and are preferred, the location map and vicinity map being shown on one or two sheets and plan, typical sections and profiles for each crossing being shown on a separate sheet.

The information to be shown on the drawings is as follows:

(A) NEW CROSSINGS

- (1) A plan of the crossing, scale of 50' to 200' to the inch, showing streets, roads, railroad and highway property lines, proposed easement, and tracks, in the immediate vicinity of the crossing.
- (2) Typical section of highway at crossing and a statement that crossing construction be Standard No. _____ PUC General Order No. 72-B, or a typical section through crossing normal to track.
- (3) Map showing location of proposed crossing with relation to existing roads, railroads and crossings, including the PUC number of nearest crossing on each side, and particularly present travelled way now used by the traffic which will use the new crossing after construction of the improvement.
- (4) Profile of existing ground and of proposed highway approaches, and rail profile, existing and proposed, at crossing and either side thereof.

(B) EXISTING CROSSINGS TO BE ALTERED

- (1) The PUC crossing number shall be shown prominently on sheet, either in title block if only one crossing is shown on sheet, or under plan if two or more crossings are shown on one sheet.
- (2) Plan of crossing, showing existing and proposed widths of pavement and crossing, existing and proposed right of way lines and limits of easement, and location of existing proposed protection.
- (3) Typical section of highway at crossing and a statement that crossing is to be constructed in accordance with Standard No. _____ General Order No. 72-B or typical section through crossing normal track.
- (4) Existing and proposed highway profile approaching and over the tracks. Existing and proposed rail profile. Where additional lanes of pavement are proposed at the crossing, the plan and typical section should show clearly whether these are bus stop lanes, to be constructed at the crossing only, or conversion of the highway from a two-lane to four-lane highway.

(C) EXISTING CROSSINGS TO BE ABANDONED

- (1) Vicinity map showing location of crossing to be abandoned, existing and proposed roads in the vicinity, indicating the routes which traffic now using the crossing will be required to travel after abandonment.

To avoid as far as possible a delay in advertising highway projects awaiting completion of agreements with the Railroad or the PUC authorization, it is recommended that drawings to be used as Exhibits be prepared as soon as the highway work to be done at crossings has been determined, and that prints, together with description of the work, be submitted to the Railroad for its approval or comment insofar as Railroad interests are affected, with a proposal of how the costs should be apportioned, together with description of the easement desired over railroad right of way and easement to be relinquished at existing crossings to be abandoned, if any. Costs must be apportioned in accordance with precedents set by past orders of the PUC. Check with the Agreements Section, Office of Structures Design, regarding cost apportioning.

Exhibit "A" and tracings of Exhibit drawings for use in filing application or notice with the PUC shall be submitted to Sacramento as soon as the District and the Railroad are in agreement as to proposed plan of work to be done.

In cases where the State and the Railroad are in disagreement regarding apportionment of cost, it is particularly important that application be filed well in advance of the desired date for advertising, in order that the PUC order may be issued before the work is advertised.

In cases which involve only alteration of an existing crossing, if State and Railroad are in full agreement regarding the proposed work and apportionment of cost, authorization is secured under General Order No. 88-A 45 days after filing notice with the Commission of the proposed work, together with evidence that the parties are in agreement.

PUC orders authorizing construction or acknowledgement of notices under General Order No. 88-A for the alteration of grade crossings require that the Commission be advised of the completion of proposed work at grade crossings.

In the past, the Districts frequently have neglected to notify Headquarters when the construction or alteration of a grade crossing is complete, including the work to be done by railroad forces as well as the work to be done by State contractor. In order to make sure this is not overlooked in the future, each District shall set up in its "follow-up" file, a

sheet for each project involving construction or alteration of railroad crossings to be pulled on or about estimated completion date, in order that the notification of completion will not be overlooked.

Federal law requires that no part of the Federal Aid appropriations shall be approved for expenditure on any highway unless proper warning devices shall be installed or be in operation at any railroad grade crossing on that portion of the highway with respect of which such expenditures are to be made. FHWA will accept the type of railroad-highway automatic grade protection devices ordered by the California PUC as complying with this requirement.

APPENDIX "B"

Extract from Section 1201 of Public Utilities Code

No public road, highway or street shall be constructed across the tracks of any railroad corporation at grade, nor shall the track of any railroad corporation be constructed across a public road, highway or street at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade without permission having first been secured from the Commission. The Commission may refuse its permission or grant it upon terms and conditions as it prescribes.

APPENDIX "C"

Extracts from Rules of Procedure of the P.U.C. pertaining to the filing of Applications for Crossings with Railroad Track

(a) Extract from Article 4, "Rule 15, Applications Generally"

15. (Rule 15) Contents. All applications shall state clearly and concisely the authorization or relief sought; shall cite by appropriate reference the statutory provisions or other authority under which Commission authorization or relief is sought; and, in addition to specific requirements for particular types of applications (See Rules 38 through 41), shall state the following:

- (a) The exact legal name of each applicant and the location of principal place of business, and if an applicant is a corporation, trust, association, or other organized group, the State under the laws of which such applicant was created or organized.
- (b) The name, title, address and telephone number of the person to whom correspondence or communications in regard to the application are to be addressed. Notices, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon applicant.
- (c) Such additional information as may be required by the Commission in a particular proceeding.
- (d) Applications for ex parte action shall set forth the basis for such request, and those seeking the granting of relief pending full hearing shall set forth the necessity for such relief.

"Appendix "C" (Cont.)

Article 10. Applications to Construct, Alter or Abolish Railroad Crossings.

This article applies to applications under Sections 1201-1205 of the Public Utilities Code, and the requirements hereof are in addition to Rule's 2 through 8, 15 and 16.

38. (Rule 38) *To Construct a Public Highway Across a Railroad.* Applications to construct a public road, highway, or street across a railroad must be made by the municipal, county, state, or other governmental authority which proposes the construction, and shall contain in the following data:

- (a) A legal description of the location of the proposed crossing.
- (b) Crossing numbers of the nearest existing public crossing on each side of the proposed crossing. (Numbers may be obtained from the crossing sign at the crossing, or from the office of the railroad).
- (c) A statement showing the public need to be served by the proposed crossing.
- (d) If the proposed crossing is at grade, a statement showing why a separation of grades is not practicable.

- (e) A statement showing the signs, signals, or other protection which applicant recommends be provided at the proposed crossing.
 - (f) A map of suitable scale (50 to 900 feet per inch) showing accurate locations of all streets, roads, property lines, tracks, buildings, structures or other obstructions to view for a distance of at least 400 feet along the railroad and 200 feet along the highway in each direction from the proposed crossing. Such map shall show the character of surface or pavement and width of same, either existing or proposed, on the street or road adjacent to the proposed crossing and on each side thereof.
 - (g) A map of suitable scale (1,000 to 3,000 feet per inch) showing the relation of the proposed crossing to existing roads and railroads in the general vicinity of the proposed crossing.
 - (h) A profile showing the found line and grade line and rate of grades at approach on all highways and railroads affected by the proposed crossing.
39. (Rule 39) To Widen or Relocate an Existing Crossing. When the political subdivision or governmental authority having jurisdiction desires to widen, relocate or otherwise alter an existing crossing, the application shall show the information required by Rule 38, supra, except that the crossing number of the crossing proposed to be altered shall be stated, instead of the information required by Rule 38 (b).
40. (Rule 40) To Construct a Railroad Track Across a Public Highway. When a railroad desires to construct a track across a public road, highway or street, it shall mail a copy of its application to the municipal, county, state or other governmental authority having jurisdiction and control over the highway or charged with its construction and maintenance. The original thereof shall contain a certification of such mailing. Such applications shall comply with Rule 38(a), (c), (d), (e), (f), (g) and (h), and shall also contain the following information:
- (a) There shall be attached to the original application a certified copy of the franchise or permit, if any be requisite, from the authority having jurisdiction, which gives to the railroad the right to cross the highway involved, and a copy thereof shall be attached to each copy of the application. If such franchise or permit has already been filed, the application need only make specific reference to such filing.
 - (b) The proposed crossing number shall be stated.
 - (c) The map referred to in Rule 38(f) shall also show, by distinct colorings or lines, all new tracks or changes in existing tracks, within the limits of the drawing, which are to be made in connection with the construction of the proposed crossing.

Appendix "D"

Extracts from PUC General Order No. 26-D, Clearances Applicable to Grade Crossings, Effective February 1, 1943, as Amended January 25, 1977

Minimum side clearances from center line of tangent standard gauge railroad and street railroad tracks, which are used or proposed to be used for transporting freight cars, except as otherwise prescribed, shall be:

All structures and obstructions above top of rail except those hereinafter specifically mentioned, 8'- 6".

The center line of any track constructed in and along a public street, shall be at least 10' from the property Line of said street, or if the street has a lawfully established curb line, such track shall be at least 10' from such line.

The railroads in general, interpret this last paragraph to require that any curb, including curbs on channelization islands or median strips, shall be at least 10' from centerline of track.

All minimum side clearances prescribed are for tangent track. In general, all structures adjacent to curved track shall have a minimum side clearance of 1' greater than the minimum required for tangent track.

Appendix "E"

Extract from PUC General Order No. 72-B, Effective June 21, 1973. Standard Types of Pavement Construction at Railroad Crossings

Standard No. 1 Filling Material: Asphaltic concrete or other equally suitable paving material, laid flush with top of rails and of thickness corresponding to height of top of rail above the crossties.

Standard No. 2 Filling Material: Asphaltic concrete or equally suitable paving material.

Planking: Vertical grain timber of good wearing and decay resistant, qualities shall be used, laid with grain vertical. Plants at ends of crossing to be beveled. Planks to be substantially secured to ties.

Standard No. 3 Planking: Vertical grain timber of good wearing and decay resisting qualities shall be used, laid with grain vertical. Planks at ends of crossing to be beveled. Planks to be substantially secured to ties.

Standard No. 4-A Filling Material: Asphaltic concrete or equally suitable paving material.

Guard Rail: Tee Rail secured to rail or ties by proper fastening forming a flangeway not exceeding 2 1/2 inches in width.

Standard No. 4-B Planking: Vertical grain timber of good wearing and decay resisting qualities shall be used, laid with grain vertical. Planks at ends of crossing to be beveled. Planks to be substantially secured to ties.

Guard Rail: Special rolled guard section or lightweight Tee Rail laid on side to provide flangeway not more than 2 1/2 inches wide. Top of flangeway to be substantially same height as top of running rail. Guard rail to be secured to rail or ties by proper fastenings.

Standard No. 4-C Planking: Vertical grain timber of good wearing and decay resisting qualities shall be used, laid with grain vertical. Planks at ends of crossing to be beveled. Planks to be substantially secured to ties.

Standard 4-D Filling Material: Asphaltic concrete or equally suitable paving material.

Guard Rail: Special rolled guard section or lightweight Tee Rail laid on side to provide flangeway not more than 2 1/2 inches wide. Top of flangeway to be substantially same height as top of running rail. Guard rail to be secured to rail or ties by proper fastenings.

Standard 5 Girder Rail Construction: For use in municipalities requiring girder rail construction. Pavement between rails and two feet outside to be consistent in type with adjacent pavement or as specified by local authorities.

The type of crossing construction most commonly specified for urban highway crossings is Standard No. 3 and for rural highway crossings is Standard No. 2, PUC G.O. No. 72-B.

Appendix "F"
EXTRACTS FROM PUC GENERAL ORDER No.75-C
Effective February 14, 1973
Regulations Governing the Protection of Crossings at Grade of Roads,
Highways and Streets with Railroads

Each carrier shall, at each public crossing of its tracks, paint or otherwise maintain on the crossing sign post or other structure an identification number assigned to the particular crossing.

Each private road crossing shall have two stop signs described as Standard RI-1 in the Manual on Uniform Traffic Control Devices for Streets and Highways, U. S. Department of Transportation, installed in conspicuous locations facing each road approach and indicating the crossing is for private use only and not for public use.

Each public crossing at grade hereinafter opened, shall be protected by at least two crossing signs or signals as later described and as authorized by the Commission.

Each crossing sign or signal shall be located in a conspicuous position facing highway travel, preferably at either corner on the right hand side of the highway traffic. flow and in advance of the track.

Special crossing signs for unusual conditions, shall be approved by the Commission before installation.

Automatic signals shall substantially conform to the specifications herein summarized, standard Nos. 8, 8A, 9, 9A, and 10.

Crossing signals shall, unless the Commission otherwise directs, be located in conspicuous positions at both corners of the crossing intersection on the right hand side of the highway flow in advance of the railroad track and arranged to face the highway travel.

Crossing signals, automatically controlled, shall display warning aspect for approximately 25 seconds, Limits of 20 to 30 seconds in advance of the normally fastest train operated over the crossing, except where special conditions prevail. Tracks other than main or branch line tracks shall be provided with a circuit control which will activate the signals when a train occupies the crossing.

The circuits for automatic crossing signals shall be arranged so that the signals will operate until the rear of train clears the crossing and such warning aspect shall not be displayed after the movement of the train over the crossing has been completed.

Crossing signals shall be installed insofar as practicable so that failure of control circuits will result in a warning aspect being displayed.

The Commission shall be notified within thirty days following the close of the month of installation of additional protection at any public crossing.

No Railroad shall hereafter remove an automatic crossing signal device, crossing gate, crossing flagman or other forms of crossing protection, or substitute any form of crossing protection or a form already maintained unless the consent for such removal, reduction or substitution shall have been secured from the Commission, provided however, a human flagman to temporarily protect the crossing during an emergency, may be removed without such consent.

The Commission reserves the right to modify any of the provisions in specific cases.

**Brief Summary of the Types of Crossing Signs and Signals Authorized by PUC General Order
No. 75-C**

Standard No. 1-C- A fixed sign consisting of an octagonal sign on a metal post with the word "Stop" in reflectorized white letters on reflectorized red background. A separate sign mounted on the same post shall indicate a private crossing in black letters on reflectorized white background. The private crossing sign may include a "No Trespassing" sign at the option of the railroad.

Standard No. 1-D- A fixed rectangular sign on a wood or metal post consisting of black letters on reflectorized white background to indicate a crossing for pedestrians only.

Standard No. 1-R- A fixed sign consisting of a wood or metal post, to which two blades are attached at an intersecting angle of approximately 90° having the words "Railroad Crossing" in black letters on reflectorized white background.

Standard No. 8- A flashing Light signal, which by alternately flashing red lights in both directions along the street or highway, provides a warning of an approaching train. Signals shall be installed on both approaches of the street or highway except on one-way streets and a sign reading "Railroad Crossing", similar in design to Standard No. 1-R, shall be mounted on the signal mast above the flashing light assembly.

Standard No. 8-A Cantilever- A fixed or rotatable cantilever mounted on a mast, with additional flashing light units similar to Standard No. 8 in signal action. The flashing light units shall be installed over the roadway on the cantilever arm.

Standard No. 9 and 9-A- A crossing gate arm used in combination with Standards Nos. 8, or 8-A above. The gate mechanism may be mounted on the signal mast or separately on a pedestal located adjacent thereto. In operation, when activated by an approaching train, the gate and is lowered to form a horizontal barrier between approaching vehicles and the track. A steadily burning red light shall be installed on the tip, and two or more flashing red lights shall be installed on the extended gate arm to provide a warning of an approaching train. Gate arms shall be in a horizontal position prior to the arrival of any train, not extend beyond the centerline of other than a one-way roadway and shall be raised after passage of a train.

Standard No. 10- An automatic crossing signal used for pedestrian crossings where required by the Commission. It is similar to a Standard No. 8 crossing signal in signal action.

Practically all recent orders where automatic protection is included, PUC has specified Standard Nos. 9 or 9A, automatic gates.

PUC GENERAL ORDER NO. 88-A

**RULES FOR ALTERING PUBLIC RAILROAD-HIGHWAY GRADE CROSSINGS
ADOPTED JANUARY 19, 1982 EFFECTIVE FEBRUARY 18, 1982**

The following rules govern the alteration of existing public railroad-highway grade crossings.

1. PURPOSE

The purpose of these regulations is to establish criteria for alteration of existing public railroad-highway grade crossings.

2. SCOPE

The following railroad-highway grade crossing alteration projects shall be governed by these rules:

- 2.1 Grade crossing widening within the existing street right-of-way.
- 2.2 Approach grade changes.
- 2.3 Track elevation changes.
- 2.4 Roadway realignment that is functionally related to the existing crossing and can be achieved within the existing or a contiguous right-of-way.
- 2.5 Addition of one track within the existing railroad right-of-way.

3. CRITERIA

- 3.1 The public agencies having jurisdiction over the roadway involved and the railroad corporation shall be in agreement as to the public necessity for altering the existing railroad-highway grade crossing.
- 3.2 The proposed alteration (s) shall comply with the Commission's General Orders 72 and 75.

4. NOTICE AND AUTHORIZATION

Notice of the proposed alteration and a request for authority shall be served on the Commission staff at least 45 days before the date the alteration is planned to start. The staff shall review the request covering the alteration and within 45 days from the date of receipt indicate to applicant its position.

5. FORM AND CONTENTS OF REQUEST

Requests shall be filed in duplicate by letter on paper 8 1/2" by 11" in size and shall include the following information:

- 5.1 The Commission's assigned crossing number and the U.S. Department of Transportation American Association of Railroads' number for the crossing proposed to be altered.
- 5.2 A statement describing the proposed alteration(s).
- 5.3 A statement showing the public benefit to be achieved by the proposed alteration(s) .
- 5.4 A statement showing why a separation of grades is not practicable under the circumstances.
- 5.5 A statement indicating the existing and proposed warning devices at the crossing.
- 5.6 A map of the immediate vicinity of the crossing proposed to be altered on a scale of 50 to 200 feet per inch showing the location of streets and roads, property, lines, racks, buildings, other obstructions to the view of the crossing, and the present width of the approaches and the roadway at the crossing.
- 5.7 A profile showing the present and proposed grade lines of both the railroad and the highway.
- 5.8 Evidence of agreement between the parties relative to the proposed alteration(s).
- 5.9 A general statement indicating the temporary traffic controls and type(s) of warning devices to be provided, if any, during the period of construction of the proposed alteration. The temporary traffic controls shall be in compliance with Section 8A-5, Traffic Controls During Construction and Maintenance, of the Manual on Uniform Traffic Control Devices, U.S. Department of Transportation.
- 5.10 Where the alteration of the crossing is of a minor nature, such as a change in elevation of eight inches or less, or a total widening of six feet or less and no additional warning devices or changes in existing warning devices are proposed, Items 5.3, 5.4, 5.5, 5.6 and 5.7 may be omitted from the request.

6. APPLICATION REQUIRED WHERE THE PARTIES ARE NOT IN AGREEMENT

Where the parties, including the staff, are not in agreement as to the necessity for or extent of the alteration or apportionment of cost of a proposed change in an existing railroad-highway grade crossing, or the proposed alteration is beyond the scope of this General Order, the party desiring the change shall apply to the Commission for authority to make the alteration. The application shall comply with the Commission's Rules of Practice and Procedure (California Administrative Code, Title 20).

7. RESPONSIBILITY FOR CONSTRUCTION

All work between the rails of a railroad and within two feet outside of the rails shall be performed under the supervision of the railroad. The railroad shall be responsible for the physical construction of additional warning devices or any changes in the existing warning devices at the crossing. This section shall not be construed as an apportionment of the cost of such work.

8. APPLICATION MUST BE MADE FOR NEW CROSSING

Nothing contained herein shall be construed as authorizing the construction of a new crossing of a railroad across a public street or highway at grade or the construction of a public street or highway at grade across the tracks of a railroad corporation.