2019

Right-of-Way Manual

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

RIGHT-OF-WAY MANUAL
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1.01.00.00 - CALIFORNIA HIGH-SPEED RAIL AUTHORITY OVERVIEW

1.01.01.00 California High-Speed Rail Authority

Established in 1996 by state legislation, the California High-Speed Rail Authority (Authority) is the state entity responsible for planning, constructing, and operating a high-speed rail system serving California's major metropolitan areas.

1.01.02.00 Project

The California High-Speed Rail Project (Project) is a planned transportation backbone of ten designated regions that will ultimately extend from Sacramento, south through the Central Valley to Los Angeles and to San Diego via the Inland Empire. The Project also connects to San Francisco from the Central Valley and Anaheim via Los Angeles. It will travel up to 220 miles per hour and can make its journey from Los Angeles to San Francisco in under 2 hours and 40 minutes.

The Project will employ train technologies like those used in other countries with established high-speed rail systems. That means steel-wheel-on-steel-rail technology, entirely electric power, state-of-the-art safety and signaling systems, and automatic train control.

California High-Speed Rail trains will operate primarily on exclusive track with portions of the route shared with other existing passenger rail operations. The route will be constructed at-grade, in an open trench, in a tunnel, or on an elevated guideway, depending on the terrain, physical constraints, environmental impacts and community input along sections of the line. Extensive portions of the Project will lie within, or adjacent to, existing rail or highway right-of-way.

1.02.00.00 – RIGHT-OF-WAY MANUAL OVERVIEW

1.02.01.00 Purpose

The Right-of-Way Manual is intended to lead users through uniform procedures established to carry out the right-of-way functions of the Authority. This manual is neither intended as, nor does it establish, a legal standard for these functions. Policies and practices established herein are for the information and guidance of the officers and employees of the Authority and those under its oversight.

1.02.02.00 Scope

This manual includes right-of-way policies, instructions, and standard practices, as well as forms and exhibits intended as aids in the solutions of field and office operations and problems. This manual is not a textbook or a substitute for law, statute, regulation, knowledge, experience, or judgment.

Administrative regulations, statutory references, and citations from the Code of Federal Regulations (CFR) are referenced but not quoted in their entirety, except in the Relocation Assistance chapter. Flowcharts have been developed for those chapters where applicable and helpful to the reader.

A system of advisory and informational memoranda called Reference File Memoranda will be developed. These are not part of the manual, but expand on specific topics as deemed necessary. They will be issued by the Authority and will be filed with the manual.

1.02.03.00 Manual Organization

A decimal numbering system is used which permits identification by chapter and section. Chapter and section headings are in bold print. The text of any referenced law, statute, or regulation is in bold italicized print. Abbreviations and acronyms are used wherever possible. A glossary of definitions is included, as are various forms and exhibits, the use of which is described below under “Forms and Exhibits.” Each page shows the section, form or exhibit number, and the date of issue. Forms and exhibits immediately follow the chapter sections to which they relate. Each exhibit contains a number that looks like, 02-EX-01. The first number represents the chapter number, followed by the exhibit’s unique identifier.

This manual is organized along right-of-way’s normal project delivery workflow for right-of-way acquisition, to the extent possible. The first subjects deal with planning, financing, and federalization of right-of-way activities. The manual proceeds through the Right-of-Way Engineering stage to the Estimating, Appraisal, and Acquisition stages. Relocation Assistance becomes involved at many stages, but is shown after Acquisition. Utility Relocation also is involved continuously, but is covered after Acquisition. Once a property is acquired, it must be managed and cleared for construction. After the project requirements are met, Right-of-Way must certify clearance for construction. A few activities are accomplished after construction of a project. These generally are Airspace leasing and disposal of Excess Land. Right-of-way activities not directly related to the Authority’s project delivery are covered in the last chapters.

New, replacement, or additional sheets will be issued in the format of this manual to be inserted or substituted for those superseded.

1.02.04.00 Forms and Exhibits

Forms are mandatory for use and contain instructions for their use where necessary. Where a form from some other source (federal government, state agency, or other) is cited, it is referenced as an exhibit, but its use is mandatory. In most other cases, exhibits are optional for use and are suggested based on history and experience. Exceptions when exhibits are mandatory for use are noted and contain instructions.

CALIFORNIA High-Speed Rail Authority

CHAPTER 2

ORGANIZATION AND POLICY
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2.01.00.00 – ORGANIZATION, ROLES AND RESPONSIBILITIES OF REAL PROPERTY TEAM MEMBERS

2.01.01.00 The California High-Speed Rail Authority

The California High-Speed Rail Authority (Authority) is mandated by the State of California to plan, design, construct, operate, and maintain a high-speed rail system on an 800-mile network connecting San Diego, Los Angeles, Fresno, San Jose, San Francisco, and Sacramento. Primary funding consists of Federal Program Grants, State Revenue Bonds, State Cap and Trade Funds (Greenhouse Gas Emission Reduction Act Funds), and future Public-Private Partnerships.

The Authority is overseen by a nine-member Authority Board of Directors (Board of Directors), five members are appointed by the Governor of California, two members are appointed by the Senate Committee on Rules and two members are appointed by the Speaker of the Assembly and managed by a Chief Executive Officer and Chief Operating Officer. This administration oversees the Program Delivery Office, Real Property Branch and its Right-of-Way Program by managing project cost, scope, and schedule, approving major right-of-way consultant contracts, approving agreements with federal and state agencies, and overseeing program administration and policy development.

The Real Property Branch is assisted by other functional units within the Authority that include the other branches of the Program Delivery Office, Administration Office, Financial Office, Strategic Communications Office, and Legal Office.

2.01.02.00 The Real Property Branch

The Real Property Branch manages the Right-of-Way Program for the Authority. It consists of offices in Sacramento and the Regions of California, including Fresno, Los Angeles, and San Jose.

The Real Property Branch is led by the Chief of Real Property. The staff consists of two Exempt Appointments (Director of Real Property and Deputy Director of Real Property), a Principal Right-of-Way Agent, three Supervising Right-of-Way Agents, and eleven Senior Right-of-Way Agents.

Real Property Branch is responsible for program and staff administration, policy development, dissemination, and compliance; general program oversight, program standards, procedures, procurement, right-of-way consultant contract management and oversight; approval/approval recommendations for right-of-way deliverables, relationships with federal and state agencies, and relationships with stakeholders including property owners and the general public.

The Fresno Real Property Branch staff is under the direction of the Deputy Director of Real Property, and consists of a Supervising Right-of-Way Agent, a Senior Right-of-Way Agent, and two Senior Surveyors. The Fresno Real Property Branch staff performs field oversight of property management activities and excess land activities, manages the Right-of-Way Engineering contracts, provides interfaces with local agency partners, coordinates design-build issues including change orders and delivery to construction, and manages relationships with property owners and the general public.

The Real Property Branch is shown on the attached Organizational Chart (see Figure 1).

2.01.03.00 Roles of Other Divisions within the Authority

The Real Property Branch is assisted in its compliance efforts by the Authority's Financial Office (Budgets, Accounting, Procurement and Contracts) which, in accordance with federal and state standards: prepares and monitors the annual capital plan, encumbers funds for each transaction by funding source and appropriation, processes each transaction, and oversees each disbursement. The Authority is compliant with the annual single audit requirement of federal grant recipients. The Infrastructure Delivery Branch oversees the design-build contractors and the certification of the right-of-way requirements for right-of-way parcel map processing, and oversees the change order process. The Real Property Branch also manages and oversees engineering and surveying contractors to prepare parcel surveys, appraisal maps, legal descriptions, right-of-way line staking, resolution of necessity exhibits, and condemnation exhibits. The Authority's Environmental Services Branch assists the Real Property Branch as it pertains to environmental processes and procedures as they relate to real property.

2.01.04.00 The California State Public Works Board

The State Public Works Board (PWB), an independent agency of the state, is the governing body in a taking by the Authority. In order to proceed with the condemnation process, a Resolution of Necessity must be authorized by the PWB.

2.01.05.00 The California Department of Transportation, Legal Division

Through an inter-agency agreement, the California Department of Transportation (Caltrans) Legal Division provides legal review for right-of-way contracts, and represents the Authority in Eminent Domain proceedings through the Final Order of Condemnation.

2.01.06.00 The Rail Delivery Partner, Contractor to the Authority

Real Property Branch staff works in conjunction with the Authority's Rail Delivery Partner (RDP), a prime consultant, and its associated network of subcontractors. Assistance is provided in the areas of planning, environmental (as it relates to the Right-of-Way Program), document and consultant management and workflow, reporting, right-of-way consulting, review of specialty deliverables such as surveying and mapping, transactions processing, and ad hoc services by request. The RDP staff is fully integrated with Authority resources to deliver the Right-of-Way Program.

2.01.07.00 Right-of-Way Consultant Contractors

Right-of-way field activities are performed by right-of-way consulting firms under direct contract to the Authority. Each firm is thoroughly screened through a multi-stage contracting process including Requests for Proposals that include standards for qualifications, quality, schedule, and performance. Key specifications include standards for licensure, functional area expertise, organizational quality management and supervision, and Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) experience.

2.01.08.00 Right-of-Way Engineering and Surveying Contractors

Right-of-Way Engineering and Surveying is performed by engineering and surveying consulting firms under direct contract to the Authority. Each firm is thoroughly screened through a multi-stage contracting process including Requests for Qualifications that include standards for qualifications, quality, schedule and performance. Key right-of-way deliverables include Parcel Appraisal Maps, Legal Descriptions for Conveyance Documents, and Resolutions of Necessity.

2.01.09.00 Authority Contract Managers

Supervising Right-of-Way Agents directly oversee the work of right-of-way consultants and are the Authority Contract Managers. They perform reviews of technical deliverables and reviews of financial deliverables, with assistance by Senior Right-of-Way Agents.

2.02.00.00 – PROCEDURES, PROCESS, AND WORKFLOW

2.02.00.00 Procedures, Process, and Workflow

Right-of-Way Program guidance is based on the latest approved Right-of-Way Manual and any unincorporated amendments to federal laws and regulations that are applicable to the California High-Speed Rail Program (Program). This includes guidance related to the Uniform Act, Title VI of the Civil Rights Act of 1964 (Title VI), Federal Grant Administration, and related federal and state statutes and regulations.

This is supplemented by Authority-specific policies and procedures prepared in conformity with federal and state laws and regulations that address the specific structure and needs of the high-speed rail project and the Authority. This includes standards for appraisals, acquisitions, relocations, condemnation/eminent domain, property management, property transfer to contractors, property disposition, etc., as provided to the Federal Railroad Administration (FRA) via the Share-Point document management system (Share-Point).

The general Right-of-Way Program workflow is provided in the "Right-of-Way Flow Chart V6.0" (see Figure 2), and provided through Share-Point.

Once a parcel has been identified for acquisition, property owners are notified through a "Notice of Decision to Appraise" (NODA) and accorded an opportunity to accompany the appraiser on the property inspection. Property owner input on valuation issues is carefully considered, along with comparable sales data, the larger parcel, elements of severance damages, and other issues germane to the appraisal.

The NODA package includes a Title VI information and complaint form, basic Relocation Assistance Program information, "Your Property, Your High-Speed Rail Project," (an informational brochure about the Federal Aid Right-of-Way Process), and a parcel appraisal map. The appraisal process is managed by Sr. Right-of-Way agents. Parcel appraisals are reviewed Supervising Right-of-Way Agents, and approved by the Director for Real Property or designee.

Language interpreters and/or bilingual agents are available at meetings with property owners upon request. Experienced right-of-way agents provide oversight at most meetings with property owners, and are available to the property owners and their representatives for follow up.

Upon approval of just compensation and approval for acquisition property owners receive a prompt offer at the full appraisal of just compensation. At the Initiation of Negotiations (ION), property owners also receive a complete copy of the acquisition appraisal, a summary statement, Title VI information, and the "Your Property, Your High-Speed Rail Project" Brochure. A specialist in the Relocation Assistance either accompanies the Acquisition Agent at the ION or follows up promptly thereafter.

Under California law, property owners may obtain their own acquisition appraisal, and are eligible for Authority reimbursement of the reasonable cost of the appraisal up to $5,000. This opportunity is made available in writing for each acquisition parcel.

MAJOR REAL PROPERTY FUNCTIONAL AREAS

Function	Synopsis
Planning and Management, Budget and Project Coordination	Develop, manage, and report on high-speed rail project consultant right-of-way activities, also act as primary point of contact to coordinate and monitor right-of-way project schedules, work plan support, delivery, certification of clearance for construction, and administrative activities.
Estimating	Prepare, update, and review both Right-of-Way Data Sheets and estimates relied upon for the high-speed rail project to forecast and program funds for right-of-way capital outlay and work plan (personnel) support requirements.
Right-of Way Engineering	Prepare maps, documents, and descriptions necessary to acquire right-of-way and dispose of excess land.
Appraisals	Obtain and/or prepare fair market valuation appraisal reports required to establish the basis for just compensation to acquire right-of-way, lease airspace rights, and dispose of excess land.
Acquisition	Conduct/supervise acquisition activities necessary to acquire property rights to construct and maintain the transportation system. Initiate and follow the condemnation process when negotiations have reached an impasse.
Relocation Assistance	Provide full implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act in the relocation, advisory assistance, and reimbursement of displaced persons and businesses.
Property Management	Manage Authority owned properties, including excess lands and those held for construction, until turned over to the contractor or sold. Also responsible to ensure that property is properly demolished and right-of-way is clear for construction, and responsible for locating and leasing space for Authority offices, as needed.
Utility	Conduct all activities necessary to oversee regulatory compliance, early identification, avoidance, accommodation, or relocation of utility facilities that the Authority has retained responsibility for and which are in conflict with planned construction or subsequent operation of high-speed the rail.
Airspace	Lease and manage various types Authority owned and operated right-of-way and/or facilities that are used to support the high-speed rail system, while safely accommodating a secondary use.
Excess Land	Dispose of properties declared as excess lands by the Authority for project or operational needs. This may include fee owned land, easement title rights, materials sources, disposal sites, maintenance station properties, or any other property owned by the Authority.
Asset Management	Oversee and support the real property retention review process and monitor transfer of unused property to excess land inventory for disposal; oversee project development of operational facility projects; and promote and pursue opportunities to optimize use of the Authority's real property assets. Develop and administer the Authority's lands and buildings database, the Asset Management Inventory (AMI).
Railroads	Perform early coordination and railroad activities necessary leading to the clearance of railroad involvements for transportation project delivery.

2.03.00.00 – QUALITY PROCESS

2.03.00.00 Quality Process

Real Property Branch has direct oversight over the Right-of-Way Quality Program as provided in their Quality Management Plan. The multi-layered quality-assurance system is required by provisions in each right-of-way service contract as overseen by Authority Contract Managers. Approvals are made by staff with appropriate delegations, training, and experience.

Each right-of-way contractor for the Authority has approved quality management plans in place for the conduct of their work. Quality assurance and functional unit managers within each right-of-way contractor certify the quality and compliance of key right-of-way deliverables including appraisals, acquisition, and relocation assistance documents.

Each acquisition appraisal receives a technical review by an independent, licensed appraiser prior to Authority review. Real Property Branch staff with appropriate experience and familiarity with the subject approve the appraisal for acquisition, in accordance with the Uniform Act. The Authority has authority under state law to approve the real estate appraisals for just compensation.

Acquisition documents are reviewed by Real Property Branch staff. Under state law, the Authority has final approval over technical reviews of appraisals and acquisition documents for real estate acquisitions. Relocation assistance and other right-of-way deliverables are reviewed and approved by Real Property Branch staff with appropriate training and experience.

2.04.00.00 – INFORMATION TRACKING, COST TRACKING, FILING, AND DOCUMENT CONTROL

2.04.00.00 Information Tracking, Cost Tracking, Filing, and Document Control

The Right-of-Way Program is administered through the Share-Point document management system and reported through the geoAMPS reporting tool. Each platform is supported by experienced and well-trained information management and process experts from the RDP. Share-Point is a restricted-access system with appropriate controls by stakeholder, functional unit, and level of delegation.

geoAMPS is an online reporting tool based on functional input from authorized stakeholders. It provides the basis for real-time status (subject to data entry latency), weekly and ad hoc reporting. The Executive Summary and Weekly reports include complete Right-of-Way Program status for both milestones (right-of-way deliverables) and financial measures. These reports include detail provided down to the parcel level and aggregated up to the Program level, project section by project section. The Executive Summary and Weekly reports are provided simultaneously to the FRA, Authority, right-of-way consultants, and other key stakeholders. Closed right-of-way files are securely stored at Real Property Branch headquarters.

The magnitude of the Right-of-Way Program creates significant challenges in achieving delivery targets, maintaining consistent quality of products and maintaining sufficient resources to meet Program needs. The multi-layered, multi-organization quality management system is a critical part of this effort.

2.05.00.00 - DELEGATION MATRIX

2.05.01.00 Delegations

California Public Utilities Code section 185024(a) directs the Board to appoint an Executive Director to administer the affairs of the Authority as directed by the Authority. Pursuant to this section, the Board has the authority to delegate any of its powers to the Chief Executive Officer (CEO) for purposes of efficiency and effectiveness in conducting the business and affairs of the Authority. Pursuant to the Authority's Delegation of Authority, amended January 14, 2014 (Board Policy – HSRA11-001), and under the oversight of the committee of the Board on Transportation and Land Use, the Board delegated certain authorities to the CEO and the CEO may at his or her discretion delegate these authorities to the appropriate, qualified Authority staff. Pursuant to HSRA11-001, the CEO has delegated this authority to the Director of Real Property as follows:

1. The CEO may perform all steps necessary to secure access to and to acquire any real property needed for high-speed rail purposes. In the event that the CEO requests the governing board to initiate litigation for these purposes, he or she shall send a memo to the members of the Board as soon as possible in order to notify them of such request.
2. The CEO has the authority to sell or exchange real property or an interest therein at fair market value in the manner set forth in section 185040 of the CA Public Utilities Code.
3. The CEO may sell or lease excess right-of-way parcels to municipalities or other local agencies for public purposes in the manner set forth in section 185041 of the CA Public Utilities Code.
4. The CEO may lease nonoperating right-of-way areas to municipalities or other local agencies for public purposes, and may contribute toward the cost of developing local parks and other recreational facilities of these areas in the manner set forth in section 185042 of the CA Public Utilities Code.
5. The CEO may lease to public agencies or private entities or individuals for any term not to exceed 99 years the use of areas above or below operating rights-of-way and portions of property not currently being used as operating rights-of-way, in the manner set forth in section 185044 of the CA Public Utilities Code.
6. The CEO may complete all necessary work and obligations related to all right-of-way relocation or removal related to publicly owned or privately owned utilities and utility facilities, including but not limited to, contracting, negotiation, execution, compensation, apportionment of obligations and settlement of claims or actions, In the manner set forth in section 185500 et seq. of the CA Public Utilities Code.
7. The CEO may develop and implement legal plans and strategy, in consultation with legal counsel, for the purposes of maintaining litigation of an action or for an adjudication as to the obligations and costs to be borne by the parties related to utility or utility facility removal or relocation.

Delegations responsibly transfer decision-making authority from the Director of Real Property to appropriate level State staff. These delegations are in place to ensure consistency and are based on good decisions; substantiated in quality documents and risk assessments; and developed, reviewed, and approved by appropriate technical and management authorities with appropriate justification and defendable rationale for regional accountability.

At the outset of Senate Bill 1172 (Beale) implementation, the delegation for execution of key actions including but not limited to the setting of just compensation, approval of acquisitions by contract or

condemnation, decision to file a Resolution of Necessity, the filing an eminent domain action, or execution of lease agreements for the Authority's excess properties shall be retained by the Director of Real Property. Except for amendments to ROW contracts which are delegated to the assigned contract manager subject to the policies and procedures of the Authority and the State Administrative Manual and State Contracts Manual, approval and execution of all other commitments related to real property acquisition reside with the Director of Real Property. In his/her absence, the Director of Real Property delegates such responsibilities to the following positions, in the following order, provided that such delegatee receives express written authorization to execute any right-of-way transaction identified in this Right-of-Way Manual:

- Deputy Director, Real Property
- Principal, Real Property
- Supervising ROW Agent, Real Property

2.06.00.00 – RISK TAKING

2.06.00.00 Risk Taking

Real Property Branch is constantly challenged with new laws, regulations, policies, and the application of policies and procedures to real-life situations. Right-of-Way activities often involve unique situations that require judgment decisions when specific guidance is not available from existing laws, regulations, or policies and procedures. Real Property Branch occasionally must evaluate and provide direction regarding calculated risks to deliver the product.

The following statement provides some guidance for making decisions involving risk taking:

A risk is defined as a legal and planned deviation in business practices or policy application consistent with delegated authority and a fiduciary position that results in time or dollar economies for the Authority. Prior to making a decision regarding a risk situation, the following factors should be considered:

- Is the risk decision legal?
- Is this informed decision consistent with the Authority's policy and practice of being good stewards of our assets?
- Is the decision consistent with delegated authority?
- Does the decision consider the rights of those involved?
- Does the decision consider the corporate view?

Figure 1 – Organizational Chart

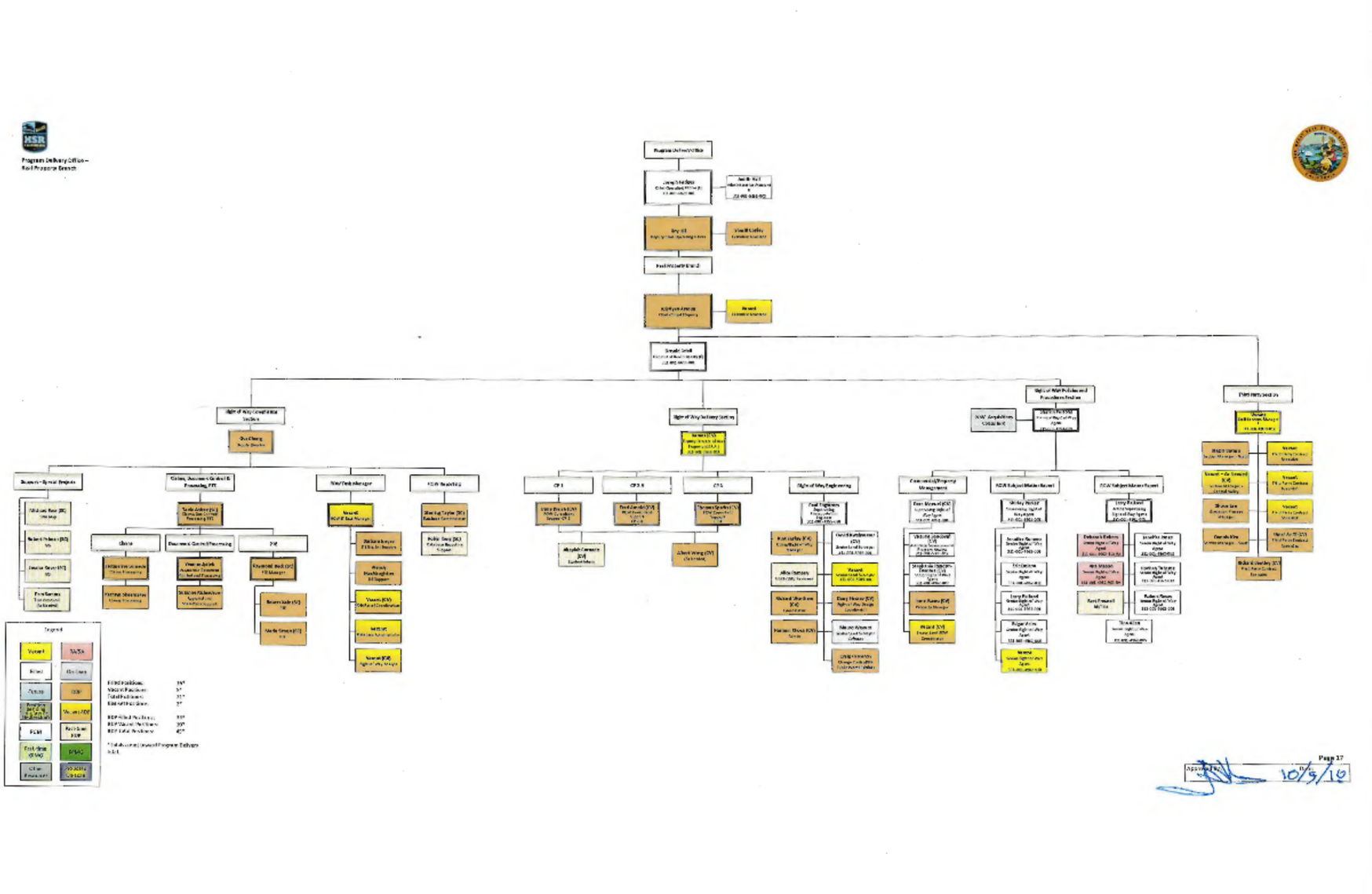
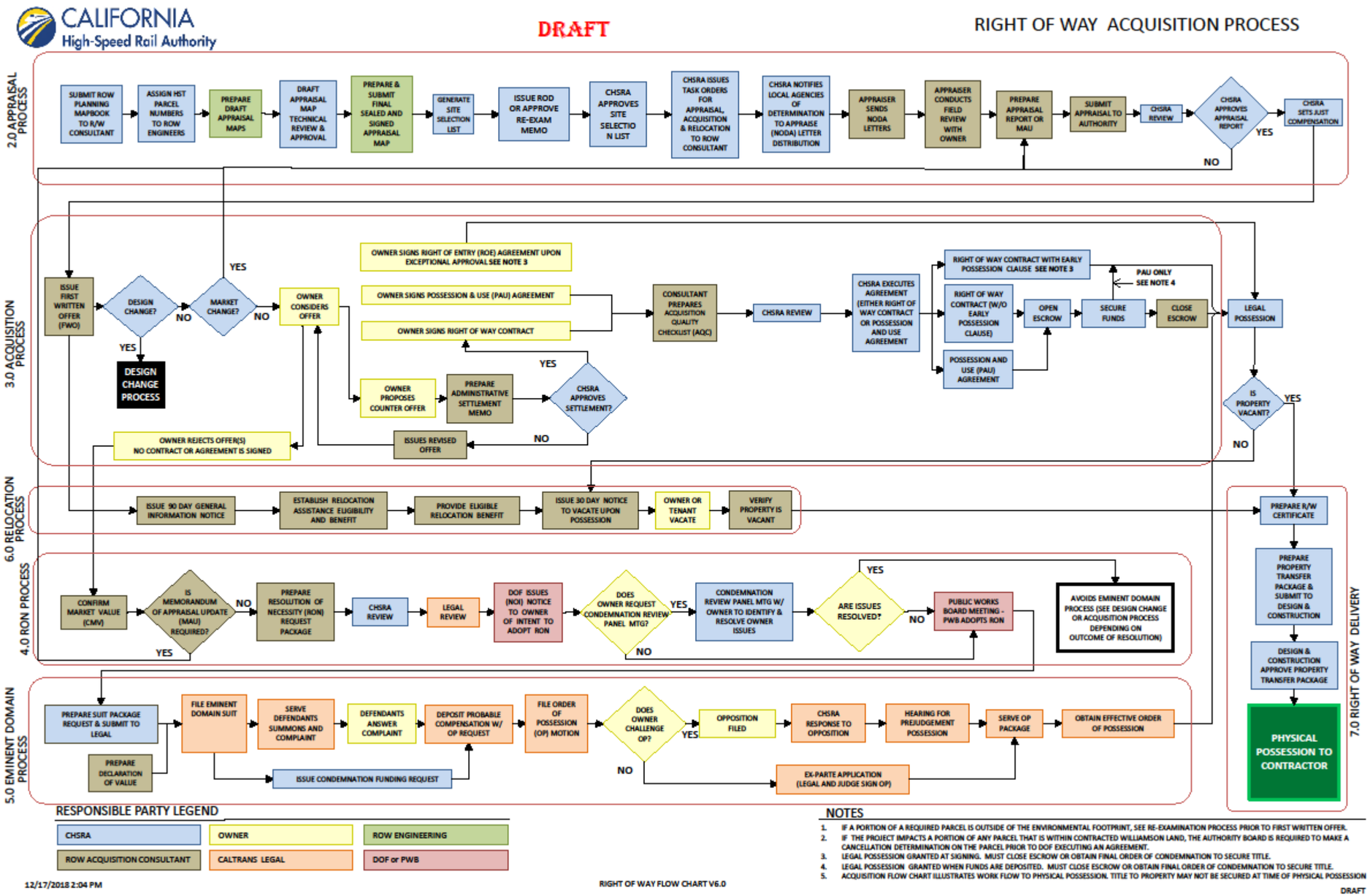


Figure 2 – Right-of-Way Flow Chart V6.0



CALIFORNIA High-Speed Rail Authority

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3.01.00.00 - AUTHORITY DATA BASES AND SYSTEMS

3.01.01.00 General

The California High-Speed Rail Authority (Authority) uses information technology to manage, track, report and measure the performance of the Right-of-Way (ROW) team and contractors in the pursuit of right-of-way needed for the project.

3.01.02.00 geoAMPS

geoAMPS is the data management system used to collect data pertaining to the appraisal and acquisition of real property for the first construction section (at the time of this writing). SharePoint 2016 is used to house all related ROW documents, templates and forms. Weekly reports are produced using the data from geoAMPS. The data is exported to a SQL database where various computations are performed. That dataset is exported to a Microsoft Excel Workbook that has a large variety of reports including performance, financial, accomplishments to date, trending and forecasting, to mention a few. geoAMPS also has dashboard reports and other reports available to the users. geoAMPS collects data for the following areas:

- Parcel and HST numbers, property owner information
- Relocations
- RHVs/Moving Bids
- Comps and Bids
- ROW Engineering
- Appraisal Tasks
- Offers to Purchase
- AQCs / Signed Contracts
- Resolution of Necessity
- Condemnation
- Possession and Delivery
- Forecast Change Log
- Land Inventory
- Payment Requests
- Leases
- Rent / Other
- Document Library
- Contact Directory
- Contract Management
- Task Orders / Parcels
- Permits to Enter

The Real Property branch will periodically assess the functionality of geoAMPs to meet the growing needs of the Authority. These systems depend on accurate and timely input by the ROW team and ROW contractors.

3.02.00.00 - EXPENDITURE AUTHORIZATION

3.02.01.00 Capital

The Real Property Branch fiscal year budget captures the following cost categories:

1. Acquisition
2. Relocation
3. Condemnation
4. Property Management
5. ROW Services (acquisition and engineering/surveying)

These details are further broken down as identified below. The Real Property Branch is reviewing its data collection practices to ensure that data captured complies with applicable law, reporting, and Authority policies and procedures.

MOVING EXPENSES - Actual Moving Cost
MOVING EXPENSES - Moving Service Authorization
MOVING EXPENSES - Schedule
Search Cost
In-Lieu Payment
Re-establishment
Mortgage Differential
Price Differential
Incidental Expense
Rent Differential
Down Payment
Other -Relocation
Relocation Cost
LAND - Right-of-Way
LAND - Early Acquisition
LAND - Excess
LAND - Mitigation Site or Credits
TEMPORARY EASEMENT(S)
TEMPORARY EASEMENTS(S) - Early Acquisition
IMPROVEMENTS - Right-of-Way
IMPROVEMENTS - Early Acquisition
IMPROVEMENTS - Excess
Personalty
Machinery And Equipment
DAMAGES To Remainders

DAMAGES To Remainders - Cost to Cure Damages
DAMAGES To Remainders - Other Damages
DAMAGES to Excess Parcels(s)
DAMAGES to Excess Parcels(s) - Cost to Cure Damages
Other Damages
Goodwill
Interest
Court Costs
Rent
Other - Acquisition
Right of Entry
LAND - Excess (State)
IMPROVEMENTS - Excess (State)
DAMAGES to Excess Parcels(s) - Cost to Cure Damages (State)
Other Damages (State)
Goodwill (State)

3.03.00.00 - RESOURCE MANAGEMENT – SUPPORT

3.03.01.00 General

Capital Outlay funds construction contracts, right-of-way capital, utility relocations and other project related support services for Authority projects. Support personnel and ROW contractors provide support all aspects pertaining to ROW including Project Management, staffing planning, budgeting, forecasting, scheduling, cost analysis and support budgets. This includes performance of studies and recommendations for improvement of right-of-way capital outlay support, Work Estimating Norms as well as related status of existing workload. Also included is identifying, ROW clean-up projects and preparing budget calculations used to determine capital resource needs (PYs) for current and future years.

3.03.01.01 PYs - Capital Outlay Support

Budget Change Proposals are prepared to request Authority's state staffing to ensure adequate State resources have been secured. For resource support related to acquisition services, Real Property Branch must submit a request to the Business Oversight Committee and the Program Delivery Committee using the change management request for requests to amend for time or money the existing ROW acquisition or engineering service agreements. Any new procurements also require prior approvals of the Business Oversight Committee before the request may be considered by the Chief Executive Officer.

3.04.00.00 - RESOURCE MANAGEMENT - ROW CAPITAL OUTLAY

3.04.01.00 General

The Authority is responsible for allocating legislatively approved capital outlay appropriations to projects that have been included in the Authority's program documents in accordance with its fiscal year budget. The Authority may only allocate funds to projects that are environmentally cleared.

3.04.02.00 ROW Estimate

Chapter 4, Estimating, sets forth in detail the Authority's policy regarding ROW estimates. The estimate is the first step in process to building the ROW budget. The initial ROW estimate as prepared by the Regional Consultants is based on the preferred alignment. This estimate is the basis for analysis and is evaluated by RDP Cost Estimating Team and the Real Property Branch. When appropriate this estimate will be used in the preparation of a Capital Outlay Budget Change Proposal (COBCP) which is submitted to Department of Finance and the legislature for consideration. Once appropriated the ROW budget is established. When the cash is made available ROW activities can commence.

The ROW estimate is included in geoAMPS so as to measure the estimate against actual expenditures. These variances assists in determining an appropriate forecast which is needed to determine the cost to complete. Depending on the magnitude additional funding may be sought. Note that the estimate is based on the Board approved preferred alternative or on the alternative presumed to be used for the construction cost estimate.

3.04.03.00 Budget Development Process

The Authority's proposed budget is submitted to the California State Transportation Agency and the Department of Finance in October. To accomplish this, the Real Property Branch provides a ROW capital outlay budget estimate (ROW Acquisition Plan) as well as the plan for reimbursed spending authority to the Authority's Financial Branch annually by August 1. The budget estimate is a combination of state and federal dollars. Reimbursed spending authority covers dollars contributed by local agencies or others that are paid through the Authority's accounting system and must be included in the annual budget. Contributor dollars that are paid directly by the locals or others without passing through the Authority's accounting system are not included in this process, nor are they included in the annual budget. Generally, contributor dollars are identified in a cooperative agreement or other form of agreement between the State and local agencies or others.

The Department of Finance forwards copies of the proposed Authority budget to the Legislative Analyst's Office to aid in review of the Governor's Budget. On January 10 of each year, the Governor submits to the Legislature a budget containing itemized statements of recommended sources and use of resources for all departments and activities in the State. This is the printed budget and is referred to as the Governor's Budget. The Governor signs the Budget Bill, which becomes the Budget Act, after it is passed by both Houses. The Budget Act is a one-year document beginning July 1 and ending the following June 30. This period is referred to as the State Fiscal Year or Funding Fiscal Year (FFY).

3.04.03.01 Hardship and Protection

Chapter 5, Corridor Preservation, Hardship and Protection, contains detailed information on review and approval of hardship and protection (Hardship and Protection) acquisitions. This section provides guidance and sets limitations for funding of Hardship and Protection acquisitions. There are two types of Hardship and Protection:

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

Authority to approve both types has been delegated to the Director of Real Property. Hardship and Protection acquisitions should be considered during the estimating process so funding can be included in the annual fiscal year capital budget. After the initial allocation, the Real Property Branch should consider priorities for spending its allocated dollars and, if necessary, seek additional funding from the Business Oversight Committee. Hardship and Protection acquisitions are reflected as Early Acquisitions in geoAMPs.

3.04.03.02 Inverse Condemnations - Damages to Property

Inverse condemnation settlements or settlements for Damages to Property and the associated costs (Expert Witness Fees, court costs, and attorney fees) are funded from the ROW capital outlay allocation.

3.04.03.03 Hazardous Waste/Materials Funding

The source of funds for identification of hazardous waste and hazardous materials and subsequent abatement is managed with the design-build contracts. Appropriate changes will be made to this section in the event this procurement methodology is modified.

3.04.03.04 Title and Escrow Fees

Title and escrow services are contracted out annually to title companies through negotiations by the Real Property Branch. The time span of each service contract is generally subject to the Authority's delegation from the Department of General Services. Contracts for title and escrow services are state funded and ineligible for federal reimbursement. In certain instances, they may be funded in part with contributor dollars when the contract services will be reimbursed by others.

3.04.03.05 Accountability of Donated Lands

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

3.04.03.06 ROW Acquisition Plan

The ROW Acquisition Plan (Plan) is a schedule of projected annual expenditures for each Construction Package. The Plan is the foundation from which ROW capital outlay is programmed, budgeted, allocated, monitored, and reported.

ROW estimates are reviewed whenever project scope, scheduling, or cost changes occur. (Refer to Chapter 4, Estimating.) The Director of Real Property determines if the change is significant and warrants revising the estimate. If the estimated revision is within the Real Property Branch's fiscal year budget, the Director of Real Property can authorize such revision. If the estimated revision requires additional budget capacity to the current fiscal year budget, the Director of Real Property shall submit a business case to the Business Oversight Committee for approval prior to the expenditure of such funds.

The Business Oversight Committee provides programmatic acquisition strategy, procurement governance and commercial oversight. It acts as the Program Baseline configuration-management control board and approves all changes of scope, timeline and budget to any program element within the Program Baseline. This committee ensures Program Baseline compliance with federal and state regulations and statutes. The BOC also approves any program execution or fiscal request presented to the Board of Directors. The BOC will forward issues requiring escalation resolution to the Executive Committee.

3.04.04.00 Budgetary Control and Allocation Limitations

ROW expenditures shall not exceed the total ROW allocation except with prior written approval of the Business Oversight Committee and the Financial Branch. A request for additional ROW capital funds shall include the following and be submitted to the Business Oversight Committee for approval:

- Demonstrate the need for the funds and why that particular alternative is necessary.
- Show the effect on project scheduling.
- Demonstrate that redistribution of existing dollars cannot meet the need.

3.04.05.00 Reporting Requirements

At the beginning of the fiscal year, ROW presents the proposed ROW Capital Expenditure Allocation Plan to the Authority's Financial Branch annually for review and processing based on the programs priorities.

The ROW Capital Expenditure Allocation Plan presented to the Authority' Financial Branch shall:

- Show proposed expenditure levels by construction package and segment.
- Show projected environmental clearance dates and project certification dates.
- Relate the budget plan to the program and identify significant ($100,000+ differences between the plan and the program) ROW advancements and delays.

3.04.05.01 Monthly Reporting Requirements

During the fiscal year, the Real Property Branch prepares a monthly report to the Program Delivery. This report compares original lump sum capital allocations to year-to-date commitments and project delivery milestones (certifications) planned to milestones completed, and evaluates the status of year-to-date expenditures on specific major projects.

3.04.05.02 Year-End Reporting Requirements

Senate Bill 1172 requires that after the end of the budget year the Authority report the following based on the Authority's official book closing statement:

- Actual ROW capital program level encumbrances against the ROW allocation.
- Any environmental clearance dates that have not been met and any consequences to scheduled project delivery.

To meet this requirement, ROW must provide a project-level detail report showing actual ROW encumbrances compared to the allocation for those major ROW projects that formed the basis of the ROW allocation. In addition, must provide a detailed explanation for each project where the encumbrance substantially deviated from the allocation.

3.04.06.00 Project Change Request Process (RRL)

The Authority's Infrastructure Delivery Branch utilizes the Request for Right-of-Way Log (RRL) to request any changes to the acquisition of ROW needed for the project (see Exhibit 03-EX-07.) The RRL is intended to capture any scope or schedule changes which may impact ROW costs. For any changes to the acquisition plan, Infrastructure Delivery Branch, in coordination with the Environmental Branch, must complete the RRL form and submit it to the Real Property Branch for review and approval. Amendments to the original acquisition plan include but are not limited to a request to rescind an existing acquisition request, modify an existing acquisition request, or propose a brand new acquisition request.

3.05.00.00 - FEDERAL-AID PROJECT FUNDING

3.05.01.00 General

To obtain federal financing of projects, the Authority must comply with laws, regulations, requirements, and procedures established by Congress. The decision to apply for federal participation on a project or phase of a project is made during the programming phase and is guided by the Authority's federal-aid policy. The following are laws and regulations that govern the Authority's financing of the Program:

- Clean Air Act
- National Environmental Protection Act (NEPA)
- Title 49 U.S. Code
- Uniform Relocation Act
- Annual Appropriation Act
- Special Congressional Action

The Federal Transportation Act sets the federal participating ratio (percentage) for each program.

3.05.02.00 Departmental Policies and Guidelines

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

3.05.02.01 Early Acquisition under 23 CFR Section 710.501

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

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

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

3.05.02.02 Credit (Soft Match) toward State's Share of Project Cost

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

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

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

Under Section 710.505 (b), donations of real property from a nongovernmental owner may be credited to the state's matching share of the project. The credit is to be based on fair market value established on either the date on which the donation becomes effective, or the date on which equitable title to the property vests in the State.

Under Section 710.507 (d), contributions of real property acquired with State funds may support a credit toward the nonfederal share of project costs provided documentation supporting all credits includes the following:

1. Certification that the acquisition satisfied the conditions in 23 CFR 710.501(b); and
2. Justification of the value of credit applied, Acquisitions costs incurred by the State to acquire title can be used as justification for the value of the real property.

Under Section 710.507 (e), contributions by local government of real property may be offered for credit against the state share of the project at fair market value of the real property. The state agency must assure that the acquisitions satisfy the conditions in 23 CFR 710.501 (b), and that the documentation justifies the amount of the credit.

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

The Financial Branch should also be consulted for further guidance on the application of soft match or credit toward a federal-aid project.

3.05.03.00 Federal Funding Overview

Whenever federal funds provide a portion of a project's funding, the Authority must qualify the project for federal participation by meeting applicable requirements of federal laws, and implementing regulations and directives. The following is a summary of activities necessary for obtaining federal authorization, funding and reimbursement for a federal-aid project:

- Verify project is included in programming documents.
- Request work/project authorization and execution of project agreement by submitting a request to FRA.
- Receive FRA's approval through electronic signature document for the work/project, and begin ROW work.
- Bill FRA for progress payments initiated through the Financial Branch.
- Initiate and submit, when necessary, an electronic modification of project agreement to adjust federal funding under agreement with FRA.
- Prepare a final voucher for the project after all work is completed and close out project with FRA.

3.05.04.00 Federal Participation in Preliminary Acquisition Activities

23 CFR 710.203 (3) allows preliminary acquisition activities to be advanced under preliminary engineering prior to National Environment Policy Act (NEPA) clearance (42 USC 432 et seq.). Appraisal completion may also be authorized as preliminary right-of-way activity prior to completion of the environmental document. Thus, costs of preliminary ROW activities incurred in conformance with state and federal law requirements may qualify for federal participation.

3.05.04.01 Stage 1 Authorization - Hardship and Protection Acquisitions

Federal-aid for Hardship and Protection acquisition is requested only when total ROW capital costs, including Hardship and Protection acquisition, are $1,000,000 or more. The Authority's practice is to budget expenditures for Stage 1 Hardship and Protection acquisitions showing federal participation. The provisions of 23 CFR 710.503 (b)(c) allow authorizations for protective buying and hardship acquisitions. FRA may authorize federal participation in acquisition of a particular parcel or a limited number of particular parcels within the limits of a proposed highway corridor prior to completion of the Environmental Impact Study and selection of the route. Known as Stage 1 Authorization, this is simply a federal authorization to proceed without the obligation of federal funds.

The following statement must used for the request of Stage 1 Authorization:

"Authorization to proceed shall not constitute any commitment of Federal funds, nor shall it be construed as creating in any manner any obligation on the part of the Federal funds for that portion of the undertaking not fully funded herein."

The Stage 1 Authorization allows eligible incurred costs be reimbursed after the appropriate requirements are fulfilled provided to and approved by FRA.

Since all eligible Stage 1 costs, including appraisal, acquisition, and rental activities, potentially qualify for federal participation, they must be captured appropriately in the submittal. See Section 3.04.04.01 for charging information on Hardship and Protection acquisitions.

All 2 and H Phase EAs for Stage 1 must be documented in the Real Property Branch's file system.

3.05.05.00 Federal Reimbursement

Federal-aid is typically distributed on a reimbursement basis. The Authority provides the initial cash to get a project underway, then receives federal funds for the federal share of the project cost incurred and work completed. This means that the Authority must first obtain obligational authority, execute a project agreement, incur costs, and bill FRA for payment. Then it can receive payment. FRA will pay only those expenses eligible for reimbursement, limited to the amounts shown on the executed in the Federal Participation Memorandum (RW 08-16).

Once the project is authorized and the Federal-Aid Agreement is executed, expenditures are accumulated in FisCAL and reimbursement procedures are initiated. Project expenditures are matched with the appropriate federal funds reimbursement criteria, and FRA pays the Authority a pro rata share of eligible participating costs.

3.05.05.01 Reimbursable ROW Costs

FRA, subject to the ARRA Grant Agreement, approves and limits the project expenditures it reimburses to those costs the Authority has actually incurred (i.e., cash disbursed, not dollars encumbered). Federal funds may participate in ROW costs in two categories:

- Capital Outlay - costs necessary to acquire and clear rights-of-way for project construction. All capital outlay costs must be charged to a specific project. To meet FRA's requirements, capital costs must be recorded in sufficient detail to determine eligibility. This includes transactions for land, improvements, damages, utility relocation, demolition, clearance, relocation assistance, condemnation deposits, and income relating to sale of improvements and excess lands.
- Incidental (Support) - personnel and operating expenses supporting ROW functions that produce the capital outlay payments. [FRA uses the term "incidental cost;" the Authority uses "support cost."

3.05.05.02 Definitions

Direct eligible costs are those expenditures incurred after federal authorization on a project is obtained. Generally, eligible acquisition and related costs are based on a parcel-by-parcel authorization by FRA. Federal participation in real property costs is limited to the costs of property incorporated into the final project and the associated direct costs of acquisition, unless provided otherwise. 23 CFR Section 710.203 (4) (b) (1) expands federal reimbursement for right-of-way acquisition costs beyond the current limits of "generally compensable" costs. Federal-aid eligibility now extends to items usually covered by state law and items formerly determined not to be compensable under earlier CFR guidelines. See above-referenced section of 23 CFR for details on federal participation in direct costs. Real Property Branch, in coordination with the Financial Branch, is responsible for determining federal eligibility of ROW costs.

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

3.05.05.03 Claims for Reimbursement

Any claims made with FRA reimbursement shall be supported by a ROW map or plan showing the rights-of-way authorized and actually acquired, including parcel identification numbers, area acquired, property lines of acquired area, and any other pertinent data affecting the cost of right-of-way (e.g., structures, improvements, and fences).
Claims must also include a statement of cost of right-of-way showing:

- Parcel number.
- Cost of parcel.
- Cost of excess land, if any, acquired from same ownership.
- Goodwill.
- Credits by parcel or project.
- Incidental expenses (support costs) by parcel or project.

3.06.00.00 – FEDERAL FUNDS MANAGEMENT

3.06.01.00 General

Federal funds management involves managing federal-aid projects from authorization to reimbursement and is the key to achieving better control over the use of federal funds. Project funds management assures the reprogramming of federal funds through the timely release of excess unexpended funds. The Authority has implemented continuous project funds management in response to audit findings by FRA and the Office of Inspector General (OIG). The Authority must manage its federal-aid funds with emphasis on the following:

- Continuously monitoring project expenditures against obligational authority.
- Applying accelerated procedures for closing completed projects.
- Promptly withdrawing federal-aid projects that will not be completed.
- Releasing funds that exceed project needs in a timely manner.

3.06.01.01 Monitoring Federal-Aid Project Expenditures

At a minimum the Real Property Branch takes the following actions to monitor all activities and project costs.

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

3.07.00.00 - MONITORING PROCESS

3.07.01.00 General

The Real Property Branch's ROW Compliance Section is responsible for identifying parcels with federal participation and segregating ROW costs for federal reimbursement down to the parcel level. The ROW Compliance Section is supported in this respect by information provided by the ROW Contractors and the Senior ROW Staff.

3.07.02.00 Roles and Responsibilities

A successful monitoring process requires a close working relationship among the various functional units within the Authority including the Real Property Branch and the Financial Branch. The Real Property Branch has the primary responsibility, authority, and accountability for parcel level detail.

3.07.03.00 Objective

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

MONITORING PROCESS RESPONSIBILITIES	
Function	**Responsibilities**
ROW Agent	The ROW Agent must initiate transactions accurately and timely. The Agent obtains the proper codes from ROW Compliance Section to record the expenditures accurately on the appropriate the Financial Branch documents.
ROW Compliance Section	The ROW Compliance Section has primary responsibility for reviewing and reporting all ROW transactions to the Financial Branch. Additionally, The ROW Compliance Section has responsibility for ensuring the documents are coded properly with correct funding splits.
ROW Compliance Section	The ROW Compliance performs all accounting activities (including providing independent analysis of financial transactions) in accordance with prescribed accounting and fiscal procedures. The ROW Compliance Section in monitoring transactions; ensures appropriate internal checks and balances are applied to fiscal data; and maintains the integrity of the accounting system in accordance with processes and procedures outlined by the Financial Branch.

3.07.04.00 Scope

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

3.07.05.00 Federal Eligibility

The Real Property Branch, in consultation with the Financial Branch, is responsible for determining federal eligibility of transactions and relaying this information to the Financial Branch on the appropriate accounting documents. For additional information, refer to:

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

3.07.06.00 Procedures

The procedures in the table on the following page establish a formalized tracking process to assure timely and uniform follow-up of ROW expenditure transactions and compliance with federal requirements.

3.07.07.00 Document Log

Since the majority of documents flow from the Real Property Branch, the ROW Compliance Section is responsible for providing the Financial Branch information sufficient to authorize expenditure of funds. The Financial Branch retains the final records outlining the expenditure of funds.

MONITORING PROCEDURES	
Responsible Party	**Procedures**
ROW Agent	The ROW Agent initiates functional transactions in a timely manner and identifies federal participation at the project and parcel levels with The ROW Compliance Section's assistance. The Agent must segregate ROW costs into eligible and ineligible categories and classify expenditures to code them properly for FisCAL. The Agent must accurately prepare and sign the Federal Participation Memorandum or a similar form to reflect the appropriate ROW transactions.
Functional Supervisor	The functional supervisor reviews the payment document and all necessary support documentation to verify appropriateness and accuracy of the Agent's work. The supervisor approves and signs the ROW Compliance Section forms and returns the transaction package to the Agent.
ROW Agent	The ROW Agent forwards the transaction package (including support data) to The ROW Compliance Section for encumbrances or payments.
The ROW Compliance Section	The ROW Compliance Section reviewer should request the complete file and any supporting material required to verify the functional transactions the Financial Branch will process. The reviewer checks accuracy of coding and federal-aid related data, including the proposed segregation of charges, to ensure an appropriate distribution between eligible and ineligible categories. The ROW Compliance Section reviewer signs the appropriate ROW Compliance Section form(s), places a copy of the transaction request form in the pending file, and forwards the transactions package to the Financial Branch.
The ROW Compliance Section	ROW Compliance Section reviews and verifies coding accuracy on all documents, and ensures that transaction package is complete. The Financial

MONITORING PROCEDURES	
Responsible Party	**Procedures**
	Branch then enters the data into FisCAL. For capital outlay transactions, ROW Compliance Section electronically transmits the weekly reports to the Authority's the Financial Branch on a daily basis. This report substitutes for the documents formerly required for the Closing the Loop process.
The ROW Compliance Section	Upon receipt of the electronic reports from ROW Compliance Section, the ROW Compliance Section reviewer confirms coding and funding splits on all capital outlay payment/encumbrance transactions. If there are no variances, The ROW Compliance Section attaches the pending file to the accounting report and forwards them to the appropriate function, which reviews coding and funding splits one last time (safety net) and files it in the parcel folder. If there is a variance, the ROW Compliance Section advises the Financial Branch either by email or phone.
The Financial Branch	The Financial Branch makes adjustments in FisCAL within 10 working days. The adjustments are recorded on the weekly reports.
The ROW Compliance Section	The ROW Compliance Section reviews the weekly reports for the next period to confirm that adjustments were made.

3.07.07.01 ROW Forms

Before ROW Compliance Section can process functional transaction requests, ROW must submit appropriate functional documents. A complete listing of the required documents for each functional transaction can be obtained from the ROW Compliance Section Office.

3.07.07.02 ROW Claim Schedule Report

The Weekly Report is electronically forwarded to each the ROW Compliance Section Office every Monday (Tuesday, if Monday is a holiday). If the Report contains a variance, it is reported to the Director of Real Property. An adjustment is made within 10 working days. The adjustment appears on the reports issued during the next two weekly cycles. The first line entry records the reversal of the variance and should contain an "R" code. The second line entry is the adjustment. The Report page is attached to the pending file document and is placed in the parcel file.

3.07.08.00 Verification

The ROW Compliance Section has primary responsibility for:

- Verifying coding and funding split amounts on Phase 9 transaction documents sent to ROW Compliance Section.
- Comparing and confirming accuracy of coding and funding type amounts on ROW Compliance Section Weekly Reports.

Excess Land documents are an exception, and Excess Land has primary responsibility for reviewing the accuracy of coding and amounts on separately transmitted weekly Excess Land reports. Functional units must also review documents for accuracy and correctness of processed data before the documents are forwarded to The ROW Compliance Section for final processing and filing.

3.07.09.00 Variance Resolution

The need to resolve variances arises in both the Financial Branch and ROW. When the Financial Branch reviews ROW transaction documents, questions may ensue about federal participation and eligibility or proper coding. ROW Compliance Section shall contact the appropriate ROW function to clarify and resolve any item in question. Accepted policy is that ROW Compliance Section will not make any coding changes to ROW transactions without ROW's approval. If the Financial Branch is not certain about whom to call, their contact is The ROW Compliance Section. The ROW Compliance Section will direct them to the correct unit/person and will follow up to ensure the issue is resolved.

If ROW discovers a variance upon review of the Weekly Report issued by ROW Compliance Section, The ROW Compliance Section contacts the appropriate ROW Compliance Section. Variances on the Weekly Reports are to be reported immediately to the ROW Compliance Section liaison by phone or by blue route tag (overnight) service. Notes verifying the phone call and anticipated corrective action should be written on the Report page and in the log. If adjustments are not made in a reasonable time or the Financial Branch liaison is not responsive, ROW should contact ROW Federal Program the Financial Branch's manager.

3.08.00.00 – PREREQUISITES FOR RIGHT-OF-WAY ACTIVITIES

3.08.01.00 Preliminary Right-of-Way Activities – Defined

Preliminary ROW Activities are defined as those ROW activities that occur after the project is programmed, and are typically charged as ROW support to the project's Phase 2 expenditure authorization. These activities include:

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

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

3.08.02.00 Prerequisites for Commencement of Preliminary Right-of-Way Activities

The prerequisites for initiating preliminary right-of-way activity are outlined as follows:
(These requirements do not apply to hardship and protection parcels or parcels subject to Acquisition Reference File 00-1 ROW Acquisition Prior to Environmental Approval.)

1. The project must be programmed or lump sum funded, if required and a Phase "9" expenditure authorization must be approved.
2. If Federal or other public entity funds are to participate in right-of-way costs, right-of-way activities must have been authorized by FRA and funded by the other participating entity pursuant to an executed agreement in accordance with the Author's policies and procedures outlined by the Financial Branch.

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

3.08.03.00 Regular Right-of-Way Activities – Defined

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

1. Acquiring right-of-way parcels
2. Relocating Displaced Persons
3. Performing Utility Relocation activities from the request for Relocation Plans forward
4. Unless the prerequisites are met, these activities shall be avoided in all cases unless prior Headquarters ROW approval has been secured in writing in accordance with the instructions found in Section 3.08.04.00 or as defined in Acquisition Reference File 00-1 ROW Acquisition Prior to Environmental Approval.

3.08.04.00 Prerequisites for Commencement of Regular Right-of-Way Activities

The prerequisites for initiating regular right-of-way activity are outlined as follows:
(These requirements do not apply to hardship and protection parcels or parcels subject to Acquisition Reference File 00-1 Right-of-Way Acquisition Prior to Environmental Approval.)

1. The project report must have been approved.
2. The project must have current final environmental clearance.
3. Funding must be appropriated, budgeted and available

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

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

Current final environmental clearance means:

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

   Or

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

   And

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

CHAPTER 4

[HELD FOR FUTURE USE]

CALIFORNIA High-Speed Rail Authority

CHAPTER 5

CORRIDOR PRESERVATION, HARDSHIP, AND PROTECTION
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5.01.00.00 - ADVANCE ACQUISITION

5.01.01.00 General

Advance acquisition is defined as acquisition on an approved high-speed rail construction segment (except for other compelling circumstances) that has been Site Selected by the California High-Speed Rail Authority Board of Directors (Board of Directors). If a parcel has not been Site Selected with adequate funding authorized by the Authority Board then an advance acquisition cannot be done. Federal rules and Authority policy prohibits acquisition prior to specified high-speed rail route adoption stage except for hardship or protection reasons. Advance acquisition may include the voluntary gift or a donation of property.

The Authority must provide prior written notice to the appropriate local governments of hardship and protection acquisitions.

Advance acquisitions made prior to completion of environmental and location processes are not to influence environmental assessment of the project.

5.01.02.00 Definitions

- **Core Area** - the area of the right-of-way that includes full take parcels, whether or not such parcels lie entirely within the proposed right-of-way lines.
- **Fringe Area** - the area outside the core area but within the right-of-way limits of a plan that includes frontage roads, interchanges, or grade separation areas. This is the area that cannot be precisely established prior to determining design features that are dependent on detailed engineering investigations and negotiations with the surrounding community.

5.01.03.00 Advance Acquisition Funding [Hold for Future Use]

5.01.04.00 Federal Participation

Federal-aid for right-of-way, including Hardship and Protection, shall be requested on all high-speed rail projects. Federal aid must also be requested for certain categories of special projects. Since federal aid policies change, the Authority will ensure that the proper entities are contacted to determine current policy and whether an authorization is applicable.

Federal aid for right-of-way overhead is requested whenever federal aid for right-of-way is requested.

5.01.05.00 Federal Authorizations [Hold for Future Use]

5.01.05.01 Pre-Environmental Clearance

Any advance acquisition must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended April 2, 1987; Title VI of the Civil Rights Act; and 49 CFR 24.

Properties that may be subject to Section 4(f) of the Authority of Transportation Act or Section 106 of the National Historic Preservation Act may not be acquired until necessary determinations of eligibility and appropriate clearance procedures are satisfied.

The Authority Legal Office must review any proposed advance acquisition on the project that is not environmentally cleared or Site Selected with funds have been identified by the Board of Directors for advance acquisition to determine if the proposed acquisition would influence environmental assessment of the project. The Legal Office's written response shall be included in the approval request. Federal approval is required as follows:

- After the Public Hearing but Before Environmental Clearance of the Project federal approval is required.

The packages shall be sent to the Federal Railroad Administration. The FRA will notify the Authority after approval so the Authority can initiate acquisition activities.

5.01.05.02 Post-Environmental Clearance

To obtain federal participation for right-of-way costs on projects with environmental clearance, the Authority must submit proposed advance acquisitions to the FRA [or **designated federal funding agency]** for approval. If there is no federal program approval for the project, the Authority may acquire the parcel with its own funds.

5.01.06.00 Local Public Agency (LPA) Funded Advance Acquisition [Hold for Future Use]

5.01.07.00 Acquisition by Donation

see Section 8.28.00.00.

5.01.08.00 Acquisition by Dedication

see Section 8.29.00.00.

5.02.00.00 - CORRIDOR PRESERVATION

5.02.01.00 General

Real Property Branch preserves corridors through a variety of means including:

- Donations,
- Dedications, and
- Advance right-of-way purchase.

5.02.02.00 Acquisition of Land

Authority may acquire land located within a designated corridor of statewide or regional priority to be held and maintained for future high-speed rail purposes. Acquisition may be through donations, purchase, or other means.

Each land acquisition proposal is submitted for review and recommended action to the regional transportation planning agency in whose jurisdiction the land is located. The Authority may approve the acquisition only after the regional transportation planning agency holds a hearing and finds that potential transportation facilities to be located on the land can be constructed in a manner that will avoid or mitigate specified environmental impacts or values.

The Authority can acquire property for corridor preservation only when authorized by the local entity.

5.03.00.00 – HARDSHIP

5.03.01.00 General

Hardship is defined as a situation where the unusual personal circumstances of an owner are aggravated by the proposed high-speed rail project construction segment and cannot be solved by the owner without acquisition by the state. There are two types of hardships:

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

The Authority is authorized to approve both types of parcels for hardship acquisition.

Authority practice is to investigate to determine the need and to appraise and acquire the property with minimal delay after Site Selection and the verification of funds have been authorized by the Authority's Board and identified in the current Business Plan. Owners of hardship parcels should receive full consideration and service consistent with normal acquisition procedures, including appropriate relocation assistance and sufficient time to consider the Authority's offer. The Authority shall make the first written offer to the applicant within a reasonable amount of time from the date of the required approval letter.

5.03.02.00 Relocation Assistance Program (RAP) Eligibility

The Authority should notify the applicant in writing of the requirements for Relocation Assistance Program (RAP) eligibility when the hardship investigation commences. If the hardship application is not approved, the applicant should be informed of benefits that will be lost if the applicant vacates prior to regular acquisition (first written offer). At the same time, it is important to ensure that double relocation payments are not made and federal reimbursement is not lost. In line with this intent, if an application is approved and the applicant is forced to move prior to the time a written offer can be presented, the Authority must mail a Notice of Intent to Acquire to preserve relocation eligibility. (see Forms RW 10-08, RW 10-09, and RW 10-10.) This letter should not be mailed until after approval of the hardship acquisition and should not be issued unless initiation of negotiations will commence less than 90 days subsequent to said Notice. This action will preserve the relocation eligibility of applicants and will avoid the possibility of creating more than one eligible relocatee.

5.03.03.00 Cessation of Hardship

If it is determined that a hardship no longer exists, Right-of-Way Acquisition must immediately withdraw any outstanding offer to purchase and advise the owner of the right to appeal the case to the Authority Hardship Appeals Board. (see Sections 5.03.06.00 through 5.03.06.03.)

5.03.04.00 Guidelines for Processing Requests [Hold for Future Use]

5.03.04.01 Hardship Criteria

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

- Owner demonstrates need to dispose of property.
- Owner is unable to dispose of property at fair market value because of the pending high-speed rail construction segment plans.
- Owner cannot reasonably alleviate the hardship in the absence of the Authority's purchase.
- Authority's purchase will either partially or totally alleviate the hardship.

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

5.03.04.02 Need to Dispose of Property

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

5.03.04.03 Hardship Application Submittal

The items listed in the table on the following page entitled "Submittal Items-Hardship Application" are considered when evaluating applications. At the initial meeting, the Authority's agent informs the owner of the hardship criteria and explains why it is necessary to submit this information.

To expedite requests, some of the requirements may be eliminated at the discretion of the Authority as indicated in the table.

If any hardship request appears to be unjustified, the Authority may request additional information, including but not limited to, financial statements and tax returns.

SUBMITTAL ITEMS – HARDSHIP APPLICATION		
ITEM	**EXPLANATION**	**CIRCUMSTANCE**
Written Request or Statement	Outlining the reasons why owner(s) must sell the property at this time	
Application	Completed and signed by owner(s) see Exhibit 05-EX-04.	
Financial Statement	see Exhibit 05-EX-08 or 05-EX-09.	Not required (at the Authority's discretion) if the hardship request is due to medical problems, job transfer, advanced age, or retirement move.
Market Substantiation	Evidence of reasonable attempt to market the property.	
Copy of Valid Listing	Statement from a broker citing reasons the property has not or cannot be sold.	
Evidence or information obtained by the Authority	If there have been other unsuccessful attempts to sell the property on the project at fair market value, listing the property is not required. The Authority should state in its recommendation that the property cannot be sold at fair market value because of the proposed project.	
Income Tax Authorization	Signed authorization to obtain a copy of federal and state income tax returns (Exhibit 05-EX-06). The Authority secures copies of the latest tax returns if additional documentation is needed.	Optional if the Authority is satisfied with all the financial information submitted by the applicant.
Doctor's Statement or Equivalent		Required if hardship request is based on a medical reason.
Verification from Employer		Required if hardship request is based on a transfer of employment.
Index Map and Plat Map	Showing affected parcel in relation to project right-of-way.	Maps must be 11X17.
Hazardous Waste Statement	Describing potential of hazardous waste at the property, if any.	
Categorical Exemption / Exclusion Determination		
Review and Written Approval of Legal Office Determination		If acquisition would influence environmental assessment of proposed project.

REASONS REQUIRING IMMEDIATE SALE

Reasons	Explanation
Medical	• Advanced Age - needs care or assistance from others • Ambulatory Defects or Diseases - where present facilities are inadequate or cannot be maintained by owner • Major Disabilities • Doctor's Recommendation - to change climate or physical environments • Other Equivalent Disabilities
Financial	• Litigation - e.g. probate • Loss of Employment • Financial Distress - involving personal or business circumstances • Retirement - e.g., can't afford maintenance or has purchased retirement home • Pending Mortgage Foreclosure, Tax Sale, Etc. • Substantial Burden - maintenance, taxes, and/or rehabilitation costs
Change of Work Location	Creates need to move
Non-Decent, Safe, and Sanitary Housing	For example, overcrowded living conditions if the occupancy level did not exceed Decent Safe and Sanitary (DS&S) standards at the time the owner originally purchased the property.
Monetary Loss - Income or Vacant Properties	These properties may be acquired when the proposed project is the immediate cause of a monetary loss. The owner must demonstrate an adverse impact of the project on profitability of business or property. A careful review should be made considering such non- high-speed rail influences as: • Inability to obtain financing • Inherent risk of ownership associated with this type of property • Other outside factors affecting the profitability of the business operation or property ownership • Local governmental regulations affecting development or rehabilitation, such as requiring the owner to set aside right-of-way from development, without the requirement for dedication

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

5.03.04.04 Documentation of Files

For each application, the Real Property Branch maintains a file that becomes part of the parcel file upon commencement of acquisition. A parcel diary is initiated when application is made. The date of notification of requirements for RAP eligibility shall be entered following the initial contact with the applicant. The application and other items submitted in support of the hardship are to be retained in the file. (see Section 5.03.04.03.)

The Director of Real Property, or designee, is responsible for approving or denying each application. The following should be explained and included as part of the entry:

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

5.03.04.05 Notification of Approval or Denial

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

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

When FRA approval is required, the telephone notification is made after the FRA has authorized the subject parcel. The responsibility for implementing this procedure rests with the Acquisition Agent.

5.03.04.06 Negotiation Alternatives

If negotiations are unsuccessful, the Acquisition Agent should either:

- Consider the merits of an Administrative Settlement.
- Explain the condemnation process to the owner. The Agent should inform the owner that if they wish the state to condemn the property, they should send a letter to that effect. The state will then proceed with an action in eminent domain. If an owner wishes, the state can prepare such a letter on the owner's behalf. A copy of the letter shall be submitted with the request for the PWB resolution.
- Withdraw the offer in writing. It is important that all offers of relocation assistance or payments to owners and tenants be formally withdrawn in writing no later than 10 days from the date of the determination not to acquire (see RAP Chapter for procedures to follow in withdrawing RAP offers).

5.03.04.07 Vacation of Property

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

5.03.05.00 Disposition of Financial Information

The Acquisition Agent shall maintain confidentiality of financial statements and income tax returns and permit only authorized personnel to have access to this information.

The agent shall note in the parcel diary when the financial information was received. This is essential to establish that the information was in the state's possession before a decision was made on the application. Upon final disposition of the application, this information shall be returned by mail to the applicant and

so noted in the parcel diary. If the application is denied, the applicant should be advised in the denial letter that the returned material must be resubmitted on appeal, if any.

5.03.06.00 Hardship Appeals

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

5.03.06.01 Hardship Appeals Board

A Hardship Appeals Board consisting of three members representing the Real Property Branch, Strategic Delivery Branch, and Legal Office shall be established.

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

5.03.06.02 Eligibility

The Acquisition Agent shall notify all applicants whose requests have been denied that they can appeal the decision in writing to Director of Real Property. Exhibit 05-EX-10 should be completed by the applicant. The file shall include documentation that the applicant was advised of the opportunity to appeal the request and to appear personally before the Hardship Appeals Board.

5.03.06.03 Hardship Appeals Board Action

The Hardship Appeals Board reviews the file and documents presented by the applicant, including personal presentation by the applicant if requested, to determine if minimum requirements per Section 5.03.04.00 have been met.

After a careful review of the circumstances, the Hardship Appeals Board shall prepare a summary of facts and findings and submit it with the Hardship Appeals Board's recommendation to the Director of Real Property or a designee who shall notify the applicant of the final decision.

5.04.00.00 - PROTECTION

5.04.01.00 General

Protection is defined as an acquisition where substantial building activity or appreciation of vacant land value in excess of the projected inflation rate for construction projects is both likely and imminent in the event early purchase is not undertaken.

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

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

The Director of Real Property shall review and approve or deny each protection request. (see Section 5.01.03.00.) All appraisals submitted for approval must contain a copy of the written authorization approving the protection acquisition.

5.04.02.00 Protection Criteria

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

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

5.04.03.00 Request for Authority to Acquire

All requests should show that prompt acquisition is required to prevent development of property, which would cause substantially higher acquisition or construction costs if acquisition was deferred. Relocation costs of people or businesses should also be considered in the financial analysis. (see Exhibit 05-EX-07 for sample format.)

Each request shall contain the information and material listed on the following page entitled "Submittal Items - Protection Application."

SUBMITTAL ITEMS – PROTECTION APPLICATION	
Item	**Explanation**
Written Request	Addressed to the Director of Real Property, or designee, as appropriate, including but not limited to the following: • Name of present owner. • Location of property. • Area of each parcel proposed for acquisition and remainders. • Name of developer (owner where applicable) and the financial capability of proceeding with development. • Information on progress of developers in obtaining permits and filing subdivision maps and likelihood of local Authority approval. • Acquisition Agent's estimate of probability of land development as proposed and the imminence of said development. • Any other information that might be useful • Statement concerning the potential that hazardous waste would/would not be present on the property. (see Exhibit 05-EX-07 for sample format.) If improvements are to be purchased include: • Pictures of improvements. • Description of improvements. • Breakdown of estimated value of improvements separate from land.
Protection Acquisition Savings Estimate (Exhibit 05-EX-02)	• **Project escalation rate** - This rate is applied to estimated right-of-way Costs. • **Projected inflation rate.** The Authority provides the inflation estimates every two years for use in the budgeting process.
Resume of Protection Request (Exhibit 05-EX-03)	Summary of justification package contents.
Detail Map (1 Copy)	Showing the property in sufficient detail to properly evaluate the proposed purchase including property remainders, if any, and the location of access lines. Coloring or outlining of the subject parcel is required. Map should be no larger than half-scale 8-1/2"x11" appraisal map if possible.
Strip Map(1 Copy)	Showing the subject property in relation to surrounding area and project. Map should be no larger than half-scale 8-1/2"x11" appraisal map if possible.

CHAPTER 6

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6.01.00.00 – GENERAL

6.01.01.00 Scope

The California High-Speed Rail Authority (Authority) Right-of-Way Engineering is responsible for the Right-of-Way Engineering survey phase of high-speed rail project. In addition, Right-of-Way Engineering prepares maps and legal descriptions for acquisition and disposal of right-of-way and maintains and updates record maps, as requested by the Authority.

6.01.01.01 Project Engineering

Right-of-way engineering work for specific project sections begins with the collection of information necessary for the location of property lines. It continues through preparation and delivery of maps, legal descriptions, and documents for appraisal, acquisition, and condemnation. It ends with disposal of excess lands, and, in some cases, preparation of Right-of-Way Record Maps.

6.01.01.02 Right-of-Way Engineering, Drafting, and Mapping

Examples of right-of-way engineering maps, with requirements for preparation of these maps, are shown in Exhibit 06-EX-01 with an alphabetical letter identifying each separate map type.

6.01.02.00 Maps for Federal Participation in Right-of-Way Costs

Federal Railroad Administration (FRA) Maps are used to show parcels to be acquired on projects for which federal aid reimbursement will be requested. They are used for:

A. Transmittal to the designated federal agency for approval of right-of-way requirements.
B. To support claims for reimbursement. Maps used for this purpose are Project Sheet/Index Maps (see Exhibit 06-EX-01.)

6.01.02.01 Project Sheet Maps

Design changes subsequent to initial federal approval of Project Sheet Maps shall be processed as follows:

A. When design changes necessitate acquiring parcels in addition to those shown on approved parcel acquisition maps, a revised sheet (or sheets) delineating such parcels will be submitted to the designated federal agency. These submissions should indicate the reason for the revised sheet.
B. When there is a major design change of such magnitude as to require an additional public hearing, revised plans will be submitted to the designated federal agency for issuance of an amended federal authorization.
C. Minor line changes involving parcels shown on original approved partial acquisition maps will be incorporated in final "as-built" right-of-way plans (see Section 6.01.02.02).

6.01.02.02 Total Acquisition Maps

Total acquisition parcels may be acquired prior to the time that termini of projects are definite. Total Acquisition Maps may be used in place of project sheet maps at the time of agreement. Total Acquisition Maps will show center lines, approximate right-of-way lines, parcel numbers and areas as a minimum and should show as much additional detail required for project sheet maps as is available at the time of

submittal. In special cases where other mapping is not available, total acquisition maps may involve only the county assessor's map and a vicinity map.

When partial federal authorization is obtained it should be revised to full federal authorization as soon as design details become available. Total Acquisition Maps should be replaced with project sheet maps and a supplemental agreement executed as soon thereafter as possible.

6.01.02.03 Final Voucher Maps [Hold for Future Use]

6.01.03.00 Cost Estimate Maps

Adequate lead-time and quality of mapping submitted to the Authority are critical factors in producing valid Right-of-Way cost estimates. These maps must show the approximate land requirements for a project in advance of precise design requirements. They are used for:

A. Studying alternative route locations;
B. Studying alternative design features; and
C. Producing cost estimates comprised of:
    1. Land (ownership and area);
    2. Improvements;
    3. Severance Damages;
    4. Special Benefits;
    5. Demolition;
    6. Relocation Assistance; and
    7. Utility Relocation.

It is the responsibility of Strategic Delivery Branch, and/or Right-of-Way Engineering to obtain aerial mapping in electronic format, mosaics, or as-built plans for all project segments covering affected properties and showing all improvements. For urban areas, a scale of 1" = 50' (preferred) or 1" = 100' will be used. For rural areas, a scale of 1" = 100' (preferred) or 1" = 200' must be used.

A Computer Aided Design and Drafting (CADD) base map shall be sent to the Authority, for review. The base map should include the approximate proposed right-of-way lines. Right-of-Way Engineering will use current assessor's maps to graphically scale affected ownerships on CADD base maps, showing the limits and sizes of parcels and assessor's parcel numbers. Right-of-Way Engineering will also provide the location of existing right-of-way lines and existing access control line information.

Right-of-Way Engineering must provide a CADD ownership map to the Authority.

Strategic Development Branch, when requesting right-of-way cost estimates, must plot on CADD ownership base maps proposed right-of-way requirements along with any proposed access control. For high-speed rail, significant grade changes requiring revisions to access points on public roads must be indicated as changes to property ingress can have an impact on property value.

A CADD ownership base map delineating right-of-way requirements must be returned to the Authority. The maps must be reviewed by Right-of-Way Engineering and revised as necessary. Areas for rights of way, excess, and remainders must be calculated and a print must be processed for estimating purposes.

6.01.04.00 Lease Area Airspace Maps

Lease Area Airspace Maps are used to show State-owned property adjacent to or under high-speed rail that is available for leasing. They are used for inventory purposes, for information to potential lessees, for circulation prior to leasing, and for estimating or appraising airspace lease areas. They consist of an Index Map and a Lease Area Airspace Parcel Map. Lease Area Airspace Parcel Maps consist of either an Inventory Map or an Appraisal Map.

All Lease Area maps shall be assigned Lease Area Airspace numbers. For additional information on Airspace, See Chapter 15 of this manual.

6.01.05.00 Hardship Authorization Maps

Hardship Maps are prepared to show parcels for acquisition in advance of normal acquisition scheduling. Hardships occur when a proposed transportation facility creates an unusual personal circumstance that cannot be resolved without acquisition of the property by the State.

Hardship maps are used for:

A. Appraisal of the property.
B. Negotiations with the property owner.
C. As a base for a Resolution of Necessity Map, if necessary.
D. An interim ROW Record Map.

For more information on Hardship Acquisition, see Section 5.03.00.00 of this manual.

6.01.05.01 Protection Authorization Maps

Protection Maps are prepared to show parcels proposed for advance acquisition to prevent development of the parcel. The maps are used for submittal to the Board of Directors when requesting approval to appraise and acquire. They are also used for the same reasons as Hardship Maps.

For more information on Hardship Maps, see Section 6.01.05.00 of this manual.

For more information on Protection Acquisition, see Section 5.04.00.00 of this manual.

6.01.06.00 Witnesses in Condemnation

On occasion, licensed personnel assigned to Right-of-Way Engineering may be called upon to testify in court proceedings. Those acting as an expert witness should be prepared prior to the court appearance or deposition. During the proceedings, the expert witness acts as a representative of the Authority and will at all times be courteous and respectful to the court.

Right-of-Way Engineering staff will assist the Legal Office on all matters related to Right-of-Way Engineering.

6.02.00.00 - OWNERSHIPS, PARCELS, AND SUBPARCELS

6.02.01.00 General

Definitions, and numbering of ownerships, and Authority requirements from ownerships are covered in the following sections. Under these definitions, the terms "ownership" and "parcel" are synonymous as far as count is concerned. The number of parcels and number of ownerships in a project will be equal. This will allow early estimates and an accurate parcel count on any specific project section. As "parcel" will be used as a production control unit, the amount of work on a project section can be closely estimated by parcel count, which is attainable prior to the final establishment of right-of-way.

6.02.02.00 Definitions [Hold for Future Use]

6.02.02.01 Ownership

A. An ownership is any area of land that meets all of the following four requirements:
   1. Unity of title;
   2. A single perimeter;
   3. Not separated by a city street or alley, county road, rail, or state highway (fee, easement, or prescriptive right); and
   4. Totally within one project section.

B. Specific exceptions to definitions of ownership are:
   1. Government Agencies - Properties under control of separate agencies of the same governmental body will be considered separate ownerships.
   2. Long-Term Leases - Where property is historically or customarily developed on the basis of long-term leases, such as subdivisions in the Irvine Ranch, the leaseholds will be considered as separate ownerships.
   3. Permits for Homesites on Federal Land-Rights of occupancy in National Forests or National Park Lands, will be considered as separate ownerships.
   4. Undeveloped Subdivisions - If a vesting is in a subdivision or tract in which the roads have not been improved or in which lots have not been sold individually, the subdivision streets and alleys will not be considered as dividing the ownership.

NOTE: Lands held by or for individual American Indians, or tribes under the various classes of American Indian Lands each constitutes a separate ownership, as defined by the Bureau of Indian Affairs, Department of the Interior.

6.02.02.02 Parcel

A parcel includes all of the rights and interests (permanent or temporary) from an ownership, as defined above, which are required for certification of a project and which will be acquired by condemnation, if negotiations are unsuccessful. Excluded from the condemnation requirement are certain public lands which, by law or policy will not or cannot be condemned but would be, if otherwise permitted. It should be recognized that "parcel," as defined in Authority agreements with title companies, differs considerably from "parcel" as defined herein and is used only as a basis of paying for title company services.

Parcel identification, as defined in this section will not affect the existing practice of dividing or combining land areas for condemnation resolution or trial purposes.

6.02.02.03 Sub-parcel

A sub-parcel is each additional separate segment or degree of title of a parcel. It is the intent of the definition of the term "sub-parcel" that it applies only where two or more areas or interests are required by the Authority from an ownership. Sub-parcel does not apply to encumbrances that must be eliminated to perfect title with the exception of rail road easements.

A. The following are examples of sub-parcels:
   1. Separate segments of fee required by Authority.
   2. Permanent or temporary easements for high-speed rail purposes, such as slope, drainage, scenic, retaining wall, detour, or construction easements.
   3. Fee, permanent easements, and temporary easements, to be appraised or acquired in the name of the state or in the name of a third party for exchange purposes, or under cooperative agreement. This includes acquisitions for sewer, storm drain, gas, water, electricity, pipeline, or ingress and egress.
   4. Access rights when entirely separated from other right-of-way requirements.
   5. Railroad easements encumbering the parcel and which will be acquired directly and separately from the railroad company.
B. The following are examples of interests that are not sub-parcels:
   1. Excess land
   2. Remainders
   3. A separate use or zoning
   4. Interests in property that consist of encumbrances that must be cleared, such as overlying easements of an adjoining property owner, a lease, a utility easement, a mining claim, a mortgage, or a deed of trust, with the exception of railroad easements
   5. Oil and mineral rights
   6. Permits to enter and construct (rights that would not be condemned)
   7. Appurtenant easements
   8. Underlying fee in a public road (may be described separately in resolutions of necessity)
   9. An option of all or a portion of a parcel

See Exhibit 06-EX-01 for an example of parcel, sub-parcel, and encumbrance numbering.

6.02.03.00 Numbering

Examples of parcel, subparcel, excess lands, and encumbrance numbering can be found in Exhibit 06-EX-01 of this manual.

6.02.03.01 Ownership

When it is determined that property rights will be required from an ownership, an identifying number without a suffix can be assigned. The number assigned can then be used in the early stages of project development. Preliminary mapping, hard copies or base maps, title report orders, files, correspondence, and property surveys will carry this assigned number prior to the time parcel requirements are established.

An ownership having only appurtenant rights lying within the Authority's requirements will be assigned a parcel number when a separate title report, appraisal, and escrow are required. Otherwise, appurtenant

rights will be considered as an encumbrance on the servient tenement. Determination of requirements affecting appurtenant rights normally occurs in the appraisal stage. It is Real Property Branch's responsibility to initiate necessary action to establish such requirements as parcels.

6.02.03.02 Parcel

Each primary right-of-way requirement shall have the identical number as the ownership of which it is, all or a portion, and shall have the suffix "-1" added.

6.02.03.03 Sub-parcel

Each secondary right-of-way requirement, or sub-parcel, will be identified by a dash and numerical suffix following the parcel number.

Railroad easements that encumber parcels of underlying fee title that are being acquired will be acquired directly from the affected railroad company in a separate transaction. As such it is necessary to identify these railroad easement parcels from the underlying fee interest. These railroad easements will be identified as a separate parcel of the fee ownership parcel number.

6.02.03.04 Non-Right-of-Way Parcels

Properties required for office buildings, shops, maintenance station sites, mitigation sites, disposal, and material sites must follow the same rules of numbering as for right-of-way requirements.

6.02.03.05 Cancellations

If any parcel or sub-parcel is found to be no longer required, its number should be canceled and not reused. Real Property Branch shall be advised by memorandum if the parcel or sub-parcel is included in an appraisal.

6.02.03.06 Additional Requirements

A parcel is closed upon recordation of the basic acquisition document. Additional right-of-way requirements from an ownership after the parcel is closed require the assignment of a new ownership number and treatment as a new acquisition.

6.02.03.07 Ownership Splits

When an ownership is divided by sale in such a manner that the parcel is divided, the remainder of the ownership will retain the original number. The parcel from the new ownership created by the split will be assigned a new number. An ownership split is created when a portion is covered by a valid contract of sale.

6.02.03.08 Ownership Mergers

No change in numbering will be made when a merger of ownerships is discovered after transmittal of final Appraisal Maps from Right-of-Way Engineering, when the Appraisal Maps have been used in the initial appraisal of the parcel. If discovered prior to such transmittal, the new ownership will assume one of the previously assigned numbers and Right-of-Way Engineering will cancel the other number.

6.02.03.09 Combining Parcels for Appraisals and Acquisition

When two or more parcels, as defined herein, are in one vesting, it is desirable to appraise and acquire them together. In such cases, the "larger parcel" concept will apply, and the parcels will be combined for appraisal, considering the unity of use, unity of title and contiguity. However, the parcels will retain their identity and numbers in the appraisal and throughout the acquisition process.

Work accomplishment will be based upon parcels appraised or closed, regardless of how they are combined. Appraisals or transactions consisting of multiple parcels should be so designated and credited by the number of parcels involved.

When parcels are so grouped for appraisal purposes, the lowest parcel number will be used as a primary number and the other parcel numbers placed in parentheses as a suffix to the primary number, e.g., 9053-1 (9054-1, 9055-1, 9060-1, etc.).

6.02.04.00 Excess Land Numbering

Excess land parcels shall be identified, numbered, and shown on the appraisal map or Right-of-Way Record Map at the earliest possible date. Right-of-Way Record Maps, Appraisal Maps, and all excess land mapping shall show up-to-date excess land parcel number. Right-of-Way Engineering shall take the initiative on coordinating identification of excess with other Right-of-Way function so mapping changes can be kept to a minimum.

For more information on Excess Lands, see Chapter 16 of this manual.

6.02.04.01 Excess Land Parcel Numbers

Excess land parcel numbers consist of a maximum six-digit alphanumeric ownership number (parent parcel number), a two-digit unit number, and a two-digit item number. All new ownership numbers shall be numeric. The total excess land parcel number must be unique.

Excess land parcel numbers consist of three parts:

A. Parent Parcel Number (Ownership Number) - The parent parcel number is the ownership number as defined in Section 6.02.03.00.
B. Unit Number - The unit number is always a two-digit number (01-99) and designates individual fee excess land parcels acquired from the same ownership. The first, or a single excess land unit, is number 01, additional units being 02, 03, etc. An alpha unit number now in the Excess Land Inventory need not be changed to numbers, but new unit numbers must be numeric.
C. Item Number - The item number is the numeric (01-99) designation of each conveyance out of an excess land unit.

Exhibit 06-EX-01 contains examples demonstrating various parcel numbering situations. This parcel numbering shall appear on Appraisal Maps, record maps, and all excess land mapping. Remainder (REM) is shown on some of the examples to indicate remainders. This need not be shown on the actual mapping.

See Exhibit 06-EX-01 for definition of non-inventory excess land parcels along with procedures to follow in numbering maps and documents.

6.02.04.02 Cross-Reference Parcel Number

When an existing excess land parcel number is not compatible with the 10-digit excess parcel number system, the old number may be entered into the Inventory Data Form as the "cross-reference parcel number." A "new" number, i.e., XXXXX, will be entered in the parent parcel number field with the appropriate unit and item numbers. This "new" or "dummy" number shall be entered on the right-of-way record map and on the Director's Deed map and document.

6.02.04.03 Deed Numbering for Excess Parcels

Right-of-Way Record Maps and maps accompanying Deeds conveying excess shall show both excess land numbers and Deed numbers. The Deed number is an excess land number preceded by an F, E, or K, depending on the type of title being conveyed. "F" is for conveyance of fee; "E" is for conveyance of an easement; and "K" is used for Quitclaim Deeds. If two or more parcels of excess land are combined for a single conveyance, the Deed will be numbered using the lowest excess land number. It will not be necessary to show other excess land numbers on the Deed, but they must be shown on the record map and Deed map.

6.02.05.00 Title Reports

The term "title reports," for purposes of this Chapter, also includes reports titled "Litigation Guarantees" and/or other reports issued by a title company.

Title reports are required for all parcels except the following:

A. Isolated parcels having a land value of $2,500 or less that do not involve access rights or improvements. In these cases, where the cost of the title report may exceed or equal the value of the parcel, reliance may be made upon the Authority's investigation of the condition of title as determined from county assessors' and recorders' records and other appropriate sources of title information.
B. In cases involving donations of unimproved land, the Authority may dispense with title reports. See also Chapter Eight, Acquisition.
C. U.S. Government land controlled by either the Bureau of Land Management, Bureau of Reclamation, Department of Indian Affairs, U.S. Forest Services, U.S. military reservations, or other government agencies.
D. All land owned by the State.

For those cases involving Items C and D above, Right-of-Way Engineering will prepare a report titled "Certification of Title" (Form RW 08-14), containing the same information as would normally appear in a title report. The certificate will be signed by Right-of-Way Engineering Title Officer. If, in the opinion of the Authority, special circumstances warrant securing of title reports regardless of low appraised valuations on parcels of vacant land or other items cited above, title reports may be secured, but an effort to economize in such cases should be made.

Title reports are used by Right-of-Way Engineering in the preparation of the following:

A. Legal Descriptions for Deeds.
B. Right-of-Way Contracts.
C. Memoranda of Settlement.

D. Resolutions of Necessity.
E. Right-of-Way Schedules.
F. Liability determination for utility relocation.

6.03.00.00 - BOUNDARY DETERMINATION AND RIGHT-OF-WAY REQUIREMENTS

06.03.01.00 General

It is the responsibility of Right-of-Way Engineering to coordinate ownership boundaries with new right-of-way requirements and to calculate areas of ownerships, right-of-way requirements, excesses, and remainders as a basis for all right-of-way maps and descriptions.

Since survey control and high-speed rail design are established on the California Coordinate System, right-of-way calculations must also be based on the California Coordinate System, except as provided for in Section 6.03.02.00.

Maps and documents produced by Right-of-Way Engineering shall clearly show the datum upon which calculations are based. Survey and design data furnished to Right-of-Way Engineering will be based upon the datum of 1983, or in rare instances a "local" datum. Right-of-Way Engineering Maps and documents shall state ***" ... based upon the California Coordinate System of 1983, Zone x ..."*** or upon whichever datum calculations are based.

6.03.02.00 Boundary Determination

On total acquisitions located entirely within the high-speed rail right-of-way, it is not necessary to coordinate ownership boundaries on the project grid system (usually California Coordinate System) unless an ownership boundary is to be coincident with a right-of-way line. It is sufficient to use record dimensions and area so identified, unless substantial errors exist in the record, in which case further investigation should be made to determine more precise boundary dimensions and area.

Property boundaries are to be established on the same grid system as new right-of-way requirements (usually California Coordinate System) for:

A. Partial acquisition parcels.
B. Total acquisitions with a boundary line coincident with the right-of-way line.
C. Total acquisitions which include excess.

Ownership boundaries shall be located from field survey data and record information in accordance with established survey practices and legal principles.

The underlying fee in an abutting public road will be mapped as part of an ownership as defined above when it is specifically included in the record description of the property. The principle of separation of ownerships by a public road applies even though the underlying fee is continuous in the abutting owner on both sides of the public road.

6.03.03.00 New Right-of-Way Requirements

New right-of-way requirements are established during project development and located in reference to a high-speed rail centerline or other construction or control line. Right-of-Way Engineering make the necessary calculations to tie new lines to existing ownership boundary lines. It is the responsibility of Right-of-Way Engineering to ensure that each submittal of right-of-way requirements includes the following:

A. Access restrictions, as submitted, conforming to established policy.
B. Elimination of sliver takings from ownerships, as appropriate, thereby eliminating the cost of unnecessary acquisitions.
C. Inclusion within the right-of-way any small ownership remainders that would otherwise become un-saleable excess, as appropriate.
D. Inclusion of any slivers or superseded existing high-speed rail right-of-way within the new right-of-way requirements, thereby eliminating the need for future vacation investigation and proceedings.

It is the Authority's policy to acquire fee for operating right-of-way. Exceptions for high-speed rail rights of way shall be obtained from the Director of Real Property, or designee. Director of Real Property approval is not required for a lesser title from governmental agencies that routinely only give easements.

It is also the Authority's policy to acquire all abutter's rights on high-speed rail whenever practical. "DFA" type clauses should be used unless there is economic justification to take a lesser right. Exceptions must be approved by the Director of Real Property, or designee.

6.03.04.00 Minor Design Changes

When minor design adjustments should be made, discussions should be held with the Director of Real Property or designee.

6.03.05.00 Property Ties

It is the responsibility of Right-of-Way Engineering to initiate requests for property ties required to establish the location of property boundaries, and to determine record locations of monuments affected by high-speed rail construction. Sources of monument information include U.S. Government Surveys, Subdivision Maps, Records of Survey, and other monuments placed by the state, cities, counties, public utilities, and private surveyors.

Right-of-Way Engineering should make a thorough field review of the project area and determine if additional data is available that should be tied to the control line.

Right-of-Way Engineering should closely coordinate any requests for field surveys to accomplish the following:

A. Make certain that requested surveys clearly identify information needed for boundary determination. Right-of-Way Engineering should include any maps, plats, descriptions, or other information necessary to clearly identify such requirements.
B. That field notes supplied by Survey contain all information requested by Right-of-Way Engineering unless information has been pursued and does not exist in the field.
C. Minimize requests for Survey to make return trips to the field for additional information.

6.04.00.00 - APPRAISAL MAPS

6.04.01.00 General

Appraisal Maps show land and improvements to be acquired for high-speed rail operating right-of-way and non-operating right-of-way. They are used for:

A. Location of and familiarization with the property;
B. Assistance in determining property value and severance damages;
C. Appraisal reports;
D. Certification;
E. Utility relocations;
F. A base for additional mapping;
G. Temporary Right-of-Way Record Map;
H. A base for final Right-of-Way maps; and
I. Relocation and clearance of improvements.

Maps for parcel appraisals shall consist of Appraisal and Index Maps. Appraisal Maps should be of a suitable scale to adequately show areas to be acquired for right-of-way. Index Maps shall show the general location of appraisal parcels and right-of-way project limits, the extent of large individual ownerships, and the relationship of the proposed high-speed rail to roads and streets which might afford access to properties under appraisal. Requirements for the maps are shown in Exhibit 06-EX-01.

6.04.02.00 Ownership Extension

There may be occasions when a total holding in one vesting extends beyond the limits of a single ownership with right-of -way required from the single ownership. Upon determination by the appraiser that it is necessary to consider such extension of ownership in appraisal calculations, Right-of-Way Engineering will calculate additional areas and delineate the additional areas on the Appraisal Maps. Such delineation of total vesting will not require any change in the original ownership number.

6.04.03.00 Railroads

Right-of-Way Engineering shall furnish to the Authority the necessary Appraisal Maps (and legal descriptions as soon as available) depicting right- of -way to be acquired from a railroad (both fee and easement). In addition, separate exhibits will be prepared for the railroad parcels only, properly colored to depict the proposed acquisition areas and type of acquisition. Fee railroad parcels will not have the “RR” designation and will only carry the parent fee parcel number.

6.04.04.00 Certificate of Sufficiency

Right-of-Way Engineering will initiate the Certificate of Sufficiency process by including an unsigned Certificate of Sufficiency (CoS) document (with appropriate parcel numbers inserted) with the Appraisal Maps transmitted to the engineer of record. A copy of the Appraisal Maps and CoS document will also be transmitted to the Hazardous Waste Coordinator. The CoS document and its process are outlined in Exhibit 6-EX-06 of this manual. Strategic Development Branch.

6.05.00.00 - ACQUISITION DOCUMENTS

6.05.01.00 General

In the acquisition of land for right-of-way purposes, Right-of-Way Acquisition (Acquisition) must be furnished by Right-of-Way Engineering a properly written legal description, describing land to be acquired, and containing appropriate exception and reservation clauses as the particular acquisition warrants. It is the responsibility of Acquisition to attach the legal description to the appropriate deed form and include the appropriate deed reservation clauses as necessary for the acquisition.

In addition to fee or easement legal descriptions Right-of-Way Engineering may be asked to prepare proper instruments to clear various liens, easements, trust deeds, mortgages, and other encumbrances affecting the land. Information regarding these encumbrances is typically shown in the title report.

6.05.02.00 Document Forms

Forms RW 06-01A through RW 06-01R are standard acquisition documents. These forms are furnished for normal use.

Situations may arise where it may be necessary for these forms to be modified to fit a specific situation. Prior approval from the Director of Real Property, or designee, is required when forms need modification.

6.05.02.01 Document Numbering

Grant deeds or other basic conveyance documents will be designated numerically without alphabetical suffixes. For example, if a parcel is numbered MF-10-9053, the grant deed number, in general, will be simply "9053." If there are undivided fractional interests in vesting and it is necessary to prepare more than one grant deed to acquire complete title, the first grant deed will be numbered "MF-10-9053-1", and the next grant deed will be numbered "MF-10-9053-2", etc.

If several parcels are to be combined into one grant deed, the lowest parcel number will be used as the primary number and the other parcel numbers placed in parentheses as a suffix to the primary number (e.g., MF-10-9053 (9054, 9055, 9060, etc.)).

Supporting documents are to be numbered with the basic document number and a capital letter suffix, beginning with "A" and going serially through the alphabet. For example:

Method of Numbering

Grant Deed Number	Supporting Documents
MF-10-9053-1	9053-1; 9053-2; etc.
MF-10-9053 (First)-1	9053-1; 9053-2; etc.
MF-10-9053 (Second)-2	9053 (9054)-1;
MF-10-9053-1 (9054)-1)	9053 (9054)-2; etc.

When a supporting document applies to only one parcel of several parcels that are combined in a grant deed, the supporting document will carry only the parcel number involved with appropriate suffix. Following the number in parentheses will be the file number. For example, the grant deed is numbered 9053 (9054, 9060). A Quitclaim Deed (supporting document) covering only 9054 should be numbered: MF-10-9054-1 (File 9053).

When one supporting document applies to two or more parcels, the supporting document will carry the lowest parcel number with the appropriate suffix. The remaining parcel numbers with appropriate suffixes will be shown in parentheses following the assigned number (e.g., MF-10-9053-1 (9054-1, 9055-1)).

6.05.02.02 Acquiring Fee Interest in Public Ways

To avoid leaving isolated parcels of fee ownership underlying the high-speed rail right-of -way, it is the Authority's policy to acquire underlying fee interests along with parcels which abut the operational high-speed rail right-of-way within the proposed right-of-way. The underlying fee will generally pass with an abutting ownership unless the method of description precludes its conveyance. It is required to include in descriptions appropriate wording to ensure the acquisition of grantors' fee interest, if any, in and to the area of adjacent public ways that fall within the right-of-way being acquired.

If the description is not written so the underlying fee will pass, the description should be followed with a clause such as:

"Together with underlying fee interest, if any, contiguous to the above-described property in and to the adjoining public way."

The clause should be modified as necessary to positively identify the underlying fee area intended to be acquired. For example, "adjoining public way" could be replaced by naming the street or road.

Since the Authority cannot acquire public road rights-of-way utilizing the Streets & Highways Code, nor can it build a high-speed rail road utilizing public road easements it is necessary for the Authority to acquire the underlying fee in public roads within the high-speed rail right- of- way. In most cases the preliminary title report for parcels on either side of the public road right-of-way will identify whether the adjoining owner owns the underlying fee, but in instances where it is not clear, it may be necessary to order preliminary title reports to identify the owner of the underlying fee. Because these rights typically have a nominal or low value, it is not necessary to obtain title insurance on such underlying fee interest acquired by the state.

6.05.02.03 License Signature Page

The Land Surveyors Act requires a seal, signature, number, and date of signing on each legal description where a new property line is created. This is not needed for a total acquisition when the original description has not been modified. See Forms RW 06-02A and B for license signature pages which have been approved for use.

6.06.00.00 - STANDARD CLAUSES FOR HIGH-SPEED RAIL DEEDS

6.06.01.00 Classification of Clauses

For the purpose of acquiring access rights and abutter's other appurtenant rights on high-speed rail, a "DF" series of clauses known as the "DF," "DFA," and "DFO" clauses have been devised. Other clauses have also been devised for specific circumstances and are shown under their own sections.

6.06.02.00 "DF" Series – Access Only

"DF" clauses merely acquire the abutting owner's rights of ingress and egress to or from the high-speed rail.

6.06.02.01 DF-1 Fee or Easement Deeds

"This conveyance is made for the purpose of a High-Speed Rail and the grantor hereby releases and relinquishes to the grantee any and all abutter's rights of access, appurtenant to grantor's remaining property, in and to said High-Speed Rail."

6.06.02.02 DF-2 Fee or Easement Quitclaim Deeds

"This quitclaim deed is made for the purpose of a High-Speed Rail and the undersigned hereby releases and relinquishes to the grantee any and all abutter's rights of access, appurtenant to the remaining property in which the undersigned has some right, title or interest, in and to said High-Speed Rail."

6.06.02.03 DF-3 Partial Reconveyance Under Trust Deeds

"This partial reconveyance is made for purposes of a High-Speed Rail and said Trustee hereby reconveys without warranty, to the person or persons legally entitled thereto, any and all abutter's rights of access, appurtenant to the remaining property described in said Deed of Trust, in and to said High-Speed Rail."

6.06.02.04 DF-4 Partial Release of Trust

"This partial release is made for purposes of a High-Speed Rail and the Trustee hereby releases from the lien of the Trust any and all abutter's rights of access, appurtenant to the remaining property described in the Trust in and to said High-Speed Rail."

6.06.02.05 DF-5 Conveying Property on One Side of High-Speed Rail and Relinquishing Access Rights on the Other Side [Hold for Future Use]

6.06.02.06 DF-6 Conveyance of Access Rights – No Property Acquired

Where access rights only are being relinquished (no property acquired), the following clause "Relinquishment of Access Rights" shall be used.

"I, (WE) being the owner(s) of the real property in the County of _____, State of California, described as: (Description of grantor's property) do hereby release and relinquish to the STATE OF CALIFORNIA, any and all abutter's rights of access, appurtenant to the above described property, in and to the adjacent High-Speed Rail right-of-way as described in deed recorded in Book _____, Page _____of Official Records of said County."

(NOTE: See notes following Clause DF-1 for acquisition of access rights on only a portion of high-speed rail frontage, etc.)

"This conveyance is made for the purpose of establishing said High-Speed Rail by the grantee and it is agreed that grantor's(s') above described property shall have no access thereto."

"IN WITNESS WHEREOF, we have hereunto set our hands and seals this day _____ of _____, 20____."

_____

_____

Where access rights only are being relinquished from properties encumbered with deeds of trust and the subordination agreement is a separate document, the following clause "Subordination of Deed of Trust to Relinquishment of Access Rights" must be used.

"For value received, Trustee(s), and Beneficiary(ies) under that certain Deed of Trust executed by, dated and recorded in Book _ at Page _____, Official Records of the County of ____, State of California, hereby agree(s) that a relinquishment of access rights as set forth in that certain instrument described as Relinquishment of Access Rights executed by _____, dated the ____, day of _____ 20__, and to be recorded concurrently herewith, shall be and remain paramount, prior and superior to, and forever bind the interests of the undersigned under said Deed of Trust for all purposes as fully as though said Relinquishment of Access Rights had been executed and delivered prior to the creation of said Deed of Trust and the latter made and accepted specifically subject and subordinate thereto."

"The undersigned, _____, Beneficiary(ies) under said Deed of Trust, hereby request(s) Trustee(s) thereunder to join in the execution hereof."

"Dated this day _____ of _____, 20__."

_____
Beneficiary
By: Trustee

Where access rights only are being relinquished from properties encumbered with mortgages and the subordination agreement is a separate document, the following clause "Subordination of Mortgage to Relinquishment of Access Rights" shall be used.

> "For value received _____, Mortgagee under that certain Mortgage recorded _____ in Book _____, Page _____ of Official Records of_____County, hereby agrees that a relinquishment of access rights as set forth in that certain instrument described as Relinquishment of Access Rights executed by_____, dated the _____ day of ____, 20 __, and to be recorded concurrently herewith, shall be and remain paramount, prior and superior to and forever bind the interests of the undersigned under said mortgage for all purposes as fully as though said Relinquishment of Access Rights had been executed and delivered prior to the creation of said Mortgage and the latter made and accepted specifically subject and subordinate thereto.
>
> Dated this day of _____, 20 _____."
>
> _____
> Mortgagee

6.06.03.00 "DFA" Series – Appurtenant Rights Including Access Rights

The "DFA" clauses acquire any and all appurtenant rights, such as view, light, and air, together with abutter's access rights. However, these clauses are for general usage and must be checked for conformance with each particular situation. Where necessary, it is permissible to modify them to conform to special situations as may be necessary. See Exhibit 06-EX-03, "High-Speed Rail & Waiver Clauses/Miscellaneous Clauses."

6.06.03.01 DFA-1 Fee or Easement Deeds

"This conveyance is made for the purpose of a High-Speed Rail and the grantor hereby releases and relinquishes to the grantee any and all abutter's rights including access rights, appurtenant to grantor's remaining property, in and to said High-Speed Rail."

6.06.03.02 DFA-1 Alternate Fee or Easement Deeds

"This conveyance is made for the purposes of a High-Speed Rail and the grantor hereby releases and relinquishes to the grantee any and all abutter's rights of access, appurtenant to grantor's remaining property, in and to said High-Speed Rail over and across the westerly 510 feet of the southerly line of the above described parcel of land and over and across _____; also releases and relinquishes any and all other abutter's rights other than access appurtenant to said remaining property in and to said High-Speed Rail."

6.06.03.03 DFA-2 Quitclaim Deed - Fee and Easement

"This quitclaim deed is made for the purposes of a High-Speed Rail and the undersigned hereby releases and relinquishes to the grantee any and all abutter's rights, including access rights, appurtenant to the remaining property in which the undersigned has some right, title or interest, in and to said High-Speed Rail."

6.06.03.04 DFA-3 Partial Re-conveyance of Trust Deed

"This partial reconveyance is made for the purpose of a High-Speed Rail and said Trustee hereby reconveys, without warranty, to the person or persons legally entitled thereto, any and all abutter's rights, including access rights, appurtenant to the remaining property described in said deed of trust, in and to said High-Speed Rail."

NOTE: Form RW 06-01N "Request for Partial Reconveyance" is to be used with Form RW 06-01R "Partial Reconveyance under Trust Deed (Fee)".

6.06.03.05 DFA-4 Partial Release of Mortgage

"This partial release is made for purposes of a High-Speed Rail and the Mortgagee hereby releases and relinquishes from the lien of said mortgage any and all abutter's rights, including access rights, appurtenant to the remaining property described in said mortgage in and to said High-Speed Rail."

6.06.04.00 "DFO" Series - High-Speed Rail and Frontage Road

Acquisitions that include both high-speed rail main line right-of-way and right-of-way for local public roads will require that the high-speed rail right-of-way be described separately from the public road right-of-way. Generally, only the high-speed rail right-of-way parcel will include access restriction clauses. Should the right-of-way requirements for the public road right-of-way include access rights, then appropriate access clauses will be included in the legal description. The clause in these legal descriptions shall follow the same as the high-speed rail main line right-of-way with the exception that they may only describe specific lines where access is restricted.

6.06.04.01 DFO-1 Fee or Easement Deed [Hold for Future Use]

6.06.04.02 DFO-2 Quitclaim Deed - Fee or Easement [Hold for Future Use]

6.06.04.03 DFO-3 Partial Re-Conveyance of Trust Deed [Hold for Future Use]

6.06.04.04 DFO-4 Partial Release of Mortgage [Hold for Future Use]

6.06.05.00 Access Clause for Deeds from Railroads Applicable to High-Speed Rail [Hold for Future Use]

6.06.05.01 For Southern Pacific Grade [Hold for Future Use]

6.06.05.02 For Railroads Other Than Southern Pacific [Hold for Future Use]

6.06.06.00 Temporary Access and Deferment Clauses for Deeds

The following sections illustrate methods of reserving temporary access to owners and acquiring easements for temporary purposes due to high-speed rail construction. Other cases for allowing temporary access or for acquiring temporary high-speed rail interests in property will not differ greatly from the following sections.

6.06.06.01 Frontage Road Deferment Clause [Hold for Future Use]

6.06.06.02 Vehicular Separation Construction Deferment Clause

"Reserving unto owners of abutting lands, their successors or assigns, the right to use their existing access crossing the HSR ROW being acquired herein, until such time as the construction of a public road grade separation is completed and open to the public at or about Engineer's Station of said survey, crossing over said High-Speed Rail, at which time the owners right to temporarily use their existing access across the HSR ROW shall be closed and such rights permitting temporary access shall cease and terminate in the same manner as if never made."

6.06.06.03 Temporary Railroad Detour

Example:

"The above described parcel is to be used as a right-of-way for a railroad detour pending construction of a bridge separating the grades of the said Railway and the State High-Speed Rail at said Street, and the rights to be acquired therein shall cease and terminate on completion of said grade separation and in any event shall cease and terminate not later than _____."

6.06.07.00 Reservation for Overhead and Underground Facilities

When the Authority finds that:

A. *The acquisition of right-of-way is through proven operating oil or gas fields where the oil company has a long-term oil and gas lease which specifically provides the lessee has surface rights including the right to install pipelines, power lines, etc., OR*
B. *The oil company owns the land in fee whether the location be a proven or potential oil field, the Authority must use the following reservation clause in deeds:*

"ALSO reserving unto grantor, its successors or assigns, the right from time to time to install, replace, repair, remove and maintain the following facilities subject to the conditions hereinafter continued: (a) underground facilities consisting of pipelines, electrical lines and conduits, together with appropriate housings therefore under and transversely across any portions of the lands herein conveyed; (b) overhead facilities consisting of electrical power and telephone lines over and transversely across any portions of the lands herein conveyed. Said reserved rights shall be subject to the following provisions:

A. *Said underground facilities shall be installed beneath the surface of any High-Speed Rail or other structure built, owned or maintained by the grantee on said lands. Said overhead facilities shall be suspended over and across said lands by means of poles or towers situated on lands outside thereof.*
B. *Grantor shall have no right of entry on the surface of said lands and shall exercise its rights over or under said lands in a manner consistent with public safety and the continued unobstructed use of said land for High-Speed Rail purposes.*
C. *Before installing or performing any work on its facilities as herein provided, grantor agrees to obtain grantee's approval of the location of such facilities which approval shall not be unreasonably withheld."*

NOTE: The above clause must not be used in deeds covering property in undeveloped oil or gas fields except in those cases where the oil company owns fee title. In many instances the lessee's rights are solely subsurface rights. Therefore, before consenting to the use of this clause, examination must be made of the terms of the lease to ascertain the extent of the lessee's rights.

6.06.08.00 Oil, Gas and Mineral Reservations

In transactions involving oil companies where the company conveys its fee land or leasehold interest to the Authority for high-speed rail purposes, and which conveyances involve only the upper 100 feet of subsurface, the following clause shall be used:

"EXCEPTING AND RESERVING THEREFROM, all oil, oil rights, natural gas, natural gas rights and other hydrocarbons, by whatsoever name known, and all other minerals and mineral rights, whether or not similar to those herein mentioned (including the right to drill, mine, explore and operate under and through the herein conveyed land for the purpose of extracting and producing oil, gas and other hydrocarbons by whatsoever name known, and all other minerals, whether or not similar to those herein mentioned, from other lands); provided that grantor shall not drill, mine, explore or otherwise operate upon, in or through the land herein conveyed, in the exercise of any of the herein excepted and reserved rights, so long as said land is used for High-Speed Rail purposes."

NOTE: In cases where the leasehold rights are not as broad as the rights set forth in this clause, it is necessary to modify the clause to the extent it must be compatible to the leasehold rights.

6.06.09.00 "DM" Series – Miscellaneous

The following sections involve miscellaneous clauses consisting of a general waiver clause, reservation clause for mineral rights, and a clause restricting public access to private property.

In some cases, it may be desirable to have a similar clause in subordinate instruments such as quitclaim deeds, releases of mortgages, etc. Whenever the corresponding clause is contained in the fee or easement deed from the Authority's grantor, it is not mandatory to insert the "DM" clause in subordinate instruments involving ordinary high-speed rail right-of-way acquisition.

6.06.09.01 DM-1 General Waiver for Deeds

"The grantor further understands that the present intention of the grantee is to construct and maintain a High-Speed Rail on the lands hereby conveyed in fee and the grantor, for the grantor and the grantor's successors and assigns, hereby waives any claims for any and all damages to grantor's remaining property contiguous to the property hereby conveyed by reason of the location, construction, landscaping or maintenance of said High-Speed Rail.

"As used above, the term `grantor' shall include the plural as well as the singular number."

NOTE: Deeds with the above clause are to be used in all fee acquisitions except in the following three cases:

A. When the acquisition involves entire fee taking of grantor's property.
B. For (DM-1) modification to be used in transactions with agreement with appropriate railroad The Atchison, Topeka and Santa Fe Railway Company, consult the Railroad Agent.

6.06.09.02 DM-2 General Waiver for Easement Deeds

"The grantor hereby further grants to grantee all trees, growths (growing or that may hereinafter grow) and road building materials within said right-of-way including the right to take water together with the right to use same in such manner and at such location as said grantee may deem proper, needful or necessary for the construction, reconstruction, improvement or maintenance of said High-Speed Rail.

The grantor, for the grantor and the grantor's successors and assigns, hereby waives any claim for any and all damages to grantor's remaining property contiguous to the right-of-way to be conveyed by reason of the location, construction, landscaping or maintenance of said High-Speed Rail.

As used above, the term `grantor' shall include the plural as well as the singular number."

NOTE: The above clause is printed on Forms RW 06-01P "Easement Deed (Individual)" and RW 06-01Q "Easement Deed (Corporation)." The clause is used in acquisition of all high-speed rail right-of-way easements, but must not be used for specific (slope, drainage, etc.) easements.

6.06.09.03 DM-3 [Hold for Future Use]

6.06.09.04 DM-4 Reservation of Oil, Gas, Mineral, or Water Rights, Etc., in Favor of the State's Grantor

The clause below is for use in fee or easement condemnation parcels when it is desirable and necessary that mineral or oil rights be excepted to the owner or some other party having interest in the oil, such as where the owner has leased or sold a fractional part of the oil rights to others or for the right-of-way through proven or potential oil fields.

When it is advisable, water rights may also be excepted by inserting after the word "all" in the first line, the words "water, water rights."

The clause is as follows:

"Excepting therefrom all oil, oil rights, minerals, mineral rights, natural gas, natural gas rights, and other hydrocarbons by whatsoever name known that may be within or under the parcel of land hereinabove described, together with the perpetual right of drilling, mining, exploring and operating therefore and removing the same from said land or any other land, including the right to whipstock or directionally drill and mine from lands other than those hereinabove described, oil or gas wells, tunnels and shafts into, through or across the subsurface of the land hereinabove described, and to bottom such whipstock or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to re-drill, re-tunnel, equip, maintain, repair, deepen and operate any such wells or mines, without, however, the right to drill, mine, explore and operate through the surface or the upper 100 feet of the subsurface of the land hereinabove described or otherwise in such manner as to endanger the safety of any High-Speed Rail that may be constructed on said lands."

NOTE:
1. When excess land is being acquired, special written approval from the Authority must be obtained before the use of the above clause, as to water rights, must be thoroughly investigated to avoid jeopardizing the state's salable title for later return to private ownership.
2. It is essential that any effect on the market value be investigated prior to incorporating the above reservations in a deed to the Authority.
3. For modified (DM-4) clauses to be used with railroad companies, see the Authority Railroad Agent.

6.06.09.05 DM-5 Restricting Public Access to Private Property

"The foregoing release and relinquishment of right of ingress and egress above set forth is not intended and shall not be construed to authorize any entry by the grantee, its successors or assigns, or the public onto said remaining property of said grantor."

NOTE:

The above clause must be used only in those cases where the property owner or the property owner's attorney insists that the clause relinquishing ingress and egress rights can be interpreted to mean the clause also grants to the Authority, its agency or representative, the right to enter upon the remaining property of the grantor. Whenever this paragraph is used in a grant deed it is necessary to insert a similar clause in supporting documents such as a Partial Re-conveyance of Trust Deed, Release of Mortgage, Quitclaim Deed, etc.

6.06.09.06 DM-6 Landlocked Remainders

The following clause must be used in the Deed in each case involving the retention of a landlocked remainder by a grantor. This clause may be revised as if necessary to meet special situations.

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

6.06.10.00 "DM" Series – Court Orders [Hold for Future Use]

6.06.10.01 DM-7 Grantor is Executor of a Last Will and Testament, Administrator of an Estate, or Administrator With the Will Annexed

"This deed is executed pursuant to an order given and made by the Superior Court of the State of California, in and for the County of _____, on the _____ day of ____, 20__, in a proceeding therein pending entitled, `In the Matter of the Estate of

_____, deceased, and numbered _____, in the files and records of said court', a certified copy of which order is recorded contemporaneously herewith in the Office of the County Recorder of said county, to which reference is hereby made."

NOTE: If a certified copy of the order has been previously recorded, provide the recording data.

6.06.10.02 DM-8 Grantor is the Guardian of the Estate of a Minor

"This deed is executed pursuant to an order duly given and made by the Superior Court of the State of California, in and for the County of ___,on the _____day of _____, 20__ , in a proceeding therein pending entitled, `In the Matter of the Guardianship of the Person and Estate of _____, a minor, and numbered _____in the files and records of said court', a certified copy of which order is recorded contemporaneously herewith in the office of the County Recorder of said county, to which reference is hereby made."

NOTE: 1. If a certified copy of the order has been previously recorded, provide the recording data.

2. The portion of the above statement enclosed within quotes is a fairly standard form. A check should be made to see if the title report shows a different form, and the quoted portion amended to conform. For example, the title report might say ***"In the Matter of the Guardianship of the Estate of Joe Doakes, a minor,"*** leaving out the words ***"Person and"***.

6.06.10.03 DM-9 Grantor is Guardian of the Estate of an Incompetent or Insane Person

"This deed is executed pursuant to an order duly given and made by the Superior Court of the State of California, in and for the County of _____, on the __ day of _____, 20__ , in a proceeding therein pending entitled, `In the Matter of the Guardianship of the Estate of _____, an incompetent _____ and _____, an incompetent person _____, an insane person numbered _____, in the files and records of said court', a certified copy of which order is recorded contemporaneously herewith in the office of the County Recorder of said county, to which reference is hereby made."

NOTE: 1. If a certified copy of the order has been previously recorded, provide the recording data.

2. The portion of the above statement enclosed within quotes is a fairly standard form. A check must be made to see if the title report shows a different form, and the quoted portion amended to conform. For example, the title report might say ***"In the Matter of the Estate of Joe Doakes, an incompetent person,"*** leaving out the words ***"guardianship of the."***

6.06.11.00 "DM" Series – Actual Possession

This clause is used when the state has taken actual possession under a Possession and Use Agreement, Right of Entry, Order for Possession,

"The date of possession by grantee of the herein described property was _____."

6.06.12.00 Slopes and Drainage Clauses [Hold for Future Use]

6.06.12.01 For Extension of Slopes and Drainage Structures Beyond Land Granted

On High-Speed Rail it has been found advantageous to secure the privilege and right to extend the embankment or excavation slopes and drainage structures on lands of the grantor beyond limits of side lines of the strip of land being granted. This is done using a clause similar to the following example:

"The undersigned hereby grants to the State of California the privilege and right to extend and maintain drainage structures, 1:1 excavation slopes and 1-1/2:1 embankment slopes on the land of the undersigned beyond the limits of the above described 100-foot strip of land where required for the construction and maintenance of a 100-foot width of rail bed; also the privilege and right to plant and maintain grass, plants and trees on said slopes for the protection and beautification of same."

NOTE: Whenever this clause is used in the deed, it will likewise be necessary to insert a similar clause in subordinate instruments such as a Partial Re-conveyance of Trust Deed, Release of Mortgage, Quitclaim Deed, etc.

6.06.12.03 For Right to Remove Slopes

The following clause is to be used primarily on High-Speed Rail where the existing High-Speed Rail is being widened to its ultimate width of rail bed through fairly well-developed areas. Its use will be helpful in mitigating possible claims to damages where adjacent properties are zoned for commercial purposes. (Generally, this clause should not be used in agricultural areas or where the value of slope rights taken represents only a small consideration):

"An easement for High-Speed Rail slopes in and to (Legal description of slope easement)

"Reserving unto grantors of the above described parcel of land, their successors or assigns, the right at any time to remove such slopes or portions thereof upon removing the necessity for maintaining such slopes or portions thereof or upon providing in place thereof other adequate lateral support, the design and construction of which shall be first approved by the Authority for the protection and support of said High-Speed Rail."

NOTE: When the slope easement is no longer necessary, the State may clear the easement from the public record by a Deed quitclaiming the easement to the fee holder of the property. The property owner is entitled to the Quitclaim Deed without payment or consideration.

6.06.13.00 Waiver

The following clause is a sample for use where no land is being acquired but may be damaged by reason of change of grade.

"Edward L. Roberts, a single man, owner of ___does hereby waive (Description) any and all claim for compensation against the State of California for any and all damages in any way resulting to the said property by reason of the construction, maintenance and/or change of grade of Street, provided the elevation of the proposed surface of the ground at the new street line fronting said property on Street shall not exceed 0.7 feet below the present elevation of the ground thereat."

6.06.14.00 Deed Reservation for Irrigation Facilities [Hold for Future Use]

6.06.14.01 Deed Reservation for "Agricultural" Crossing Under the High-Speed Rail

"Excepting and reserving, unto the Grantor, their successors or assigns, an easement appurtenant to the Grantor's existing abutting lands for the sole purpose of moving livestock, equipment, machinery and vehicles for agricultural purposes beneath the High-Speed Rail System at a structure to be owned and maintained by Grantee and constructed at the location (describe the location, i.e.: of owners existing farm road located at approximate Engineer's Station___); provided that such easement shall not be exercised at the surface of said High-Speed Rail System or by means other than the hereinabove

described structure, or for any other purpose or for the benefit of lands other than said existing abutting lands, and that such easement shall cease and terminate upon the discontinuance of the use of said abutting lands for agricultural purposes; provided, further, that any maintenance of said crossings required by reason of the use thereof for purposes of the Grantor's abutting lands shall be the obligation of said Grantor of said abutting lands."

6.06.14.02 For Facilities 12 Inches in Diameter or Less and All High Pressure Lines

"Reserving, however, unto the Grantor, Grantor's successors and assigns, the right to install, replace, repair, remove and maintain a (size and type) irrigation pipeline transversely under the High-Speed Rail at Engineer's Station _____. This underground facility shall be installed beneath the surface of the High-Speed Rail within a conduit to be constructed, owned and maintained by the grantee transversely across the High-Speed Rail at Engineer's Station."

"The rights reserved by the Grantor shall be subject to the following provision:

The Grantor's right to repair Grantor's facilities existing within the State-owned right-of-way is limited to performing such maintenance and repair from outside the State's right-of-way. In no instance shall the Grantor have the right to traverse or use the State's right-of-way for maintenance or repair of Grantor's facilities without securing the issuance of a permit from the State, which approval shall not be unreasonably withheld."

6.06.14.03 For Low Pressure Facilities in Excess of 12 Inches in Diameter [Hold for Future Use]

6.06.14.04 Open Irrigation Ditches

"Reserving, however, unto the Grantor, Grantor's successors and assigns, the right to pass irrigation water transversely under the High-Speed Rail at Engineer's Station within a conduit to be constructed, owned and maintained by the Grantee transversely across the High-Speed Rail at Engineer's Station _____."

"The rights reserved by the Grantor shall be subject to the following provision:

A. The Grantor's right and obligation to maintain the inlet and outlet of the grantee owned conduit is limited to performing such maintenance from outside the State's right-of-way. In no instance shall the Grantor in the exercise of said rights traverse or use the State's right-of-way for maintenance or repair of grantor's facilities without securing the issuance of a permit from the State, which approval shall not be unreasonably withheld."

6.07.00.00 - RESOLUTION OF NECESSITY

6.07.01.00 General

When the state exercises the power of eminent domain to acquire property necessary for public use, it must do so through the process of condemnation as required by various sections of the Code of Civil Procedure (CCP). A Resolution of Necessity (RON) must be authorized (Section 1245.220, et. seq of the CCP) by the Public Works Board (PWB) in order to proceed with the condemnation process.

The requirements of a Resolution of Necessity can be found in Section 1245.230 of the CCP.

For more information on the Condemnation Process, see Chapter 9 of this manual.

6.07.02.00 Preparation

Acquisition will request Right-of-Way Engineering to prepare legal descriptions and maps for inclusion in the Resolution of Necessity, and other related condemnation documents. Acquisition is responsible for relaying information to Right-of-Way Engineering to assist in identifying the parcel, owner, the type of title or interests, and other rights to be condemned.

Right-of-Way Engineering will prepare a written legal description of the parcel to be condemned and an exhibit showing its location in relation to the project for which it is to be taken.

Authority is responsible for preparing the resolution to be reviewed and approved by the PWB. Acquisition is required to provide all the necessary information needed to prepare the resolution. This information is also used by the Authority Legal Office and Caltrans legal, who under the general supervision of the Authority's Legal Office, prepares court filings associated with the condemnation.

6.07.02.01 Legal Description

Condemnation legal descriptions are written following the same rules of legal description writing applicable for grant deeds or other types of conveyance documents, except where underlying fee is to be separated into individual sub-parcels (see Section 6.07.02.02 of this manual). Generally, legal descriptions for total acquisitions are the same as the record legal description for the parcel contained in preliminary title reports, and legal descriptions for partial acquisitions are the same as legal descriptions contained in grant deeds.

In condemnation legal descriptions involving excess, the excess must be described and mapped separately from the portion lying inside the right-of-way, and must be treated as a separate interest.

In some cases, different interests, such as drainage or slope easements, are to be condemned together with fee title for the high-speed rail itself when condemned from the same ownership. Appraisal Parcel Numbers must be used to identify the different interests (see Section 6.02.03.01, et seq., of this manual).

Separate sub-parcels of like interests, i.e., two separate pieces of fee, may be described together if doing so is more efficient. Include the additional sub-parcel numbers in parentheses, e.g., MF-10-1234-1 MF-10-1234-2.

When describing the vesting interest, "OWNER" should be used in place of "GRANTOR" and "STATE" should be used in place of "GRANTEE."

A statement of area is not to be used in a condemnation legal description.

6.07.02.02 Type of Title or Interest

When submitting condemnation descriptions to the Authority for PWB action, incorporate in the description of each parcel the *purpose* for which the type of title or interest is to be condemned. This procedure of describing interests to be acquired within the body of the parcel description allows for the acquisition of various rights in one resolution without the necessity of special recitals in the preamble of the resolution.

The following examples should be used for the acquisition of fee title:

> *For High-Speed Rail purposes, that portion of _____, described as follows: (Description of Parcel)*
>
> **NOTE:** The example above will be used even if the parcel is for a connecting road. No access rights are to be extinguished.
>
> *For High-Speed Rail purposes, that portion of _____, described as follows: (Description of Parcel)*
>
> **NOTE:** The example above will be used even though the parcel is partly for high-speed rail, partly for connecting road, and partly for frontage road purposes.
>
> *For High-Speed Rail purposes, that real property, described as follows: (Description of parcel)*
>
> **NOTE:** The example above will be used for an entire ownership, lying entirely within the right-of-way, or a description of that part within and a description of that part outside the right-of-way as excess property.

The following examples should be used for the acquisition of other title:

> *An easement for high-speed rail purposes in and to that portion of _____, described as follows: (Description of Parcel)*
>
> *An easement for drainage ditch purposes in and to that portion of _____, described as follows: (Description of Parcel)*
>
> *For High-Speed Rail purposes, the extinguishment of all easement of access in and to*
>
> *_____(High-Speed Rail) appurtenant to the following described property, over and across_____. (Description of Parcel)*
>
> *An easement for the purposes of a railroad detour over a temporary roadbed upon, over and across a portion of _____, described as follows: (Description of Parcel)*

6.07.02.03 Underlying Fee

It is not necessary to condemn the underlying fee in cases where the Authority is acquiring the right-of-way to reconstruct a public road and the local agency has an existing easement. However, it is necessary to condemn the underlying fee in the high-speed rail main line corridor right-of-way where the underlying fee has not been acquired with the acquisition of adjacent property. It is the policy of the state to avoid creating isolated islands of underlying fee within high-speed rail right-of-way. For that reason and since the Authority cannot build a high-speed rail utilizing a public road easement, appurtenant underlying fee will be acquired along with the state's requirements. In those cases, where it is necessary to describe the underlying fee, it will not be described separately.

NOTE: In cases involving property of substantial value and in cases requiring extensive survey costs to prepare a separate description, consult with Legal.

6.07.02.04 Clauses for Condemnation

It may be necessary to modify clauses in standard acquisition descriptions to meet specific requirements for condemnation. For example, a standard acquisition description may contain a clause for acquiring abutter's rights, but the state typically condemns only for the abutter's right of access. Also, items that would normally be handled in a Right-of-Way Contract may have to be added to the condemnation description, i.e., the right to sever and remove improvements.

For more information on Standard Clauses used for High-Speed Rail Condemnation, see Section 6.08.00.00 of this manual.

6.07.02.05 Title Sheet [Hold for Future Use]

6.07.02.06 Mapping

The necessity of quality mapping is important as it is used throughout the condemnation process. It provides a visual picture of the parcel to be condemned and its relationship to the overall project for which it is to be taken. It is also a requirement for various pleadings with the court (see Section 1250.310(e) of the CCP).

The condemnation mapping shall consist of at least 2 maps:

1. Index Map (Exhibit A) – Shows parcel in relation to the overall project.
2. Detail Map (Exhibit B) – Shows parcel in detail.

Requirements for Resolution of Necessity Maps are shown in the Authority's Right-of-Way Mapping Guidelines.

6.07.03.00 Final Package

The final Resolution of Necessity package to be transmitted to the Authority shall include:

A. A file in Portable Data Format (pdf) containing the attached mapping and condemnation legal description(s) (see Section 6.07.02.04 of this manual).
B. The Condemnation legal description(s) in Word format (to be used by Legal in the preparation of court documents).

Legal has requested descriptions to be:

- in Times New Roman 11 point font
- *not* on pleadings format
- Resolution of Necessity Mapping in pdf format

The original condemnation mapping and legal description(s) should be kept in the project folder.

6.07.04.00 Posting [Hold for Future Use]

6.08.00.00 - STANDARD CLAUSES FOR HIGH-SPEED RAIL CONDEMNATION

6.08.01.00 Classification of Clauses

For the purpose of extinguishing access rights with or without additional land, a "CF" series of clauses known as the "CF," "CFO," and "CFNL" clauses have been devised. Other clauses have also been devised for specific circumstances and are shown under their own sections.

These clauses are used when widening existing high-speed rail for the purpose of showing the nonexistence of access rights in acquiring land where no abutter's rights exist, such as high-speed rail on a new alignment. These clauses are for general usage and must be checked for conformance with each particular situation. Prior approval from the Real Property Branch to modify them to conform to special situations is necessary.

The alpha designation following each clause refers to the example on Exhibit 06-EX-04, "Condemnation Parcel Access Clauses".

6.08.02.00 "CF" Series

The "CF" clauses extinguish the abutting owner's rights of access to or from the high-speed rail.

6.08.02.01 CF-1 Condemnation and Extinguishment of Existing Access Rights or Condemnation Where No Access Rights Exist

The comprehensive access clause "Lands abutting said High-Speed Rail shall have no right or easement of access thereto" shown in clause A.1. below, will be used where access rights do exist, such as in widening existing high-speed rail by a partial acquisition of the abutting property. In some cases, it will be used for constructive notice purposes where access rights do not exist, such as a partial acquisition on a new alignment.

"Parcel 1: For High-Speed Rail purposes, that portion of _____follows: (Description of Parcel), described as

1. *Lands abutting said High-Speed Rail shall have no right or easement of access thereto."*

NOTE: In all cases, the words "said High-Speed Rail" means only the land lying within the described boundaries and no more.

3. *"Together with the extinguishment of all easements of Access appurtenant to the remaining lands on and over Carson Street, resulting from the closing of Carson Street at the High-Speed Rail along the northerly prolongations of the easterly and westerly lines of the above described 200-foot strip of land across said Carson Street. Lands abutting said High-Speed Rail shall have no right or easement of access thereto."* (C)

B. If fee title is to be acquired in the adjoining public road but it is not to be closed, it would be described separately such as:

1. *"Parcel MF-10-1234: For high speed rail purposes, that portion of said Carson Street described as follows:* (D)

(Description of Parcel)"

If fee title is to be acquired in the adjoining public road and it is to be closed, it would be described separately such as:

2. *"Parcel MF-10-1234: For High-Speed Rail purposes, that portion of Carson Street described as follows:* (E)

(Description of Parcel)"

In either case, Parcel 1 would be designated Parcel MF-10-1234-1.

NOTE: If the adjoining cross street is to be closed, the comprehensive clause to extinguish existing access rights should not be added to the description of the rail parcel because the public rail parcel, without the extinguishment of access, has only nominal value. If extinguishment of access is included with the rail parcel, it prevents the court from so instructing the jury.

6.08.02.02 CF-2 Condemnation and Extinguishment of Access Rights; Extinguishment of Access Rights Along Side Line of Existing Longitudinal or Cross Road or Street Beyond Parcel; Condemnation Where No Access Rights Exist

If in addition to acquiring land for high-speed rail where access rights do exist (such as in widening existing high-speed rail except along property lines) or where access rights do not exist (such as a High-Speed Rail on a new alignment), and it is necessary with a particular parcel to extinguish existing access rights over a portion of the boundary of an existing longitudinal, cross rail, or street, which portions are beyond the limits of the land to be acquired, a clause to extinguish access to such longitudinal, cross street, or rail will be used. Such clause will precede the comprehensive access clause (see C.1.).

Examples of this are:

"Parcel MF-10-1234: For High-Speed Rail purposes, that portion of , described as follows:

(Description of Parcel)"

A clause for access over an existing longitudinal rail boundary line which is to be a boundary of the high-speed rail:

C. *"Together with the extinguishment of all easements of access appurtenant to the remaining lands in and to said Pico Avenue (the avenue would be mentioned in the above description) over and across that portion of the easterly line of said Pico Avenue extending northerly from the most northerly corner of the above described Parcel 6 to the northerly line of said remaining lands."* (F)

A clause for access over existing cross rail or street boundary line beyond high-speed rail boundary:

D. *"Together with the extinguishment of all easements of access appurtenant to that portion of the owner's remaining property which lies easterly of the above described Parcel 6 in and to said Walnut Road (the cross rail or street would be mentioned in the above description) over and across that portion of the northerly line of said Walnut Road which extends easterly 200 feet from the southerly terminus of the above described course (7)."* (G)

In either of the above cases, the standard comprehensive access clause would follow:

E. *1. "Lands abutting said High-Speed Rail shall have no right or easement of access thereto."*

6.08.03.00 "CFO" Series

The "CFO" clauses are not required for high-speed rail acquisitions of main line corridor right-of-way as this right-of-way will be described in a separate legal description. Right-of-way being acquired for reconstruction or construction of local public roads must be described in a separate legal description and normally does not include the acquisition of access rights. If access rights are required, they must be described separately with appropriate access clauses included.

NOTE: Any other appropriate description specifically defining limits of access rights is satisfactory.

6.08.03.01 CFO-1 Condemnation for High-Speed Rail and Frontage Road

Parcel MF-10-1234: For High-Speed Rail purposes, that portion of____, described as follows: (Description of Parcel)

"Lands abutting said High-Speed Rail shall have no right or easement of access thereto; provided, however, that the remaining lands shall have access to Cahuenga Boulevard, a city street, by passage under said High-Speed Rail approximately at said Engineer's Station 100+00 with no right of access to the surface of the High-Speed Rail." (L)

NOTE: A location approximately at which the access is to be allowed above or beneath high-speed rail is necessary.

6.08.03.02 CFO-2 Condemnation for High-Speed Rail; Remainder to Abut on End of Stub Frontage Road [Hold for Future Use]

6.08.03.03 CFO-3 Condemnation for High-Speed Rail; the Remainder Have Access Above or Beneath High-Speed Rail to Existing Adjoining Longitudinal Street or Road [Hold for Future Use]

6.08.04.00 "CFNL" Series

The "CFNL" clauses extinguish all abutter's access rights without acquiring any land.

6.08.04.01 CFNL-1 Condemnation of Access Rights Only

A. *"Parcel MF-10-1234: For High-Speed Rail purposes, the extinguishment of all easement of access in and to ____Street (or High-Speed Rail), appurtenant to Lot 6 of Tract 111, as per map recorded in Book 35, Page 16 of Miscellaneous Maps, records of _____ County over and across the east line of said Lot 6." (M)*

If land to which access rights are appurtenant cannot be briefly described as shown above, the description should be rearranged in a manner such as follows:

B. *"Parcel MF-10-1234: For High-Speed Rail purposes, the extinguishment of all easement of access in and to ____Street, appurtenant to the following described property, over and across that portion of the westerly line of said _____Street described as follows:*

(Description of the portion of the westerly line of the street)"

"The said property to which said easement of access is appurtenant is described as follows: (Description of the adjoining land to which the abutter's rights are appurtenant)"

6.08.05.00 For Temporary Access and for Temporary Purposes Due to High-Speed Rail Construction

The following three sections illustrate condemnation clause methods of reserving temporary access to owners and of acquiring easements for temporary purposes due to high-speed rail construction. They are used only infrequently and in cases where the completion date of the ultimate construction is not definitely fixed. Other cases for allowing temporary access or for acquiring temporary high-speed rail interests in property will not differ greatly from the clauses given.

6.08.05.01 Public Road Construction Deferment Clause [Hold for Future Use]

6.08.05.02 Vehicular Separation Construction Deferment Clause [Hold for Future Use]

6.08.05.03 Temporary Railroad Detour Easement

"The above-described parcel is to be used as a right-of-way for a railroad detour pending construction of a bridge separating the grades of the said RR Railway and the State High-Speed Rail at said, and the rights to be acquired therein shall cease and terminate on completion of said grade separation and in any event shall cease and terminate not later than _____."

6.08.06.00 Access for Livestock Across High-Speed Rail Through Cattle Pass; Livestock and Agricultural Equipment Access Under Bridge; Maintenance is Owner's Obligation

"Excepting and reserving, unto the Grantor, their successors or assigns, an easement appurtenant to the Grantor's existing abutting lands for the sole purpose of moving livestock, equipment, machinery and vehicles for agricultural purposes beneath the High-Speed Rail System at a structure to be owned and maintained by Grantee and constructed at the location (describe the location, i.e.: of owners existing farm road located at approximate Engineer's Station _____); provided that such easement shall not be exercised at the surface of said High-Speed Rail System or by means other than the hereinabove described structure, or for any other purpose or for the benefit of lands other than said existing abutting lands, and that such easement shall cease and terminate upon the discontinuance of the use of said abutting lands for agricultural purposes; provided, further, that any maintenance of said crossings

required by reason of the use thereof for purposes of the Grantor's abutting lands shall be the obligation of said Grantor of said abutting lands."

6.08.07.00 Condemnation Improvement Clauses

The Condemnation Improvement clauses are used for acquiring rights to enter a portion of the remainder of the landowner's property in order to sever or remove permanent structures that are located partially within the right-of-way to be acquired.

6.08.07.01 Condemnation Improvement Removal Clause

The following clause must be added to the description of the parcel being condemned:

"TOGETHER WITH all of the existing improvements which are located partially within and partially outside the boundaries of the above-described parcel."

A temporary easement must be added to cover the area of the owner's remaining property needed to accomplish the removal of the improvements. The temporary easement must be described as follows:

"TOGETHER WITH a temporary easement, to expire on (date), over and across the following described parcel for the purpose of removing existing improvements.

(Description of Parcel)"

If necessary for access to the area of work, the following may be added:

"AND, a temporary easement, to expire on the date above, for the purpose of ingress and egress, described as: (Description of Parcel)"

6.08.07.02 Condemnation Improvement Severance Clause

The following clause must be added to the description of the parcel being condemned:

"TOGETHER WITH the temporary easement, to expire on (date), for the purpose of severing and removing the portions of improvements which lie within the above-described parcel and for the purpose of constructing and maintaining any shoring, braces, foundations or walls necessary to support the remaining improvements on the remaining portion of owner's property. Said temporary easement is described as: (Description of Parcel)"

If necessary for access to the area of work, the following may be added:

"AND, a temporary easement, to expire on the date above, for the purpose of ingress and egress, described as: (Description of Parcel)"

6.09.00.00 - FEDERAL LANDS

6.09.01.00 Map Application for Public Federal Lands

Map applications for public federal lands are used to secure rights of way, material sites, or other transportation interests in federal lands covered in the Federal Highway Act of August 27, 1958 (23 USC 107(d) and/or 23 USC 317). The major classifications of land involved are unpatented public lands, National Forest lands, Indian lands, and surplus U.S. lands. For all federal map requirements, see Exhibit 06-EX-01.

6.09.01.01 Congressional Grant of Right-of-Way for High-Speed Rail (Unpatented Public Lands)

The *"Federal Land Policy and Management Act Of 1976"* (90 Stat. 2743; 43 U.S.C. 1701) provides that right-of-way for construction of high-speed rail over public lands not reserved for public use is granted. This act must be used only on nonfederal aid routes.

Right-of-Way Engineering shall file the approved map with the County Recorder with one print to the local Bureau of Land Management Land Office. Two prints of the map, containing recording data, shall be submitted to the Authority for filing in the general map archives.

6.09.01.02 National Forest Lands

Metes and bounds descriptions are not required in this appropriation procedure. Maps must contain sufficient information to facilitate an accurate survey of the parcel on the ground. Since maps are used in lieu of legal descriptions, they must be prepared in a manner that will provide for transfer of title.

6.09.01.03 Surplus U.S. Lands

Right-of-Way Engineering shall submit the original and two copies of typed metes and bounds legal description of the parcel or parcels required. The description is to be set up on plain legal-size paper and must include appropriate access clauses, area (acreage) and the parcel number or numbers as shown on the map. If available, both the maps and typed legal descriptions should contain a deed reference setting forth the source of title to the federal agency exercising supervision and control of the lands together with the total acreage originally acquired by that agency.

6.09.01.04 Indian Lands

Requirements for the maps are shown in Exhibit 06-EX-01.

6.09.02.00 Reversion of Excess or Superseded Portions of Right-of-Way Over U.S. Lands

Reversion shall commence by Right-of-Way Engineering preparation of a metes and bounds, or other adequate legal description of the area, or areas, together with a resolution of vacation, to revert to Bureau of Land Management jurisdiction. The description and resolution are to be submitted to the Authority for action in accordance with established vacation procedure.

Following approval of the vacation, Right-of-Way Engineering shall prepare and submit CADD files, essentially the same as those prepared for original acquisition of the right-of-way. Right-of-way and access rights to be retained should be clearly delineated on these maps and identified as such, e.g.:

"Right of way and access rights acquired under Bureau of Land Management Decision

_____dated_____; TO BE RETAINED."

Excess or superseded right-of-way which is to be permitted to revert should also be clearly delineated, preferably shaded, and designated as:

"Portion of right-of-way obtained under Bureau of Land Management Decision _____ dated no longer required for High-Speed Rail purposes and to revert to former status."

6.09.03.00 Filing Application Maps

Easement deeds obtained as the result of filing map applications will make reference to the maps, i.e., "Exhibit A." Thus, the maps are part of the deed.

To record prepared maps along with the deed would require reducing them in size to the point where they may become illegible. To avoid this problem, file the maps in the Authority Map Book. Then put an addendum sheet in the deed, before recording, which makes reference to the pages of the map filed in the appropriate Authority Map Book.

6.10.00.00 - STATE LANDS

6.10.01.00 General

Lands owned or controlled by the State of California can be under the jurisdiction of many State Agencies. This section addresses how the Authority may interact with other State Agencies to:

- Obtain rights needed for state high-speed rail purposes over and across lands under the control of other State Agencies.
- Release lands under the control of the Authority no longer needed for state high-speed rail purposes to other State Agencies.

6.10.01.01 Map Application for State Sovereign Lands

The purpose of map application for State Sovereign Lands is for obtaining Authority approval to cross non- Authority state-owned land for high-speed rail construction purposes. Requirements for the map are shown in Exhibit 06-EX-01.

State Lands provide a Public Agency Permit for high-speed rail purposes across any interest they may have that lies within the right-of-way requirements as shown on the entire map. This revision leaves the State Lands Commission uncommitted to the boundary locations of State Lands ownership or interest as shown on the approved Application Map.

6.10.01.02 Map Application for Vacant State School Lands

Maps prepared by Right-of-Way Engineering shall contain sufficient information necessary for appraisal analysis, identification and documentation. Generally, such maps should conform to appraisal map requirements. Requirements for these maps are shown in Exhibit 06-EX-01.

6.10.01.03 Transfer of Land Between State Agencies

Government Code Section 14673 provides that control or possession of land owned by the State may be transferred from one state agency to another state agency with written approval of the Director of General Services.

The instrument to be used, "Agreement for the Transfer of Control and Possession of Land Owned by the State for High-Speed Rail Purposes," functions both as contract and deed. This instrument must contain all terms of the transaction together with a complete and accurate description of property being transferred. Descriptions follow the same rules of description writing as are used in preparation of grant deeds or other types of acquisition documents.

Maps to be attached should contain the same data as Deed maps (see Section 6.13).

6.11.00.00 VACATION [Hold for Future Use]

6.12.00.00 – RELINQUISHMENTS

6.12.01.00 Policy

It is the policy of Authority to release all interests in High-Speed Rail corridors deleted by legislative act, High-Speed Rails superseded by relocation, and adjacent public ways which have been constructed as part of a High-Speed Rail project but are not essential to the proper functioning of the High-Speed Rail facility.

A release of rights is unnecessary for adjacent public ways improved as part of a High-Speed Rail project if there was no additional acquisition of title. If the Authority acquires additional right-of-way to relocate, or reconstruct local public roads constructed as part of the construction of the High-Speed Rail will require a separate conveyance of those right to the local agency. The conveyance will be at no cost to the local agency. The Authority's obligations to relocate, reconstruct or rehab local roads and the specific construction or other obligations that must be met prior to the local agency accepting title to the right-of-way will be covered in a separate agreement with the local agency. Until the conditions of this separate agreement are met and the local agency has agreed to accept title the Authority will be unable to convey it to the local agency.

The State may convey the right –of-way to local government jurisdictions, without referral to the FRA, on a project-by-project basis subject to the following conditions and understandings:

A. Immediately following action by the Authority in approving conveyance to local governmental jurisdiction of facilities in which there has been participation of Federal Aid funds, the Authority will furnish the Federal agency division engineer, for record purposes, a copy of a suitable map, or maps, identified by the Federal Aid project number and the date of the Authority approval, clearly delineating the facilities to be conveyed.
B. If at any time after conveyance the conveyed/ facility is required for proper operation of the Federal Aid High-Speed Rail, the Authority will take immediate action to restore such facility to State jurisdiction.
C. If at any time a conveyed public road, or portion thereof, or any part of the right-of-way therefore, has been vacated by the local governmental or Authority and a showing cannot be made that the vacated facility is no longer required as a public road, the FRA may withhold Federal Aid rail funds due the State in an amount equal to the Federal Aid participation in the vacated facility.
D. In no case shall any conveyance include any portion of the right-of-way within the access control lines as shown on the plans for a Federal Aid project approved by the FRA without prior approval from the FRA.
E. There cannot be additional Federal Aid participation in future construction or reconstruction on any conveyed local road unless the underlying reason for such future work is caused by future improvement of the associated Federal Aid High-Speed Rail.

6.12.02.00 Numbering

A conveyance of right-of-way to a local agency shall utilize the outgrant numbering system.

Exceptions may be made in the above-numbering procedure when necessary to expedite the relinquishment process or to clarify unusual situations.

Exceptions should be explained in the Conveyance Request submitted to the Authority.

6.12.03.00 Status of Relinquishments

The Director of Real Property, or designee, shall prepare and periodically maintain a complete list and status of all necessary conveyances of ROW to a local agency. The status shall contain sufficient information to depict without undue investigation the latest completed step in the conveyance process. The status shall also give reasons for any delay in completing the process on schedule. The Status report shall be created immediately upon Authority execution of a ROW agreement with the local agency.

6.12.04.00 FRA Approval

FRA approval of a proposed conveyance to a local agency is required when any portion of the right-of-way lies within access control lines as shown on the plans for a Federal Aid project previously approved by the FRA.

The Authority determines when access rights are no longer needed. They obtain necessary approvals for disposal from the FRA.

Conveyance requests submitted to the Authority involving access rights no longer needed for High-Speed Rail purposes will contain a copy of the FRA approval letter.

6.12.05.01 Consent of Local Agency

Consent of the local agency is assumed to be granted at the time of approval and execution of the ROW agreement. However prior to recordation of the deed conveying the ROW to the local agency it will be necessary for the local agency to formally accept the deed.

6.12.05.02 Changes Subsequent to Agreement

When changes occur in the project after the ROW agreement has been executed, an amendment to the original agreement is recommended. In the absence of an amended agreement, or in situations which are appropriate for conveyance and are not covered by an agreement, the Local agency acceptance of the deed will be sufficient documentation of the change.

6.12.06.00 Ramp Junction Limits [Hold for Future Use]

6.12.07.01 Legal Description

The description of right-of-way shall be in the form of a metes and bounds legal description describing the ROW limits to be conveyed. Where the ROW to be conveyed is adjacent to the High-Speed Rail, the common boundary between ROW to be conveyed shall include the reservation of access rights by the Authority.

6.12.07.02 Frontage Roads or Relocated Public Roads

Frontage roads or relocated public roads that will constitute new public roads (as distinguished from a superseded existing road) must have their boundary fully described. This requirement may be fulfilled by giving either the correct centerline description with right-of-way widths stated, a metes and bounds description, or a description referring to maps filed in the State Highway Map Books. The reason for the distinction between frontage roads or relocated public roads, and superseded public roads, is that the width and location of the superseded road can be determined by record. The construction of a frontage road or relocation of a public road to accommodate the new State highway creates a new road or roads

that did not exist prior to construction.

6.12.07.03 Excess Land

It is the policy of the Authority to dispose of excess land by Deed. The relinquishment statutes do not apply to the High-Speed Rail.

If there is excess land along the route of a proposed public agency conveyance, the maps and legal descriptions must clearly show by exception or exclusion the excess land is not a part of the conveyance.

6.12.07.04 Access Restrictions

Access is not to be reserved to the State on lines between private property and the road to be relinquished.

If access is to be restricted between the conveyed ROW and the adjacent State High-Speed Rail, the following clause is to be added at the end of the description:

"EXCEPTING AND RESERVING to the State of California any and all rights of ingress to and egress from the High-Speed Rail hereby conveyed in and to the adjacent and adjoining High-Speed Rail."

6.12.08.00 Approval of Conveyances to Local Agencies

The Director of Real Property is delegate the approval of all conveyances of public road ROW to local agencies. Each request shall be assigned a request number. This number shall be the basic reference when communicating regarding a specific resolution.

6.12.09.00 Preparation of Requests

The request for conveyance of public road row to a local agency shall be prepared and submitted to the Director of Real Property, or designee. The request shall contain the following information:

A. County, route and post miles.
B. Give name of local agency where relinquishment is located.
C. Location of proposed relinquishment by descriptive limits. An example would be to reference the beginning and end points to the nearest existing definable point on the ground, such as a road, street, river or county line. A specific tie to a city limit should never be used because they are subject to frequent change.
D. Contract number, segment limits and date of acceptance or anticipated completion date of relocated construction segment.
E. Federal Aid number, if applicable.
F. High-Speed Rail right-of-way agreement with the local agency, date and/or a copy of the city or county resolution of acceptance when not covered by High-Speed Rail agreement.
G. Type of conveyance:
    1. Deleted by Legislative Action
    2. Superseded High-Speed Rail
    3. Public Roads or Collateral Facilities
    4. Reconstructed City Streets or County Roads
    5. Other

H. State that all right-of-way has been acquired and that fee and/or easement title vests in the State.
I. State whether or not access rights are to be reserved and give details.
J. If frontage roads, service roads or outer highways are under the minimum width of 40 feet and are not shown in the High-Speed Rail agreement, furnish the Resolution of Acceptance or Letter of Consent by the local authority.
K. If all locations of the proposed conveyance do not conform to the approved plans, deviations and reasons therefore should be listed. If no deviations exist, this fact should be stated. Discrepancies relating to access control should be fully justified.
L. Explanation of any special conditions, including, if applicable, a statement advising if any or all of the proposed conveyance is within forest land.
M. If action involves a railroad grade crossing or separation, give the PUC decision number by which consent was given.
N. Mileage of public road proposed to be conveyed to counties will be submitted in a tabulated form with the conveyance request letter. Mileage will be noted for all public roads (see sample tabulation below). Mileage should not be shown in the description or on the maps. Mileage need not be shown for parcels that contain only cul-de-sacs, alleys or reconstructed county roads. In cases where frontage roads and reconstructed local roads are combined as one parcel, show mileage for the frontage road portion only and note it "mileage added."

State that High-Speed Rail planting, if any, is covered by a cooperative agreement. Enclosures for the above request letter shall include:

A. Two sets of Deeds with appropriate legal description of the right-of-way to be conveyed--an original typewritten description and one copy. Legal descriptions shall be submitted, double-spaced, on 8-1/2" x 11" bond with 1-1/2" margin at the top and 1" margin at the bottom and sides, except the last page shall have a 3” margin at the bottom. The description should include an access clause if applicable.
B. Maps to be included as follows:
    1. Two sets of maps when using metes and bounds descriptions.
    2. When bearings and distances used on maps or in descriptions are on the State plane coordinate system, identify the datum as either the 1927 or the 1983 system and state the zone.
C. The person in responsible charge of preparing the maps or descriptions should place their name and seal on the description or on the title sheet of the relinquishment map.
D. Two sets of mileage tabulations for conveyances to counties only.

6.12.10.00 Processing

The local agency must accept the deed prior to recording. Conveyance of the public road right-of-way will be in accordance with the terms and conditions and with any notices provided for the right-of-way agreement with the local agency.

The Authority shall forward a copy of any conveyance of rights involving public road right-of-way on National Forest Lands to the local National Forest Representative when processing has been completed.

6.12.11.00 Recordation of Relinquishments

The deed conveying the public road right-of-way to the local agency will be recorded upon local agencies acceptance of the deed.

6.12.12.00 Relinquishment Over Federal Lands

Care should be exercised when contemplating a conveyance of High-Speed Rail over Federal lands. If the Authority acquired a High-Speed Rail easement from a Federal agency it is possible that the easement is not transferable.

If that is the case, it is advisable for the Authority, the local agency, and the Federal agency to agree beforehand as to what transfer will be acceptable to all parties. The Notice of Intention to transfer should then specify the proposed conveyance plan so that there will be no later dispute as to its terms.

It must be understood that in the case when a transfer would terminate the High-Speed Rail easement right, the local agency, upon proper application would be granted the necessary right-of-way.

6.13.00.00 – DEEDS CONVEYING EXCESS LAND

6.13.01.00 General

An Excess Land Deed is a document used for the conveyance of any real property or interests therein, to be sold or exchanged.

Preparation costs of maps and documents for disposal of real property or interests in real property either acquired for exchange pursuant to utility agreement or cooperative agreement, acquired as a replacement for real property required for high-speed rail purposes, and/or excess property to be exchanged to the adjacent property owner for state's requirements, are eligible for federal aid..

Preparation cost of maps and documents for disposal of real property no longer required for high-speed rail purposes and/or for real property acquired for high-speed rail purposes, but not used for high-speed rail purposes, are not eligible for federal aid and shall be charged to a general ledger account.

6.13.02.00 Excess Land Deed (ED) Forms

The types of ED forms utilized are as follows:

A. Standard ED, Form RW 06-01S, to be used for the conveyance of fee interests in lands by sale or exchange.
B. ED (Quitclaim), Form RW 06-01T.
C. ED, Form RW 06-01U, to be used where the state has acquired land by inadvertence or mistake in the description in the deed conveying same to the state.
D. ED, Form RW 06-01W, to be used where the state has acquired access rights by inadvertence or mistake in the description in the deed conveying same to the state.

6.13.03.00 Preparation

Two copies of the ED must be forwarded to the Director of Real Property, or designee, at the time the request is made for execution of the Deed.

ED descriptions follow the same rules of description writing as used in the preparation of grant deeds or other types of acquisition documents. The state cannot convey any greater title than it acquired. Conveyance by ED is subject to all encumbrances that affected the property. Therefore, each ED must contain the following provision:

"Subject to special assessments, if any, restrictions, reservations and easements of record."

Any title encumbrance which affects the property being conveyed, but is not of record, must be specifically set out in the ED.

It is preferable to show the marital status of the grantee and the manner in which title will be conveyed. Unless due to some special condition, it is desirable to convey title to grantees in the same manner as they hold title to adjoining land, e.g., in joint tenancy.

6.13.03.01 Exceptions and Reservations to State

It is extremely important and necessary to make proper exceptions and reservations in ED where the state will retain or reserve certain rights from land being conveyed, such as drainage easements, slope rights, access rights, oil, gas, and mineral rights, etc.

6.13.03.02 Access Clauses

For purposes of providing constructive notice of the nonexistence of access rights appurtenant to real property lying adjacent to high-speed rail, constructed or proposed to be constructed, one of the following two access clauses is to be used:

A. ED-1

The following clause shall be used in all cases where property being conveyed abuts directly upon the access restriction line of high-speed rail. The clause shall also be used in all cases where property being conveyed abuts only upon a sidewalk, a bikeway, and/or any other type of non-motorized public thoroughfare lying between the real property and the access restriction line of high-speed rail.

The clause may be used where property being conveyed abuts only upon a frontage or connecting road, a cul-de-sac, cross street, or alley that is closed at high-speed rail and/or any other type of motorized public thoroughfare lying between real property being conveyed and the access restriction line of high-speed rail. Use this clause where real property is being conveyed prior to construction of high-speed rail.

"There shall be no abutter's rights of access appurtenant to the above-described real property in and to the adjacent High-Speed Rail."

When the real property abuts upon an elevated high-speed rail and upon a public way beneath said high-speed rail, a statement permitting access to the public way is to be added to the clause, such as:

". . . provided, however, that said real property shall have access to a public way beneath the elevated High-Speed Rail structure."

B. ED-2

At interchanges where real property abuts upon high-speed rail and a city street or county road and the demarcation of high-speed rail and local road is reasonably subject to misinterpretation, the following clause is used to designate the lines over which no access is allowed:

"There shall be no abutter's rights of access over and across the courses described above with lengths of_____."

NOTE: In exceptional cases, when further clarification is needed of intent to restrict or permit access, modification of the above clauses will be made to clearly set forth the state's intent.

6.13.03.03 Landlocked Parcels

ED for landlocked parcels sold at public auction shall contain the following constructive notice clause:

"The above-described real property is landlocked and without any direct access to any public or private road. The State Of California is without obligation or liability to provide access to said real property."

6.13.03.04 Power of Termination Clause for Public Purposes

ED conveying excess land to public agencies may require a clause limiting use of property to public purposes and to provide for reversion to the state if such a limiting condition is broken (Civil Code Section 885.010, et seq.).

Where it is desired to limit use of property to a public use without limiting the nature of the public use, the following clause shall be used:

"It is expressly made a condition herein that the conveyed property be used exclusively for public purposes for a period of fifteen (15) years from the recorded date of this deed; that if said property ceases to be used exclusively for public purposes during this fifteen (15)-year period, the State may exercise its power of termination. In the event the State exercises its power of termination, all title and interest to said property shall revert to the State of California, High-Speed Rail Authority, and that the interest held by the grantee(s) named herein, or its/their assigns, shall cease and terminate.

The actual public use of the herein described property must commence within _____years from the recorded date of this deed and that public use shall continue through the remainder of the fifteen (15)-year period or the State may exercise its power of termination."

If a more restrictive clause which would limit use to a specific public purpose is desired, the following clause shall be used:

"It is expressly made a condition herein that the conveyed property be used exclusively for _____, a public purpose, for a period of fifteen (15) years from the recorded date of this deed; that if said property ceases to be used exclusively for _____, a public purpose, during this fifteen (15)-year period, the State may exercise its power of termination. In the event the State exercises its power of termination, all title and interest to said property shall revert to the State of California, High-Speed Rail Authority, and that the interest held by the grantee(s), named herein, or its/their assigns, shall cease and terminate.

The actual public use of the herein described property as a_____, must commence within_____years from the recorded date of this deed and that public use shall continue throughout the remainder of the fifteen (15)-year period or the State may exercise its power of termination."

6.13.03.05 Clause for Soil Instability Caused by High-Speed Rail Construction

The following clause shall be included in all ED, sales contracts and public sales notices utilized in disposal of excess properties having a history of soil instability caused in part or in its entirety by high-speed rail construction:

"It is mutually agreed and understood that this property may be subject to soil instability and that the grantees, for themselves and their successors or assigns, hereby waive any and all claims for damages resulting from further earth movement or soil instability which may occur because of prior actions by the State of California, its officers, agents and employees."

6.13.03.06 Slope Clause - Right to Remove

The following clause shall be included in applicable ED, sales contracts, and public sales notices utilized in disposal of excess properties where its use might be helpful in the sale of property, or in realizing the maximum return on property:

"It is understood and agreed by the parties hereto that the grantees, their successors or assigns, shall have the right at any time to remove such slopes or portions thereof upon removing the necessity for maintaining such slopes or portions thereof or upon providing in place thereof other adequate lateral support. The design and construction of any support or changes in lieu of existing slopes shall first be approved by the California High-Speed Rail Authority or such other public body having the right of said approval for the protection and support of said High-Speed Rail or adjacent public road."

When the slope easement is no longer necessary, the state may clear the easement from the Public Record by an ED, quitclaiming the easement to the fee holder of the property. The property owner is entitled to the ED without payment of consideration.

6.13.04.00 Correctory Excess Deed

Recorded ED containing errors or omissions shall be corrected by submitting new deeds to the Director of Real Property, or designee, explaining the errors or omissions. Correctory Deeds that involve a substantial change in interest to be conveyed shall not be submitted to the Director of Real Property, or designee, until the Division of Real Property has reacquired the interest originally conveyed. A quitclaim deed will normally be sufficient for this purpose. Examples of Correctory Deeds are deeds that were in error as to area or access.

Correctory Deeds prepared for purposes of correcting minor errors occurring in the deed description or vesting may be submitted to the Director of Real Property, or designee, without reacquiring the interest conveyed. The Correctory Deed shall however contain the following clause:

"The purpose of this Excess Deed is to correct the (description) (vesting) contained in Excess Deed recorded_____."

6.13.05.00 Deed Maps

ED Maps or Excess Land Maps are used in appraisals, negotiations, and sales notices of real property or interest in real property being exchanged or sold by the Authority. ED Maps are used by the Authority in reviewing proposed transactions. DD Maps must accompany all ED and shall consist of an Index and Parcel Map.

Requirements for the following ED Maps are shown in Exhibit 06-EX-01.

A. Public Sale Parcel/Index Maps
B. Finding "A" and "B" Parcel/Index Maps
C. Exchange Parcel Map
D. Contract Obligation Parcel Map

6.13.05.01 Parcel Maps – Excess Lands

Parcel Maps are not legally required in disposal of state-owned excess land. The Authority may, for public relations purposes, elect to record Parcel Maps when both the following two conditions exist:

A. The excess land parcel is located within a county or municipality which has adopted a local ordinance requiring submission, approval, and recording of Parcel Maps.
B. The excess land parcel is being disposed of by public sale.

6.14.00.00 - TRANSFER OF CONTROL AND POSSESSION

6.14.01.00 General

Maps and descriptions for transfer of control and possession to another state agency must consist of a legal description of the property to be transferred (original and four copies), together with a map containing sufficient bearings and distances so the description can be analyzed. For map requirements, see Exhibit 06-EX-01.

6.15.00.00 - RECORD MAPS

6.15.01.00 General

One copy of the Right-of-Way Record Map showing restriction of access rights on the high-speed rail project must be furnished by the Authority to properly safeguard the state and to prevent any violations of such rights. The map must be prepared on durable reproducible material preferably to the same scale as the construction layout sheets. Maximum use of appraisal maps and reproduction techniques must minimize record map costs.

Data to be shown on Right-of-Way Record Maps is that necessary to produce an intelligible, comprehensive right-of-way record. Construction details and data usually shown on plan layout sheets, not pertinent to right-of-way, must be omitted.

Right-of-Way Engineering shall advise Excess Lands by memorandum of all posting of excess land on the Right-of-Way Record Map. The memorandum must identify the location, the parcel, and advise of the area posted.

Right-of-Way Engineering is also responsible for advising Excess Lands by memorandum of all excess parcels created, eliminated, increased or decreased in size as a result of design changes subsequent to acquisition.

Requirements for Right-of-Way Record Maps are shown in Exhibit 06-EX-01.

6.15.02.00 Review of Record Maps

Within 90 days following acceptance of a construction segment by the Authority, the Division of Real Property shall review the Right-of-Way Record Maps for completeness and conformance with the "As-Builts" for the project. The design build contractor's Right-of-Way Engineer must verify with the Offices of Construction and Design and make field reviews, as necessary, to ensure the following:

A. Right-of-way lines and legal access control are correctly depicted on the Record Maps.
B. Easements outside the right-of-way lines, joint use agreements (JUA's) and consent to common use agreements (CCUA's) within the right-of-way are correctly shown.
C. Excess land is correctly depicted on the Record Maps and entered into excess land inventories.
D. Areas to be relinquished and vacated have been entered on the relinquishment and vacation status.
E. Necessary cross-references to previous record mapping are complete.

6.15.03.00 Excess Land

The most recently prepared Right-of-Way Record Maps for any particular section of high-speed rail must depict all of the current excess land. The latest Record Maps must show all of the pertinent right-of-way information by one of the two following methods:

A. Pertinent information contained on previously prepared Right-of-Way Record Maps must be incorporated into the most recent Right-of-Way Record Maps, and previous Record Maps must be labeled "superseded" or destroyed.
B. The current Record Map must show the latest right-of-way requirements, including right-of-way lines, access control, easements, etc. Parcels previously acquired must be included in the new Record Maps by cross-reference between the new and old Record Maps.

6.15.04.00 Excess Land Leases

An Authority lease of excess land pursuant to Section 185044 of the Public Utility Code shall be posted on the Right-of-Way Record Map by showing graphically the boundary of the lease area and adding the Authority's lease number on or adjacent to the lease area.

6.15.05.00 Procedure for Making Public Records Available

For the purpose of complying with Sections 6250-6261 of the Government Code and for the purpose of making required information available to the public in an orderly, uniform, and economical manner, the following procedure must be used:

A. At the completion of each right-of-way acquisition, the consideration and other pertinent information will be summarized on a parcel summary card which will be maintained by the Authority. This card will include all information pertaining to the parcel that is shown on Exhibit 06-EX-07.
B. A counter, desk, or other suitable reception area will be maintained at the Authority's regional office at a location where Right-of-Way Record Maps are readily available. Parcel Summary cards will be filed at this location.
C. Specific Authority personnel shall be assigned to receive parties making inquiries and aid them in finding parcels in the Right-of-Way Record Maps.
D. When an inquiry is made as to the consideration on state-acquired parcels, and the parcel numbers are determined from Record Maps, the inquiring party shall be offered the Parcel Summary Card(s) pertaining to those parcels for inspection. If a request is made for supporting documents, the Authority will, with Legal's concurrence, provide for copies of the Right-of-Way Contract, Deed, Record Map, or Parcel Summary Card to be mailed to the party making the request. Payment of standard fees to cover actual costs of copying and handling the document(s). If certified copies are requested, the documents should be forwarded for certification by the Director of Real Property, or designee. An additional charge per document will be made for certification. If requests are made for Condemnation Judgment or Final Order, the suit number or recording data will be furnished and the inquiring party should be referred to the County Clerk or County Recorder's office.

The above-mentioned code and procedure in no way affects the state's practices under the 1959 Discovery Act pertaining to information that can be obtained by means of various discovery devices in a condemnation suit.

CALIFORNIA High-Speed Rail Authority

CHAPTER 7

APPRAISALS
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7.01.00.00 - APPRAISAL POLICIES AND GENERAL REQUIREMENTS

7.01.01.00 General Overview

Article I, Section 19 of California Constitution states ***"Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner."***

7.01.01.01 Definition of Market Value

The measure of "just compensation" is "market value." Section 1263.320 of the California Code of Civil Procedure defines market value as:

"(a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

"(b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable."

A just and equitable method of determining the value of nonprofit, special use property as defined, for which there is no relevant, comparable market is:

> ***"The cost of purchasing land and the reasonable cost of making it suitable for the conduct of the same nonprofit, special use, together with the cost of constructing similar improvements."***

This method of valuation pertains only to those properties where all of the following apply:

1. Operated for a special nonprofit use such as a school, church, cemetery, hospital or a similar property.
2. Tax-exempt.
3. Not owned by a public entity.
4. There is no relevant, comparable market.

See Section 7.04.13.00 for further details.

7.01.01.02 Necessity for Appraisal

An appraisal is necessary to ensure compliance with the Constitution in arriving at a conclusion of just compensation. The basic document in all appraisals is the Appraisal Report. It contains the appraiser's estimate of fair market value and all data and narrative necessary to support the appraiser's conclusions.

An approved report is generally required for acquisition, property management, relocation assistance and record purposes. It is of critical importance to further Right-of-Way activity. It must be complete and reliable in all its contents.

The report will be a summary of basic information and conclusions together with pertinent support. It shall contain information about the properties and general aspects of the entire project. Additional backup information such as detailed improvement descriptions and plans, additional photographs, bids, detailed cost studies, interview records, additional comparable data, utility relocation studies, etc., should be maintained until acquisition is complete and the files are no longer necessary for record, testimony, or RAP purposes.

7.01.02.00 Appraisal Report Not Required

When the Supervising Right-of-Way Agent (Supervisor) determines that the valuation problem is uncomplicated and the fair market value is estimated at $10,000 or less, based on a review of available data, an appraisal report is not necessary under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. The $10,000 amount includes severance damages but excludes any nonsubstantial construction contract work. Authority to waive the appraisal as provided for in Federal Regulation [49 CFR 24.102(c)(2)]. Authority to make this determination rests with the Director of Real Property, who may delegate it. The documentation required is the "Waiver Valuation." (see Section 7.02.13.00.) The Waiver Valuation **cannot** be used as a basis for deposit when obtaining an Order for Possession.

7.01.03.00 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act)

The Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) contains basic requirements for the appraisal of real property for Federal and federally-assisted land acquisition programs. These basic requirements shall apply to all projects, regardless of Federal participation. Appraisals are to be prepared according to these requirements, which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP).

49 CFR 24.1, 24.101, 24.102, 24.103, and 24.104 set forth these basic requirements.

7.01.04.00 Standards

The appraiser will thoroughly investigate and consider every material fact regarding the market value of the appraised property. Every effort will be made to interview the property owners and to secure factual information on the subject property sales, costs, alterations, income and expense data, age, etc. The subject properties and comparable data shall be viewed in the field and all improvements to be appraised shall be carefully inspected. The appraiser should refrain from furnishing detailed information regarding valuation, time schedule or construction items. At the appraisal stage, such information is usually incomplete and subject to change.

7.01.04.01 Appraiser Qualifications [Hold for Future Use]

7.01.05.00 Separation of Appraisal and Acquisition Functions

The Authority maintains a separation of the appraisal and acquisition functions, except that the same person can appraise and negotiate a parcel if total valuation, excluding nonsubstantial construction contract work, is $10,000 or less. This dollar limit also applies to revisions where the appraiser was previously assigned to negotiate the parcel. The valuation document can be either an appraisal or Waiver Valuation as discussed in 7.01.02.00 above.

When the same person prepares the appraisal and performs the acquisition, the Certificate of Appraiser must be revised from the standard Certificate. It should contain a statement substantially as follows: *"That I understand that I may be assigned as the Acquisition Agent for one or more parcels contained in this report but this has not affected my professional judgment nor influenced my opinion of value."*

Members or candidates of professional appraisal organizations who are assigned to act in the dual capacity of appraiser and acquisition agent should check their organization's code of ethics for specific prohibitions and disclosure requirements.

7.01.06.00 Prerequisites for *"Preliminary Right-of-Way"*

Right-of-Way Planning and Management is the lead right-of-way function concerning prerequisites for commencement of all "preliminary engineering" activities, "preliminary right-of-way" activities, and "regular right-of-way" activities. see Chapter 3.

Preliminary Right-of-Way is defined as those Right-of-Way activities that occur after:

A. The project is programmed or lump sum funded.
B. Budgeted spending has occurred.
    1. The project is in the current approved Right-of-Way Capital Plan or in the proposed Right-of-Way Capital Plan for the budget year.

The Preliminary Right-of-Way Activities are:

1. Ordering Title Reports.
2. Preparing Base Maps.
3. Preparing Appraisal Maps.
4. Conducting project-wide comparable sales searches once a preferred alternate is internally selected.

In addition, the preferred alternate must be made public in some manner, e.g., newspaper announcement, distribution of the final environmental document, or the like, before the following activities can take place.

5. Assigning appraisers to specific parcels.
6. Contacting the property owners to commence appraisal activity (i.e., sending the Notice of Decision to Appraise).
7. Completing the appraisal.

These prerequisites do not apply to hardship and protection appraisals.

Final environmental clearance is a prerequisite to commencing regular right-of-way acquisition. The exception to this rule is when "early acquisition" is approved. See the Early Acquisition Guidelines (Reference 03-EX-06). Appraisal support costs may or may not qualify for federal aid. PA (Project Adoption) & ED (Environmental Determination or Record of Decision (ROD)) approval is the point at which parcel specific right-of-way support costs become eligible for federal aid on a federally eligible project.

7.01.06.01 Dual Report Requirements

The Authority may determine that dual reports are needed to ensure the owner receives a fair market value offer. Duals may be considered for unusually large or complicated parcels.

The following are items to consider in determining which parcels may require dual reports:

- There is a serious question as to highest and best use.
- Market data is inconclusive because of its scarcity and/or absence of established patterns.
- There are substantial improvements not compatible with the highest and best use of the land.
- A significant portion of the appraised value is severance damages or there is a substantial question regarding damages or benefits.
- The value of the land is primarily on a development-analysis approach, or there is reliance on a specific plan of proposed development.

Dual reports shall be separate, and fully independent in calculations, analysis and conclusions. The appraisers and their supervisors are responsible for maintaining the fact, spirit and appearance of this independence.

7.01.08.00 Donations

Anticipated donations must first be appraised unless the following apply:

A. The donation is initiated by the owner, and
B. The owner, after being informed of the right to receive just compensation, provides the Authority with a signed statement or letter waiving said right to receive just compensation and releasing the Authority from its obligation to appraise the property.

If an owner provides a signed statement or letter waiving just compensation but requesting an appraisal, the Notice of Decision to Appraise is not required.

7.01.08.01 Credit Toward State's Matching Share

If a property is donated for Authority purposes, the fair market value of the land lawfully donated may possibly be used towards the required Authority's matching share to the federally funded portion of the Authority solely at the FRA's discretion.

Donated land must be incorporated into the project to be eligible for credit purposes. Donations made by a Federal or State government agency are not eligible for project credit purposes. A contribution by a unit of local government of real property which is offered for credit, shall be credited against the State share of the project at fair market value of the real property.

All appraisals involving donations for credit to Authority matching funds must otherwise meet the same standards as normal acquisition appraisals. See Chapter 8 for further information related to Acquisition.

7.01.09.00 Dedications

Legal considerations concerning the appraisal of property having future street requirements as of the date of value are summarized in this section. Legal considerations are not to be confused with factual determinations which are to be made in every instance by the appraiser. Appraising a property with future street requirements can prove problematic when the property is located in such manner that in order to comply with the master plan of streets or the master plan of zoning, additional street areas will be required to be dedicated and improved in the reasonable near future as of the date of valuation for the purposes of the appraisal. These properties generally fall into four categories:

A. Those already improved to their highest and best use.

   The property that is already enjoying the highest and best use and the street requirement, while considered, must be assumed to not affect valuation. It is unlikely that the local governing body could force a dedication if the property is already developed to its highest and best use. If the street were to be widened, the local governing body would be required to condemn the necessary area. Therefore, this property should be valued at full market value under the highest and best use.

B. Those already zoned to their highest and best use.

   Generally, a dedication requirement arises as a condition for a change of zone. If that is the only requirement of the local governing body, then the conclusions under Category A would be followed. However, a significant number of local governmental entities have adopted building permit requirements, as opposed to zone change requirements, which impose dedication requirements as a condition for obtaining a building permit. If the property is found in such a political entity, then the conclusion under Category C would be followed.

C. Those not zoned or improved to their highest and best use.

   Since the required street area would have to be dedicated before the property could achieve its zoning or building permit for highest and best use, the required area would likely have a nominal value. In this instance, the value of the area to be dedicated is reflected in the higher unit value of the remaining property which is generated by such dedication. It follows then that the average unit value theory could not apply and the nominal value theory would be used. In any event, if the appraiser finds that by reason of the local agency's governing provisions the land probably will never be used for street purposes, the appraiser should take that into consideration in forming an opinion of value.

D. Those properties which would fall within Category C, except there is an interim use of some significant time period before the ultimate highest and best use is developed.

   The area to be dedicated would have the same unit value as either the whole property or the remaining property by the interim use, assuming, that the time of the interim use and the value of the interim use were of such significance as to affect the appraiser's ultimate conclusions of value.

   In all of these instances, the future requirement of street dedication with the ultimate improvement of the street for city or county standards must be considered by the appraiser.

7.01.10.00 Notice of Decision to Appraise

The appraiser must advise the property owner of the Authority's decision to appraise the property. The notice must be in writing and cover the following:

A. A specific area is being considered for a particular public use, i.e., the project;
B. The owner's property is located within the project area; and
C. All or a portion of the owner's property (which should be generally described) may be acquired for public use.

The letter will offer the owner (or the owner's representative) the opportunity to accompany the appraiser on an inspection of the property. It will give reasonable advance notice. There is no mandatory format for the notice; however, see Exhibit 07-EX-17 for a suggested format.

Enclosed with the letter to the owner will be the following:

A. Written explanation of the Authority's land-acquisition procedures. The booklet "Your Property, Your High-Speed Rail" will satisfy this requirement; and
B. A Title VI brochure.

The Notice and acquisition procedure explanations may be modified as necessary when the property owner is a governmental agency, etc. Governmental agencies are entitled to written notice, etc., just like a private property owner; however, judgment should be used as to the need to send complete notices and packages to the same agency time after time.

7.01.11.00 Parcel Diary

The appraiser will initiate the Parcel Diary Form RW 07-01 for each ownership. The appraiser shall include all required information covered in the instructions. The form should be initiated by an appropriate entry indicating the date the parcel is assigned for purposes of preparing an appraisal, together with entries documenting parcel data. The parcel diary is an internal document to be forwarded with the appraisal for review and kept in the parcel file for documentation.

7.01.12.00 Responsibility for Providing RAP Information

Real Property Branch, Appraisals is responsible for the following:

A. Appraisals, when asked, shall give accurate, basic relocation information to all potential displaced persons encountered during the appraisal process.

B. Pursuant to Federal regulations, potential displacees must be advised of their possible RAP benefits as soon as the occupants are identified. The Code of Federal Regulations also requires each business to be interviewed by the Relocation Agent prior to the initiation of negotiations. The appraiser is usually the first contact a potential displaced person has with the Authority. When an appraisal (primary or alternate) indicates a displacement of people, businesses, and/or personal property, the appraiser is to complete the Parcel Occupancy Data Form RW 07-02 at the time of the first meeting or contact with the owner. This is true whether the displacement would result from the taking of right-of-way or from the effect of the taking on the remainder. Note that a displacement may occur even though there are no severance damages to the real property (a "consequential" displacement). This form may be modified to cover a residential or business only displacement. The Relocation Agent may accompany the appraiser during the inspection of the subject.

C. Where the appraisal of commercial, industrial, or other properties includes machinery, equipment, fixtures, and/or improvements pertaining to the realty, the appraiser shall, as part of the appraisal report:

   1. Itemize for identification: machinery, equipment, and fixtures which are considered realty, as well as those items determined to be Improvements Pertaining to the Realty (see California Code of Civil Procedure Sec. 1263.205).
   2. To the extent possible, determine the ownership or claims to ownership of the listed items as between the fee owner and tenants or lessees.

D. If the primary or alternate appraisal indicates occupied improvements will be acquired or may be acquired as uneconomic remnants (in the market or to the owner), then the State is usually obligated to provide relocation assistance to the occupants (residential or business). In questionable situations, the appraiser shall discuss the situation with Relocation Assistance.

E. Actual and Economic Rental Rates (see Section 7.03.08.00, "Rental Rates") – Actual and economic rental rates for all properties will be shown in the fair market value appraisal.

7.01.13.00 Legal Opinions

All appraisals shall consider potential legal items involved in the appraisal problem, and care must be exercised to see that they are clearly defined and resolved. The Real Property Branch (RPB) staff should consult with the Legal Office, normally through the Director of Real Property, when such problems are first encountered.

Any legal opinions involved in the appraisal process shall be documented in the report. It may be desirable to secure legal opinions on such questions as benefits, compensable damages, extent of larger parcel, personalty versus realty, valuation of dedications, etc.

7.01.14.00 Responsibility for Preparation

Appraisals will only be made by qualified appraisers. Field work and composition will be accomplished by or under the direct supervision of a Senior Right-of-Way Agent. The appraiser assisting in the preparation will sign the Title Page and/or a Certificate of Appraiser as discussed in Section 7.02.03.00. The appraiser shall personally conduct the inspection of the subject and comparable properties.

7.01.15.00 Appraisal Review

All appraisals are reviewed to:

1. Ensure that the appraiser's documentation, including valuation data and the analyses, demonstrates the soundness of the appraiser's opinion of value and that the appraisal report conforms to the requirements of this Chapter and established appraisal practices.
2. Ensure that the appraised amount is equitable and represents a proper amount for the offer of just compensation in accordance with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended 49 CFR Part 24 and Government Code section 7260 et seq.

Both the cumulative review and review appraiser process are recognized and acceptable methods for determining the adequacy and appropriateness of the appraisal report being reviewed to ensure that it is based on sound appraisal theory and contains appropriate documentation to support the appraisers' conclusions. Both methods will also accomplish the requirement that the approved appraisal represents the fair market value of the property and represents a proper amount for the offer of just compensation.

Definitions:

Administrative Review - A review performed to confirm the appraisal contains the proper forms, is in proper sequence, and the arithmetic is correct. The administrative review is usually less detailed than a technical review, and the administrative reviewer does not render an opinion as to adequacy of the opinion of value.

Technical Review - Review performed for the purpose of forming an opinion as to whether the analyses, opinions and conclusions in the appraisal report under review are appropriate and reasonable and that the appraisal complies with the Uniform Act, Government Code section 7260 et seq., the requirements of this Chapter, and established appraisal practices.

The technical reviewer, as the review appraiser or the cumulative review appraiser, must have the necessary appraisal knowledge, experience, and formal education to satisfy the requirements of 49 CFR 24.103(d). The qualifications of the review appraiser and cumulative review appraiser must be consistent with the scope of work for the appraisal assignment. The qualifications must meet the appraisal related criteria of the Senior Right-of-Way Agent classification (as defined by the California State Personnel Board).

7.01.15.01 Cumulative Review Concept

The cumulative review process used by the Authority requires that Appraisals will conduct a technical review and approve or recommend for approval the appraisal report. If the supervising Senior Right-of-Way Agent is not delegated to approve the appraisal report, it will be submitted for approval to the Supervising Right-of-Way Agent or Director of Real Property in accordance with the current delegations. A flow chart outlining the typical steps in the cumulative review process is shown as Table I in Section 7.01.21.00.

There are limited instances where the Review Appraiser concept and its implementation are available to the staff appraisal reviewer.

7.01.15.02 Review Appraiser Concept

The review appraiser is a unique position whose responsibility includes ensuring that appraisals under review are based on sound appraisal theory and contain appropriate documentation to support the conclusion of fair market value consistent with requirements of 7.01.15.00. As part of this responsibility, the review appraiser can reject an appraisal that does not meet the test of an adequate appraisal product and if unable to resolve the differences with the appraiser, require a new appraisal be prepared.

The review appraiser will conduct a technical review and will have the authority to approve appraisals consistent with current delegations.

The review appraiser is responsible for reviewing and approving the appraisal report, it is imperative that the review appraiser have a solid appraisal background. This will include education and experience in preparing a wide variety of appraisals including partial acquisition appraisals with severance damages and/or benefits analysis. At a minimum, the review appraiser should be a Senior Right-of-Way Agent. Review appraisers receive their approval authority/review appraiser delegation through the Director of Real Property based on individual appraisal background and experience.

This process may be used when a contracted/independent fee appraiser prepares an acquisition report or, in rare instances, on a staff appraisal.

When the review appraiser finds the report lacking in content, support, reasoning, or conclusion, the reviewer may elect to assume the capacity of review appraiser (when delegated) and supplement the areas considered lacking, including modifying the appraised value. This would be accomplished by written memorandum clearly delineating the areas in question and providing full support and documentation for the reviewer's conclusions. Approval requirements will be in accordance with existing delegations.

7.01.16.00 Review Appraiser Process

A flow chart outlining the typical steps in the review appraisal process is shown as Table II in Section 7.01.21.00.

A. Roles and Responsibilities of Review Appraiser.

To better define the role and responsibilities of a review appraiser, a Review Appraiser Task/Duties is included as Table III in Section 7.01.21.00. While some of the tasks may be discretionary, the table provides the basis for the expectations of the duties to be performed by a review appraiser.

B. Approval Certificate

In conjunction with the approval of the appraisal, the review appraiser will sign the Review Appraiser Certificate, Exhibit 07-EX-24D, and Appraisal Title Page - Review Appraiser, Exhibit 07-EX-21B.

C. Dual Report Process

The current process for dual reports as stated in 7.01.07.00 remains the same. The review appraiser duties regarding dual reports are as follows:

- Review and concur with all requests for waiver of dual reports prior to submitting the request to the Director of Real Property.
- When dual reports are prepared, the review appraiser will perform a technical review of both reports and recommend both reports to the Director of Real Property for approval.

The review appraiser's recommendation of both reports is not necessarily a recommendation of two separate fair market values. Rather it is an indication that both reports are based on sound appraisal theory and contain appropriate documentation to support the appraisers' conclusions. see Section 7.02.09.02 for an additional discussion on resolving significant judgmental differences between the two reports.

Only the approved appraisal will be provided to the Grantor. The second report will be stamped "Reviewed for Documentation" and kept in the office files.

7.01.16.01 Minor Deficiencies

Minor deficiencies are deficiencies that do not affect the value, but should be corrected prior to approval. They include:

1. Mathematical errors not affecting the value conclusion
2. Project identification data
3. Parcel numbers
4. Typographical errors which could lead the reader to an erroneous conclusion. Possible errors in location, zoning, or present use of either the subject property or of comparable sales, if not a major deficiency (i.e., one which affects value)
5. Other minor deficiencies not affecting value

In the case of minor deficiencies in the appraisal report, the review appraiser can either request the appraiser correct the deficiencies or make the changes to the report as the review appraiser. Any changes made by the review appraiser should be initialed and dated and the appraiser notified of the changes.

7.01.16.02 Major Deficiencies

Major deficiencies are deficiencies that affect the value conclusion and, unless corrected, will result in a rejection of the appraisal report. They include:

1. Highest and best use analysis
2. Insufficient analysis, reasoning, and erroneous conclusions
3. Errors in valuation
4. Analysis that mislead the user of the report
5. Nonadherence to the requirements of this Chapter
6. Other deficiencies that will cause the report to be rejected

In the case of major deficiencies in the appraisal report, the review appraiser should immediately notify the appraiser and supervising agent, preferably in writing, stating the deficiencies and/or need for clarification.

If the review appraiser is unable to resolve the deficiencies, the review appraiser will reject the appraisal and request a new appraisal or prepare a Reviewer's Appraisal Report.

A. Appraisal Rejection

   When an appraisal is rejected, the review appraiser prepares a memorandum to the Director of Real Property stating the reasons for the rejection, the major areas of disagreement, and efforts taken to obtain an acceptable report.

B. Reviewer's Appraisal Report

   If it is not practical to obtain a new appraisal, the review appraiser, after consulting with the supervising right-of-way agent and Director of Real Property, may develop appraisal documentation to correct the rejected report for the parcel in question. In arriving at their own estimate of value, the review appraiser may use valid market data available, including data contained in any appraisals received for review. The review appraiser must personally verify any data obtained on their own initiative and provide written analyses of the data, plus reasoned justification or explanation supporting their conclusions consistent with the requirements of this chapter and established appraisal practices.

   When the review appraiser makes changes to an existing appraisal report to cure a deficiency which results in the reviewer's own opinion of value, the entire appraisal report is considered to be that of the review appraiser and no longer that of the original appraiser.

7.01.17.00 Approval Authority

Regardless whether the Authority utilizes the cumulative review or review appraisal process, approval of the appraisal products will be in accordance with the existing delegations as discussed in Right-of-Way Manual Chapter 2. Any approvals not specifically delegated are retained by the Director of Real Property.

7.01.18.00 Criteria for Use of Contracted or Independent Fee Appraisers

When the Authority uses a Contracted or Independent Fee Appraiser to prepare a regular acquisition, condemnation, excess land or airspace appraisal, the Contracted/Independent must have a current California "Certified General" (AG) real estate appraiser license issued in accordance with Title XI of Reform, Recovery and Enforcement Act of 1989 and the California Code of Regulations Title 10, Chapter 6.5 (Real Estate Appraisers) and or Appraisal Institute MAI Membership Designation Certificate.

7.01.19.00 Report Processing and Record Keeping

The original appraisal shall be held by the Authority as the record of appraisals for the applicable retention period.

1. Appraisals may contain multiple parcels in a single ownership. Waiver Valuations may also contain multiple parcels in a single supplement. In these cases, parcels will be arranged in the report in numerical order regardless of approval authority.
2. The Title Page will indicate whether the Director of Real Property approved.
3. If used, a Parcel Summary Sheet may be kept in the parcel file for documentation.
4. Internal documents including the Certificate of Sufficiency (COS), the Hazardous Materials Disclosure Document (HMDD), the Parcel Diary, the Parcel Occupancy Data Sheet, the Parcel Summary Page, and the Excess Property Inventory Valuation (VTA) are not a part of the appraisal per se. As such, they must go forward with the appraisal for review and also with the copy that goes to Acquisition.

7.01.20.00 Memo of Transmittal

A memo of transmittal is required for routine submission of Appraisal Reports.

7.01.21.00 Tables [Hold for Future Use]

Table I - Cumulative Review Process For $10,000 and Over

Table II - Review Appraiser Process $10,001 to $1,500,000

Table III - Review Appraiser Task/Duties

7.02.00.00 - APPRAISAL REPORTS

7.02.01.00 Federal Project Numbers

Federal project numbers are required for projects involving Federal participation in Right-of-Way costs. The Federal project number will appear on the following:

A. All appraisal correspondence (including a letter of transmittal, if used)
B. The Front Cover (07-EX-01)
C. Appraisal Title Page (07-EX-21)
D. Parcel Summary Page, if used (RW 07-04)
E. Appraisal Summary (RW 07-09)
F. Appraisal Maps

7.02.02.00 Report Identification Numbers [Hold for Future Use]

7.02.03.00 Organization, Content, and Sequence

The material in most reports shall be arranged in the following order as applicable. All pages in the report shall be numbered consecutively and completed as described.

A. Front Cover

   A copy of the report will be bound and the information shown on Exhibit 07-EX-01 will be typed in the upper right-hand corner of the cover sheet.

   For a revised parcel, place the word "Revised" and the old report number in parentheses following the parcel number. All parcels appraised together as a larger parcel will be listed in parentheses under the lowest parcel number of the group, regardless of number sequence.

B. Title Page

   The Title Page will be organized substantially as shown on Exhibit 07-EX-21 if the cumulative review process is used or Exhibit 07-EX-21B if the review appraiser concept is used.

   One signed original or a scanned copy of the Title Page will be bound into the report, inside the front cover. Each person signing this page certifies the appraisal has had appropriate review for accuracy and the report is approved or recommended for approval. Signatures shall be in accordance with current delegations.

   The person verifying the calculations certifies that all mathematical calculations have been checked, verifies the accuracy of the maps in comparison with parcel appraisals, and certifies that no typographical errors or content inconsistencies exist in the report.

C. Parcel Summary Page (if used)

   This will be prepared in accordance with RW 07-04.

D. Senior Field Review Certificate

   This will be organized substantially as shown on 07-EX-24. The Senior Right-of-Way Agent supervising preparation of the appraisal will sign the Certificate which summarizes the Senior Right-of-Way Agent's field review and certification statements regarding all parcels in the report. The 07-EX-24A will be used when the Senior Right-of-Way Agent has not performed a field review. The 07-EX-24D will be used by the Review Appraiser.

E. Certificate of Appraiser

This is executed by the Appraiser and by any other Agent who participated in preparing the appraisal. A new Certificate is required whenever a parcel appraisal is revised resulting in a change in value. see RW 07-06.

F. Excess Land Review Certificate

The Excess Land Review Certificate is an internal document. This will not be included in the appraisal report, but transmitted separately for review with reports proposing purchase of excess. A new Certificate will be submitted with any change in excess parcels. see RW 07-07.

The Certificate will be executed by the Director of Real Property. The purpose of the excess land review is to minimize or eliminate fragmentary excess land parcels.

G. Introduction

The Introduction shall contain information of a general nature applying to the Appraisal Report as a whole. It may also contain parcel description or valuation information pertaining to several parcels, if more than one parcel is included in a supplement (e.g., more than one parcel in a single ownership or Waiver Valuation).

Data which apply only to individual parcels should be shown on the pages for those parcels and not in the Introduction.

H. Outdoor Advertising Structures

All outdoor advertising structures owned by entities other than grantor or occupants of the subject property will be listed on the Summary of Outdoor Advertising Structures prepared in accordance with the format and instructions shown on RW 07-08.

The cost of outdoor advertising structures appraised will be carried forward to the Parcel Summary Page (RW 07-04), if used, and to the Appraisal Summary (RW 07-09).

I. List of Access Openings

A list will be included in each report noting parcels with proposed private access openings within the access - restriction line. The list will show the openings by parcel number, station location, width, and type (permanent, temporary, or locked gate). The list and pertinent maps will be reviewed and confirmed prior to submission of the report for approval.

J. Photographs

Each Parcel Appraisal and each Comparable shall include photographs. They are to show all major improvements. Approximate location and direction of the view and the right-of-way line should be indicated where possible. Each photograph will be clearly identified with the parcel number, date, and photographer's initials or other suitable identification.

K. Appraisal Summary

Separate Appraisal Summary pages will be included covering all parcels (and subparcels when necessary) included in the report. see RW 07-09. An Appraisal Summary may be used to recapitulate the values for all subparcels in the parcel appraisal and for all parcels appraised together as a larger parcel.

L. Parcel Remarks

The Parcel Remarks shall contain information of a specific nature, applying to the individual parcel only. Included in this narrative section are site descriptions, improvement descriptions, Highest and Best Use, valuation analysis, damages/benefits discussions, and reconciliation.

To aid the acquisition agent with the preparation of either the Appraisal Summary Statement (08-EX-15A or the Valuation Summary Statement (08-EX-15C), in compliance with Section 7267.2 of the Government Code, the appraiser shall provide a paragraph entitled, "Summary of the Basis for Just Compensation." The paragraph shall be reproduced, verbatim, and inserted by the acquisition agent into either the Appraisal Summary Statement or the Valuation Summary Statement. This paragraph shall provide a concise summary of the reconciliation of value, (i.e., method most heavily relied upon, and reason); the reason for damages, or the lack thereof; the reason that damages can or cannot be cured; and a discussion of benefits, or a lack thereof. Numerical calculations should not be included in the narrative discussion.

M. Sales Data

The subject's sales history will be reported on the form and according to the instructions shown on RW 07-10. Each change of vesting of the subject during the last five years will be explained on a separate Sales Data form. Starting with the most recent sale that occurred during this period, all sales shall be verified by the appraiser with both the grantor and the grantee if at all possible. If not verified with both parties, efforts to do so must be described.

A complete verification shall be made, not only as to price paid and terms of the sale and what the sale included, but why the seller sold the property, why the buyer purchased the property, was the buyer aware of the State's proposed construction and acquisition, if the buyer had knowledge of the proposed construction and the effect it had on the purchase price, and how the purchase price was determined.

Any difference in appraised value and sales price must be explained.

This page is not required for sales of portions of the subject ownership outside the right-of-way.

N. Summary of Comparable Data

All comparable data used in a report should be separately summarized in tabular form similar to Exhibit 07-EX-02.

A specific comparable or group of comparables may be related to one or more specific subject properties.

O. Comparable Data

All comparable data will be carefully investigated with as many parties involved as warranted. All reasonable attempts should be made to confirm the transaction with both the seller and the buyer. In the rare instance when the sale cannot be confirmed with one or both of the principals to the transaction, the appraiser will provide the full explanation on the Comparable Data form. In these cases, confirmation with secondary sources such as brokers, closing agents, and lenders with direct knowledge of the transaction should be included. Information solely obtained from the Assessor, Recorder, or private data services such as Costar, FARES, and Multiple Listing Service is not adequate for verification and confirmation purposes. Comparable improvements should be inspected when possible and/or appropriate, including interiors, and square feet obtained. If not possible, the Comparable Data form will so state.

Recent listings of the subject parcel should be investigated, considered, and discussed in the appraisal. If the listing is considered to be a reliable indicator of value, it may be included in the comparable data. In this case, it will also be referenced as a subject parcel.

All comparable data will be described on Comparable Data forms in accordance with RW 07-11 or RW 07-11A. Other State appraisals or settlements will not be used for comparable data purposes.

An appraiser using the data verified previously by another State appraiser must investigate and analyze the data as appropriate, to enable reliance on the information for valuation purposes. This does not require reverifying the data with the principals unless the circumstances warrant. It does require viewing the data in the field and reviewing all pertinent information necessary to become familiar with the data in all the aspects necessary for reliable comparison purposes. It is imperative that each appraiser analyze any zones of land value or contributory value of improvements indicated on the Comparable Data form. Independent judgment will be documented by appropriate comments on the sales sheet to the effect that the figures have been reviewed and found reasonable or changes made to reflect the second appraiser's judgment. Each appraiser is free to change items on sales sheets previously used if he or she disagrees with the judgment of the original appraiser.

The Comparable Data form will show the date and name of the agent who originally verified the data. If the comparable data is used by other appraisers in subsequent appraisals, the date and name of the using appraiser will be shown immediately below that of the verifying appraiser.

Not all comparable data discovered need be included in the report. Include only that data considered most reliable and indicative of market value and which has been referenced in support of the parcel appraisal. Additional data should be retained in the appraisers' files.

The Comparable Data form shall be numbered, indexed, and filed for easy and rapid retrieval.

The inclusion of an Assessor's Plat of the comparable is strongly encouraged for clarity and understanding. see Section 7.05.02.00 for further information on comparable data.

P. Appraisal Maps

The report will contain all the maps necessary for proper analysis, identification, and documentation. Each report will contain an Index Map (if available from Right-of-Way Engineering), an Appraisal Map, and a Comparable Data Map.

The report will include any additional maps required for proper understanding and documentation of specific parcel valuations, such as contour maps, topographic maps, or design plans. Significant topography should be included for partial acquisitions. Where a total ownership is very large, it can be shown on a reduced sketch, plat, or map.

Exhibit maps showing pertinent design detail are required for parcels with damages, benefits, and/or construction contract work of other than routine curative nature, utility relocations, or road approaches. Such exhibit maps may be on a reduced scale and need show only the affected parcels. The maps should show the main lanes, frontage roads, and the nearest interchanges, drainage structures, construction contract work locations, and information regarding cuts and fills (if significant) for the affected parcels. This information may be on separate maps, or plotted on the Appraisal Maps. If a large number of parcel appraisals are involved, the possibility of consolidating the Appraisal Map and the topographic design map should be investigated.

The Appraiser is responsible for the completeness of the maps, and for requesting delineation of pertinent data and topography not previously included.

It is also the Appraiser's responsibility to ensure that maps, including coloring, are correct. If corrections are required, the maps will be returned to Right-of-Way Engineering for correction.

Q. Comparable Data Map

This map will be produced from information supplied by the appraiser. The map must show the proper locations of the comparable data, the subject properties, and other pertinent information necessary for the understanding of the comparable data.

The map will be prepared by the appraiser or Right-of-Way Engineering. It will be of sufficient size or scale to show the following:

1. Size, shape, and location of subject property(ies) and comparable data as related to each other.
2. Zone(s) of the various properties (when pertinent).
3. Comparable sales colored orange, comparable listings colored green, and subject property(ies) colored red.
4. Utility service mains (when pertinent).

Additional information may be included when necessary or when considered by the appraiser to contribute to the understanding of the comparable data. A North arrow will be included on all maps.

7.02.04.00 Parcel Numbering

The parcel numbering shown on the Appraisal Maps and certified for right-of-way acquisition will be utilized in the report. If parcels merge prior to final Appraisal Maps being received by the Appraiser, the parcel numbering will be revised. If a merger occurs after final Appraisal Maps are received the assigned parcel numbering will continue and the merged parcels will be appraised together as a larger parcel. Merged parcels will be colored one color; both separate and combined areas will be shown, and the correct vesting will be shown on the maps. The lowest parcel number will be used for reference and the other number(s) will be shown in parentheses. The maps and numbering may be revised and the parcels may be combined into one.

Occasionally, an ownership lies outside the right-of-way but has appurtenant rights affected by the project requirements (access rights, easements, etc.). The effect of the project requirements may not become known until the appraisal stage. Such rights may be cleared by quitclaim deed in the encumbered parcel transaction. Frequently, however, the right-of-way acquisition of the appurtenant rights may materially affect the dominant remainder. If a separate appraisal of the affected ownership is required, the Appraiser will request a parcel number be assigned and the ownership delineated. Separate appraisals may be required when (1) improvements are affected, (2) damages occur to the remainder, (3) construction contract work is required, or (4) a separate escrow is necessary.

Subparcel numbers will be used to designate separate requirements. Occasionally, subsidiary interests, such as mining claims or oil rights, will require separate appraisals. These will be separately identified by subparcel letters by the Appraiser and need not be delineated on Appraisal Maps unless required for clarity.

Parcel numbering for right-of-way purposes may not necessarily coincide with condemnation parcels nor with title company parcels.

7.02.05.00 Number of Parcels Per Report

Generally, only one parcel will be contained in each report. However, multiple parcels within a single ownership may be contained in a report. Waiver Valuations may also contain more than one parcel in a supplement.

7.02.06.00 [Hold for Future Use]

7.02.07.00 Parcel Groups - Mutual Owners

A project may contain multiple parcels with the same ownership, but the parcels not comprising an integrated operation. In these cases, the remarks for each parcel should contain clear references to other parcels required from the same owner. All requirements from a single owner on a project should be included in the same report, if possible.

7.02.08.00 Parcel Groups - Integrated Operation

A. General

Parcels that compose an integrated operation will be included in one appraisal with sufficient discussion to illustrate the relationship of the parcels. If the inclusion of all of the parcels in one appraisal is impractical, the Director of Real Property may approve a variance.

B. Procedure

When appraising parcels which are part of an integrated operation, the following instructions apply:

1. All parcels in the group will be included together in the report regardless of numbering sequence. If revision of an unclosed transaction is necessary, either revised appraisal pages may be used or the entire group included in a revised appraisal.
2. A recapitulation Appraisal Summary (RW 07-09) will summarize the values for the total group. The page will reference in the upper margin all parcels included in the group. It will use the lowest parcel number as file reference.
3. Following the recapitulation will be the pro rata segregations of value for each parcel and subparcel, including excess portions. Subparcels will follow each parcel. Below the words "Parcel No." on the Appraisal Summary, insert the words "See also Parcel___" and the lowest parcel number in the group.
4. Following the Appraisal Summary will be the basic appraisal data for the group.
5. On the Appraisal Report front cover and Parcel Summary Page, list the parcels appraised together as a larger parcel in parentheses showing the lowest parcel number regardless of number sequence. On the Parcel Summary Page, the total value of each parcel in the group will be shown.
6. On the Appraisal Maps, the group will be colored as a whole with the same color. A plot plan of the group will also be shown if the total group cannot be seen on one map.

7.02.09.00 Dual Report Process

When a Dual Report Process is utilized, the second report may be prepared by either a second staff appraiser or by a contract appraiser under the supervision of another Senior Right-of-Way Agent, or both reports may be done by contract appraisers. Contract appraisals shall comply with all pertinent appraisal instructions. This includes the front cover through the Appraisal Summary (RW 07-09) which will be prepared by the reviewing Senior Right-of-Way Agent from information in the report. The two reviewing Senior Right-of-Way Agents shall act as a liaison between the appraisers to ascertain that both are following the same legal premises and have benefit of all the sales and other supporting data. (see 7.01.07.00 and 7.01.16.00, C.)

Senior Review Certificates will be prepared for each appraisal.

The excess property inventory valuation and replacement housing estimates will be prepared by Staff and not by independent appraisers.

The report to be used for acquisition will be approved. The other report will be reviewed for documentation. The judicious use of joint factual data is encouraged; however, independent analyses, judgments, valuations, and conclusions are required. A joint factual data section may include any data of a factual nature mutually accepted as such by the appraisers, and other data such as acquisition authorization documents, list of access openings, photos, maps, and cost-new estimates.

7.02.09.01 Corrections and Revisions

Where two reports were prepared and revision or correction of the approved appraisal becomes necessary, the following guidelines are to be observed:

A. In general, only the approved appraisal need be revised; except,
B. In these situations where there is a major change which substantially affects the fair market value estimate, it is necessary to revise both reports.

7.02.09.02 Review Process

Senior Right-of-Way Agent's are responsible for resolving significant differences between reports due to factual matters only. Determining the reasons for major divergences is important. It may be necessary to inquire into the report for significant judgmental differences. However, any attempt to simply narrow the spread of values resulting from differences is inappropriate and contrary to the purpose for securing dual reports.

The senior's signature recommending approval of both reports is not considered a recommendation of two separate fair market values. It is just indicating that both reports are based on sound appraisal theory and contain appropriate documentation and analysis to support the appraiser's conclusions. Supervisors are responsible for reviewing both reports and approving the report which best supports its conclusions.

7.02.10.00 Replacement Housing Valuation Reports

The appraiser may prepare these reports for use by the Relocation Assistance function. Instructions for preparing them are contained in Relocation Assistance, Chapter 10.

One individual cannot prepare both the Acquisition Appraisal and the Replacement Housing Valuation on the same dwelling unit. One Senior Right-of-Way Agent may review and recommend for approval both reports on the same dwelling unit.

7.02.11.00 Calculations

All monetary appraisal calculations shall normally be carried accurately to the nearest cent without rounding of figures or adjustment of unit values to yield rounded figures. The total appraised value is to be rounded as follows:

A. From $500 to $2,500, to the nearest $50.
B. From $2,501 to $100,000, to the nearest $100.
C. Parcels exceeding $100,000, to the nearest $1,000.

When several approaches to value are used, the final value found after reconciliation will normally be a rounded figure. Minor rounding adjustments are permitted on condemnation appraisals for clarity of testimony presentation.

Generally, land areas should be shown to at least two decimal places where acres or front feet are used, and to the closest square foot where areas are so expressed.

Building areas should be calculated to the closest square foot.

All calculations shall be carefully checked prior to first level recommendation for approval.

7.02.12.00 Noncomplex Valuations of $25,000 or Less

Noncomplex parcel valuations of $25,000 or less may be appraised utilizing either the memorandum appraisal format (Exhibit 07-EX-25), or a very succinct narrative appraisal using RW 07-09. The $25,000 amount includes severance damages, but excludes minor construction contract work such as: replacement of existing facilities such as road approaches, fencing, irrigation pipelines, etc. A Noncomplex Valuation is still an appraisal and must meet all the requirements of 49 CFR 24.103(a) and applicable California State Statutes.

The determination as to which parcel valuations are noncomplex rests with the seniors. Among the criteria to be considered in making the determination are:

A. There is no serious question as to highest and best use.
B. Adequate market data is available.
C. Substantial damages and benefits are not involved.
D. There is no substantial decrease in market value due to the presence of hazardous material/waste.

Exhibit 07-EX-25 shows the minimum content requirements for the narrative portion of the appraisal. The amount of analysis and degree of documentation should be in proportion to the appraisal problem and valuation involved. However, substance and brevity should be the norm. If RW 07-09 is used, then the narrative should be the same succinct format as the Memorandum Appraisal. A narrative paragraph, as described in Section 7.02.03.00, L., shall be included in the report.

All appraisals must include at least the following:

- Certificate of Sufficiency and HMDD
- Senior Field Review Certificate
- Certificate of Appraiser
- Photograph(s) of subject
- Summary of the Basis for Just Compensation
- Index map
- Appraisal map
- Comparable Data forms with photographs
- Comparable Data Map

Where applicable, the appraisal must also include: Summary of Outdoor Advertising Structures, List of Access Openings, and Sales Data form.

7.02.13.00 Waiver Valuation In Lieu of an Appraisal

An appraisal is not required if the supervisor determines one is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at $10,000 or less based on a review of available data. As stated in 49 CFR 24.102(c)(2), an appraisal is not required for parcels estimated at $10,000 or less.

The $10,000 amount should include severance damages, if any, but exclude any insignificant construction contract work. Authority to make this determination rests with the Right-of-Way Manager, who may delegate it.

The "Waiver Valuation" does not qualify as an appraisal under 49 CFR 24.103(a) and is to be used merely for documentation for support of the amount of just compensation to be paid to the property owner. A Waiver Valuation cannot be used in eminent domain proceedings.

The determination as to which parcel is uncomplicated rests with the supervisor. Among the criteria to be considered in making the determination are:

A. There is no serious question as to highest and best use.
B. Adequate market data is available.
C. Substantial damages and benefits are not involved.
D. There is no substantial decrease in market value due to the presence of hazardous material/waste.

The Waiver Valuation may be based on a review of available relevant data such as: comparable sales and listings, comparable sales and listings from multiple-listing services, and commercial databases, opinions of Assessor's Office appraisers or real estate brokers, and other data sources. Comparable Data forms and Comparable Data Maps are not necessary.

The documentation to support the Waiver Valuation is contained in Manual Sections 7.02.13.01 and 7.02.13.02. The required content will differ depending on whether the value is $2,500 or less, or $2,501 to $10,000.

Requirements regarding the Certificate of Sufficiency and HMDD for environmental clearance, project identification, certification date, confidentiality statement, and certification of need for the right-of-way and access control by Project Development still apply. A narrative paragraph, as described in Section 7.02.03.00, L., shall be included in the report.

Property owners of these parcels shall be sent the "Notice of Decision to Inspect" letter (07-EX-17A) with the appropriate Title VI information and booklet "Your Property, Your Transportation Project." Also, parcel diaries should be initiated and included in the estimate and the file.

A Waiver Valuation must be approved in accordance with present approval delegations. They may be prepared and recommended for approval by an Agent of less than Associate grade. It is strongly recommended that Agent preparing the Waiver Valuation have a good understanding of appraisal valuation concepts.

Members or candidates of professional appraisal organizations who are assigned to act in the dual capacity of Appraiser and Acquisition Agent should check their organization's Code of Ethics for specific prohibitions and disclosure requirements.

7.02.13.01 Waiver Valuation ($2,500 or Less) - Contents and Requirements

In addition to the documentation mentioned in Section 7.02.13.00, a Waiver Valuation valued at $2,500 or less can be documented with a diary entry. The diary entry should state the basis of the value conclusion, i.e., land value, improvement value, and severance/cost-to-cure damages. In addition, a photograph(s) of the subject must be included.

7.02.13.02 Waiver Valuation ($2,501 to $10,000) - Contents and Requirements

In addition to the documentation mentioned in Section 7.02.13.00, a Waiver Valuation with a value estimate of $2,501 to $10,000 must include the following:

- Waiver Valuation Title Page, Exhibit 07-EX-21A
- Senior Review Certificate Form - Waiver Valuation, Exhibit 07-EX-24B
- Certificate of Waiver Valuation, RW 07-06A
- Waiver Valuation, RW 07-15
- Photograph(s) of subject
- Index map (if available)
- Appraisal map

The Certification of Waiver Valuation may have to be modified as to the statements concerning comparable sales. It should also contain a statement as follows:

> "That I understand I may be assigned as the Acquisition Agent for one or more parcels contained in this report, but this has not affected my professional judgment nor influenced my opinion of value."

7.02.14.00 Nominal Values ($2,500 or Less)

Regardless of the type of valuation report prepared, i.e., narrative appraisal report, memorandum appraisal report, or Waiver Valuation, if the amount of all property rights or interests is $2,500 or less, the value of the required property is considered to be nominal. Calculations supporting this conclusion shall be shown in the valuation report to illustrate the basis for the $2,500 or less conclusion. For example, the report will show 0.025 acres at $5,000/ac = $125.

The word "Nominal," as discussed above, shall be shown in the $2,500 or less valuation report as the following:

A. If the value of the requirement is so minimal as to not be calculable or to not have an effect on the market value of the parcel, show "Nominal" in the amount column.
B. If the calculated amount is $500 or less, show "$500 (Nominal)" in the amount column.
C. If the calculated amount is between $501 and $2,500, show the actual amount rounded to the nearest $50 with "(Nominal)" in the amount column.

Under options A, B, or C, the word "Nominal" or the valuation amounts with Nominal in parenthesis shall be carried forward to the RW 07-09 value column, the Parcel Summary Page, if used, the Senior Field Review Certificate, and the Certificate of Appraiser.

The Senior Field Review Certificate and Appraisal Review Report shall be prepared substantially as shown on the 07-EX-24. Minor modifications may be made to suit the approval requirements.

7.03.00.00 - APPRAISAL PREPARATION

7.03.01.00 The Appraisal Summary - Purpose

This page presents a summation of parcel data, value elements, and total appraised valuation.

7.03.02.00 Appraisal Summary Format

The Appraisal Summary (Form RW 07-09) will be completed in accordance with the directions following the form. Each of the described headings will be completed as appropriate.

Under the heading "Land," show the valuation of the land or other property rights to be acquired. Each class of land required will be shown by type, area, unit value, and total value. Mining claims or other land rights separately valued will be separately described. If access rights are the only rights required, the remark "Access Rights Only" and a nominal value will be shown. Loss in parcel value will be reflected under "Damages." If excess property is to be acquired, including parcels with excess proposed for exchange or as replacement sites, a segregation between Right-of-Way and Excess will be shown. If subparcels are included, clearly indicate the separate values, including those of excess.

All improvements proposed to be acquired, including those valued with land, will be listed under the "Improvement" heading. If improvements are on excess to be acquired, there will be a segregation of value between right-of-way and excess.

Improvements proposed for relocation in lieu of purchase and fixtures, machinery, equipment, and other "items pertaining to the realty" proposed for purchase will be shown under separate subheadings. Improvements may be listed either on the Appraisal Summary page, a Summary of Improvements page, or in the Cost Approach.

7.03.03.00 Alternate Appraisals

Alternate appraisals are secondary acquisition approaches and will be shown on supplemental Appraisal Summary pages. When alternate appraisals are included, the words "Primary" or "Alternate" will be shown in the headings of the Appraisal Summary pages. See the following sections on appraisals of Uneconomic Remnants and Excess Acquisitions regarding which approach should be the primary and which approach should be the alternate. The amount carried forward to the Parcel Summary Page, if used, will be the appraisal, either alternate or primary, that represents the higher cost to the State. Both the Primary and Alternate valuations will be provided to the Grantor as they are both part of the approved appraisal.

7.03.04.00 Appraisals of Excess Property for Acquisition

The appraisal of excess property will be done according to one of the following subsections:

7.03.04.01 Uneconomic in the Market

Staff appraisals will normally propose only acquisition of the right-of-way required plus net damages to the remaining property, if any. A small uneconomic remnant should be reviewed for possibility of including it in the right-of-way. However, with full substantiation, the appraisal may propose purchase of uneconomic remnants and/or improvements in the following instances:

A. When net severance damages, construction contract work, and utility relocations are substantial in relation to the value of the remainder in the before condition.
B. When the remainder is landlocked or so reduced in size or irregularly shaped as to be legally or economically incapable of independent development in the after condition.

Whenever the purchase of excess is proposed, purchase of the excess is required as the primary appraisal and will be approved for acquisition in accordance with current appraisal approval delegations. Justification for the acquisition of the excess from an economic standpoint in the market must be included in the report. The partial acquisition appraisal including estimated net severance damages must be included as the alternate appraisal. On Federally funded projects, the Authority's policy is to seek Federal reimbursement for the value of the partial acquisition, plus the amount of net damages accruing to the remainder.

NOTE: Whenever feasible, a valuation of the minor remnant left in the after condition should be included in the acquisition appraisal if: (1) the uneconomic remnant "is landlocked or so reduced in size or irregularly shaped as to be legally or economically incapable of independent development;" and (2) the uneconomic remnant is likely to have a value of $5,000 or less as an independent parcel or as plottage to an adjoining property. The valuation should be prepared in the appropriate excess land appraisal format and processed as a nominal value parcel (see Section 7.14.00.00). The valuation amount is the VTA. see Section 7.03.07.00.

If an exchange appears likely, the acquisition may be accelerated by completing the excess land appraisal concurrently with the acquisition appraisal, regardless of dollar amount.

7.03.04.02 Uneconomic to the Owner, or for the Convenience of the Owner

Uneconomic remnant parcels are parcel of real property in which the owner is left with an interest after a partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner. Nevertheless, an uneconomic remnant may have substantial market value and still have little or no value or utility to the owner.

The Uniform Act [49 CFR 102(k)] states:

> "If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project."

Statutes on the subject of "uneconomic remnants" are as follows:

A. State Government Code Section 7267.7(a) states:

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

B. Code of Civil Procedure Section 1240.150 states:

> "Whenever a part of a larger parcel of property is to be acquired by a public entity for public use and the remainder, or a portion of the remainder, will be left in such size, shape, or condition as to be of little value to its owner or to give rise to a claim for severance or other damages, the public entity may acquire the remainder, or portion of the remainder, by any means (including eminent domain) expressly consented to by the owner."
>
> Law Revision Commission Comment: "Inasmuch as exercise of the authority conferred by this section depends upon the consent and concurrence of the property owner, the language of the section is broadly drawn to authorize acquisition whenever the remainder would have little value to its owner (rather than little market value or value to another owner)."

At the appraisal stage, it may be difficult to determine whether or not a remainder is an uneconomic remnant to the owner. The determination must be made on a case-by-case basis. Ultimately, the appraiser needs to explain in the appraisal that the proposed changes to the remainder will affect the utility of the parcel in such a way as to make the use no longer viable to the owner, and make a determination that the owner's request for acquisition is not merely for the owner's convenience. If the remainder is not identified initially by the appraiser as an "uneconomic remnant to the owner," the acquisition agent may later request an alternate appraisal that includes the uneconomic remnant and document such request by the owner in the Parcel Diary.

Identified uneconomic remnants to the owner will be included for acquisition as an excess parcel in an alternate appraisal. A partial acquisition appraisal is required as the primary appraisal, which will be reviewed and approved for acquisition. The alternate will be approved for valuation purposes only. The specific justification and authorization for the acquisition of the excess in the alternate will be the responsibility of the Director of Real Property.

The partial acquisition appraisal including damages sets the limit for Federal participation. The residual value of the excess after damages is not eligible for Federal participation.

The exception to the requirement of preparing both a primary and alternate appraisal, as described above, is in situations where the property owner, at the time of the appraisal, requests that the State acquire the remnant that has been identified by the appraiser to be an "uneconomic remnant to the owner." In these cases, the Director of Real Property may authorize the Appraiser, in writing, to prepare a single, full take appraisal that proposes acquisition of the remnant as an excess parcel. A copy of the memorandum authorizing the single appraisal will be included in the appraisal report. The appraiser must also document such requests in the Parcel Diary. This exception only applies if there is no Federal participation in funding the acquisition since the appraisal would not contain a before and after damage analysis.

Additionally, property owners may request the purchase of a remainder merely for their convenience under circumstances which do not fit within the reasons as described above. Again, the partial acquisition appraisal including damages sets the limit for Federal participation. An alternate appraisal proposing the purchase of excess will be prepared when authorized. A copy of this memorandum will be included in the report with appropriate reference.

When the property owner requests the purchase of a remainder for convenience, a partial acquisition appraisal is required as the primary appraisal, which will be reviewed and approved for acquisition. The alternate will be approved for valuation purposes only, in accordance with current delegations. The alternate excess acquisition appraisal may be made at the time of the initial appraisal or subsequently at the request of the Acquisition Agent.

If primary and alternate appraisals are made pursuant to this Section, the appraisal report must include a statement to that effect.

7.03.04.03 To Avoid Large Windfall Relocation Payments to Single Family Owner-Occupants

In some situations involving improved single family residential sites, a partial acquisition may result in a large windfall purchase price differential payment to the owner-occupant. This may occur when the taking includes the residence, and the remaining site has substantial value. The appraiser must discuss these cases with the Relocation Agent and Acquisition Agent to determine if a windfall situation exists, and thus a need to offer to acquire the remainder as excess (a total take) to avoid the windfall. If yes, a total take appraisal (including excess) will be made as the primary approach and a part take appraisal will be made as the alternate approach. A statement must be included that both appraisals are being made to avoid creating a windfall situation.

The total take must first be offered to the owner-occupant. If the owner elects to retain the remainder, the relocation payment can be calculated on the basis of a full take, thus avoiding the windfall payment.

In these situations, both the primary and alternate appraisals will be reviewed for approval in accordance with current appraisal approval delegations. While the purchase of the excess under this circumstance is not eligible for Federal participation, reimbursement can be sought for the value of the requirement plus the appraised amount of the damages (as set by the partial acquisition appraisal) on Federally funded projects.

7.03.05.00 Legal Larger Parcel and Subparcels

Generally, each parcel, together with all subparcels, will be included on one Appraisal Summary (RW 07-09). It may be necessary to have separate Appraisal Summary pages for subparcels. In these cases, the total value for the parcel will be compiled on one Appraisal Summary page.

There will be cases when more than one ownership will be included in a legal larger parcel. It may be necessary to appraise the separate ownerships as one legal larger parcel for proper damage and special benefit valuation. A separate Appraisal Summary page will be included to summarize the combined analysis of these separate ownerships.

7.03.06.00 Allocation Between Excess and Right-of-Way

Land value will be segregated by area, unit value, and total value of each class of land in the right-of-way and excess area. Additional requirements on excess land (drainage easements, etc.) are to be valued and attributed to the right-of-way. The excess is valued after encumbrances of any additional requirements.

Improvement values, including Relocations in Lieu of Purchase and Improvements Pertaining to the Realty, will be allocated between the required right-of-way acquisition area and the proposed excess area depending on their location and subject to the following instructions:

A. Building improvements straddling the right-of-way line will be charged to Right-of-Way. Building improvements, including garages and auxiliary buildings, located entirely on excess will be charged to Excess.
B. Landscaping, miscellaneous yard improvements, minor sheds, patios, fencing, and improvements pertaining to the realty located on excess are to be charged to Right-of-Way if the property's major improvements are charged to Right-of-Way.
C. Damages to remainders not acquired as excess will be charged to Right-of-Way. Separate totals will be shown for right-of-way and excess areas.

7.03.07.00 Excess Parcel Inventory Value (VTA)

Every proposed excess parcel will be appraised at inventory value (Value at Time of Acquisition, or VTA) for accounting purposes.

A. Inventory Value is the value of the excess, as a partial acquisition under condemnation rules, immediately after acquisition and considered as a separate parcel. The inventory value may not exceed the pro rata cost of the parcel except when this cost is less than $1. The minimum inventory value is $1.
B. The inventory value of each proposed excess parcel will be shown on an Excess Property Inventory Valuation Page (Form RW 07-13) in each parcel appraisal.
C. Inventory Value may be based on the appraiser's judgment without detailed supporting documentation. Excess valued in a partial acquisition appraisal need only be summarized on Form RW 07-13.
D. It is anticipated that Form RW 07-13 will not contain sufficient data to document a partial acquisition. If grantor desires to retain the excess and the excess has not been appraised on a partial acquisition alternate, the acquisition agent will request a revised appraisal.
E. Inventory value will be changed only if the appraisal is revised. Inventory values will not be revised to agree with administrative settlements, independent appraisals, stipulations, or condemnation judgments.

7.03.08.00 Rental Rates

Rental rates for all improved properties where the improvements are affected by the taking and rented unimproved properties shall be shown on the Appraisal Summary (RW 07-09).

The actual existing rental rate and the estimated economic rental rate will be shown on tenant-occupied properties. An estimate of the economic rental rate will be shown for all improved owner-occupied properties. The basis for the appraiser's estimate of economic rent on dwelling units to be acquired shall be documented in the appraisal usually by specific reference to comparable rental data (see Exhibit 07-EX-03). State ownership will not be considered in estimating the rate. All actual and estimated economic rental rate data that include utilities should be specific as to type of utility(ies) involved.

7.04.00.00 - VALUE CONCEPTS AND CONSIDERATIONS

7.04.01.00 Value Basis

Required property rights will be appraised at current fair market value. The property will be appraised as though free and clear of all liens, bond assessments, and indebtedness. The property will be appraised at its highest and best use, considering its legal and economic utility and desirability. Highest and best use is considered to be the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and results in the highest value.

Any decrease or increase in the fair market value prior to the date of valuation of real property caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property.

7.04.02.00 Total Value

The market value of required property is the total appraised value of the property rights proposed for purchase including net damages, if any, to the remainder. This amount is carried forward to the Appraisal Summary (RW 07-09) and the Parcel Summary Page (RW 07-04), if used.

7.04.03.00 Encumbered Fee

The condition of title of each subject parcel will be examined. The effects of land restrictions and existing rights-of-way and easements, recorded and unrecorded, will be considered in the land valuation. The effect of routine tract restrictions, domestic utility easements, and easements of nominal effect may be reflected in the overall valuation of the land. Fee areas encumbered with extensive easements and rights-of-way which materially affect the use or desirability of the land are to be valued separately, reflecting the effect of the encumbrances. Great care must be exercised in evaluating the effect of private land restrictions or easements in which the subject parcel is a servient tenement. In these cases, a separate appraisal of the dominant tenement and the effect on the servient tenement may be required.

7.04.04.00 Mineral, Water, Oil and Gas Rights

Mining claims, water rights, mineral reservation, and oil and gas rights will be valued as separate rights in land, if separately owned, or if comparable data supports other than nominal valuation. The appraisal will include the land value of the right, the improvements appurtenant to the right, and the damage payments and construction contract work necessitated by the proposed construction. The value of the fee ownership should reflect the loss of the surface area and other rights required to exploit the resource.

Frequently, these rights may be exploited in the after condition without interfering with the use of the surface for high-speed rail purposes. In these cases, the appraisal may show the right at a nominal land value and appropriate payments for improvements, damages, and construction contract work.

When necessary to make separate appraisals of these interests, the appraiser will identify the separate rights by subparcel letter designation. These rights need not be delineated on Appraisal Maps unless required for clarity.

7.04.05.00 Improvement Bonds and Assessments

Property will normally be appraised free and clear of improvement bonds and assessments. This assumes that the appraised value reflects these improvements over properties not so improved and therefore not subject to bonds and assessments. Comparable data are to be adjusted to reflect these differences where the comparables are not subject to the same bonded indebtedness.

Exception to this policy will be allowed only if both the following conditions are met:

A. The assessment area is relatively new, and few, if any, sales have occurred which reflect the effect of the bonded improvements on property values.
B. The appraisal indicates that the bonded improvement will be adequate for the area and will add value to the properties, at least, commensurate with its cost.

7.04.06.00 Leasehold Interests "Bonus Values"

The valuation of parcels will be made as if free and clear of leasehold interests. However, leasehold information is required. The appraisal will contain the name of the lessee, lease rate, and general summary of the lease terms. The contract, estimated economic rents and any circumstances which may indicate a "bonus value" situation, including the statement that one does or may exist, will be discussed.

"Bonus Value" is defined as the value of a tenant's leasehold interest in the real estate arising from contract rent that is less than the economic rent. The economic rent must be consistent with the highest and best use of the property. The amount of "bonus value" is a matter between lessor and lessee. Any "bonus value" shall be estimated only at the request of the acquisition agent for assistance in negotiations and not included in the Appraisal Report.

7.04.07.00 [Hold for Future Use]

7.04.08.00 Access Rights

The value of restriction of abutter's rights, including access rights, is measured by the loss in value of the remaining property before and after the restriction. The requirements for abutter's rights and/or access rights will be marked on the Appraisal Summary (RW 07-09) of all partial acquisitions. If abutter's rights and/or access rights are the only property rights acquired, the remark "Abutter's Rights and/or Access Rights Only" and nominal value will follow the "Land" heading. Valuation of any loss will be shown under "Damages." (see Section 7.09.00.00.)

When the Authority proposes to dispose of access rights, Project Development may request an appraisal of the market value of the property right being transferred. The measure of market value for access rights is the potential increase in value of the abutting property before and after the access is granted.

7.04.09.00 Temporary Easements

A temporary easement is an encumbrance for a specific use over a specified duration of time. Temporary requirements are valued by the loss in utility and enjoyment of the encumbered area for the entire easement term/duration. The appraiser shall discuss the proposed use of the temporary easement area with Design in order to understand and estimate the impacts to the subject parcel.

An appraiser is often unable to accurately calculate any varying levels of loss, as the Authority may not control when "actual" physical work starts and ends on a parcel within the span of the temporary easement term. Although the actual/physical use of a property may be anticipated for a limited duration within a set time frame, a property is considered to be encumbered for the entire duration of the easement term. While the extent of an owner's loss of utility and enjoyment may be influenced by a potential constraint to the lease or general use of the encumbered area, the temporary easement valuation shall employ one consistent (flat) rate for the compensable period. This loss may be expressed as a discounted land rental rate. The compensable period for a temporary easement shall commence on the "start date" and expire on the "end date." The start date shall be the project's Right-of-Way Certification date. The end date should be confirmed with Design, if possible. If the end date cannot be confirmed with Design, the end date shall be the project's Construction Contract Acceptance date.

If there are additional acquisitions and/or impacts to the subject property, timing of the temporary easement encumbrance shall be considered appropriately in order to avoid any potential double payment and/or minimize damages.

7.04.10.00 Permanent Easements

A permanent easement is a perpetual encumbrance for a specific use. Permanent requirements, such as drainage easements, etc., will be valued by the loss in utility and enjoyment before and after the imposition of the encumbrance. This loss may be expressed as a percentage of unencumbered fee value. The appraiser shall discuss the proposed use of the permanent easement area with Design in order to understand and estimate the impacts to the subject parcel. The requirement may also involve improvements and possible damages and benefits to the remaining property.

Care must be exercised that easements existing within the subject fee acquisition are properly valued and that double payment is not proposed for easement replacement requirements.

7.04.11.00 Unit Values

Comparable data, land, and improvement values are normally expressed as unit values. The unit values are then adjusted and applied to land and/or improvements of the subject, as appropriate, after taking differences into account.

Occasionally, land may be valued by comparison on a site or lot basis. This method must be supported by the comparable data. In a partial acquisition, the land will be valued at the comparable unit value of the class of land of which it is a portion. Distribution of value between right-of-way requirements and excess will be shown at the component unit land values of the classes of land of which the portions are a part.

7.04.12.00 Hazardous Waste and Hazardous Material Definition

A material is hazardous if it poses a threat to human health or the environment. The term *"hazardous waste"* is applicable to the storage, deposit, contamination, etc., involving a hazardous material (HM) which has escaped or been discarded or abandoned and which may be defined in general terms as being any of the following:

- Flammable
- Reactive (subject to spontaneous explosion or flammability)
- Corrosive
- Toxic

"Hazardous materials" may be any of a large group of the above products. If their use is under control and in accordance with applicable statutes and regulations, there is generally no appraisal problem.

7.04.12.01 Hazardous Waste General

A. No real property acquisition or possession is to take place until HW investigation reports have been completed and the appraisal reflects those findings.
B. The parcel Certificate of Sufficiency (COS) from Project Development to Right-of-Way is to have attached a Hazardous Materials Disclosure Document (HMDD) that provides a narrative certification that the property can be:
    1. considered free of significant HW; or
    2. the COS and HMDD will include a completed and approved property investigation report stating the nature and extent of contamination and an appropriate remedial cost estimate; or
    3. if appropriate, the COS and HMDD will state the owner's approved cleanup plans, schedule and current status.

The COS and HMDD are internal documents. As such, they are to be transmitted with the appraisal for review and retained in the file.

7.04.12.02 Hazardous Waste Identification and Investigation

During the early stages of project development, the Project Development Team (PDT) will identify sites or facilities that may be contaminated with HW for further investigation.

Environmental engineering administers HW investigations and should furnish resulting parcel reports and estimated costs to Right-of-Way by the time the parcel Certificate of Sufficiency with attached Hazardous Materials Disclosure Document is approved and forwarded to Right-of-Way.

The appraiser must receive and consider in the appraisal the effect of the parcel HW investigation report, or receive a certification that the parcel is considered "free" of HW, before a resulting parcel appraisal can be approved for acquisition purposes.

Right-of-Way will assist in the identification and investigation phases whenever possible and will provide the primary source of contact with property owners and operators. As such, Right-of-Way will:

A. Alert the PDT whenever a new potential HW site is discovered.
B. Obtain necessary Permits to Enter for HW investigation and cleanup from property owners and operators, including securing court orders through the Legal Division.
C. Provide normal right-of-way clearance activities to include cleanup of minor HW situations which can be handled as part of the clearance contracts.

Early identification of potential HW is essential. The PDT is responsible for developing and maintaining an HW tracking system database; however, Right-of-Way should assist in any possible way and ensure that the PDT is aware of any suspected HW sites.

Environmental engineering must give a copy of any reports and cleanup costs to Right-of-Way by the time the Certificate of Sufficiency with attached Hazardous Materials Disclosure Document is approved and provided to Right-of-Way. This must then be considered in the appraisal of the parcel or the Certificate with attachment must state the parcel is "free" of HW before the appraisal can be approved for acquisition.

7.04.12.03 Hazardous Materials

Asbestos containing materials (ACMs) and other HMs must be fully considered to ensure property with such HM is not acquired without adequate prior investigation, valuation analysis and clearance abatement. HMs primarily include asbestos, but can include polychlorinated biphenyls (PCBs), lead based paints, etc.

The identification, investigation and evaluation of parcels which may contain HMs must be made early to assure project delivery schedules are met. This early identification requires the appraiser to use common sense and knowledge to identify possible HM-containing property. Once identified, inspections will be performed by licensed, qualified persons, usually contractors hired by contracts awarded under the bidding process either by task order or separate contract.

The property owner must give prior written permission before an inspection can be made. The inspection will include a determination of:

A. The type, extent, location, and quantity of ACM (and any other suspected significant HM), within the structure;
B. Condition of the ACM - friable, nonfriable, stable or deteriorating, etc.;
C. Identification of and cost of appropriate remedial action(s):
    1. Removal
    2. Other acceptable steps (encapsulation, etc.)
    3. Cost of restoration.

Every improved property will be inspected except:

A. Residential improvements of one to eight units when:
    1. The market approach is the only, or clearly the primary, basis for valuation;
    2. Comparable data shares the general characteristics of the subject; and
    3. The existing improvements represent the highest and best use of the property;
B. Improvements constructed entirely after January 1, 1980.
C. Those improvements constructed with materials which can be easily determined to not contain HMs (example: all-metal storage buildings).

7.04.12.04 HW Site Identification

This, as well as information on testing and/or cleanup, including a cleanup cost estimate appropriate for fair market value appraisal analysis, should be furnished by Project Development for all parcel appraisals including replacement utility easements to be acquired by the Authority. The appraiser may obtain information to assist Project Development in identifying possible HW sites that may have been missed. This includes observing potential problems during the inspection of the subject property. It also includes questioning the owner and lessee about current and past possible HM and possible contamination on the site including underground storage tanks. When previously undiscovered tanks do exist, the appraiser must obtain as much information as possible regarding tank size, age, construction, location, contents, etc.

The appraiser must document observations and discussions with the property owner, lessee or other occupants regarding possible waste problems in the Parcel Diary.

As a general guide for appraisers, some present and prior land uses where HW/HM problems may exist are set forth below.

A. Commercial and industrial sites such as service stations, muffler shops, bulk plants, paint manufacturing companies, machine shops, plating works, dry cleaning plants, chemical and fertilizer companies (which may use or have used solvents, cleaning compounds, catalysts, cutting oils, plating solutions, dyes, paints, or other chemicals);
B. Junk yards, auto wrecking yards, dumps, or landfills;
C. Underground or aboveground tanks for storage of liquid hydrocarbons, pesticides or other toxic materials;
D. Existing buildings with asbestos siding, roofing, ceiling material, floor tiles, fire-proof doors, or insulation on water pipes, heaters, heating ducts, steel framing, etc.
E. Disposal sumps or pits which may contain agricultural chemicals or industrial wastes;
F. Utility substations or storage/maintenance facilities, and;
G. Sites where contamination may have resulted from an adjacent property owner's operation.

7.04.12.05 Notification

When a suspected HW site has not previously been identified, Right-of-Way is to immediately notify Project Development by memorandum. This memorandum is to give full details as to the appraiser's observations and findings regarding the potential HW problem. The memorandum will request an investigation to determine future actions. If the investigation finds potential HW and testing is necessary,

Project Development will hire a consultant to determine the nature and extent of the waste. If testing confirms contamination, Project Development is to furnish the appraiser with a cleanup cost estimate.

7.04.12.06 Valuation

Regardless whether the right-of-way requirement is fee or easement title, the real property will be appraised recognizing the effects of HW and HM on its market value.

A. HAZARDOUS WASTES -

The valuation of property that involves an identified HW site will include: 1) The market value of the property as if free and clear of the HW. 2) The market value of the property considering the effects of the HW.

The opinion of market value of a property in its contaminated condition must consider the following:

- Local regulatory agency cleanup requirements.
- Estimated cleanup cost furnished by Project Development.
- Market data involving sales, offers or listings of properties with comparable cleanup problems.
- Marketability of parcels with known HW cleanup problems considering opinions of developers, brokers, lenders, insurers, investors or other informed persons.
- Any other pertinent data, opinions, etc.
- Comparable data verification will at a minimum include the following:
  1. Was site investigation or testing done as a condition of sale? What were the results?
  2. Did the transaction price or terms reflect the results and/or cost of correction?
  3. Was an indemnification agreement to protect the buyer from risks associated with HW/HM a part of the deal?
- If investigation indicates that the property being appraised either originated or caused contamination that has, or may have, also contaminated adjacent property, the Director of Real Property is to be contacted.
- Adequate comparable data may not be available to directly conclude a fair market opinion of a property in its contaminated condition. In such cases, the alternate appraisal may consider deducting the estimated cleanup cost from the value of the property as if free and clear of the HW. The estimated cleanup cost should reflect what a knowledgeable buyer would reasonably expect to pay in order to utilize the property at its highest and best use. This does not necessarily follow the remedial methods, costs or construction schedule associated with the Authority's project. Also, the property's highest and best use could change depending on the nature and extent of contamination and alternate remediation options and costs.
- Analysis must consider the cleanup requirements, for highest and best use, of the local regulatory agency having jurisdiction. Full cleanup may not be required or can be delayed for a certain period of time. Thus, the cleanup estimate as furnished by Project Development may need to be adjusted or discounted to reflect the market value situation.

  Appraisals that result in a negative value (cost of HW cleanup exceeds market value of cleared property) will be shown as "$0."

The existence or absence of possible hazardous waste will be noted on the Appraisal Summary (RW 07-09) in every appraisal by checking "Yes" or "No" after "Possible HW (including underground tanks)." Where possible or confirmed HW problems do exist, a full discussion will be included in the body of the appraisal. This discussion will describe the nature of the problem or suspected problem, regulatory agency cleanup requirements, status of testing or cleanup plans and any other pertinent information, including the impact on market value, if any.

B. HAZARDOUS MATERIALS -

The Real Property Branch must obtain and fully evaluate the impact of ACM, or other HM, before an appraisal report can be approved for acquisition purposes. The Real Property Branch retains the responsibility for requesting needed inspections on improved properties which were originally excluded from inspection. The appraisal report will document if an inspection was not required.

Appraisals of all improved properties to be acquired will reflect market adjustments for the presence of ACMs or other significant HMs. Evaluation of improved comparable sales data will, at a minimum, include verification of the following:

1. Was an inspection of the buildings for HWs and/or HMs made as a condition of sale? If "Yes," what were the results of the inspection?
2. Did the transaction price or terms reflect the results and/or the cost of correction or other HW/HM considerations?
3. Was there an indemnification agreement provided by the seller that affected the property's sale price by protecting the buyer from liability, risk or exposure associated with a known or possible HW/HM condition?

Valuation will consider the impact of HM on the property. The market may react to the presence of HMs in an improvement on the subject by adjusting the price/terms of the purchase agreement. Dollar adjustments, if any, may be more, less, or equal to the cost of the remedial action to remove, restore, or otherwise mitigate the problem.

The effect of HM on value will vary depending on whether the existing improvements are the highest and best use of the land. Cost of remedial action may change the highest and best use. Further, any remodeling, renovation, repair or modernization which requires disturbance of otherwise dormant HMs in order to achieve or maintain highest and best use must be analyzed. Economic life of improvements may be shortened as a result.

The fact that the Authority will incur cleanup costs as part of the right-of-way clearance process does not necessarily indicate that the market value of the property is affected. In appraisals where the estimated demolition cost of an improvement is being deducted from the market value of a property as if vacant and ready for development, the estimated demolition cost should include the removal of any HMs.

Containerized HMs used in an operation that represents the highest and best use of a property will ordinarily not affect market value — i.e., paint stored in cans in an auto paint shop. On the other hand, containers of HMs that must be removed to utilize a property to its highest and best use may impact market value — i.e., abandoned drums of toxic chemicals on a vacant site.

Following investigation, the existence or absence of HMs will be noted in the appraisal. Where HMs occur, the appraisal discussion will include a description of the materials, their location and condition, any regulatory controls applicable, the effect on the property's current or future use, present and/or future remediation actions and costs, and the estimated impact on market value.

7.04.13.00 Market Value of Nonprofit, Special Use Properties

The statutory definition of market value for nonprofit, special use properties is defined by Evidence Code Section 824(a) as:

> *"The cost of purchasing land and the reasonable cost of making it suitable for the conduct of the same nonprofit, special use, together with the cost of constructing similar improvements."*

These provisions are applicable only if the property meets all four of the following criteria:

1. The subject property is operated for a special, nonprofit use.
2. The operator must have an exempt status with the State or Federal Income Tax offices.
3. The property is not owned by a public entity.
4. There is no relevant, comparable market data.

"The cost of purchasing land" is considered to be the estimated cost to acquire an area of sufficient size to conduct the special use. It is not necessary to identify any specific property. The cost should usually be estimated on the basis of typical unit or site prices for a land area with sufficient utility to conduct the use. The geographical area analyzed to arrive at the typical price should be suitable to the special nonprofit use.

"The reasonable cost of making it suitable for the conduct of the same nonprofit, special use" should be based on the typical or appropriate factors in the geographical area suitable to the use. There is no requirement to base the cost on a specific site, and there is no requirement that the nonprofit entity relocate in order to be compensated under this method.

"The cost of constructing similar improvements" shall be based on the value of reproducing the improvements without taking into consideration any depreciation or obsolescence of the improvements per Evidence Code Section 824(b).

The total sum of these three costs is the market value under this method. It is important to note that Federal participation in acquisition costs is limited in these cases to fair market value as commonly measured on the basis of replacement cost new less depreciation. For accounting purposes, appraisal reports shall include the market value of the subject property using a conventional cost approach (considering any applicable depreciation).

The difference between the two valuations will be a nonparticipating, state-only payment.

Properties of this type may not be acquired often but have potential for significant effects on capital and scheduling, and should be discussed with the Real Property Branch before the owner is contacted and the appraisal begun. All nonprofit, special use property appraisal reports are to be approved consistent with current delegations.

7.05.00.00 - METHODS OF VALUATION

7.05.01.00 Value Approaches

The appraisal of all properties will utilize the three approaches to value as appropriate. If an approach is not used, an explanation will be given for the nonapplicability of the particular approach. Even if not required, separate approaches may be used if helpful.

The final reconciliation of value will be made considering the relative validity and reliability of each approach and will be the best estimate of the value of the entire property. The basis of reconciliation and relative considerations will be explained as necessary. Averaging is not a satisfactory reconciliation procedure. Exhibit 07-EX-04 is a suggested format. The final Estimate of Value should be further segregated for total charges to lessee-owned improvements, partial acquisition, joint acquisitions, etc.

Separate approaches and reconciliations for before and after conditions may be required to measure severance damages.

7.05.02.00 Sales Comparison Approach

The Sales Comparison Approach is required in most appraisals. The only exception to this rule is in certain governmental, public utility, or special-purpose parcels under specified circumstances. Comparable data will be fully utilized for direct comparison of total values, land values, improvement values, for information for other approaches, and for damage and special benefit studies.

Gross Income Multipliers are a unit for comparison of income properties and are indicated when there are sufficient sales of similar properties. It is extremely important to use similar properties when employing this method.

7.05.02.01 Comparable Data

The most reliable comparable data are the sales and listings of properties similar to subject parcels. Comparable data are not to be limited to sales and listings or to use in the Sales Comparison Approach. Valuable information may be gained for all three approaches by studies of similar properties with regard to use and development, well-informed opinions, independent appraisals, depreciated values, after condition land use, remainder parcel and excess parcel sales, options, income-expense experience, etc. Each factor or value element in the appraisal which can be supported by comparable data attains greater reliability.

Significant comparable data of all types are expected to be included in the Appraisal Report in support of appraisal conclusions.

Sections 7.02.03.00 O and P contain additional requirements for comparable data collection, confirmation, and reporting.

7.05.02.02 Analysis of Comparable Data

Proper analysis of comparable data in relation to the subject is basic to the Sales Comparison Approach. The following procedures are intended to achieve the optimum quality in the discussion relating comparables to the subject parcel:

A. Comparable-data prices may be compared in terms of whole properties. However, to facilitate comparison, reduction of comparable prices to a common denominator or unit of comparison may be desirable. Examples are price per square foot and price per dwelling unit. Applicable adjustments may be made on either the whole property or unit of comparison basis.

B. The six basic elements of comparable adjustment are:

1. Property rights conveyed (i.e., conveyance of leasehold interest, etc.)
2. Financing terms
3. Conditions of sale (i.e., motivations of the buyer or seller)
4. Expenditures immediately after purchase (expenditures a buyer will have to make immediately upon purchase, i.e., demolition costs, hazardous waste cleanup)
5. Market conditions (time)
6. Physical characteristics (e.g., location, size, shape, topography, access, etc.)

C. Adjustments to Comparable Data

The Authority appraisal policy recognizes the need to have an appraisal that is well supported and demonstrates a thorough analysis of the elements of comparison necessary to arrive at a factual conclusion in the sales comparison approach. Each appraisal must contain a sufficient description of the comparable sales including the specific elements of comparison made thereto so that it is possible for the reader to understand the conclusions drawn by the appraiser from the comparable sales data. Authority policy mandates that quantified adjustments shall be the primary method of adjusting comparable data. The quantified adjustments can be expressed as a percentage or dollar amount and represent a market derived adjustment or, absent that, the appraiser's opinion of the comparative weight for the element of comparison to be made.

In very limited circumstances when the appraiser cannot find market derived adjustments and/or cannot form an opinion of the comparative weight for the element of comparison to be made, qualitative adjustments can be used. When the appraiser must resort to qualitative adjustments, they must recognize that this form of comparative analysis will require a more extensive discussion. Merely to state that the comparable is superior or inferior, either overall or for a particular element of comparison, is not suitable. Each element of comparison must be discussed in sufficient detail to allow the reader to clearly understand the appraiser's reasoning for the adjustment and the comparative weight that the appraiser is attributing to that element of comparison. To facilitate clarity and consistency, seven levels of comparison are to be used in qualitative adjustment: similar, slightly inferior, inferior, far inferior, slightly superior, superior, and far superior. The degree of difference may be expressed as one, two, or three pluses or minuses applied to each element in a grid. In addition, the appraiser must state whether the comparable sale is overall superior or inferior to the subject.

Quantitative and qualitative adjustments are not mutually exclusive methodologies. Because one element of comparison cannot be quantified does not mean that all adjustments to a comparable sale must be qualitative. All factors that can be quantified should be adjusted accordingly. When quantitative and qualitative adjustments are both used in the adjustment process, all quantitative adjustments should be made first.

If no adjustment of any element is needed, a statement explaining the reason(s) shall be included in the appraisal.

In developing a final value estimate by the sales comparison approach, the appraiser shall explain the comparative weight given to each comparable sale, no matter whether quantitative or qualitative adjustments or a combination thereof are used. A comparative adjustment chart or grid is strongly recommended and may assist the appraiser in applying the adjustments consistently and help the reader follow the appraiser's reasoning and analysis.

D. Sequence of Adjustments

The following sequence for making adjustments is required whenever percentage adjustments are used either solely or in combination with dollar adjustments. The first series of adjustments are sequentially applied with resulting subtotals for each adjustment. After applying the market condition adjustment, all other adjustments for items such as location, physical characteristics, etc., are combined and applied to the market conditions adjusted price to arrive at a final adjusted sales price.

This sequence is depicted in the following example:

Unadjusted sales price		$100,000
Adjustment for property rights conveyed	0%	0
Adjusted price		$100,000
Financing terms	-5,000	-5,000
Adjusted price		$95,000
Conditions of Sale	+10%	+9,500
Adjusted price		$104,500
Adjustment for expenditure immediately after		+5,000
Adjusted price		$109,500
Adjustment for market conditions	+10%	+10,950
Adjusted price		$120,450
Location	+5%	
Size	-10%	
Shape	-5%	
Topography	-5%	
Access	+5%	
Net Adjustment	-10%	**-12,045**
Final Adjusted Sales Price		**$108,405**

7.05.03.00 Assessor's Office Data

Under Section 408 of the Revenue and Taxation Code (AB 82-Chapter 1641), County Assessors are required to provide information, abstracts, or access to records to Authority appraisers "pursuant to their authorization to examine such records."

The code provides that Authority will reimburse the Assessors for their actual costs incurred in furnishing data pursuant to the code. These costs and the resulting charges to Authority can vary from county to county.

7.05.04.00 Cost Approach

The Cost Approach is required in the valuation of improved properties where income and market data are nonexistent, limited, or inconclusive. In the valuation of improved properties where there is sufficient comparable data to estimate the value of the property by the market and income approaches, the Cost Approach is optional. However, the Cost Approach may still be appropriate and advisable in these cases for reconciliation with the Income and Sales Comparison Approaches. The Cost Approach is not required for the valuation of minor improvements and improvements that have only interim, salvage, or a negative value.

An analysis and support of depreciation must accompany the Cost Approach. The basis for the "cost new" estimates must be supported by acceptable cost sources. This applies to the valuation of buildings, structures, machinery and equipment and all other improvements pertaining to the realty defined in Code of Civil Procedure Section 1263.205.

Support of the cost new estimates with acceptable cost sources applies to all appraisals using the Cost Approach prepared by either staff or independent appraisers, including separate specialty-type appraisals (e.g., machinery and equipment). The same support for cost estimates also applies to cost-to-cure damages.

The following are some of the cost-new sources which are acceptable:

- Recent actual construction costs of similar improvements.
- Cost data services (e.g., Marshall & Swift).
- Architects, engineers, contractors, builders and supplier estimates.
- Actual written bids from contractors, engineers, suppliers, etc.
- Manufacturers' catalogs.

When estimates from architects, engineers, contractors, etc., are used as cost sources and the estimated cost new of any improvement is substantial, a secondary cost source must be used as collateral support. If more than one cost source is used and the costs differ, the appraiser must furnish rationale for the final cost estimate.

When a cost-data service such as Marshall & Swift is used as a cost source, the appraiser must show the page, section, and date of each reference, together with support for any adjustments used in estimating the cost new. Cost references must be identified or referenced on an item-by-item basis in the Cost Approach. Exhibit 07-EX-05 is a suggested format for displaying the Cost Approach.

7.05.05.00 Income Approach

The Income Approach is appropriate and usually required for valuation of properties that are bought and sold in the market on the basis of income.

There may be instances where there is sufficient comparable data to very clearly support the value indicated by the Sales Comparison Approach without the need for analysis by other approaches. This would most often occur with smaller residential income properties. Use of the Income Approach in those cases is optional. However, its use may still be appropriate as a check against the other approaches. In most cases involving income property, inclusion of an Income Approach is expected.

The Income Approach is not required for minor partial acquisitions with no severance damages, which have little or no effect on the income stream and where there is no necessity for entire property valuation.

When the Income Approach is used, documentation to support each element, including income, expenses, and rate(s) must be included in the Appraisal Report. If possible, the same comparable sales used in the Sales Comparison Approach should be analyzed in sufficient detail to reflect these elements. If these sales cannot be utilized, other comparable data must be gathered and analyzed to obtain the necessary information. These data or a detailed summary must be included in the Appraisal Report.

Where economic rent varies from existing or contract rent, the increase or decrease shall be explained and supported by market information.

7.05.05.01 Income Schedule

A schedule of actual and fair income will be included as a supplement. The schedule will show the rental basis including furniture or utilities supplied, and the reasons for adjustment to fair rents. It will also include significant leasehold terms and conditions and may include a Gross Income Multiplier valuation. An example for an income residential property is Exhibit 07-EX-07, which also provides basic relocation assistance information.

7.05.06.00 Review of Owner's Claimed Out-of-Pocket Expenses

The Acquisition agent must verify any payment to reimburse owners for out-of-pocket expenses claimed to be incurred by the development of property when development is interrupted by State's Acquisition. (see Chapter 8.) This will include appropriate audits, and, if necessary, review by the Legal Office. However, the Acquisition Agent should request the Real Property Branch to assist in the review of the reasonableness of the expenses claimed by the owner. This review will be to determine whether or not any of these expenses claimed have already been considered and included in the appraisal. This review should eliminate any duplication of payments.

7.06.00.00 - LAND

7.06.01.00 General

Final appraised land value will assume the land to be vacant and ready for development to its most probable highest and best use. Land value will be established in almost all cases by the Sales Comparison Approach.

It is proper to use zones of value due to differing amenities or utilities of portions of the parcel. Examples of zones of value would be illustrated in differences between level and hillside, commercial and residential, or irrigated and nonirrigated portions of an ownership. Differing land values by zone must be supported by comparable data. When using zones of value, it is important to consider the effect each zone has upon each other and the value of the whole. Without this, merely aggregating the different zones of value is not a complete analysis.

Valuation of timber land, agricultural land, government land, land which is encumbered by a conservation easement, and fee-owned public utility properties may be subject to special treatment as noted in this Section and in Section 7.13.50.00.

The effect of existing private expressway access openings on the development potential of the land should be investigated. The reasonable probability of developing such an opening as a future public street connection to and from the interior of the property is a valid valuation consideration.
Retaining walls and utility services necessary for proper use of the land should be included in land valuation. Certain specific improvements such as agricultural wells, fencing, etc., may be included with land, as described in 7.07.05.00 and 7.07.06.00.

7.06.02.00 Timber Land

Valuation of commercial timber will be based on in-place value of the uncut timber estimated by timber crews. The value of the timber and the value of cut-over land will be shown separately but totaled in the land valuation. Care must be exercised that proper market consideration is given to possible recreational or residential use of the timbered area.

7.06.03.00 Agricultural Land

Adequately developed agricultural properties such as orchards and vineyards frequently sell on acreage values, considering the state of development and productive capacity of the land as improved. As such, the value of trees, vines, irrigation systems, agricultural wells, fencing, etc., may properly be included as part of the land value. The unit value should reflect adjustment to the comparable data for differences in age, condition, and productive capacity as compared to the subject. If valued by this method, agricultural improvements other than trees and vines will be briefly described under “Improvements” with zero value and the remark that their value is included in the “Land.” The description of pumps and motors will include model and serial numbers.

Although Code of Civil Procedure Section 1263.250 requires the valuation of and payment for growing crops when possession is taken before harvesting, it is usually not necessary to make such a valuation in reports prepared for negotiations. The owner will generally be afforded the opportunity to harvest the existing crop.

7.06.04.00 Valuation of Williamson Act or Farmland Security Zone Lands and Timberland Production Zone Land

If the land proposed for acquisition, in whole or in part, is under contract with a local agency pursuant to the California Land Conservation Act of 1965, special notification and valuation procedures apply. This Act, which is also known as the Williamson Act, is found in Government Code (GOV) Sections 51200 – 51295 inclusive. Article 6, GOV Sections 51290 – 51295, governs eminent domain procedures for Williamson Act lands. Agricultural properties may also be held subject to Farmland Security Zone contracts, which are similar to but expand upon Williamson Act contracts (GOV Sections 51296 – 51297.4). Generally, the same eminent domain provisions applicable to Williamson Act lands will also apply to Farmland Security Zone properties (GOV Section 51297.1).

The Williamson Act and Farmland Security Zone provisions require special notification under GOV Section 51291(b) to the Director of the California Department of Conservation and the local governing body administering the preserve ***" . . . whenever it appears that land within an agricultural preserve may be required by a public agency or person for a public use . . . ."*** Usually such notification would take place during the environmental phase of the project, with facts and findings in the approved environmental document. The appraiser should confirm with the Environmental Branch that this notification has been performed.

As to valuation for eminent domain acquisitions, the law requires that Williamson Act contracts shall be considered never to have existed for the purpose of valuation in the case of a total acquisition, and disregarded in the valuation of the land actually taken in a partial acquisition. If the remaining land subject to contract will be adversely affected by the acquisition, the value of the damage shall be computed without regard to the contract (GOV Section 51295). As noted above, the same procedures apply for properties under the Farmland Security Zone contracts.

Similar notification and valuation procedures apply for land zoned Timberland Production Zone (TPZ) (GOV Section 51155). Like lands subject to Williamson Act contracts, these specialized zones artificially affect highest and best use, and are to be disregarded in eminent domain appraisals as outlined above. However, the notification is to be sent to the Secretary of Resources and the local governing body [GOV Section 51151(b)]. Again, the appraiser should confirm with the Environmental Branch that this notification has been performed. Timberland Production Zones are governed by the "California Timberland Productivity Act of 1982" under GOV Sections 51100 – 51155 inclusive. Article 6, GOV Sections 51150 – 51155 governs eminent domain procedures for TPZs. In valuation, the TPZ shall be deemed never to have existed. Under GOV Section 51155, when any action in eminent domain is filed in court for a full acquisition, the parcel is immediately rezoned as to the land actually being condemned; for the purposes of establishing the value of the land, the TPZ must be treated as though it never existed. When an action to acquire less than all of a parcel of land subject to a TPZ is filed, the parcel is deemed immediately rezoned as to the land actually condemned or acquired and must be disregarded in the valuation process only as to the land actually being taken, unless the remaining land subject to the TPZ will be adversely affected by the condemnation, in which case the value of that damage shall be computed without regard to the TPZ. As a result, the appraiser should contact the County Planning Department to ascertain the zoning of the parcel upon the removal of the TPZ.

Each of these special zones will be disclosed by investigation at the local planning agency as part of the appraisal process.

7.06.05.00 Valuation of Land Encumbered by Conservation Easement

If the land proposed for acquisition is encumbered by a conservation easement, special procedures apply. These properties are distinguished from Section 7.06.04.00 above in that the properties noted above are owned in fee and have restrictive zoning overlays, whereas the properties covered in this Section are encumbered by conditions in a recorded deed. The term "conservation easement" is defined in Civil Code (CIV) Sections 815-815.5 and refers to a restriction placed by (or on behalf of) the owner upon the use of land for the purpose of retaining land in its natural, scenic, historical, agricultural, forested, or open-space condition. Public entities, qualified tax-exempt, nonprofit organizations, and certain California Native American Tribes [see CIV Section 815.3(c) for specific information regarding qualifying tribal entities] can hold conservation easements, but all conservation easements must be recorded under CIV Section 815.5.

California law recognizes several special types of conservation easements that involve specific approaches to valuation and acquisition (Open-Space, Wildlife, and Agricultural Easements, discussed further in this Section). However, conservation easements are generally acquired and valued by the Authority in the manner set forth in Code of Civil Procedure (CCP) Section 1240.055. Under the statute, the Authority has authority to acquire conservation easements solely under either CCP Section 1240.510 (compatible public use) or CCP Section 1240.610 (more necessary public use). The following provisions apply:

NOTIFICATION:

When sending the *Notice of Decision to Appraise* to the fee land owner, the appraiser shall also send a letter to the easement holder notifying them of the State's proposed acquisition and including the project description and appraisal map. This notice is mandatory and provides for early communication with the parties involved with the conservation easement acquisition; CCP Section 1240.055(c) states ***"Not later than 105 days prior to the hearing held pursuant to Section 1245.235, or at the time of the offer made to the owner or owners of record pursuant to Section 7267.2 of the Government Code, whichever occurs earlier, the person seeking to acquire property subject to a conservation easement shall give notice to the holder of the conservation easement as provided in this subdivision."*** CCP Section 1240.055(c)(1)(D) requires the easement holder, under certain circumstances set forth in CCP Section 1240.055(c)(2)(B), to take several steps – one of which is to forward the State's notice within 15 days to any and all public agencies funding or having direct involvement in the approval or permitting of the original easement. An example of this notice is included in the Exhibits as 07-EX-17B *Notice of Decision to Appraise (Conservation Easement).* The holder of the conservation easement or the public entity receiving notice, or both, may respond with written comments on the acquisition, including identifying any potential conflict between the public use proposed for the property and the purposes and terms of the conservation easement. Written comments on the acquisition may be submitted no later than 45 days from the date the notice was mailed to the easement holder. The statute requires the Authority to respond to comments from the easement holder and the notified public entity within 30 days. Any comments received shall be referred to the project environmental coordinator for expert analysis and input. The result of that coordination shall be utilized in preparing responses to comments. It shall also be considered in the appraisal of the impacts of the proposed project on the conservation easement.

VALUATION:

- CCP Section 1240.055(g)(1)(A) provides general parameters for valuing conservation easements: ***"The total compensation for the acquisition of all interests in property encumbered by a conservation easement shall not be less than, and shall not exceed, the fair market value of the fee simple interest of the property as if it were not encumbered by the conservation easement."***
- The statute further reads: ***"If the acquisition does not damage the conservation easement, the total compensation shall be assessed by determining the value of all interests in the property as encumbered by the conservation easement."*** [CCP Section 1240.055(g)(1)(B), emphasis added]. A "before and after" analysis will be the primary means of valuing the rights acquired from the interest(s).
- The final valuation guidance in the statute [CCP Section 1240.055(g)(1)(C), emphasis added] reads that ***"If the acquisition damages the conservation easement in whole or in part, compensation shall be determined consistent with Section 1260.220 and the value of the fee simple interest of the property shall be assessed as if it were not encumbered by the conservation easement."*** That section (CCP Section 1260.220) provides that each property interest and the damage to the remainder of each interest shall be separately "assessed," but allows the condemning agency to present an undivided offer at its discretion.

While the appraisal shall present separate valuations of just compensation due to the fee and easement holder, it is the Authority's usual policy to follow CCP Section 1260.220(b) that allows an undivided offer.

The acquisition may damage the conservation easement by reducing the environmental and/or ecological goals and values for which the easement was acquired. The appraiser shall consider damages to the remainder of the conservation easement. Damages to the remainder of the conservation easement may occur due to reduction in the critical size of the protected area (i.e., size of the remainder limits ability to serve intent of easement), fragmentation thereof, or related issues. These are technical questions that require communication with the Environmental Services Branch and input from the affected stakeholders through the notification and communication process outlined above.

The following concepts are consistent with appraisals in general: there may be the "value of the part acquired" and/or "damages to the remainder" from the encumbered fee area, in addition to "the value of the part acquired" and/or "damages to the remainder" from the unencumbered fee area (that is, free of the conservation easement). The appraiser must be careful not to duplicate compensation to the fee and easement areas.

The general case is that most high-speed rail acquisitions are fee acquisitions that may potentially impair the value of the conservation easement as the high-speed rail system improvements typically physically impair the natural resource values for which the conservation easement was acquired in the first place. In such cases, the Authority will typically invoke the authority of CCP Section 1240.610 to acquire the property. The measure of compensation is based on the rights that the express deed language grants to the Authority, and upon the assumption that the Authority's exercise of its granted rights are "more necessary" and will displace the conservation use(s) of the property. Anecdotal or unrecorded assurances of about lesser impacts, regardless of the source(s) of the assurances, should be disregarded.

However, instances may arise where the acquisition will not impair the conservation easement. This occurs where the Authority's authority to acquire is based on CCP Section 1240.510, in that the use to be put to the land is "compatible" with the conservation easement purposes, and the easement deed language has been specifically modified to perpetuate and protect the environmental values for which the conservation easement was created. In such cases, the acquisition would result in no impairment to the conservation easement. As previously described, the property should then be valued as though encumbered by the conservation easement.

In order for the appraiser to incorporate these compatibility findings into the appraisal, specific documentation must be provided from the certified project environmental document. In addition, communication with the Environmental Services Branch, the easement holder, and impacted public agencies should be undertaken to reach a mutual concurrence on the compatibility finding. Any modifications to the acquisition easement deed to ensure compatibility would necessarily be drafted and/or approved by the Legal Division in conjunction with the discussions with the stakeholders. The appraiser should fully discuss the findings in the appraisal and attach a copy of the easement deed with the modified language.

Regardless of possible damage(s) to the remainder of the easement, the valuation analysis of all reports should include the unencumbered fee value of the acquisition. The Appraisal Summary (RW 07-09) will show the just compensation to the fee interest and just compensation to the conservation easement interest.

If the recorded conservation easement, recorded deed, or other document encumbering the acquisition parcel includes a "condemnation clause" which specifies a different procedure from the statutes by which just compensation will be segregated between the underlying fee owner, the conservation easement holder, and/or funding entities, then the recorded easement language shall be cited and attached in the appraisal and acquisition. The appraiser still performs the analysis between the conservation easement and the fee interest as above.

The appraiser should find conservation easements of all types disclosed in the exceptions to the preliminary title report as they are required to be recorded by law. In addition, the appraiser should also consult the certified environmental document, the approved project report, and/or the project environmental coordinator for guidance and consistency regarding how the project Authority plans to address any acquisitions of conservation easements.

Identification and evaluation of conservation easements frequently involve complex legal issues in the areas of real property and State and Federal environmental law. In the event that legal assistance is needed in assessing the Authority's and grantors' rights and/or duties with respect to conservation easements, the Legal Division should be contacted.

7.06.05.01 Open-Space Easements

Open-Space Easements (easements established to preserve the natural character of open-space land for the benefit of public use and enjoyment) should be treated in the appraisal as other conservation easements (in accordance with CCP Section 1240.055), with one exception. If the open-space easement was gifted or donated, the easement shall terminate at the time of condemnation complaint filing; the owner is compensated as if the easement did not exist (GOV Sections 51063 and 51095).

7.06.05.02 Wildlife Conservation Easements

Wildlife Conservation Easements (easements held by state agencies at least 10 years in duration primarily to benefit wildlife) will be acquired in accordance with Fish and Game Code (FGC) Section 1348.3. The eminent domain law regarding conservation easements (found in CCP Sections 1240.055(g)(1)(A)-(C) as referenced in the previous section) does not apply in its entirety to wildlife conservation easements acquired by a state agency, as stated in CCP Section 1240.055(h). The following principles are specified in FGC Section 1348.3, which is part of the "Wildlife Conservation Law of 1947" under FGC Sections 1300-1375.

Under FGC Section 1348.3(b), prior to the initiation of condemnation proceedings against a state agency-held wildlife conservation easement, the condemning entity shall give notice to the holder of the easement, provide an opportunity for the holder of the easement to consult with the condemning agency, provide the holder of the easement the opportunity to state its objections to the condemnation, and provide a response to the objections. CCP Section 1240.510 (authority to acquire for a compatible public use) and CCP Section 1240.610 (authority to acquire for a more necessary use) apply to wildlife conservation easement acquisitions. The condemning governmental entity is required to prove by clear and convincing evidence that its proposed use satisfies the requirements of those statutes. At the appraisal stage, the FGC Section 1348.3(b) notice of the proposed acquisition shall be given to the holder of the wildlife conservation easement. Exhibit 07-EX-17B may be used for this purpose. Upon receiving the response to the notification, the appraiser shall forward the response to the Environmental Services Branch and the Senior Right-of-Way Agent. The Authority is required to provide a response to any objections to the acquisition.

The statute does not explicitly identify a valuation methodology, nor does it preclude one; therefore, the following valuation approach is recommended, consistent with similar special conservation easement valuations. In valuing the acquisition, the owner of the land in fee shall be paid the full value that would have been payable to the owner but for the existence of the wildlife conservation easement less the fair market value of the easement, and the easement holder shall be paid the value of the wildlife conservation easement. The appraisal shall take into account any reasonable impacts disclosed by the comment process as outlined above.

7.06.05.03 Agricultural Conservation Easements

Agricultural Conservation Easements are interests in land, less than fee simple, which represent the right to prevent the development or improvement of the land, as specified in Civil Code Section 815.1, for any purpose other than agricultural production. Such easements are granted for the California Farmland Conservancy Program by the owner of a fee interest to a local government, nonprofit organization, resource conservation district, or to a regional park or open-space district/authority that has the conservation of farmland among its stated purposes as provided by statute, or as expressed in the entity's locally adopted policies. Agricultural conservation easements are granted in perpetuity as the equivalent of covenants running with the land (Public Resources Code Section 10211).

Agricultural conservation easements will be appraised in accordance with Public Resources Code (PRC) Section 10261. According to PRC Section 10261(a)(1), ***"The owner of the land in fee shall be paid the full value that would have been payable to the owner but for the existence of the easement less the fair market value of the easement, as determined by an independent appraisal, at the time of condemnation."*** Furthermore, PRC Section 10261(a)(2) states ***"The [California Farmland Conservancy] program, and any other contributing parties if so provided in the easement, shall be paid***

the value of the easement at the time of condemnation." In valuing the acquisition, the owner of the land in fee shall be paid the full value that would have been payable to the owner but for the existence of the agricultural conservation easement less the fair market value of the easement, and the easement holder shall be paid the value of the agricultural conservation easement.

However, CCP Section 1240.055 subdivisions (a) through (f), which govern scope, notification, resolutions of necessity and court proceedings, still apply. It is only the valuation subsection, CCP Sections 1240.055(g)(1)-(2), that does not apply to agricultural conservation easements acquired under PRC Section 10261.

7.06.05.04 Replacement Conservation Easements

In some cases where the Authority is acquiring a property encumbered by a conservation easement, it may propose replacement of the conservation easement. This may occur by replacement with a substitute property or easement elsewhere, or by acquiring a replacement conservation easement area from the existing fee owner (this applies where there is a remainder that is not encumbered by an existing conservation easement). Usually, this type of an arrangement will be developed through the environmental phase of the project and documented in the approved environmental document, license, certification, or permit. In addition, there will be cases where the certified environmental document will require a replacement easement area that exceeds the existing easement area by a ratio that is higher than 1:1. The appraiser will appraise the project requirement and any replacement property as per normal procedures and cite the approved environmental document, license, certification, or permit's specific provisions for the treatment of conservation easement and the replacement conservation easement.

7.06.05.05 Comparison of Statutes Regarding Valuation of Conservation Easements

The following table shows the relationship between the statutes regarding the valuation of existing conservation easements.

Comparison of Statutes Regarding Valuation of Conservation Easements

Easement Type	Scope of Law (Application)	Measure of Compensation
Conservation Easements	• Applies to recorded conservation easements (CIV Section 815.5), whether local, special district, state, federal, or tribal, [CCP Section 1240.055(a)] or held by a tax-exempt nonprofit entity whose primary purpose is conservation, etc. (CIV Section 815.3). • Does not apply to wildlife conservation easements if they were acquired by a State agency. [CCP Section 1240.055(h)]. • Per CCP Section 1240.055(g)(2), the valuation methodology [CCP Section 1240.055(g)(1)] does not apply to Agricultural Conservation Easements acquired under PRC Section 10261.	• Allocation between encumbered fee and easement areas as provided in CCP Section 1240.055(g)(1): ➢ If the acquisition does not damage the easement, compensation is assessed as encumbered. ➢ If the acquisition does damage the easement, compensation is assessed as not encumbered. ➢ The total compensation of all interests shall not be less than, and shall not exceed, the fair market value of the fee simple interest as if it were not encumbered by the easement.
Open-Space Easements	• These apply only to open-space easements acquired by or on behalf of a city or county. **GOV Sections 51063 and 51095**	• Similar to the methodology for conservation easements above, with one exception: ➢ If the open space easement was gifted, then the compensation shall be calculated as if the easement does not exist.
Wildlife Conservation Easements	• Applies only to state-agency acquired wildlife conservation easements [FGC Section 1348.3(a)(3)] as defined in CIV Section 815.1 and recorded in CIV Section 815.5. **FGC Sections 1300-1375**	• Not specified in FGC Section 1348.3 or related statutes. FGC Section 1348.2 provides that the (original) acquisition price " . . . shall not exceed the fair market value of the property." Suggested methodology consistent with similar special conservation easement valuations: ➢ The land fee owner is compensated for the fair market value as encumbered. ➢ The easement-holder is compensated for the value of the easement

Agricultural Conservation Easements	• Applies to agricultural conservation easements acquired through the "California Farmland Conservancy Program" (PRC Section 10211), administered by the Department of Conservation and held by an entity defined in PRC Section 10212, "city, county, nonprofit organization, resource conservation district, or a regional park or open space authority . . . " **PRC Sections 10211-10212 and 10261**	• Allocation between the encumbered fee and the conservation easement as specified in PRC Section 10261(a): ➢ The land fee owner is compensated for the fair market value as encumbered. ➢ The easement-holder is compensated for the value of the easement.

7.06.06.00 Outdoor Advertising Sites

Where a property is improved with an existing outdoor advertising sign and the comparable sales are not so improved, it will be necessary to analyze the additional contributory value of the outdoor advertising site. Any additional value may take the form of, and require the consideration of, either an interim use, an ancillary use, or a highest and best use.

Interim use value is defined as that increment in value which a short-range use, usually not exceeding five years, other than the highest and best use of the property, would contribute to the total value of the property.

Ancillary use value is defined as an additional source of income other than from highest and best use of the property which may or may not influence the economic rent of the dominant use.

Highest and best use is used in the regular appraisal context.

Complete Exhibit 07-EX-10. The value on Line 28 will be carried forward to the Land Valuation portion of the Appraisal Page under the heading of "Contributory Value of Outdoor Advertising Sign Site(s)."

The appraisal will contain sufficient explanation to document adjustments, conclusions, and assumptions, including "Comparable Sign Board Site Rental Adjustment Chart" (Exhibit 07-EX-10 pg. 3).

7.07.00.00 - IMPROVEMENTS

7.07.01.00 General

Improvements will be appraised at the value they add to the land, assuming the land to be vacant and ready for development to its most probable highest and best use. As such, improvements will be appraised at their depreciated value in place, considering the effect of depreciation from all causes.

Appraisal of improvements at the value they add to the land, if vacant, does not assume that existing improvements are necessarily an improper development of the land. Appraisal by this method will reflect the amount the well-informed buyer would pay for the total property, considering the estimated remaining useful and economic life of the improvements and probable use of the land, if the improvements are removed.

(see the following Right-of-Way Manual Sections 7.07.04.00, 7.07.05.00, and 7.07.06.00 regarding classification of fences, water sources and agricultural improvements, and Exhibit 07-EX-09 regarding improvements.)

7.07.02.00 Single Family Residence and Two to Four Unit Multi-Residence - Form Appraisal

The Uniform Residential Appraisal Report form (URAR) may be used for appraising total acquisitions of either improved single family residential or 2 to 4 unit multi-residential properties. The acquisition may include excess property providing an appropriate allocation of land and improvement values between excess and right-of-way is made as set forth in Right-of-Way Manual Section 7.03.04.00.

The URAR form appraisal may be used only if the land's highest and best use is single family residence and the property is improved with one single family residence or, the land's highest and best use is a 2 to 4 unit multi-residence and the property is improved with one 2 to 4 unit multi-residence. This includes properties improved with mobile homes as realty. see Right-of-Way Manual Section 7.12.00.00.

When using the form appraisal, a Parcel Appraisal Page, Form RW 07-09, must still be included in the appraisal report for each parcel appraised, together with any other forms listed in Right-of-Way Manual Section 7.02.03.00 that are pertinent to the appraisal.

When appraising a total acquisition of either a single-family residence or a 2 to 4 unit multi-residence, with no excess land to be acquired, an allocation between land and improvement values is not required.

When using the URAR form, the total price shown on the Comparable Data Page (Form RW 07-11) does not need to be allocated between land and improvements. However, a detailed description of the improvements located on the comparable must be shown on the Comparable Data Page.

There are several books available providing instructions for using the URAR forms for appraising single family residences and 2 to 4 unit multi-residences. The URAR form appraisals may also be completed by use of a computer. There are various companies that sell computer software packages for the URAR form.

7.07.03.00 Miscellaneous Improvements and Landscaping

Normal and adequate landscaping and miscellaneous yard improvements (including residential Private Fencing, driveways, and walks) may be briefly listed and valued at their lump-sum contribution to the total value of the property. Normal and adequate porches, stairways, and breezeways need not be separately evaluated if they are considered in the basic building value. Private retaining walls are included in the land value.

Minor curative work, such as the relocation of very minor improvements, can be proposed in an appraisal without including a separate value for purchase. Mailboxes, gate posts, Private Fence end posts, yard lights, capping landscaping irrigation lines, and small signs are examples.

7.07.04.00 Agricultural Improvements

Agricultural buildings and farm residences will be valued as Improvements at depreciated value in place.

If agricultural use represents only an interim use, particular care should be taken to consider only the value the improvements add to the land. If conversion of the land to a higher use is anticipated in the near future, agricultural improvements might better be valued under the "Improvement" headings at interim, salvage, or demolition values rather than included with the land. (see Right-of-Way Manual Sections 7.07.07.00 and 7.07.08.00.)

7.07.05.00 Valuation of Fences

For purposes of this chapter, fences are divided into two (2) categories: 1) Authority Fences, and 2) Private Fences.

Authority Fences are State owned and act as physical barriers to ensure integrity of access lines or right-of-way lines. All Authority Fences are placed on State property either on the access lines or immediately adjacent to the right-of-way line and are maintained by the State. Authority Fences are not valued as part of the requirement. Cost to install, replace or relocate Authority Fences will be included in construction costs.

Private Fences are located outside the State's right-of-way. Private Fences are owned by the adjacent property owners and only serve the property owners' needs. The property owners maintain Private Fences. Private Fences are valued as follows:

A. Private Fencing Included in Land Value

   Private Fences on agricultural, grazing, timber, desert, or undeveloped subdivision land, or Private Fence of marginal utility, should be included in the land value unless the comparable data indicates the contrary. Private Fence included in the land value will be briefly described as to type and condition under "Improvements" with a zero value and the remark that the value is included with the land. Specialized Private Fence may still be valued under "Improvements" at the contributory value it adds to the total property.

B. Private Fencing Appraised as an Improvement

   Any Private Fence within the requirement not included in land value will be valued as an improvement for the contributory value to the land. The method is to value the improvements at the depreciated value in place. Care should be exercised that double payment is not made for Private Fence owned by two property owners.

C. Damages to the Remainder for Private Fencing

After total Damages are assessed, the State may pay to mitigate those Damages by replacing, adding to, or internally rearranging Private Fences for permanent or temporary construction. The appraiser must be careful not to double pay for Damages. The amount paid as a Damage cannot be more than the difference between 100% cost of a new replacement Private Fence and the amount paid as the improvement (the depreciated value in place). (see Damages Section 7.09.00.00.) Damages may also be mitigated by reinforcing grantor's remaining Private Fence. Private Fences can be replaced or rearranged by construction contract work to mitigate Damages.

7.07.06.00 Valuation of Water Sources

Agricultural water sources and pumping and distribution systems will usually be included in the land value, as adjusted, to reflect the productivity of the water supply. The improvements being acquired, such as the pump, are to be fully described as to type, distribution and condition under the "Improvement" heading. Water sources included in the land value will be valued at zero with the remark that the value is included with the land.

Water sources which are replaced or relocated will be valued at zero. If an agricultural water source or system is to be relocated or replaced, the cost of such work will be shown under "Damage" or "Construction Contract Work," and must be justified as mitigating greater severance damages to remainder (see also Damages Section 7.09.00.00).

Nonagricultural water sources will be appraised as an improvement. If water-system equipment is proposed for relocation, the water source will be valued at the relocation cost estimate under "Improvement" subheading of "Relocation in Lieu of Purchase." This relocation cost estimate will include necessary expenses to reestablish a source of equivalent quality and quantity, including well drilling and test holes, if required.

Increased size, capacity, power, etc., necessary due to relocation of a water source must be justified as mitigating greater severance damage to the remainder. Where physical relocation of the water source equipment is not feasible, the equipment will be valued at depreciated value in place under "Improvements." Additional expenses which become necessary to avoid greater severance damage due to loss of the water source must be shown under "Damages."

If relocation or replacement of a water system is proposed to be performed by a State contractor, the water source and equipment will be described under the "Improvement" heading and valued at zero value. The entire relocation or replacement cost will then be shown under "Construction Contract Work."

7.07.07.00 Improvements - Little or No Value

Occasionally, improvements add little or no economic value, or may even decrease the value of land suitable for a higher and better use. In these cases, the improvements will be described for Real Property Branch purposes and valued at the amount they contribute to the market value of the property. This would be a positive amount if the improvements have a salvage value; such an amount should be identified as "salvage value." This would be a negative amount if the improvements have no salvage value and a cost would be incurred for their removal. This amount should be identified as "clearance" or "demolition" cost.

7.07.08.00 Improvements - Interim Value

Occasionally, improvements may have value due to a brief period of productive income until conversion of the land to a higher and better use. Such value should be identified and supported as interim value. Estimated short term net income, giving consideration to proper risk and expenses, may be an appropriate valuation method.

7.07.09.00 Improvements - Purchase or Curative Work

It may be more economical to relocate, rearrange, or alter improvements such as garages, other auxiliary buildings, storage sheds, on-premise signs, etc. For these cases, the primary appraisal must value the improvement for purchase. The curative work should be included as an alternate appraisal.

Where substantial savings may result if the grantor or the State relocates, rearranges, and/or severs and reconstructs improvements that would otherwise be purchased or damaged, only the curative approach need be included in the appraisal. An alternate providing for purchase may be included at the request of the Acquisition agent. The alternate appraisal will be processed in accordance with Section 7.03.03.00.

Relocation curative work is normally considered economically feasible if the cost (including utility relocations and other damages) does not exceed the depreciated value of the improvements, less salvage value at State sale. This information will be included in the appraisal to support the feasibility of proposed relocation work.

7.07.10.00 Improvement Relocations or Replacements Exceeding Depreciated Value Less Salvage

Occasionally, improvements within the right-of-way (including excess) may be valued at their relocation or replacement costs rather than at their depreciated value in place to avoid greater severance damages to the remainder. The improvement will be described and valued at the relocation or replacement cost. If the relocation or replacement cost is greater than the depreciated value in place, less salvage, the additional cost must be justified as mitigating greater severance damage to the remainder. This additional cost will be shown under "Damage."

The only exceptions to these rules are relocation or replacement of improvements valued as part of the land or proposed for replacement in kind or utility by a State contractor. In these cases, the total relocation or replacement cost will be shown as a Damage or Construction Contract Work and must be totally justified as mitigation of greater severance damages.

7.07.11.00 Relocation, Rearrangement, or Reconstruction Estimates

This work on minor improvements, such as mailboxes, sheds, Private Fencing, gates, cutting and capping utility lines, etc., may be briefly described and valued at lump sum amounts directly on the Appraisal Page. On major improvements, it must be supported by a work estimate included in the appraisal.

The estimate will:

A. Include all necessary expenses involved in the proposed work, including storage, security, overhead, and supervision; but will exclude, or take credit for avoidable betterments.
B. Contain the source of the cost data.

C. Show the estimated depreciated value in place and salvage value of building improvements proposed for relocation.

Estimates involving relocation of improvements from within the right-of-way (including excess) will be shown under "Improvements" with the subheading "Relocation in Lieu of Purchase." The only exception to this rule is the relocation, from within the right-of-way (or excess), of improvements valued with the land or proposed for relocation by a State contractor. In these cases, the improvement will be listed under the "Relocation" subheading with a zero value. The relocation estimate amount will be shown under "Damage" or "Construction Contract Work."

All other rearrangement, replacement, and severance and reconstruction work will be considered as a Damage or as Construction Contract Work.

Severance and reconstruction of improvements straddling the right-of-way line may involve payment for the portion of the improvement required as well as payment for the curative work.

7.07.12.00 Building Check Sheets

Exhibit 7-8 is for use in assembling the basic information required to describe residential improvements in a uniform, systematic manner with a limited amount of actual writing. The grid on the back is to record improvement measurements, and is for field use. This exhibit without the grid will be inserted in the Report. If the URAR form is used, Exhibit 7-8 is not necessary.

Types of improvements not listed on the exhibit will be described in detail in the appraisal. This description will include the use, age, construction, condition, specialized features, if any, and any other factors which may be important in valuing the improvement.

7.07.13.00 Service Station, Commercial and Industrial Buildings

When appraising these, Exhibit 7-9 should be used to assemble the basic data. The exhibit, without the grid, will be included in the Report.

7.07.14.00 Tenant or Lessee-Owned Improvements (Excluding Personal Property)

The appraisal will contain a specific list of tenant or lessee-owned improvements (realty) which include buildings, structures, other improvements and improvements pertaining to the realty. The appraiser will separately show the value of the improvements on the Appraisal Page according to their ownership, such as:

Lessor Owned (List improvements)	$100,000
Tenant or Lessee Owned (List improvements)	25,000
Total Value of Improvements	$125,000

Tenant or lessee-owned improvements will be appraised at the amount they contribute to the fair-market value of the real property to be acquired or their fair-market value for removal from the real property, whichever is greater [49 CFR §24.105(c)].

Fair-market value for removal means "salvage value." It is the probable sales price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

The Appraisal Report will show both the contributory and salvage value of such improvements. The greater value will be carried forward to the Appraisal and Summary Pages.

If the salvage value is greater than the contributory value, the existing improvements may not constitute the highest and best use of the property. Where the tenant-owned real property improvements do not contribute any value to the property, the tenant is still entitled to any salvage value of such improvements.

In some situations, it is possible for both the contributory value and the salvage value of lessee-owned improvements to equal zero. In these cases, the improvements should be shown at "nominal" in the Report.

Structural improvements are normally classified as real property and not personal property. If there is any doubt whether a tenant or lessee-owned improvement is part of the real estate or personal property, the Legal Division should be consulted and/or a legal opinion obtained.

In some cases, there may be controversy between lessors and lessees regarding ownership of the improvements (real property). Then, the appraiser will make a statement in the Report regarding the controversy of ownership to alert the Director of Real Property of the problem.

The appraiser should separately show three categories, such as:

Lessor Owned (List improvements)	$100,000
Lessee Owned (List improvements)	15,000
Ownership Claimed by Both Lessor and Lessee	10,000
Total Value of Improvements	$125,000

7.07.15.00 Retention Value

A separate retention value may be included in a Report when the owner wants to retain the structural improvements. This is in addition to either the full or part-take appraisal that proposes the purchase of the improvements, as applicable, and any "Relocation in Lieu of Purchase" alternate that may be appropriate. Retention value in this instance is the same as salvage value. It should normally be established through a comparative analysis of improvements sold at public sale.

It is not intended to allow "piecemeal" retention of portions of structural improvements which, if removed, would leave the structure in an unrentable condition. Also, this concept does not apply to improvements pertaining to the realty, such as machinery and equipment, as defined in the California Eminent Domain Law (Title 7, Chapter 9, Article 3, Section 1263.205 of the Code of Civil Procedure). These items are available to owners by other means.

Owner retention of improvements for salvage value is at the Authority's option and is not a right of the owner. Accordingly, it should not be proposed in situations that have the potential of producing an indefensible windfall to the owner.

Retention value estimates will be provided on written request from the Acquisition Agent if they were not a part of the original appraisal. These requests will be processed like any other revised page(s) to the original appraisal.

The above instructions do not apply to those miscellaneous minor improvement items which grantors often wish to retain, e.g., drapes, antennas, etc. If a separate valuation of such items is requested, they will be listed with their contributory values.

7.08.00.00 – IMPROVEMENTS PERTAINING TO THE REALTY

7.08.01.00 General

Trade fixtures, equipment, machinery, and other items installed for use on a property will only be appraised if they are "improvements pertaining to the realty" as defined in Section 1263.205 CCP. These improvements include items that "...cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation." The appraiser must compare the value in place against the value if removed and sold.

This decision is a matter of economics. It must be fully documented so the decision can be supported without question. This requires a comparison of the items' depreciated value in place and its salvage value to establish that it cannot be removed "without substantial economic loss." The nature and extent of the damage must be explained.

Whenever a separate valuation of machinery and equipment or other specialty items is required, it shall be prepared by a qualified individual. Separate specialty reports shall be prepared in accordance with current and appropriate standards and will contain cost sources for each item as shown in Section 7.05.04.00, "Cost Approach."

Independent specialty reports shall be reviewed by a specialist with building cost estimators before distribution to the real estate appraisers. Senior Right-of-Way Agents shall review independent specialty appraisals. The specialty reports shall be reviewed to the same degree as is now done on regular realty appraisals before being utilized in establishing the market value of the total property required.

When a separate valuation of trade fixtures, equipment, machinery, and/or other items pertaining to the realty is required, the value of such items shall not be arbitrarily added to the valuation of other realty. It shall be considered to the extent of their contributory value in establishing the value of the whole property. If the specialty appraisal is used to establish the value of the whole, a narrative discussion of the adjustments or lack of adjustments from the values in the specialty report will be included in the appraisal. The appraiser may consider the specialist's factual data, information, and opinions, but the final conclusions of value remain the appraiser's responsibility.

7.08.02.00 Appraisal Page Format

Trade fixtures, equipment, machinery, and other items determined to pertain to the realty will be listed on a separate page in the parcel appraisal with the following information:

- Item identification, including make, model, and serial number.
- Age (approximate age is sufficient where actual age is not known or is not appropriate due to extensive remodeling).
- Estimated new and remaining service life.
- General condition.
- Replacement cost new in place with cost sources.
- Depreciated value in place.
- Salvage value in place.

- Relocation expense estimate.
- Cost sources of each item and basis of relocation estimate.
- Photographs of major items.
- Comment on which items may be easily moved or utilized in circumstances other than the existing use.

Lessee-owned items will be separately shown. The items' value, relocation estimates, and salvage value totals will be appropriately proportioned between lessee and lessor.

The contributory value in place of trade fixtures, equipment, machinery, and improvements pertaining to the realty will be carried forward to the Appraisal Page (Form RW 07-09) and entered under the appropriate subheading under "Improvements." In partial acquisitions and alternate appraisals where grantor requests relocation in lieu of purchase and on minor improvements, the relocation estimate amount may be used in lieu of the contributory value in place.

7.08.03.00 Replacement Cost

Replacement cost new of equivalent machinery should be shown at catalog price plus freight, tax, cartage, and installation costs to yield cost new in place. Freight, tax, cartage, and installation costs should consider installation of the entire operation at one time and not as separately installed items. However, costs should be distributed to individual items when practical. Care should be exercised that specialized plumbing, electrical and structural work is not included in both the building appraisal and the installation charges.

7.08.04.00 Depreciated Value

Depreciated value in place is to reflect depreciation due to all causes as related to each item and to the total operation. This should include physical deterioration, functional obsolescence, and any economic obsolescence. A dollar or percentage breakdown of each type is not necessarily required. The appraiser should state whether the item contains functional obsolescence and provide a reasonable explanation of the depreciation basis.

While depreciation may be attributed to the entire operation, distribution of an estimate of depreciation to each item is desirable, when practical.

7.08.05.00 Salvage Value

Salvage value is the price the Authority would obtain for the equipment in place at auction with the buyer removing the equipment in a relatively short time.

7.08.06.00 Improvements Not Pertaining to Realty Under Section 1263.205

Appraisals of furnished or partly furnished rental homes, duplexes, motels, hotels, or apartment houses need to include an inventory of the improvements not pertaining to the realty under Section 1263.205 CCP. It should show the total estimated in-place market value. The Authority may have to purchase these items to prevent eviction of tenants who will be unable to continue their occupancy of the premises if such items are retained and removed by the owner. Items which would not cause the tenants to move from the premises if not purchased by the Authority are not to be included. The total value of such

improvements not pertaining to the realty is not to be carried forward to the Appraisal Page nor included in the "Market Value of Required Property." This is in contrast to improvements which do pertain to the realty which shall be carried forward and included in the market value.

Purchase of furniture from vacated homes or homes which are not the permanent residence of the occupants would only be done when the property is purchased long enough in advance of right-of-way clearance that the State can amortize the cost of the furniture from increased rentals during the time the property will be available for rent.

7.09.00.00 - DAMAGES, BENEFITS, AND CONSTRUCTION CONTRACT WORK

7.09.01.00 General

The possibility of damages and benefits will be investigated in every partial acquisition. This investigation will include local market data, similar after-condition land development and highest and best use analyses, and other applicable information.

Any damages and/or benefits will be supported and clearly documented in the parcel appraisal. Severance damages and benefits will be shown as separate totals. Benefits, if any, will be subtracted from severance damages. Any net benefits or damages will be shown separately.

The results and support of the investigation which reveals that no damages and/or benefits occur must be shown in the appraisal report. Such analyses may materially assist negotiations in cases where unsubstantiated claims for damages might be made.

Benefits which result due to construction of the project in the manner proposed should be described, valued, and supported even if it is determined that there are no damages. Benefits may presently be incapable of being valued; the nature of the benefits should then be described in the appraisal. Legal opinions should be secured when there is uncertainty regarding compensable damages.

7.09.02.00 Severance Damages

A severance damage is a loss in value to the remaining property after acquisition and construction in the manner proposed. Severance damages are valued by the appraisal of the remainder as a portion of the total property in the before condition and as a freestanding remainder in the after condition (disregarding the benefits of the construction project). The remainder is considered damaged if it is worth less after construction of the project due to a legally compensable reason. The after condition valuation requires the same support as the before condition valuation. Severance damage analyses should consider when the damages will occur (Code of Civil Procedure Sections 1263.420 and 1263.440).

The parcel appraisal must specifically state the reasons for the severance damage and discuss the comparable data or investigation results supporting the severance damage estimate. Comparable data used will be referenced under the heading “Market Data (After).”

Generally, any severance damages to a larger parcel functioning as a unit, especially under an agricultural use, will be measured by any decrease in market value of the remainder(s) (*Department of Public Works v. Lundy*). Under very narrowly described circumstances, damages to the continued operation of the remainder(s) as a unit may be considered (*Department of Public Works v. Cozza*); these include items such as increased cost, difficulty, and hazard. If this form of damages is considered applicable, the appraiser must furnish particulars to the Director of Real Property and request a legal opinion prior to completion of the appraisal.

Compensable damages to the remainder may be caused by either or both of the following (see CCP Section 1263.420):

(a) The severance of the remainder from the part taken.
(b) The construction and use of the project for which the property is taken in the manner proposed by the plaintiff, whether or not the damage is caused by a portion of the project located on the part taken.

7.09.03.00 Noncompensable Damages

The following types of damages have been found by the courts not to be compensable, or in certain respects, may be compensable only under laws other than those of eminent domain. Therefore, the following noncompensable damages should generally not be included in real property acquisition valuations:

A. *Damages to business*

However, loss of goodwill is compensable if proven by the owner. Handling of such losses is treated under Right-of-Way Manual Section 7.17.00.00.

B. *Expenses for moving personal property*

However, displaced property owners and tenants may be entitled to payment for moving personal property under the Relocation Assistance Program.

C. *Temporary damages to the use and occupancy of property reasonably incident to construction requirements*

Unnecessary and substantial interference may be compensable. The appraiser should confer with Real Property Branch and Legal to assist in the determination of damage compensability.

D. *Damage due to annoyance and inconvenience suffered by the public generally*

Exceptions to this may include diminution in property value of the remainder caused by noise, fumes, and/or other annoyances inherent in the daily use of a high-speed rail. These types of severance damages are generally dependent on the specific circumstances in each case and must be measurable within the market. It is important to note that the damage must be sustained by the property itself rather than the owners. The appraiser should confer with Real Property Branch and Legal to assist in the determination of damage compensability.

If noise damages are assessed in the appraisal, written documentation from Project Development will be included in the report. This documentation should confirm that no noise attenuation measures are included in the proposed construction plans.

7.09.04.00 Cost-to-Cure

Some severance damages may be mitigated or entirely eliminated by estimating the cost-to-cure the damage. The appraiser must first show the total estimated severance damages to the remainder which would occur if not cured. After the damage amount is estimated, the appraiser can explore potential costs to cure those damages. Damages are measured by the lesser of these two costs: the potential damage (loss in value) to the remainder or the cost-to-cure the damage. The estimated cost-to-cure may not exceed the estimated severance damage. Since cost-to-cure damages are a form of severance damages, they are to be offset by any benefits.

The supporting data and sources used to estimate cost-to-cure damages must be shown in the appraisal report in accordance with Right-of-Way Manual Section 7.05.04.00 relating the documentation of cost estimates.

7.09.05.00 Benefits

Benefits are valued by the appraisal of the remainder before and after the acquisition and construction of the project in the manner proposed. Benefits analyses should consider when the benefits will occur. (see CCP Sections 1263.430 and 1263.440.)

The appraiser must provide a descriptive analysis with adequate support for any estimated benefits.

Benefits are to be offset against any severance damages in the valuation. If benefits are estimated to the remainder, such benefits will be quantified and shown in the appraisal report, even if it is determined that there are no severance damages to the remainder. When excess benefits remain after the offset against severance damages, the excess benefits shall be shown in the report. Benefits can be used to offset any loss of goodwill that may occur to a business located on the property if owned by the fee owner. (see CCP Section 1263.410.)

7.09.06.00 Summary of Severance Damages and Benefits

Severance damages and/or benefits shall be summarized on a before-and-after value basis in the appraisal report. A "Summary of Severance Damages and Benefits" (Form RW 07-12) shall be used for the summary.

In cases where severance damages and/or benefits are relatively minor, it will not be necessary to include a before-and-after value summary.

7.09.07.00 Damage Alternatives

The "Summary of Damage Alternatives" and "Discussion of Damages" (Exhibit 07-EX-06) are the suggested formats to be used to compare practical alternative damage approaches and to discuss damage elements. The "Discussion of Damages" section will be used in cases where damages, other than minor adjustment curative work, are present.

If no feasible curative work alternative can be proposed to mitigate severance damages, the "Discussion of Damages" will so state. If severance damage estimates are inconclusive using before-and-after valuations, or are impractical due to the size or nature of the remainder, or if the cost-to-cure the severance is the best measure, the "Discussion" will give the reasons for the approach used. If the severance damages are valued by market comparison, the "Discussion" will reference the comparable data used and explain the comparative analysis. If market data is inconclusive as a basis for the estimation of damages, the "Discussion" should include a description of the scope of the market investigation and the reason supporting the opinion of damages.

The formats contained in Exhibit 07-EX-06 should be used to substantiate a purchase of excess land, except in the following cases: (1) landlocked remainders; (2) properties with major improvements straddling the right-of-way line; (3) sites reduced below zoning minimums; (4) public utility or governmental properties. Even in these exceptions, comments should describe investigations of possible curative work alternatives and reasons for rejections.

It is important to note that in some cases, potential curative work alternatives may include substitute condemnation. The most common situation where substitute condemnation should be considered occurs where an acquisition would deprive a property of access to a public road or utility service. To restore the utility of such parcels, and in doing so, to minimize severance damages, the State may provide substitute access or utility service. CCP Section 1240.350 provides the discretionary authority for substitute condemnation of additional property "as reasonably necessary and appropriate (after taking into account any hardship to the owner of the additional property) to provide utility service to, or access to a public road from, any property that is not acquired for such public use but which is cut off from utility service or access to a public road as a result of the acquisition by the public entity." When proposing substitute condemnation as a means to minimize severance damages, the appraisal report (along with the resolution of necessity) shall specifically refer to CCP Section 1240.350 and include a statement that the substitute property is necessary for the purpose specified in this section.

7.09.08.00 Utility Service Damage

The grantor must be fully compensated for all justified damages due to relocation of utilities, including payment for severing water, sewer, and gas lines and wiring extending into the right-of-way area, if such work is to be performed by grantor.

7.09.09.00 Construction Contract Work

Occasionally, work in or outside of the State right-of-way is required to restore the utility of remaining property (i.e., road/driveway approach, cattle pass, utility sleeve) and may be most economically and/or practically performed by the State's contractor. The work and estimated cost will be described as "Construction Contract Work." The feasibility and cost of the proposed work must be estimated or verified by the Director of Real Property prior to submission of the appraisal. Costs must be justified by the value of the remainder and must be less than the potential damage which would occur if the construction work was not performed.

Only work for the grantor's benefit to the remainder is considered to be "Construction Contract Work" as it is a form of a damage payment. Work of greatest benefit to the public or required by the high-speed rail construction will not be classified as "Construction Contract Work."

The appraisal must clearly show the computations and explain the reasons for proposing construction contract work that is not offset when benefits are present. Minor construction contract work for driveway reconstruction, domestic utility reconnections, etc., should be proposed regardless of the presence of benefits.

Construction contract work may also include curative work for a remainder which is to be performed by a clearance contractor or public utility agency.

The Appraisal Summary (RW 07-09) will show a "Construction Contract Work" heading for all partial acquisitions. The heading will show the remark "None Required" or contain a description and valuation of required construction contract work, including proposed engineering station locations. The total of all construction contract work will be carried forward to the Parcel Summary Page (if used).

Construction contract work can benefit more than one property. If multiple properties are benefited, the total amount of construction contract work will be split among the various properties at the amount of benefit each property receives. A reference will be made in each parcel appraisal that the construction contract work benefits other parcels.

7.09.10.00 Utility Main Relocations

Relocation of utility transmission lines up to the point of owner's service is usually included in agreements with the utility company. Such relocations need not be considered in the parcel appraisal, with the one exception: the extension of utility mains for the sole benefit of few properties remaining after State acquisition. In these cases, the utility main relocation costs must be justified by the values of the affected remainders.

If payment of severance damages or purchase of remainders is less costly, it should be considered.

7.09.10.01 Private Utility Connections

The relocation of private connections can be handled in one of the following ways:

- Reconnection by the grantor through a damage payment.
- Reconnection by the utility company as part of the utility agreement.
- Reconnection by the high-speed rail contractor as construction contract work.
- Reconnection by the clearance contractor as construction contract work.

Whenever possible, the appraisal analysis should anticipate how private relocations and reconnections will be accomplished. The estimated cost for work performed by the grantor will be shown as a "Damage." Reconnection by any other means will be shown as "Construction Contract Work." If construction plans or utility company plans are incomplete, the appraisal will describe the various utility services and discuss possible relocation and reconnection requirements, potential challenges (if any), and estimated costs.

An analysis will also describe the parcel's utility sources and possible relocation requirements, if any. Such analyses should consider grantor-owned well water, sewerage, and other utility systems.

7.09.11.00 [Hold for Future Use]

7.10.00.00 - REVISION AND REVIEWS

7.10.01.00 General

Offers may be made only on the basis of approved appraisals or authorized adjustments; therefore, it is imperative that revisions be made without undue delay.

The supervisors shall devise and maintain an efficient procedure for systematic appraisal review for "updating" unclosed parcels in areas where significant new data is revealed.

It is the Acquisition Agent's responsibility to develop any new data, make an investigation thereof and determine if such new data warrants further review by the appraiser. When requested, the appraiser shall investigate the new data and determine the applicability to unacquired parcels. If adjustment is not justified, the acquisition agent will be immediately notified.

If significant adjustment is in order, an appraisal revision will be immediately processed so negotiations may proceed without undue delay. Review will be expedited upon request.

7.10.02.00 Changes in Unapproved Appraisals Requiring Approval

If a report is returned without action, or a report is approved except for certain parcels, the supervisors will take such corrective action as necessary. A cover letter of transmittal will describe the action taken on the points raised by the Director of Real Property.

7.10.03.00 Changes in Approved Appraisals - Unacquired Parcels

The contents or valuation of an unacquired parcel appraisal may be changed by one of the following methods, in accordance with current delegations:

- Revised appraisal pages.
- Revised parcel appraisal canceling and superseding an existing appraisal by inclusion in a later report.
- Memorandum of Adjustment.

7.10.04.00 Revised Appraisal Pages

Parcel appraisals may be revised by submitting revised appraisal pages for replacement in the approved report, providing the change can be substantiated without extensive changes in supplemental appraisal pages. The following are examples of cases in which revised appraisal pages may be used:

A. Mathematical or typographical errors.
B. A valuation change resulting from an orderly change in price level which can be clearly supported by new comparable data and the original appraisal relied predominantly on a market approach.
C. The change involves addition or deletion of a subparcel, or parcel split or merger with little change in value factors.
D. The change involves addition or deletion of minor improvements without effect on the land valuation.

E. The change involves increase or decrease in right-of-way requirements or excess with no significant change in damages, benefits, or construction contract work.
F. The change involves including an alternate appraisal with little change in the valuation of the total property.
G. The change involves parcel grouping.

7.10.04.01 Submittal of Revised Pages

Revised pages and maps will be submitted with a memorandum of transmittal detailing the changes. A change in right-of-way requirement or access control will be approved by Engineering. Revised pages will have the word "Revised" and the revision date shown at the top of all pages. Revised maps, when necessary, will have only the affected parcel(s) colored and will have the word "Revised" and the date visible on the map when both opened and folded. A revised Comparable Data Map is required whenever new comparable data is used. A new Senior Field Review Certificate and a revised Certificate of Appraiser are required whenever there has been a change in the value, improvements affected, or area taken. Minor typographical corrections do not require new Certificates.

7.10.05.00 Confirmation of Market Value (CMV)

When a request for appraisal review because of RON process, time or new data is made but the review does not result in a revision to value a CMV may be issued in lieu of an MAU. The CMV updates the date of value but does not change the value. It will be held in Authority's file for future reference.

7.10.06.00 Memorandum of Adjustment

This method will be used for nonsubstantial valuation adjustments and minor variations which do not warrant revised appraisal pages. The revision may be at the request of the Acquisition Agent or as a result of a subsequent appraisal or discovery of new information and data. Each Memorandum must follow the same approval process as the original appraisal.

7.10.07.00 Changes in Approved Appraisals on Acquired Parcels

There are very few occasions where an approved appraisal can be revised after the parcel is acquired and escrow has closed. In certain instances, the Acquisition Agent may find it necessary to amend a Right-of-Way Contract to correct a situation discovered after close of escrow. Acquisition should direct a memo to Appraisals setting forth the reasons for the amendment and the need for a change in the approved appraisal. Appraisals will then prepare a Memorandum of Adjustment valuing the additional rights taken or damages incurred as if they were part of the original appraisal. The approval process will be the same as the original appraisal.

A. Additional right-of-way over a grantor's remainder requires a new appraisal under a new parcel number in a new appraisal report. Legal advice should be obtained concerning the use of before or after condition values in the appraisal of additional requirements.
B. If no new right-of-way is required, the Acquisition Agent may nonetheless find it necessary to amend a contract. In such an instance, when related to value, the Appraiser shall, prior to such necessary amendment and at the request of the Acquisition Agent, prepare a Statement of Value, in the same form as a Memorandum of Adjustment, valuing the additional rights taken as part of the original appraisal. Approval of the Statement of Value will be in accordance with the existing delegations.

7.10.08.00 Parcel Splits and Mergers

Splits or mergers due to change in ownership, or addition and/or cancellation of subparcels, may be submitted by revised appraisal pages or revised parcel appraisals, as the extent of necessary reappraisal requires. Parcel splits will comply with the following instructions:

A. The original ownership (or one parcel) will retain the original parcel and appropriate subparcel numbers and will be identified as a revised appraisal.
B. The new ownership will have new parcel and subparcel numbers issued. It will be considered a new appraisal.
C. The headings of both parcels' Appraisal Summaries (RW 07-09) will cross-reference the other parcel.
D. Both appraisals will be submitted concurrently if revised appraisal pages are used or in the same report if submitted as revised parcel appraisals.

In parcel mergers (merged after the initial appraisal), the merged parcels will be grouped under the lowest parcel number and appraised as a larger parcel. Originally assigned parcel and subparcel numbers for each parcel will be retained. The parcels will have typed in the upper margin "Revised (date), merges with Parcel_____and supersedes the parcel appraisal in Appraisal Report No._____Dated_____." Revised maps are necessary showing new gross areas, vesting, and correct coloring.

7.10.09.00 Parcel Cancellations

Parcel appraisals may be canceled for any number of reasons. Typically, Design may change the requirements or the construction date is delayed and the project is no longer budgeted. Prior to cancellation, the Director of Real Property, or designee must be advised and they must determine that there are no outstanding obligations to the owners or occupants of the property.

7.10.10.00 Review of Condemnation Parcels

Upon written request, the Director of Real Property, or designee will investigate all new data discovered relating to condemnation parcels and will revise affected parcels.

Prior to engaging appraisers, Acquisitions will request the Real Property Branch to make a review of a condemnation parcel and all pertinent data. Upon receipt of the Confirmation of Market Value request, the Appraiser will issue an appraisal revision with a new date of value and new comparable data, if any, supporting the opinion of value as of the new date. For nonsubstantial valuation adjustments, a Memorandum of Adjustment should be used.

After engaging condemnation witnesses, the appraisal would not normally be revised except for mechanical changes (in areas, subparcels, etc.), substantial changes in design, or protracted delays or changes in data which would normally require significant adjustments in witnesses' reports. In these latter two cases, revision of the appraisal is optional with the senior considering the most cost-effective approach to acquisition.

7.10.11.00 Preparation of the Report Analysis for Expert Witness Appraisals

Preparation of the Report Analysis (07-EX-18) shall be consistent with current appraisal report approval delegations; if the acquisition or loss of goodwill report was approved by the Director of Real Property through the cumulative review process, then appraiser will prepare the 07-EX-18 for Director of Real Property's review and concurrence.

The Report Analysis (07-EX-18) shall include the following:

- **Compliance** – Comment on compliance with applicable reporting and valuation standards. When comparing staff/independent reports, note and explain any significant differences.
- **Value** – Tabulate the major value conclusions in the current appraisal, the experts' appraisals, and/or other experts' appraisals received to date in the Analysis Section. If the submission is a revision of a previous appraisal, show both the original and updated amounts. Comment on major differences in value or other important information.

The Appraiser shall neither approve nor disapprove the report. The analysis shall state if the report is in compliance with professional appraisal standards (e.g., the Uniform Standards of Professional Appraisal Practice [USPAP]), in addition to the valuation-related components of Federal and State laws applicable to the acquisition and appraisal of real property rights (e.g., the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs [Uniform Act], California Eminent Domain Law, etc.). The analysis will not contain recommendations as to possible settlement amounts or negotiation approaches.

7.11.00.00 - OUTDOOR ADVERTISING SIGNS

7.11.01.00 Valuation

Signs owned by grantors or occupants, located on a subject property, and identifying or advertising the business or activity conducted on that property (known as on-premise signs) will be valued on the Appraisal Page under "Improvements" at depreciated value in place. If relocation of such signs is feasible, the relocation costs may be shown in parentheses for information purposes, or may be included on Alternate Appraisal Pages. Grantor or occupant-owned business signs located off the subject parcel may be subject to severance damages.

Signs owned by outdoor advertising companies will be valued by use of payment Schedules A, B, C, D, E, G, and H (Exhibit 07-EX-14). This valuation will be shown on the Summary of Outdoor Advertising Structures, Form RW 07-08. If the outdoor advertising company refuses the schedule, the signboard structure will be appraised as an improvement. see Section 7.11.05.00.

7.11.02.00 Definitions

8-Sheet Poster Panel - A structure designed to support a flat surface of 72 square feet upon which printed advertising or other messages are pasted to the panel, built on one or more posts embedded in the ground.

A. Back-To-Back Poster Panel - A structure designed to support two or more flat surfaces of 300 square feet built on one or more posts imbedded in the ground.
B. Illuminated Sign - A sign with attached lighting fixtures to make the advertising message visible at night.
C. Miscellaneous Signs - Signs normally built with minimum quality and amounts of material and may be characterized by "do it yourself" workmanship. This type of construction tends to shorten physical life and increase the necessity for maintenance over the life of the sign. In many instances, the advertising message is of a nonprofessional type and advertises the sign owner's business. Signs in this classification should be valued by the use of Schedule F.
D. Off-Premise Sign - All outdoor advertising signs other than on-premise signs.
E. Offset Sign - A sign constructed so that the advertising surface is supported upon horizontal members not less than 2 feet in length, and these members are joined to vertical posts imbedded into the ground.
F. On-Premise Sign - A sign identifying or advertising the business or activity conducted on the property where the sign is located.
G. Outdoor Advertising Company - This refers to any business or individual who erects or maintains an outdoor advertising display.
H. Painted Bulletin - A structure designed to support one or more flat surfaces upon which at least one advertising or other message is painted in whole or substantial part, built on one or more posts imbedded into the ground or attached to the wall or roof of a building.
I. Poster Panel - A structure designed to support a flat surface of 300 square feet upon which printed advertising or other messages are pasted to the panel built on one or more posts imbedded in the ground or attached to the wall of a building.
J. Printed advertising or other messages are pasted to the panels.

K. Professional Signs - Well constructed signs with quality materials and workmanship evidenced throughout, providing a uniform appearance and extended physical life with minimum necessary maintenance. The advertising message is normally professionally lettered. Schedules A, B, C, D, E, G, and H should be utilized for signs in this classification.

L. Roof Poster Panel - A Poster Panel built on one or more posts imbedded into the roof of a building. Each flat surface supported by such post(s) is a separate Roof Poster Panel.

M. Special Build - Any sign not covered under Schedule A, D, E, F, G, or H. Usually this type of structure is on one post imbedded in the ground and utilizes torque bar construction.

N. Steel Sign - A sign with steel posts.

O. Urban Rotate - Painted bulletins which always have full illumination and the advertising facing sections are in modular form, designed and constructed to be moved from one structure to another on a periodic basis. The standard size is 14′ x 48′, but they are often larger and may have special embellishment features, such as cutouts, special lighting effects, freestanding letters, neon and space extensions to cover the advertisement of a specific product. The structures are usually steel and always have two back decks designed and constructed to State and local safety standards so that working crews can have easy and safe access to the back of the facing sections during the rotation process. They are generally found in urban areas in the more desirable locations at points of maximum advertising exposure. Their advertising message is most often of a national product or of regional interest.

P. Wood Sign - A sign with wood posts.

7.11.03.00 Process

When starting an appraisal that includes outdoor advertising signs, the appraiser will take the following steps:

1. Send a request to the Property Management Unit for determination of the legality of the sign and feasibility of relocation. Use Exhibit 07-EX-11 as a format.
2. When Schedule B is utilized for a special build, send a letter to the sign company requesting the information required on Exhibit 07-EX-12.

A. If a sign may be relocated pursuant to Business and Professions Code Section 5412 or 5443.5 or onto the grantor's remaining property, the relocation payment should be determined as follows:
   1. Poster Panel - Use Schedule C.
   2. Special Builds, Painted Bulletins or Urban Rotate Bulletins:
      - Obtain an estimate from the sign company by use of Exhibit 07-EX-13, or
      - Obtain an estimate from the Property Management Unit, or
      - Obtain estimates from at least two sign companies other than the company that owns the sign to be relocated.

B. For each structure, show the average height of the bottom of the sign panel above the ground on the Outdoor Advertising Structures Page. A close-up photograph of each sign will be included.

C. The photographs shall be placed in the Appraisal Report immediately following the Summary Page.

D. The appraisal must include the results of the legality and relocation determination from the Property Management Unit. When a sign may be relocated, the relocation cost will be shown with the removal (i.e., purchase) cost shown in parentheses. If it is necessary to receive information from the sign company to complete the valuation and it is not available by the time the Appraisal Report is ready for completion, the sign will be listed in the "Summary" with the valuation space showing "N.A."

The Remarks section should state when the letter was sent to the sign company.

E. Signs within the existing right of way are not entitled to payment but will be listed in the Summary of Outdoor Advertising Signs at a zero value.

F. Signs located on property under the Williamson Act (Government Code Sections 51200-51295) contract as an agricultural preserve may or may not be compensable, depending primarily on when they were erected.

1. A structure erected on property after the land is placed in an agricultural preserve is illegal and payment must not be made for its removal. Removal of such structure should be enforced by the county or the local entity as a party to the Williamson Act contract. It will be listed on the Summary Page.
2. Property placed in an agricultural preserve with an existing structure in place.

Generally, the Surface Transportation Act of 1978 requires payment for the removal of any structure located adjacent to an Interstate or Primary highway, if it was legally placed prior to November 6, 1978. Not all aspects of the compensation provisions are clear. These payment provisions do not apply to structures located adjacent to highways not included in the Interstate or Primary systems. The Property Management Unit should seek advice from the Legal Division prior to proceeding with the appraisal and acquisition of signs in these locations.

7.11.04.00 Payment Schedules/Application Renewal Permit Fees

The sign payment schedules (see Exhibit 07-EX-14) are to be used as follows:

- Schedule A - Payment Schedule for Poster Panel Removal (straight or offset single and double plus rooftop).
- Schedule B - Payment for "Special Build" removal and relocation of "Special Builds," Painted Bulletins (Professional and Miscellaneous), and Urban "Rotate" Bulletins based on sign owner cost claims.
- Schedule C - Payment Schedule for Relocating Poster Panels onto Adjacent Property or pursuant to Business and Professions Code 5412 or 5443.5.
- Schedule D - Payment Schedule for Urban "Rotate" Bulletin Removal. Painted Bulletins that do not fall under the definition of an Urban "Rotate" should be covered by Schedules B, E, or F.
- Schedule E - Payment Schedule for the removal of Painted Bulletins in the "Professional" category.

This schedule is to provide a basis for payments in lieu of appraisals or cost claims (Schedule B) for painted bulletins not falling under the definition of Rotate Bulletin (Schedule D) or "Miscellaneous" Sign (Schedule F).

- Schedule F - Payment Schedule for "Miscellaneous" Sign Removal.
- Schedule G - Payment Schedule for 8-Sheet Poster Panel Removal.
- Schedule H - Payment Schedule for Relocating 8-Sheet Poster Panels onto Adjacent Property or pursuant to Business and Professions Code 5412 or 5443.5.

7.11.05.00 Appraisal Procedures for Outdoor Advertising Signs

If the schedule is not used, the valuation of the real property, including the sign structure, will follow normal appraisal practice and must adhere to the Uniform Act and applicable statutes. The following items must be considered when appraising a sign structure:

- The sign will be considered an improvement and will be analyzed as a primary or secondary use in appraising the value of the land as consistent with its highest and best use.
- Only cost information and that market and income data attributable solely to the real estate should be considered. Using this real-estate-only data, accepted real-estate-valuation methods should be used to the extent necessary and possible to value the land and improvements. Since data can be difficult to obtain, the cost approach may be of primary importance.
- If the fair market rent of the structure as real estate, in contrast to advertising business income, can be determined, that income may be processed to an indicated value or be reconciled with one or both of the other approaches.
- Sign structures will be appraised at the amount they contribute to the fair market value of the real property. The value of the structure will be shown on the RW 07-09 as an improvement at its value in place and included as part of the total value for the parcel. Tenant-owned sign structures will be indicated as such.
- Even though a sign structure alone may not represent the highest and best use of a site as though vacant, it may still have value. If the sign is located on the site in such a manner as to not interfere with development of the site to its highest and best use, it remains an economically viable asset.
- In considering the sales comparison approach, the Appraiser should make a reasonable search for comparable sales that included a sign structure considered as realty.
- The application of multipliers to the advertising income is not proper in arriving at the value contributed to the property by the sign structure. Advertising revenues are to be distinguished from the economic rent for land and improvements.
- The ground lease to the outdoor advertising company will generally add value to the fee. If the contract rent is less than the market rent, the outdoor advertising company may have a bonus value in the lease. The ground lease should be thoroughly reviewed to ensure a complete understanding of what it covers.
- As with any tenant business, the sign company compensation is provided for in the payment for the land and improvements or in the payment for compensable loss of goodwill.
- Each sign company should be advised of its right to claim a loss of goodwill due to the taking, and the fact noted in the diary sheet. If a claim and tax returns are filed, the business aspect and loss of goodwill, if any, can be determined by a goodwill appraisal.

7.12.00.00 - MOBILE HOMES

7.12.01.00 Mobile Homes - General

Mobile home appraisals are treated somewhat differently than other types of appraisals only because of their unique nature. The first determination to be made is whether it is realty or personalty.

7.12.02.00 Mobile Homes - Realty

Mobile homes installed on the owner's land in compliance with Health and Safety Code Section 18551 may be shown on County Recorder's records as subject to real property taxation. Mobile homes so indexed should be considered real property and be appraised as such. see Section 7.07.02.00. If the mobile home is not so indexed, the appraiser should consider the following tests to determine if the mobile home should be classified as real property:

A. Does the physical manner in which the mobile home is affixed to land (particularly the nature of the foundation) indicate an apparent intention that the home be permanently annexed to the realty?
B. Would removal of the mobile home completely or materially render other significant real property improvements associated with the use of the mobile home (e.g., pads, utilities, etc.) to be unfit for their intended use? Minor improvements should not be considered in this respect.

If the mobile home clearly fits either of these tests, it should be considered real property and appraised accordingly. If there is doubt, a legal opinion should be obtained.

7.12.03.00 Mobile Homes - Personalty

Mobile homes classified as personalty are eligible for purchase by the State only if they are determined to be owner-occupied and to fall within one of the following categories:

A. The mobile homes do not meet "decent, safe, and sanitary" standards; or
B. There are not an adequate number of suitable replacement sites for the mobile homes being displaced; or
C. The mobile homes cannot be made roadworthy and are thus incapable of being moved.

These mobile homes will be appraised only after the supervisor has determined that they qualify for purchase by the State. The supervisor will normally initiate the appraisal by memorandum specifying the conditions requiring the appraisal. A copy of this memorandum will be included in the Report.

It is the responsibility of the appraiser to review all mobile homes when inspecting the parent property site. If it appears that any will not meet D. S. & S. standards, the Senior Right-of-Way Agent should be notified so that a definitive determination can be made.

7.12.04.00 Mobile Homes - Special Procedures

The parcel number to be used for mobile homes on rented or leased space (such as in a mobile home park) will be the parcel number of the property in which the mobile home is located, with an "MH" suffix added together with a unit number; e.g., 11456(MH-1). Mobile homes will be appraised in the same manner as other property, (i.e., fair market value in place). Normally, there should be ample market data available.

Comparison factors should be based on industry standards. Although they should not be included in the report, current Mobile Home Appraisal and Condition Report forms are often available through lenders and dealers and list many of the factors considered in mobile home valuations. The Residential Building Check Sheet (Exhibit 07-EX-08) should be used in the appraisal. As an alternate, a modified URAR Form can be used. Additional considerations involved in the appraisal of mobile homes are the license or tax status of the unit and possible penalties to the seller, differences between nominal and actual length of the unit, the quality, condition and desirability of the mobile home park, and the impact of space rental rates on the subject and the comparables.

The industry "blue book" may yield useful information for arriving at a Replacement Cost New for a comparable unit, but not include the total cost of a new unit established on the site.

7.12.05.00 Mobile Homes - Format

Mobile home appraisals will conform to normal format except that the following additional information is required:

A. Year built and manufacturer.
B. Nominal dimensions; e.g., 2.4 m x 12 m and actual dimensions (if different); e.g., 2.44 m x 12.04 m.
C. Vehicle serial number.
D. Vehicle license plate number, State, and expiration date. Instead of a license plate number, some mobile homes will have a substitute State of California Title Control Number ("Q" series number) on the Ownership Certificate (if sold new in California after July 1, 1980, if sold more than 120 days after the expiration date of the license plates, and certain other circumstances). The number used should be the two letter-four digit license plate or control number indicated on the title to the current owner.

7.13.00.00 - SPECIAL APPRAISAL REPORTS

7.13.01.00 General

Some special appraisals shall be prepared in separate reports. Such Special Reports may have modified formats, and follow modified review and approval processes as discussed below. These Special Reports include appraisals for material and disposal sites; sites for maintenance stations, shops, and offices; joint acquisitions by the Authority and other public agencies; and inverse condemnation actions.

7.13.02.00 Material Site Appraisals [Hold for Future Use]

7.13.03.00 Disposal Site Appraisals {Hold for Future Use]

7.13.04.00 Office and Maintenance Station Site Appraisals

Appraisals of new sites for maintenance stations, shops, or office buildings shall be separate reports. If the site is to be acquired in conjunction with a right-of-way acquisition, both requirements will be appraised as a whole even though separated into two reports. All other appraisals not a part of a right-of-way project will be in the standard format and content with the same approval process as a regular acquisition appraisal.

7.13.10.00 Joint Acquisition Appraisals

The Authority may enter into Cooperative Agreements with other public agencies for purchase of property for other public purposes. The date and title of the Cooperative Agreement will be referenced in the report. The high-speed rail requirements and the other agencies' requirements will be shown separately with the appropriate values distributed to each in accordance with the agreement.

The appraisal will assume that all agencies' acquisition and construction occur together and no damages or benefits caused by one shall affect the before value of the other. This does not preclude proper apportioning of damages occurring to remaining property due to specific construction features of one. Similarly, benefits due to the construction project of one agency may be used to offset damages caused by the other.

If the Cooperative Agreement provides for specific proportions for sharing right-of-way costs, these proportions will be used in the report and shown on the Appraisal Page.

Legal opinions should be obtained before condemnation of joint acquisitions.

7.13.20.00 Protection Appraisals

Protection acquisitions require prior approval by the Director of Real Property. Upon receiving authority, the appraiser shall proceed to prepare an appraisal covering this acquisition. The appraisal will be prepared the same as a regular program appraisal, but identified as a "Protection" appraisal.

Appraisals submitted for Director of Real Property approval must contain a reference to the date of the approval authorizing the protection acquisition. Any special funding approval must also be noted in the report.

7.13.30.00 Appraisals for Other Agencies

Appraisals prepared for other State or Local Agencies will be comparable in format and documentation to that of a normal acquisition appraisal for the Authority except where the agreement with the agency specifies a different product.

7.13.40.00 Litigation Reports

An appraisal for condemnation or inverse litigation testimony shall be of sufficient detail, consistent with legal and professional requirements for format and documentation to present a clear and accurate opinion of value. Condemnation appraisals are to be completed and submitted for review at least 14 days prior to exchange with opposing counsel and 60 days prior to the trial date.

CT Legal requests for an independent appraisal for purposes of inverse litigation, the report will conform to the same standards as a condemnation report, but will show the phrase "Inverse Condemnation Appraisal" on the front cover. A description of the claim will be included.

The following two statements will be included in the Certificate of Appraiser:

A. "This report is pursuant to the request of and for the confidential use by the CT Legal for the purpose of defending the State."
B. "Valuation conclusions are the result of using given legal assumptions for analysis purpose only and in no way imply acceptance or rejection of the validity of the claim to which this report relates."

7.13.50.01 - UTILITY, RAILROAD AND GOVERNMENTAL OWNERSHIPS

7.13.50.00 Public Utility Property

Property owned in fee by public utilities (including governmental utility agencies, irrigation district/regions, and flood control district/regions) may be subject to special appraisal treatment, including the purchase of replacement land for exchange, where necessary. If the public utility and the State have entered into a master agreement at variance with instructions, the master agreement will prevail. In these cases, the title and date of the master agreement will be noted in the appraisal.

7.13.50.01 Fee Land

A. If joint use of fee-owned property is proposed, the land required for high-speed rail use will be appraised at the market value of the underlying fee. This envisions the land utilized by the utility facility has a secondary use. For example, an electric tower line traverses a property. The area under the line may still be used for agriculture, parking or residential assemblage.

B. If the State proposes to replace the land in full required by exchange, land value of the fee-owned parcel should be shown as zero (Market Value may be shown in "Remarks"). In "Remarks," describe the location and parcel numbers of the replacement land, if determined.

   When the State is replacing the fee-owned utility right-of-way with a replacement right-of-way that is not as wide as the existing utility property being acquired, the valuation approach will be the same as set forth in Section 7.13.60.01 for valuation of railroad operating right-of-way.

C. If the public utility proposes to acquire the replacement property, the land value should be the market value of the minimum requirements of the replacement property. The basis of the valuation and description of the replacement property must be fully documented in the appraisal.

D. If the public utility proposes to abandon the use of the property without replacement, market value would be paid for the required property considering the property clear of the public utility use. Cost of abandonment and removal of improvements may be covered by utility agreement.

E. Public utility corporation yards, shops, office and other proprietary properties will be valued by normal methods.

7.13.50.02 Improvements

Relocation and/or replacement of buildings, equipment, and lines involved in the utility production or transmission will normally be handled by utility agreement. Improvements which are relocated and/or replaced under the utility agreement will be clearly described and assigned a zero value. Improvements which are not included in the utility agreement will be valued using normal appraisal methods, with depreciation and salvage value given full recognition.

7.13.60.00 Railroad Property General Prerequisites

All appraisals of railroad-owned properties are to be submitted to the Director of Real Property for review and approval, regardless of the monetary amount involved. All appraisals of railroad-operating properties connected with rights-of-way, depots, station grounds, switching yards, or public team tracks, etc., are specialized and require special handling, including being submitted to the Rail Operations Branch for review and approval, regardless of the monetary amount involved.

All railroad properties will be appraised at market value of underlying fee and be in compliance with all other sections in the Right-of-Way Manual for appraisal reporting (except where noted in this section). The Non-Complex Valuation of $25,000 or Less and the Waiver Valuation formats may be used when appropriate and in compliance with sections 7.02.12.00 and 7.02.13.00 respectively . Railroad parcels are not eligible for the one-agent appraise/acquire process.

Proper handling of railroad properties requires a high degree of coordination between numerous departments, including Legal and the Real Property Branch. The following prerequisites apply:

A. Upon assignment of a railroad property appraisal, the appraiser shall first confer with Real Property Branch. The delivery of the Notice of Decision to Appraise letter shall be coordinated through the Real Property Branch. Acquisitions may also facilitate inviting a railroad representative on the inspection of the subject.
B. Railroad appraisals are to be submitted on a construction project basis including all takings from the railroad ownership in a single appraisal.
C. Due to extraordinary lead time requirements, appraisals of land located within the railroad's transportation corridor must be submitted a minimum of 24 months prior to the project certification date. Single transverse crossings of railroad transportation corridor which do not require substantial relocation of rail facilities are excepted from this requirement and may be submitted one year prior to the certification date. Any other exception to this policy must have prior approval of the Director of Real Property.
D. The appraisal shall include a general description of the items, e.g., track and signals, which are proposed to be covered by a future construction and maintenance agreement or service contract.
E. The appraisal will include copies of the permanent and temporary easement deed language for property rights being appraised. If it is a Permanent Easement, the Appraiser will use the most recent version of the RW 06-01(Z) Deed form.
F. In all cases, the appraisal will include a clear statement describing the property rights held by the railroad in the property being acquired.

Railroad Property Terms:

Railroad Right-of-Way: Title, in fee and/or easement, or by adverse possession, to a strip of land between two points, all or a portion of which land is used for railroad purposes that include freight and/or passenger service.

Transportation Corridor: A corridor which includes existing operating and nonoperating railroad property with reasonably probable future transportation uses, including railroad tracks, excess width, utility lines, pipelines, fiber-optic lines, etc. These uses must not be speculative. see Section A.1.d. below.

Operating Railroad Property: The property necessary for operation of rail service over the railroad right-of-way. The area covered by the nonabandoned tracks plus the minimum additional clearance width as set by the Public Utilities Commission (PUC) and/or the safety standards set by the railroad. It may include switching yards, station sites and their parking lots, and crossing gates and associated equipment. All operating railroad property is located within a transportation corridor.

Nonoperating Railroad Property: Anything other than operating railroad property; i.e., property which is not required to operate rail service on a right-of-way. This may include unused right-of-way where track has been removed, area required for flood protection, grading, land leased to others, administrative

change the "transportation corridor" status.
Abandoned Railroad Right-of-Way: A right-of-way for which a termination of rail services has been approved by the Surface Transportation Board, and all further requirements have been fulfilled.

7.13.60.01 Valuation of Railroad Properties

Takings from railroads may involve complex legal and appraisal problems in determining fair market value for all or a part of the transportation corridor being acquired. Whenever it becomes apparent that unusual problems exist or there is a problem with defining whether the property is located inside or outside of the transportation corridor, the appraiser should confer with the Railroad Agent, or if necessary, the Director of Real Property. In most cases, the following guidelines may be used:

A. Appraisals of Railroad-Owned Lands

1. Land within the transportation corridor:

a. Where the State proposes replacement of the required land or facility, the part taken will be assigned a nominal value. A description of the replacement land will be included in "Remarks" and delineated on the Appraisal Maps.

When the State is replacing the transportation corridor needed for the project with a transportation corridor that is not as wide as the existing transportation corridor, generally, only the portion replaced will be assigned a nominal value. For example, assume the existing transportation corridor is 80 feet wide and the State is proposing to convey a 60-foot wide transportation corridor to the railroad company as the replacement transportation corridor. Under this circumstance, the appraisal will show 60 feet of the existing transportation corridor at nominal (because it is being replaced). The remaining width, 20 feet in this example, will then be handled in one of two ways:

1) If the additional width of the existing transportation corridor is required only because of uneven topography (slopes, etc.), it will also be valued at nominal.
2) Otherwise, the additional width will be appraised at market value.
The appraisal report will show as follows (on Form RW 07-09):

Total area taken - 80 x 500 feet =	40,000 sq ft
Area being replaced - 60 x 500 feet (30,000 sq ft) =	nominal
Area not being replaced - 20 x 500 feet (10,000 sq ft) @ $5.00/sq ft (market value) =	$50,000
Est. Total Value =	$50,000

3) However, if the existing transportation corridor is 80 feet wide because of an adverse terrain condition (cut or fill) and the replacement transportation corridor is on level ground thus only requiring 60 feet of transportation corridor to replace the utility of the existing transportation corridor, then the total area being acquired of 40,000 sq ft

will be assigned a nominal value.
If the railroad company requests that the State acquire and convey a replacement transportation corridor which is wider than their existing transportation corridor to be acquired by the State for the project, then the appraisal will show the extra width at market value to be paid for by the railroad company in the exchange transaction.

The appraisal report will show as follows (on Form RW 07-09):

Total area to be acquired - 60 x 500 feet =	30,000 sq ft
Replacement transportation corridor - 80 x 500 feet =	40,000 sq ft
Transportation corridor take - 60 x 500 feet (30,000 sq ft) @ nominal	nominal
Replacement area in excess of take - 20 x 500 feet (10,000 sq ft) @ $5.00/sq ft (market value) =	$50,000
Total amount to be paid to the State by railroad company	$50,000

However, if the replacement railroad transportation corridor is 80 feet wide because of adverse terrain condition (cut or fill) and the replacement transportation corridor merely replaces the functional utility of the existing transportation corridor, then the appraisal will show nominal value for an even exchange.

Width with utility will be the criterion. Length and area alone will not.

If the total area of the replacement transportation corridor is different from the total area of the existing transportation corridor to be acquired for the project merely because of the different lengths of the two transportation corridors, the appraisal will be nominal value as stated in the first paragraph of this Section.

b. Where the State does not propose replacement of the required land, the State's requirement shall be identified as either a transverse crossing or a longitudinal taking.

"Transverse Crossing" means any portion of a project physically crossing a transportation corridor from one side of the transportation corridor to the other regardless of the angle of the crossing.

"Longitudinal taking or acquisition" means any taking of any portion of a transportation corridor other than a transverse crossing. However, a transverse crossing may also physically share a portion of the area within a longitudinal taking.

Where the State does not propose replacement of the required land, the longitudinal takings will be appraised at fair market value. An example of this type of taking occurs when the State is acquiring a longitudinal strip of existing transportation corridor and the railroad company is able and willing to continue its operations without any replacement transportation corridor; e.g., the existing transportation corridor is 80 feet wide and the State needs a 20-foot strip for the project and replacement transportation corridor is not required.

c. Where portions of the transportation corridor property may reasonably be converted to nontransportation uses by minor adjustments of facilities without affecting the reasonably probable transportation uses, the longitudinal taking will be appraised at market value, reflecting the costs of conversion.

d. Transverse crossings require special consideration by the appraiser. Existing California law establishes certain principles regarding the valuation of transverse crossings. The leading case in California establishing those principles is City of Oakland v. Schenck (1925) 197 Cal. 456. The main principle is that the public has the right to construct crossings necessitated by a public road project for a nominal consideration when the crossing does not interfere with the railroads' use. Subsequent cases have expanded the "rail use" to a "transportation use." This is why the transportation corridor is defined above. Information about railroad operations and uses should be obtained through the Acquisition Agent.

   The transportation corridor may contain operating right-of-way, nonoperating right-of-way, excess land, communication corridor, pipeline corridor, Outdoor Advertising Structures, etc. The following are factors to consider in defining the transportation corridor and should be included when testing for uses which are physically possible, legally permissible, financially feasible, and maximally productive.

   1) Determine the area that is subject to PUC and Federal Surface Transportation Board (STB) regulation. Determine what restrictions, if any, the PUC and the STB place on railroad operations within the area subject to PUC and STB jurisdiction. This information should be obtained through the Railroad Agent.
   2) Determine what interest the railroad has in the land, i.e., fee or easement. Determine what deed restrictions have been placed on the railroad's use of that area.
   3) Determine whether the railroad has any documented plan for the use and/or development of its property. This information should be obtained through the Railroad Agent.
   4) Railroad properties are not zoned by the Cities and Counties even though county zoning maps might show railroad properties zoned similar to adjacent parcels. This is due to the fact the counties have no authority of use over railroad properties. Railroad properties are under federal government jurisdiction acting through the Surface Transportation Board (STB) and are not accountable to county regulations.
   5) Determine which uses are considered to be for legitimate railroad purposes. Some uses may be precluded by existing physical limitations, such as steep terrain. Legitimate railroad uses may include air or subsurface space, which may be reasonably usable for valuable nontransportation uses or for other transportation uses, and these uses are reasonably probable.

The appraiser must also be familiar with the construction in the manner proposed to determine the impact on the existing and potential uses. The physical impact of construction should be analyzed as to its effect on the reasonable and probable transportation uses. Construction details, such as footings and pillars, shall not be valued separately, but shall be included in the analysis of the overall impact of the State's requirement.

The valuation of permanent easements for transverse crossings is similar to other easement valuations. The value of the easement is the difference in the parcels value from the unencumbered condition and the encumbered condition (Right-of-Way Manual Section 07.04.10.00 on Permanent Easements). The appraiser must ask the following questions: 1) Does the exercise of the rights being acquired unduly interfere with the railroad's existing use of its transportation corridor for legitimate railroad and other existing transportation purposes? The appraiser must also determine whether the transverse crossing will interfere with a reasonably probable future transportation use. If it does not and there is no loss of use, utility or capacity in the after condition, the holding in City of Oakland v. Schenck (1925) 197 Cal. 456 applies, and the value is nominal. If the State's project does interfere with any one of the above uses, then two additional questions must be answered: 2) What are the reasonably probable uses that are impacted; and, 3) What is the market value of those impacts as measured by the loss in utility and desirability of the transportation corridor? When the State's transverse crossing interferes with any one of the above-listed uses, the impact will be reflected in the valuation. With respect to transverse crossings, after making the above-listed determinations, including the width of the corridor and the permitted uses, the transverse crossing will be valued by the loss in utility and desirability before and after the imposition of the encumbrance.

Each transverse crossing must be evaluated as described in the preceding paragraph. Merely including the Manual reference or the simple citation of California Case Law in the written appraisal is not sufficient documentation of the valuation. Based on the appraiser's thorough analysis when the value of the transverse crossing is nominal, the loss can be expressed as "nominal" in the equation instead of as a percentage.

Temporary Construction Easements (TCE's): In the valuation of TCE's, the appraiser must consider whether the easement is an exclusive or nonexclusive (shared use) easement (please refer to Right-of-Way Manual Section 07.04.09.00 on Temporary Easements). If the temporary easement is nonexclusive, the appraiser must determine the resulting loss of use the railroad has incurred during the easement term. That percentage of loss will be multiplied by the fee unit value, the rate of return to vacant land, and easement's term. It is important to note that the Schenck ruling can be interpreted to include Transverse TCE's if the appraiser's findings are consistent with the 'combined use' and nominal loss holding of the ruling.

A "Summary for the Basis of Just Compensation" is required to be included at the end of all appraisal reports. Appraisal reports for railroads are no exception. Where the easement values are determined to be nominal, a statement similar to the following paragraph shall be included in the appraisal to summarize the analysis:

"The appraiser has ascertained that the Highest and Best Use of the subject property

is as a transportation corridor including all legitimate railroad and other transportation purposes. The required transverse crossing will not diminish the market value of the railroads' property or unduly interfere with the railroads' use for legitimate transportation purposes, as ascertained by analysis of the before and after conditions. Therefore, the compensation is nominal, consistent with California state law."

e. Longitudinal takings that cross existing structural transverse easements will be appraised at market value if the existing transverse easement was obtained at nominal value. The effect on land uses or values because of the existing highway-railroad grade separation structure, within the new longitudinal easement area, will not be considered in estimating the market value of the longitudinal taking. The reasoning behind this premise is that if the original transverse crossing easement was obtained at nominal value and provided no benefit to the railroad, the new longitudinal taking should be paid for by the State.

2. Land outside of the transportation corridor:
Land considered to be outside of the railroad's present or future transportation corridor will be appraised at market value. Where the property is not capable of independent use or development, the appraiser should consider any potential additional use or utility of the property as assembled to the adjacent properties.

B. Appraisals of Railroad-Owned Improvements

1. Railroad improvements (other than trackage) being acquired without replacements or relocation and lessee-owned improvements on railroad properties will be valued using normal appraisal methods, with depreciation and salvage value given full recognition.
2. Railroad improvements, including trackage, which are to be relocated or replaced under the terms of a construction and maintenance agreement will be clearly described and assigned a zero value.

7.13.70.00 Governmental, Indian, Functionally Replaced Publicly Owned Facilities, and State Land

A. Federal public lands, including national forests, will be appraised at zero land value, unless the appraiser believes land value may become an issue during acquisition. In this event, the land is to be appraised and shown at market value.
B. Federal military reservations and Federal reservoirs, canals, and flood control channels will normally be appraised at zero land value unless the appraiser believes value may become an issue during acquisition. In this event, the land is to be appraised and shown at market value.
C. Federal General Services Administration properties will usually be appraised at market value. There may be circumstances where the property will be conveyed at zero value if the use as a high-speed rail is compatible and a benefit to the Federal facility.
D. State School Lands will be appraised at market value.
E. Proposed acquisitions of public parks will be appraised at replacement cost. Per the Public Park Preservation Act of 1971, the acquiring entity pays sufficient compensation, or land, or both, to enable the operating entity to replace the park land and the facilities thereon. Ballantine's Law Dictionary defines "park" as a "tract of land acquired by a city, town, or other public authority, for ornament, and as a place for the resort of the public for recreation and amusement."

The substitute land should be of comparable characteristics and of substantially equal size, located in an area that would allow for use by generally the same persons who used the existing park land and facilities. The cost will include the land and the cost of development into park land, including placing of substitute facilities thereon. see Sections 5400 through 5409 of the California Public Resources Code.

F. Indian tribal and allotted lands will normally be conveyed as easement title only and will therefore be appraised at market value less one dollar.

G. All other federal, state, county, special district, school district, and city lands will be appraised at market value except:

1. If State will purchase the replacement property and functional replacement of improvements is proposed, and the owning agency has waived its right to have an estimate of compensation for the acquisition parcel established by the appraisal process in preference to functional replacement, the subject acquisition parcel will be valued at zero value. (see Acquisition Chapter 8 and Exhibit 08-EX-34.)

   The parcel numbers of the replacement land will be noted if available and the valuation basis discussed. The market value of the subject land will be included for information in "Remarks."

   It will always be necessary for the Appraiser to supply cost-estimate data for the acquisition property. This will normally occur during the project-development stage of a project.

2. If acquisition of replacement property by the governmental agencies is proposed, the value of the minimum requirements of the proposed replacement property may be used as land value of the subject. The basis of valuation and description of the replacement property will be fully documented in the appraisal. The market value of the subject land will be included for information in "Remarks."

   These instructions do not preclude donation, dedication, consent to joint use, or transfer of possession and control, without consideration, from any public agency to the Authority for high-speed rail purposes.

7.14.00.00 - EXCESS LAND APPRAISALS

7.14.01.00 General

Requests for excess property valuations normally will originate with Acquisitions. A copy of the written request will be included in the report, as well as the *Hazardous Material Disclosure Document-Disposal* (ENV-0001-D) to certify the property can be sold or exchanged.

At the discretion of the Director of Real Property, Market Value Determinations and Public Sale Estimates of market value may be prepared by Excess Land. However, the Market Value Determination must be reviewed and recommended for approval by a Senior Right-of-Way Agent assigned to the Appraiser.

When the same agent prepares the Market Value Determination or Public Sales Estimate and conducts the sale, the RW 07-17A, Certificate of Market Value Determination, must be revised. It should contain the following statement:

> "That I understand I may be assigned as the sales agent for one or more parcels contained in this report, but this has not affected my professional judgment nor influenced my opinion of value."

Only in the instances cited above, may an excess land valuation be prepared by Excess Land.

7.14.01.01 Excess Land Methods of Disposal

The following are commonly used methods of disposal that typically require valuation:

A. Public sale by auction or sealed bid.
B. Private sale by auction or sealed bid between adjoining owners.
C. Direct conveyances.
    1. Direct sale to adjoining owner (Findings "A" and "B").
    2. To other governmental agencies.
    3. To public utilities.
    4. By Cooperative Agreements.
    5. Pursuant to legislation.
    6. To qualifying occupants under certain statutory requirements.
    7. Exchange pursuant to a contractual obligation.
D. Transfer of Jurisdiction to other State agencies.

7.14.01.02 Excess Land Valuations

There are three basic types of excess land valuations. They are Market Value Appraisals, Market Value Determinations (of $10,000 or Less), and Public Sale Estimates. A Market Value Appraisal or a Market

Value Determination will be prepared for all properties to be sold at other than a public sale. All excess land valuations are based on the same definition of fair market value used in acquisition appraisals. All valuations shall be approved in accordance with the current delegations.

7.14.02.00 Market Value Appraisals

A Market Value Appraisal will be prepared for all excess parcels unless they are to be sold at public auction or meet the criteria for a Market Value Determination ($10,000 or less). The Market Value Appraisal must consider the full market effect of all damages and benefits, and the economic effect of delay in the use of the property pending completion of construction of the transportation project. "Market value" is based on the value of the parcel at its highest and best use, which may be as assemblage to adjoining property.

There are some specific valuation concepts and considerations associated with Market Value Appraisals of excess land.

A. Excess property with a highest and best use as assemblage to an adjoining property will be appraised at plottage value, i.e., the increment of value created by assemblage. The before and after valuation method will be used. Thus, the adjoining property will first be appraised as a separate parcel and then as assembled with the excess property. Plottage value created by assemblage must then be allocated between the adjoining parcel and the excess parcel, recognizing that both parcels are needed to create plottage value, but taking into consideration what each contributes to that value. The portion of the allocation attributed to the excess parcel is the "market value" of the excess. Note: Where the excess parcel is a minor remnant and an analysis of the adjoining property indicates that the excess parcel is likely to add $5,000 or less to its value, a simple approximation of the value of the adjoining property is sufficient.

   In valuing the assembled parcels, the appraiser must also consider costs of physically joining the excess property with the adjacent property; for example, earthwork necessary to eliminate a substantial grade difference. The appraiser must also take into consideration soft costs such as time, carrying costs, and profit for any development required to realize the plottage value.

   When the excess parcel being valued adjoins more than one ownership, it will be appropriate to indicate the value of the excess parcel as assembled with each of the adjoining ownerships. The value as shown on page 1 of the Excess Land Market Value Sheet (Form RW 07-18) will be that which is the highest value. Lower values considering assemblage to other adjoining ownerships may be indicated by notation on the Excess Parcel Market Value Sheet or attachment thereto.

   In assemblage situations, the appraisal will include a map showing the excess and all adjoining ownerships.

   When an adjoining property(s) requests decertification of right-of-way, the appraised value will not be reduced by the costs of relocating or reconstructing any necessary high-speed rail facilities. The buyers of decertified right-of-way must pay for necessary costs of rearranging utilities, fencing, landscaping, and other improvements which may be affected by the decertification.

B. Utility easements to be conveyed to utility companies will be appraised at market value.

1. If the valuation amount is between $0 and $500, show "nominal" in the amount column.
2. If the valuation amount is between $501 and $2,500, show the actual amount rounded to the nearest $50, or, show "nominal" followed by the amount shown in parentheses.

C. Access rights will be valued at the difference between the values of adjoining property with and without encumbrance of the access rights.

D. Current market data are normally the best comparables. State sale comparables may be used if they meet normal criteria of comparability in time, desirability, market transaction, etc. State sales may best be used to demonstrate damage/benefit relationships between a State sale and contemporary market data in its locality. This relationship may be helpful in applying similar damage/benefit ratios to local market data and the subject parcel.

7.14.02.01 Format, Content, and Standards

A. Market Value Appraisals must follow the general standards of right-of-way acquisition appraisals.

However, the amount of analysis and degree of documentation should be in proportion to the appraisal problem and valuation involved. Only relevant data should be included. The relevant data should be concisely stated and succinctly analyzed.

The standard right-of-way acquisition appraisal format is used except that the Excess Land Appraisal Title Page (RW 07-16), Senior Field Review Certificate - Excess Lands (07-EX-24C), Certificate of Appraiser - Excess Land (RW 07-17), and Excess Land Market Value Sheet (RW 07-18) will replace the standard forms/exhibits used in the acquisition appraisal. The report will also include the excess land appraisal request and Director's Deed Map(s).

The excess land appraisal request from Acquisitions should include the acquisition cost of the excess.

B. The Uniform Residential Appraisal Report form (URAR) may be used for appraising single family residential properties or 2 to 4 unit multi-residential properties. For further information regarding the use of the URAR form appraisal, see Section 7.07.02.00.

If the URAR form appraisal is used for proposed direct sales of excess pursuant to Government Code Section 54235 et seq. (SB 86, Roberti), the following is to be considered when preparing the appraisal:

- If improvement rehabilitation work is to be completed prior to sale and the parcel is appraised as though the work has been completed, list the rehabilitation work on a separate page attached to the form appraisal.
- The form may also be used to appraise the property before rehabilitation if the Director of Real Property requests such an appraisal. The appropriate premise must be indicated in the appraisal request letter.

7.14.02.02 Dual Report Requirements [Hold for Future Use]

7.14.03.00 Market Value Determination of $10,000 or Less [Hold for Future Use]

7.14.03.01 Format, Content, and Standards [Hold for Future Use]

7.14.04.00 Public Sale Estimates [Hold for Future Use]

7.14.04.01 Format [Hold for Future Use]

7.14.04.02 Content [Hold for Future Use]

7.14.04.03 Examples of Supporting Data [Hold for Future Use]

7.14.05.00 Review of Request for Proposal Submittals (RFP)

Proposal Forms received as the result of a Request for Proposals, in the course of sale of residential properties under Government Code Sections 54235 et seq., will be reviewed by the supervisors. This is to validate the reasonableness of the offers received.

Upon receipt of written request from the Excess Land Sales Section, the Appraiser's responsibility will be to review the Proposal Form to verify that the estimated operating expenses appear appropriate to the particular property involved. That is, fixed and variable operating expenses and reserves for replacements will be reviewed to see that they conform to local practice experience, market expectations and reasonable anticipated costs and economic life standards.

In addition, proposed rehabilitation work and its estimated cost as contained in the proposal should be reviewed to determine whether the work and cost appear appropriate. The review will be commensurate with the extent of the information furnished. Excess Land Sales is responsible for furnishing additional data for consideration if any is required.

The review memorandum should be signed by Director of Real Property and a copy retained in the Appraisal files.

7.15.00.00 - AIRSPACE ESTIMATES, BID LEASE VALUATIONS AND APPRAISALS

7.15.01.00 General

Appraisers should familiarize themselves with the Airspace Chapter and the Standard Airspace Development Lease to better understand the procedures and terms used by the Authority.

Estimates, valuations and appraisals of airspace parcels will be made at the written request of the Director of Real Property. A copy of the written request will accompany the estimate or appraisal. Requests will provide necessary maps, plans and profiles of the high-speed rail, the airspace parcel numbers and any available information pertinent to the valuation. The property (rights) to be appraised and any special conditions that would affect value must be defined.

The appraiser should include any collateral data useful in marketing the area to be leased. Whenever possible, the appraiser and the airspace agent will discuss the site prior to the start of the appraisal. If special restrictions have a significant effect on value, the necessity for the restrictions should be reviewed and discussed between the appraiser and the seniors.

Real Property Branch will furnish, on an annual basis, the projected airspace appraisals needed for the next fiscal year. This list will identify the lease areas to be appraised and the dates by which the appraisals are needed. It will form the priority basis for preparation of airspace appraisals. If the Real Property Branch must change this schedule, a written request for change and/or an updated schedule is to be furnished to the Appraiser. Updates should be requested well in advance of the need.

The appraiser should consider all legal potential and proposed uses for the parcel. A proposed use should be discussed in the Report even if the appraiser subsequently decides that this use does not represent highest and best use. Each analysis must be thorough and complete so the reader/reviewer is clearly and logically led to the appraiser's conclusion. Among other questions, the analysis should answer those such as:

A. Can the subject airspace parcel be legally developed as an independent parcel?
   1) Is it physically possible to develop it independently?
   2) What can it be used for as an independent parcel?
   3) What markets exist for the most profitable anticipated uses?

B. Can it be joined for use with an adjacent parcel?
   1) How are the adjacent parcels developed?
   2) Can the airspace parcel be used through joinder?
   3) Does it enhance/improve the use of the adjoining property?

C. The conclusion:
   1) Which will yield the highest net return, joinder or use as an independent site?
   2) What is the highest and best use and the reasoning leading to this conclusion?
      Experienced associate grade appraisers should be assigned the preparation of airspace appraisals because of their specialized nature. The assignment should be for at least three years. Appraisers should meet periodically to exchange data and ideas. The need for such meetings should be expressed to the Director of Real Property which will coordinate them.

7.15.02.00 Estimates

Estimates may be requested to provide the Director or Real Property with a figure for preliminary discussions with potential users or for minimum value sites. A regular airspace appraisal can be made in lieu of an estimate if deemed necessary.

Estimates should be minimum-type valuations similar to letter-type appraisals. Only a minimum amount of comparable data to support the conclusions of value is necessary.

The estimate will consider all factors directly or indirectly affecting the utility of the rights to be leased. Full recognition will be given to any enhancement of real estate values in the area because of the location of the high-speed rail. A statement of highest and best use will be made with supporting data and rationale. The appraiser should consider any possibility of plotting the airspace parcel with a State excess land parcel or a privately owned parcel in the immediate area to determine the highest and best use.

A completed Form RW 07-19 will be accompanied by a vicinity and parcel map.

7.15.03.00 Appraisals - General

The parcel may have to be appraised based on various uses or premises; for example, as a separate parcel, in conjunction with uses of adjacent or nearby properties, etc. The primary appraisal will be the fair market value of the parcel based on its highest and best use. Any other requested values based on uses or premises that do not represent the highest and best use of the parcel will be shown separately in the Appraisal Report as alternate appraisals on separate Airspace Parcel Appraisal pages Form RW 07-21 labeled as "Alternate Appraisals." When alternate appraisals are included, the primary appraisal as described above will be labeled "Primary Appraisal."

The appraiser, after deciding on the highest and best use of the parcel and before proceeding with the appraisal, should consult with the Director of Real Property to advise him/her of the conclusion. Once the Real Property Branch knows the highest and best use, they may see a need for an alternate appraisal based on some other premise or use.

For example, if the highest and best use is concluded as joinder with the adjacent ownership, the Real Property Branch may also need an alternate valuation as an independent parcel.

By holding these consultations during the initial appraisal process, any need for alternate appraisals can be identified at an early stage so the alternate can initially be done and included in the Appraisal Report.

7.15.03.01 Format

The format for airspace appraisals will generally be the same as for acquisition appraisals. However, airspace appraisals use Form RW 07-20 for the Appraisal Title Page and Form RW 07-21 in lieu of the Form RW 07-09. If the appraisal contains more than one parcel, include a summary page listing the parcels and the appraised values.

7.15.03.02 Standards and Methods

Regular market value airspace appraisals will be required for any airspace parcel that will be leased on a direct basis without calling for competitive bids, and those situations not meeting the specified criteria for bid lease valuations.

All airspace appraisals shall be performed to meet the same quality standards as used for acquisition appraisal reports with respect to analysis, documentation, market data, and market data analysis. Only one appraisal is required, even for airspace parcels to be directly negotiated.

Methods will be the same as those applied in appraising any right-of-way acquisition parcel, except that consideration should be given to all of the factors that may limit or enhance its utility because of the existence of the high-speed rail improvement located on or near the parcel. Full recognition will be given to any enhancement of real estate values in the area because of the location of the high-speed rail.

7.15.03.03 Preparation

The appraiser must thoroughly discuss and analyze the effect that the high-speed rail improvement has on the use of the parcel, with special emphasis on the restrictions imposed by the following jurisdictions:

- The Authority
- The State Fire Marshal
- Local planning and building departments
- Any other agencies having controls

The appraiser should look closely at the location of the high-speed rail structure across the parcel. If the viaduct structure were confined to one side of the parcel, it could have a different effect on the overall use of the parcel than if the structure traversed the center of the parcel only, leaving small strips of open land on each side.

Comparable data directly applicable to the physical condition of the subject may be difficult to find in the market. However, the appraiser must use what market data is available and make the necessary adjustments. The appraiser may use lease data in an income approach for the purpose of estimating the value of the parcel. Lease data from existing airspace leases may be useful if the data meets the normal comparability tests.

There should be a thorough analysis of adjustments with market-data support if possible. The use of dollar or percentage adjustments follows the same requirements as for acquisition appraisals. The appraiser must fully support the conclusion of value the same as is presently required in any appraisal of acquisition parcels.

All airspace appraisals will be reviewed for approval by the Real Property Branch. Only the primary appraisal based on the highest and best use of the airspace parcel will be approved for lease purposes.

Alternate appraisals will be reviewed “as to value only” based on the premise used in the Report. Any subsequent use of the alternate appraisal for lease purposes will require prior administrative authorization by the Director of Real Property.

An Airspace Appraisal Summary Form RW 07-22 will be prepared and submitted to the Director of Real Property with each parcel appraisal.

Form RW 07-22 shows the format to be used. For consistency purposes, please adhere to the format shown.

The summary should be brief, but long enough to adequately cover the important aspects of the appraisal. Under "Brief Property Description," include a description of the high-speed rail facility that is located on or over the airspace parcel.

7.15.04.00 Bid Lease Valuations

An airspace bid lease valuation is used for establishing minimum rental rates for leasing airspace parcels on the basis of competitive bids. They will be approved according to the current delegations.

Each valuation will contain a range of value and will be prepared upon written request from the Airspace Branch.

Range of Value is defined for this purpose as the range of most probable sales price if the rights being valued were to be sold on the open market. The range should be based on the typical low and high prices paid for similar properties in the market adjusted for comparability.

Because the airspace rights so valued will be exposed to the market through the bid process, documentation and support need not be as extensive as in the standard airspace appraisal which estimates fair market value. Nevertheless, at least a reasonable amount of documentation and support must be presented. However, every bid lease valuation will contain a thorough, complete statement and analysis of the highest and best use of the rights under study. This analysis will be as comprehensive and definitive as one required for an airspace market value appraisal.

7.15.05.00 Rental Rate Appraisals

In order to streamline the airspace appraisal process, for those qualifying nondevelopmental uses on directly negotiated airspace leases, appraisers may use an Airspace Rental Rate Appraisal process in lieu of a regular airspace appraisal report.

The purpose of this airspace appraisal category is to facilitate the appraisal process for numerous noncomplex and noncontroversial airspace parcels. Appraisals responds directly to a request for a specific use rental rate by the Director of Real Property. In this specific case, the appraiser is not asked or required to perform an independent highest and best use analysis or resulting land valuation.

Generally, Airspace rental rate appraisals can be used for vacant:

1) Landlocked Parcels
2) Minimum-sized or oddly-shaped parcels that have little value or utility
3) Park-and-ride lots
4) Public parks (Marler-Johnson)

5) Parcels leased to bona fide public agencies
6) Parking and/or storage uses when there are ample comparable rents available

Rental rate appraisals will not be used for the following:

1) If comparable rents are scarce or nonexistent and rental value is not easily determined
2) If the proposed use is controversial or complex
3) If the parcel is to be leased for plottage to an adjoining owner to meet minimum use requirements or intensify the development of such a privately owned parcel

Qualifying Rental Rate Appraisals will be approved in accordance with current Delegations, with a report copy forwarded to the Director of Real Property. Regular full-market value appraisals are still required for all other proposed uses that will be leased on a direct basis without calling for competitive bids.

The decision to request a full appraisal or Airspace Rental Rate Appraisal is entirely that of the Director of Real Property.

The Director of Real Property also assumes exclusive responsibility for specifying the highest and best use/specific use to be assumed by the appraiser, and for providing all proposed rental information for use and reliance by the Appraiser.

The written airspace request for a rental rate appraisal must clearly describe the proposed use, term and renewal options, any special conditions or credits, and any limitations to be placed on the parcel by the Authority. The rental rate appraisal will therefore not contain a highest and best use determination, but will rely strictly on the use and parcel data information provided by the Director of Real Property. However, the Director of Real Property should consider any input from the Appraiser, including whether comparables are available that provide a good indication of a market rental rate.

The rental rate appraisal will conclude a specific market lease rate as appropriate to the airspace parcel's attributes, limitations and benefits, and its proposed rental use and lease terms. In extenuating circumstances involving marginal market data only, the appraisal may as an exception include a lease rate range as supported by the limited market data.

The rental rate appraisal format will follow regular airspace appraisal standards and methodology. As with any appraisal, the amount of analysis and degree of documentation should be in proportion to the appraisal problem and valuation involved. Since the report will not include the appraiser's independent highest and best use analysis, the appraisal will include the limiting conditions on the new Airspace Parcel Appraisal Form RW 07-21 in conformance with Uniform Standards of Professional Appraisal Practice, S.R. 2-2.

7.16.00.00 - RENT DETERMINATION

7.16.01.00 General

A fair market rent determination is an estimate of the amount of rent which a parcel would command in the open market, if offered under the terms and conditions typical of the market for similar properties. The fair rent for property for which there is no relevant market data shall be estimated by any reasonable method that is fair and equitable. The justification for use of such method and a full explanation of the rationale on which the method is based will be set forth. The following process will be followed for both residential and nonresidential fair market rent determinations.

Property Management may prepare residential fair market rent determinations in accordance with Right-of-Way Manual Sections 11.04.02.00, 11.05.01.00, and 11.06.02.00.

The Appraiser prepares, reviews, and approves fair market rent determinations for all nonresidential properties except as noted in Right-of-Way Manual Section 11.05.00.00.

This service is provided by the Appraiser upon written request from Property Management. These requests should be scheduled so as to give Appraisals as much lead time as possible, and will include the following information:

- A map of the property.
- Parcel number, county, route, post mile (P.M.), and property address.
- Improvements that belong to the tenant and should be excluded from consideration.
- Special items on the property, such as machinery or equipment. An inventory should be available if needed.
- Whether construction of improvements on the property will be permitted.
- Term of the proposed lease and estimated length of time property will be available for rent. Rent determinations will be updated upon written request from Property Management.

7.16.02.00 Content

Fair market rent shall be based on the most reasonable highest and best use, taking into consideration the term of the State's proposed lease. Other appropriate market-related factors shall also be considered in the rent determination.

The rent determination will be a specific estimated fair market rent. Rent determinations will be rounded to the nearest $10. (Example: A fair market rent estimate of $545 will be rounded to $550.)

The rent determination will be based on current rents being paid in the area for comparable properties. An analysis of comparable rentals and other market data supporting and leading to the appraiser's conclusion of fair market rent must be included in the report. The amount of analysis, number of comparables used, and the degree of documentation required should be in proportion to the value of the property to be rented.

Property Management will use the rent determination as a benchmark from which to reach the actual rental rate. The actual rental rate will be concluded after any special adjustments which may be appropriate to Property Management's operation. Therefore, it is important that the appraiser clearly indicate those items for which adjustments were made in arriving at the appraiser's estimate of fair market rent.

Individual Rental Comparable Data Sheets shall be used, and should include the following information:

- Property identification
- Property description
- Condition and effective age of improvements, if any
- Present use and highest and best use
- Rental rate, including escalation rate, if any
- Date rental rate established
- Terms, including who pays utilities, taxes, and insurance and any other recurring expenses
- Period of lease
- Names of data sources
- Names of owner and tenant, if pertinent

All fair market rent determinations will include parcel maps. Improved properties will include pictures showing the improvements. In addition, an index map, comparable data map, and comparable data pictures are required for all rent determinations where fair market rent is $5,000 per month or more.

Rent determinations requiring Director of Real Property approval will be submitted with a transmittal page showing county and route, parcel number, and date of value. It will include the required signed recommendations for approval.

7.16.03.00 Review and Approval Process

The review and approval process is discussed in Sections 7.01.15.00, 7.01.16.00, and 7.01.17.00. The Senior Right-of-Way Agent who reviews and recommends the fair market rent determination cannot execute the resulting lease on the same parcel.

7.16.04.00 Special Circumstances

Occasionally, there will be requests for rent determinations for specific uses. In many cases, the property is already rented for some use consistent with constraints the Authority has imposed. This existing use may not be the most reasonable highest and best use. If the appraiser's analysis indicates there is a significant difference between the existing use and the most reasonable highest and best use, this should be pointed out in the report. Both a statement of the most reasonable highest and best use and an estimate of the fair market rent under this use will be included. This analysis will be in addition to the rent determination for the specific use as requested.

An example of this is a parcel which has a highest and best use as a parking lot. For special reasons, it may not be feasible or practical to raze the existing improvements and put it to this use. A request for a rental determination on the parcel as improved is appropriate, provided the most reasonable highest and best use is cited and the estimated fair market rent, on this basis, is also included.

7.16.05.00 Nominal Value Nonresidential Rentals

Many properties cannot be rented for more than nominal rental rates because of size, irregular shape, and/or location. Nominal rental for this purpose is defined as $2,400 per year ($200 per month) or less.

The Appraiser or the Director of Real Property may be used for rent determinations on nominal value nonresidential rentals.

In these cases, only an 11-EX-53 appraisal is required. It should identify and describe the parcel, and summarize the data and analysis that leads to the appraiser's conclusion of fair market rent. The nominal rental conclusion should be stated as a specific rental amount. A map of the appraised property is required (8½" x 11"print is sufficient); photographs are recommended. See 11.05.02.00.

The rent determination should include a signed statement that the appraiser has personally viewed and inspected the parcel. The determination should also be signed by the function's Senior Right-of-Way Agent.

7.17.00.00 - BUSINESS GOODWILL APPRAISALS

7.17.01.00 Statute - Compensation for Loss of Goodwill

Code of Civil Procedure, Title 7, Eminent Domain Law, Chapter 9, Article 6, Compensation for Loss of Goodwill, Sections 1263.510, .520, and .530 provide the basis for compensating the owner of a business for the loss of goodwill. These sections should be reviewed by the appraiser prior to completing any appraisal involving a commercial property. See the reference volume.

7.17.02.00 Interpretation of the Eminent Domain Law, Court Cases, and Legal Issues

The courts are continuing to interpret the statutes on loss of goodwill. The first major court ruling by the State Supreme Court was the Department of Transportation v. Muller. This case has established that the increased cost of doing business at the replacement site is a compensable cost.

The appraiser should consult with the Director of Real Property concerning any problems with interpretation of the compensability for loss of goodwill. Requests for legal opinions must be directed through the Director of Real Property for action by Legal.

7.17.03.00 Burden of Proof

The law provides that a business owner shall be compensated for the loss of goodwill if the owner proves that the loss is caused by the State's taking of the property and that the loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt to preserve the goodwill. The business owner has the burden of proof for loss of goodwill.

7.17.04.00 Notification Letter to the Business Owner (Form RW 07-30)

At the initiation of each real estate appraisal of a parcel occupied by one or more businesses, the appraiser will provide each business owner a written notification of the owner's right to claim a loss of business goodwill using Notification of Right to Claim Loss of Business Goodwill (RW 07-30). It is highly recommended that the RW 07-30 be sent to the business owner by certified mail, with return receipt requested. Form RW 07-30 includes a questionnaire asking for information about the business for the owner to return when claiming a loss of goodwill.

The RW 07-30 will set a reasonable time limit for the owner to respond. No follow-up requests by the appraiser are required. The appraiser must not delay the initiation and completion of the real estate appraisal while waiting for the business owner to respond. If the appraiser does not have the business owner's name and contact information at the time the real estate appraisal report is written (such as when outdoor advertising signs are present), it will be the acquisition agent's responsibility to send the notification letter as soon as the name and contact information become available.

The date the notification letter is sent to the business owner and any responses from the owner, written or oral, must be documented in the parcel diary. The section of the parcel diary with entries relating to business goodwill shall subsequently be copied and attached to the parcel diary for the goodwill appraisal or a separate goodwill diary can be initiated.

If the owner does not submit a claim or makes a claim but does not furnish copies of State Income Tax returns, as required by California Code of Civil Procedure Section 1263.520, the appraiser must so document in the parcel diary and the real estate report. The appraiser must still make a preliminary analysis and tentative conclusion as to whether or not the business owner will be able to relocate without a loss. The research and analysis for the tentative conclusion will be included in a separate section of the staff real estate appraisal or in the addendum to the report. The research and analysis will include, as a minimum, a statement of the observed availability of replacement sites.

7.17.05.00 Timing for the Preparation and Completion of the Goodwill Appraisal

It will be prepared as soon as possible after receiving the claim from the owner with copies of the owner's tax returns and any other supporting financial data that is furnished. All goodwill appraisals will be in separate reports and not part of the real estate appraisal report.

The appraiser will not complete the goodwill valuation appraisal if the owner does not furnish copies of the State Income Tax returns. The business' "in-house" financial records do not constitute acceptable income and expense information. The appraiser will make a statement in the real estate appraisal report that since the owner has not furnished income tax returns, there is insufficient data to estimate whether or not the business possesses goodwill value in the before condition. Therefore, any loss of goodwill is indeterminable.

7.17.06.00 The Goodwill Appraisal Report

The report may contain more than one business under the same ownership. Each business will be valued independently in the before condition and the after condition. If the business goodwill in the before condition is $0.00 or a negative number, it is not necessary to calculate an after condition value. The report will be prepared by or under the direct supervision of, and will be signed by, a Right-of-Way Agent of at least Associate grade. The duties and responsibilities of the appraisers and reviewers are the same as those for real estate appraisals.

Upon receipt of the goodwill questionnaire from the grantor, if the Senior Right-of-Way Agent determines it is obvious that there is no goodwill in the before condition (e.g., negative net income for the previous three years) as shown from the loss of business goodwill claim and tax returns for the previous five years, the supervisor has the option of utilizing a memorandum appraisal format or a very succinct narrative appraisal to document these conclusions. The memorandum is to give a full explanation of the valuation and will contain sufficient supporting documentation.

7.17.07.00 Parcel Diary

The appraiser will initiate a parcel diary, Form RW 07-23, for each goodwill parcel appraisal. A copy of the diary shall be included in the report forwarded to the Director of Real Property.

7.17.08.00 Cross-referencing the Goodwill and Real Estate Appraisal Reports

The report for the goodwill appraisal will carry the same basic number as the real estate report with a subreference of the letter "G." For example, if the real estate report is AR-7, the goodwill report on a business located on the parcel will be numbered AR-7G1. Any subsequent reports made on other businesses located on properties appraised in AR-7 will carry AR numbers running consecutively, e.g., AR-7G2, AR-7G3, AR-7G4, etc.

A goodwill appraisal which supersedes a prior valuation of the same business will be given a new AR designation. The new report will cross reference the prior appraisal(s). For example, "AR-7G8: This appraisal supersedes AR-7G3, approved (date)."

7.17.09.00 Parcel Numbering

The parcel numbers for goodwill parcels will be the same as the parcel number for the real estate on which the business is located with a subreference of G-1, G-2, G-3, etc., i.e., 12345 and 12345G-1.

7.17.10.00 Review and Approval Process

All staff and in-lieu of staff goodwill appraisals will be reviewed for approval by Real Property Branch.

7.17.11.00 Project Influence

Goodwill valuations shall not include any increase or decrease in the value of the business that is attributable to the project. see Section 1263.330 of the Eminent Domain Law.

7.17.12.00 Appraisal Report Components and Sequence

- Appraisal Title Page - Business Goodwill Valuation (RW 07-24)
- Parcel Summary Page – Goodwill (RW 07-25)
- Business Goodwill Valuation - Senior Field Review Certificate (RW 07-26)
- Business Goodwill Valuation - Certificate of Appraiser (RW 07-27)
- Appraisal - Business Goodwill Valuation (RW 07-28)
- Business Sales Data Page – Goodwill (RW 07-29)
- Business Comparable Data Page – Goodwill (RW 07-31)
- Purpose of Appraisal
- Date of Value
  The date of value shall be the date funds are deposited by the State into the grantor's escrow account unless the court otherwise stipulates the date. In the case of pre-condemnation, the date of value is the date of possession.

- Description of Business

  In addition to a comprehensive description of the business operation, include the name of business and the owner(s), location, history of the business ownership, areas of land and description of improvements used (owned or leased) by the business, lease/rental amounts and terms including expenses paid by tenant, geographical area served by the business, hazardous materials used by the business and hazardous waste observed.

- Recent sales of the subject business

  Each sale of the subject business during the last five years preceding the appraisal will be explained in detail. Use a separate sales data page for each sale. The most recent sale during the period shall be verified by the appraiser with both seller and buyer, if possible. If not verified with both parties, efforts to do so must be described. A complete verification of the most recent sale will be made including sale price, terms, and a breakout of the amount paid for tangible and intangible assets such as machinery, equipment, liquor licenses, and goodwill. Any difference between the appraised value of goodwill and the price paid for goodwill must be explained.

- Availability of suitable sites for relocation

  Include a detailed study of the availability or lack of availability of suitable replacement sites for the business. If the business has already relocated prior to the date of the appraisal, the analysis will state whether or not other suitable sites were available at the time of relocation and, if utilized, would have resulted in a lesser loss or no loss.

- Valuation

  The valuation section shall include a comprehensive analysis of the appropriate approaches to value and the conclusion of the goodwill value at both the existing location and the new or proposed location. This also applies to businesses affected by partial acquisitions that may continue operations on the remainder.

- Reconciliation of valuation approaches and final conclusion

  Where two or more approaches to value are used, the appraisal will reconcile the separate indications of value derived and include a reasonable explanation for the final conclusions of business goodwill. The final conclusion will state whether or not the business will suffer a loss of goodwill as a result of the taking. This will usually be a comparison of the goodwill valuation of the business at the old location and at the new or proposed location (before and after).

- List and valuation of tangible and intangible assets
- Comparable data pages and maps
- Index maps (if available), subject map, relocation site map
- Parcel diary
- Addendum

The addendum should include supporting data such as financial statements, copies of the State income tax returns, relocation site studies, market analysis studies, questionnaire supplied by business owners, etc.

7.17.13.00 Goodwill Valuation

The first step is to estimate the value of goodwill, if any, of the business at the location being taken or affected by the project.

The premises for the goodwill appraisal should be consistent with the premises used in the real estate appraisal. Examples of premises that are ordinarily expected to be consistent are highest and best use, economic rent, and value of business improvements such as fixtures, machinery and equipment. Any differences in these and other important elements must be explained in the report.

Normally, the value of the goodwill is not estimated directly but is derived by a residual process. The first step is to estimate the value of the total business enterprise and then subtract the value of the separately valued assets of the business, both tangible and marketable intangible, from the total value. The residual value, if any, represents the intangible asset of goodwill. The following is a summary of this residual process:

Total value of business
(-) less value of tangible assets owned by business
(-) less value of marketable intangible assets owned by the business
Value of goodwill (intangible asset)

(Intangible marketable assets are those which can be sold off separately from the business, such as a liquor license.)

If the analysis indicates no goodwill value, the appraisal process ends and the report is completed. If no goodwill value exists in the before condition, there cannot be a loss of goodwill.

If the analysis results in a goodwill value, the appraiser must proceed with the appraisal process. The next step is to repeat the above process for the business after project construction in the manner proposed (and if the business required relocation), to determine the value of the goodwill at the new or proposed location. If the business has already relocated at the time of the appraisal, the business operation must be analyzed by repeating the valuation process outlined above to determine the value of the goodwill at the new location.

The compensable loss is the amount, if any, that the value in the before condition exceeds the value in the after condition.

Example:

Estimated value of goodwill before	$15,000
Estimated value of goodwill after	-10,000
Estimated compensable loss of goodwill	$ 5,000

If the business has not been relocated at the time of the appraisal, the appraiser and the relocation agent will make a comprehensive study regarding the availability of either existing suitable sites or those sites that are expected to become available within a reasonable period of time to which the business can relocate. A suitable site is considered to be one which a prudent business owner would select in attempting to preserve goodwill to the greatest extent possible. The report will contain a section detailing the appraiser's study of the availability or lack of availability of suitable replacement sites. If suitable sites are or will become available, the appraiser will value the goodwill in the after condition as described above as if the business were relocated to a property which would be selected by a prudent business owner seeking to preserve or enhance the value of the business goodwill. This is in keeping with the Eminent Domain Law (CCP Section 1263.510).

If the study shows that there are no available suitable relocation sites, and none can be expected within a reasonable period of time, then the estimated business goodwill value in the before condition will be the loss of goodwill shown in the report. In other words, there is a total loss of goodwill value to the business. If these circumstances exist, the appraiser must fully document, in detail, the reasons why the business is unable to relocate.

If a business is highly complex or specialized it may be necessary or advisable to contract with consultants for appropriate market analyses and/or relocation studies.

7.17.14.01 Business Valuation Methods

There are many methods by which the value of a business and its goodwill can be estimated. The following are three methods commonly used for business valuation:

A. Market Approach

The most common market approach is the utilization of income multipliers derived from the market transactions of similar businesses. For example, retail store businesses might sell for two times annual gross income. Particular market multipliers may be based on income or sales and vary widely, depending on the type of business.

B. Capitalization of Excess Earnings

This is an income approach where excess earnings are calculated by subtracting from business net profit, a return on and of depreciable tangible assets and a return on marketable intangible assets. The return of a depreciable tangible asset is made over the remaining economic life of the asset. If marketable intangible assets have a limited life, then it will be necessary to also subtract a return of the asset over its remaining economic life. The excess earnings of a business, if any, are then capitalized at an appropriate rate to estimate the value of the goodwill.

C. Discounted Cash-Flow Analysis

This approach is focused on the projected earnings and expenses of a business over a period of time (usually the anticipated investment period). Value of goodwill is the present value of the projected net cash flow (either before or after taxes) for a period of years plus any reversion value of the goodwill. This method takes into account the effects of changes in the net return each year.

These are brief descriptions of the more commonly used valuation methods. For a more detailed explanation of the various valuation methods, the appraiser must refer to appraisal text books or other instructional materials on business valuations.

7.17.15.00 Analyzing Financial Statements and State Income Tax Returns

In processing the various business valuation methods, such as the "capitalization of excess earnings," it will be necessary to analyze financial statements and State income tax returns. As part of this process, the appraiser must reconstruct the income and expenses reported to arrive at a net income applicable to the value of goodwill.

The following list includes examples of items that must be considered in reconstructing the income and expenses reported:

- Depreciation must be deleted.
- Payments (principal and interest) on loans used to purchase the business must be deleted.

- Payments (principal and interest) on loans used to purchase real property must be deleted and an economic rent for the real estate used by the business substituted for the payment.
- Use economic rent instead of contract rent in the statement. Also, economic rent must be used at the new location. This approach is based on legal interpretation of the law. The appraiser must look at the real estate report to see what was determined to be economic rent. An explanation must be made by the goodwill appraiser if the economic rent used in the goodwill appraisal is different than the economic rent used in the real estate appraisal. There could be a difference in the economic rents if substantial time elapsed between the dates of the two appraisals.
- Owner's salary and draws must be adjusted to reflect reasonable compensation for the owner's role or activity in the business operation. In some cases, corporation officers receive a salary even if they do not work in the business. These salaries may be disguised as profit-sharing compensation and must be deleted because they are not an expense.
- Use of unsupported future earnings are not acceptable. All earnings in the after condition must be factual and supportable. Expectations for growth on investment or changes in the economy cannot be utilized in the calculations.

7.17.16.00 Betterment at the Relocation Property

In the process of reconstructing and/or estimating an income and expense statement for the business at a relocated property, the appraiser must adjust the statement for avoidable property betterments. The following is an example of an avoidable betterment which must be adjusted in the income and expense statement as a part of the process of estimating goodwill value at the new business location.

Assume that the business at the old location occupied a building containing 9,700 sq ft with an economic rent of
$10,000/month. Also assume that the business owner chose to relocate to a 15,000 sq ft building with an economic rent of $15,000/month, even though there were other suitable relocation properties on the market containing 9,700 sq ft at a rent of $10,000/month comparable to the old property. In this example, the appraiser must use an economic rent of $10,000/month in the statement instead of the actual rent of $15,000/month at the new location.

On the other hand, an adjustment should not be made if there were no other comparable replacement properties available in the market with 9,700 sq ft renting for $10,000/month, and the owner was forced to relocate to a 15,000 sq ft, $15,000/month rent in order to continue business and preserve the goodwill (patronage). This may be considered an "unavoidable betterment." In this case, the appraiser must use an economic rent of $15,000/month. However, if the business owner were forced to relocate to the larger 15,000 sq ft building, but could sublet the 5,000 sq ft of excess area for $5,000/month, then the appraiser must, of course, take that rental income into account at the new location.

The appraiser must be careful in deciding which betterments must be adjusted as part of the process of estimating the value of the goodwill at the relocated property in the after condition. The basis for the appraiser's decision that there is an "unavoidable betterment" must be included in the goodwill report. If the appraiser has any difficulty in identifying betterments which should be adjusted, the Supervising Right-of-Way Agent should be consulted. There may be a need to request legal advice on specific issues.

7.17.17.00 Disadvantages at the Relocation Property

There may be certain conditions at the relocated property which cause a reduction of net income and, thus, a reduction from the level of goodwill value that the business had at the old location (loss of goodwill). Some examples are loss of net patronage and increased (economic) rent or other increased operating expenses. (The increased rent or other expenses must, of course, not be a result of avoidable betterments.)

Note that the phrase "loss of net patronage" is used in this section. The reason that the word "net" is used is because Eminent Domain Law Section 1263.510, paragraph (b), states "within the meaning of this article 'goodwill' consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill, or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage." Therefore, if some of the old patronage was lost by the move, but an equal amount of new patronage was gained at the new location, there would be no net reduction of patronage.

If the appraiser has any difficulty with a particular appraisal in determining which disadvantages must be considered in estimating the compensable loss of goodwill, Appraisals should be consulted. There may be a need to request legal advice on specific issues.

7.17.18.00 Compensation to Business Owners Under the Relocation Assistance Program (Pursuant to Section 7262 of the Government Code and 49 Code of Federal Regulation Part 24)

Certain compensable goodwill losses and Business Relocation Assistance Program items may fall into overlapping areas of the various laws. An owner is entitled to only one payment for a loss. Therefore, the appraiser must furnish the best information possible as to identifying the components of a loss of goodwill.

It is then up to Acquisition and Relocation Assistance to apply the information appropriately in determining proper payments. This will ensure compliance with 49 CFR 24.3 regarding no duplication of payments. The statute for compensation for loss of goodwill, California Code of Civil Procedure Section 1263.510, provides that there shall be no duplication of payments for loss of goodwill which are provided to the business owner pursuant to the Relocation Assistance Program. In addition, Section 1263.010 of the CCP provides "where two or more statutes provide compensation for the same loss, the person entitled to compensation may be paid only once for the loss."

The following are items for which the business owner may receive compensation under the Relocation Assistance Program. Some of these may also be included in a particular finding of a loss of goodwill. The Relocation Assistance Program covers the following:

A. Moving and related expenses that are actual, reasonable and necessary (49 CFR 24.301 and 303).
B. Reestablishment expenses (limit $25,000).Only "small businesses" are entitled to compensation for these reestablishment expenses. A small business is defined [49 CFR 24.2(a)(24)] as "a business having not more than 500 employees working at the site being acquired or displaced. Sites occupied solely by outdoor advertising signs, displays or devices do not qualify as a business for purposes of receiving reestablishment benefits under 49 CFR 24.304."

1. **Eligible expenses** - Reestablishment expenses must be reasonable and necessary, as determined by the State. They may include, but are not limited to, the following:
   a. Repairs or improvements to the replacement real property as required by Federal, State, or local law, code, or ordinance.
   b. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
   c. Construction and installation costs, for exterior signing to advertise the business.
   d. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
   e. Advertisement of replacement location.
   f. Estimated increased costs of operation during the first 2 years at the replacement site for such items as:
      (i) Lease or rental charges
      (ii) Personal or real property taxes
      (iii) Insurance premiums, and
      (iv) Utility charges, excluding impact fees.
   g. Other items that the State considers essential to the reestablishment of the business.
2. **Ineligible expenses** – the following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:
   a. Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.
   b. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
   c. Interest on money borrowed to make the move or purchase the replacement property.
   d. Payment to a part-time business in the home which does not contribute materially to the household income [49 CFR 24.2(a)(7)].

C. In Lieu or Fixed Payment for a business, a farm operation or a nonprofit organization for not less than $1,000 nor more than $40,000. (This is a fixed payment in lieu of actual moving and related expenses, actual reasonable reestablishment expenses, and loss of patronage.)

A business owner may be entitled to payments for eligible items listed under both Categories A and B. As an option, a business owner may elect to receive a payment under Category C, “In Lieu of or Fixed Payment.” If the owner selects the “In Lieu of or Fixed Payment,” the owner is not entitled to any payments under either Categories A or B. It should be noted that the portion of the in-lieu of or fixed payment that is not moving and related costs must be offset against goodwill.

To enable the Acquisition and Relocation Agents to comply with the law and fully compensate the business owner for proper costs and/or losses, but still ensure there is no duplication of payment, the appraiser must show the following in any goodwill appraisal which finds a compensable loss of goodwill:

> The appraiser must list in the loss of goodwill report each of the items listed above which contributed to the loss of goodwill, i.e., any of the eligible reestablishment expenses and/or loss of patronage which contributed to the loss of goodwill. The amount of loss of goodwill attributed to each such item shall be shown separately, if possible.

Example:

Total estimated loss of goodwill:	$18,000
Allocation (causes of the loss):	
1. Increased economic rent	9,000
2. Necessary modification at new location	4,000
3. Loss of patronage	5,000
Total Loss	$18,000

If the goodwill appraisal report concludes a loss of goodwill, the appraiser is to include a statement in the appraisal that if any amounts relating to loss of goodwill were paid to the business owner under Relocation Assistance, such amounts must be deducted from the amount of the loss of goodwill shown in the appraisal report. The purpose of the statement is to serve as a reminder to the Acquisition Agent and to Relocation Assistance that no duplication payments for loss of goodwill are to be made as provided in the Eminent Domain Code.

See the Relocation Assistance Chapter for further information.

7.18.00.00 – DELEGATIONS [Hold for Future Use]

CALIFORNIA High-Speed Rail Authority

CHAPTER 8

ACQUISITION
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8.22.00.00 CALIFORNIA VETERANS' PROPERTY
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8.25.00.00 MATERIAL SITES AND DISPOSAL SITES
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8.25.00.00 MATERIAL SITES AND DISPOSAL SITES *Continued*
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8.26.00.00 MUTUAL WATER COMPANY STOCK
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8.27.00.00 SPECIAL ACQUISITIONS
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8.50.00.00 ACQUISITION QUALITY CHECKLIST (AQC) ***Continued***

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8.60.00.00 ESCROWS, TITLES AND SCHEDULING
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8.61.00.00 PROCEDURE WITH ESCROW COMPANIES
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8.62.00.00 ESCROW PROCEDURE WITHIN THE AUTHORITY
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02.00 Use of Acquisition Invoice (Form RW 08-17)
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8.63.00.00 PAYMENT PACKAGE
01.00 Authorization for Scheduling Payments
02.00 Federal Participation Memorandum (Form RW 08-16)
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10.00 Correction of Scheduled Amount
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8.64.00.00 RECORDATION OF INSTRUMENTS
01.00 Acceptance Required
02.00 Execution of Certificate of Acceptance
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8.64.00.00 RECORDATION OF INSTRUMENTS *Continued*

08.00 State Deed Recordation
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8.65.00.00 TITLE REPORTS AND POLICIES OF TITLE INSURANCE

01.00 Title Vested in People
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04.00 Title and Escrow Services
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06.00 Access Rights Endorsement Forms

8.66.00.00 CLOSING PROCEDURES

01.00 Segregation of Taxes on Partial Acquisitions of Properties Which are Locally Assessed
02.00 Segregation of Taxes on Partial Acquisitions Which are State Assessed
03.00 Requests for Refund of Prepaid Current Taxes
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8.67.00.00 FILING OF COMPLETED TRANSACTIONS

01.00 Filing of Recorded Documents and Policy of Title Insurance
02.00 Notation on Right-of-Way Record Maps
03.00 Donated Deeds to be Labeled
04.00 Documents Affecting More Than One Acquisition
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8.68.00.00 OTHER ACQUISITION PAYMENT REQUESTS

01.00 Payment Requests in Condemnation Cases
02.00 Miscellaneous Court Deposits
03.00 Deposits With Federal Housing Administration
04.00 Bid Deposits in Sales of Bankrupt Estates; Administrator's Sales; Payments for Tax-Deeded Lands
05.00 Payment of Notary and Recording Fees
06.00 General Day Labor Expenditures [Hold for Future Use]

8.01.00.00 - ACQUISITION GENERAL

8.01.01.00 Function and Responsibility

California High-Speed Rail Authority (Authority) - Real Property is responsible for the timely securing of those property rights necessary to permit the initiation of construction for a project. Those property rights, insofar as the Authority is concerned, means that any and all interests in the property adverse to Authority's use have either been cleared or the documents or legal process which will legally authorize entry by the Authority 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 as referenced herein and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). Compliance with the Authority's policy of paying just compensation should be assured when the constitutional and Government Code requirements are adhered to in all Authority dealings with the owners.

8.01.02.01 Real Property Acquisition Practices

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

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 Authority, its employees, and agents. 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 Authority and its acquisition functions.
B. The necessity for the proposed High-Speed Rail improvement.
C. Project design and how the proposed improvement will affect the property.
D. The ability and independence of our appraisers and the honest and sincere effort that has been made to determine the market value of the property.
E. The right of the property owner to receive reasonable costs of an independent appraisal, not to exceed five thousand dollars ($5,000.00).

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 08-EX-01).
C. 49 Code of Federal Regulations 24 - Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.

Section 6194(a) of the Housing and Community Development Guidelines, second paragraph, dealing with rental rates based upon financial means, is neither the policy nor procedure of the Authority. Again, any conflict in these guidelines is to be resolved in favor of the Uniform Act. 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 Authority 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 Authority 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 Authority 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. Except as provided by Public Utilities Code section 185040(b).
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. Acquisition 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 Acquisition 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 Acquisition Agent assigned parcels for acquisition will review the appraisal with the appraiser. A field review with the appraiser will be made, if necessary, so the Acquisition Agent will have the benefit of all information used by the appraiser for determination of values.

The Acquisition Agent will ascertain that they have 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 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

It is the policy of the Authority that all Initial offers be made in person, however when warranted by cost and good business considerations, the Acquisition Agent may on Authority's approval of an exception accomplish acquisition through the mail.

For example, where the appraiser of a noncomplex $10,000 or less parcel also acts as their 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 Acquisition Agent however, may consider conducting any subsequent negotiations with the owner by mail or fax other than Initial Offer and when mutually agreed.

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, fax and/or email other than Initial Offer and when mutually agreed. In transmitting the Contract and Deed, the agent is to use the Authority's Standard Offer letter 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 Authority's Responsibility in Certification Process

The Authority must assure that all property interests affected by a project, 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 Authority 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 delivery date to the construction contractor.

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

For Authority purposes, possession of required real property interests are secured by obtaining a 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 right-of-way assembly process.

Essentially, the responsibility of the Authority in the right-of-way assembly process is to document that all interests adverse to the Authority'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 Acquisition Agent 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 Authority'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 may be entered into the court proceedings (including relocation assistance appeals) as evidence, especially if the agent or attorney refers to a statement in the diary about the offer.

The parcel diary is generally initiated by the appraiser. The Acquisition Agent must maintain the diary for each assigned ownership. It will document when where and whom they have met with, and reflect the offer and status of the Acquisition Agent's contacts and conversations with all interested parties. It will remain with the 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 Authority 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 the Right-of-Way Acquisition Parcel Diary, Form RW 07-01. Business Goodwill Parcel Diary, Form RW 07-23, 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). Legal opinions stress 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 and distinct obligation of the displacing agency.

8.01.07.01 Waiver of Relocation Assistance Program (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 Authority's 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 compensation 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 non-substantial 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 (08-EX-15A) and Summary Statement Relating to the Purchase of Real Property or an Interest Therein (08-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 acquisition agent will refer the owner or representative to their Relocation Assistance Program (RAP) agent, who will explain the Relocation Assistance Program.

Tenants in possession under valid agreement will have the Program explained by the RAP agent. The acquisition agent should also be familiar with the contents of the RAP Chapter.

The Authority 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.

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 Acquisition Agent should be cognizant of relocation issues that may be encountered. See Section 10.01.13.00 of the Right-of-Way 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 appraisals, acquisition, and relocation activities associated with the transaction.

8.01.10.00 Offers to Purchase Must be Made Promptly

Federal, State, and Authority 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 in the full amount of the Just Compensation (JC) are required to be made within one week (7 days) of Authority approval. In addition, all first written offers to acquire the necessary property rights from a property owner are to be made in person if at all possible. First written offers made other than in person (i.e. by mail) will be an exception that must be noted in the parcel diary. The normal exceptions will be owners that are out of State/Country, owners who have refused to meet in person or owners who have been unable to be contacted or found.

In all cases, all offers, whether in person or by mail, will include a cover letter explaining the offer. 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 Authority's standard offer letter will be used for all offers with attached Right-of-Way Contract containing all terms and conditions of the offer and will be handed to the property owner, or owner's authorized representative, by the Acquisition Agent at the first contact when compensation 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 offer package will include a copy of the Appraisal and all applicable documents listed in the First Written Offer (FWO) Quality Control Checklist Sheet (Form RW 08-TBD), including but not limited to the Valuation Summary Statement and the Summary Statement Relating to the Purchase of Real Property or an Interest Therein, and a Possession and Use Agreement. The agent shall also deliver the following documents to the owner as applicable: Grant Deed, Easement Deed, Owner's Certification of Tenants (RW 10-01), Certificate of Occupancy and Receipt of Relocation Information (RW 10-25), Rental Escrow Instructions (Exhibit 08-EX-03), Protective Rental Agreement (Exhibit 08-EX-04), Information Sheet for Owner(s) Regarding Property Tax Relief (Exhibit 08-EX-49), and the Authority's Your Property, Your High-Speed Rail Project Brochure and Offer 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 on all properties at the time of initiation of Negotiations (ION) to establish eligibility for relocation benefits. 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 (08-EX-18A or 08-EX-18B) should be secured, if feasible, on properties occupied by tenants who own or claim ownership in some of the improvements. To avoid confusion, ownership of

the realty/personalty should be fully resolved before or at the time the appraisal is completed. (see Section 8.04.15.00.)

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 Authority 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.

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.)

All offers made on behalf of the Authority whether made in person or by mail will include the Authority's Standard Offer letter as the first document in the offer package. In instances where a condemnation action has been filed and the Acquisition Agent has received Authority approval to make a legal settlement offer the Standard Offer Letter should be modified to include the following: "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

FRA is not required to fund excess acquisitions. FRA should be provided with notice prior to the exchange of excess lands for which Federal or State-match funds have participated in acquisitions and/or damages.

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

Acquisition Agent 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 Authority'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 Authority's Appraisal

It is the Authority's policy to give each affected property owner a copy of the Authority's appraisal. Not giving the owner a copy of the appraisal is an exception to policy and will require Authority approval. This policy does not apply to independent reports prepared for use in condemnation. The release of these condemnation appraisal reports is strictly at the direction and discretion of the Authority's attorney handling the case. Restrictions on disclosure of RAP valuation data are discussed in the RAP Chapter.

8.01.13.00 Use of Primary or Alternate Appraisal Reports

The Acquisition Agent may with Authority's approval 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 that 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 parcel's Appraiser with a request that the appraisal be reviewed and updated as necessary. The analysis of such sales data is the function of the Appraiser. In an active real estate market, the Appraiser should be supplied with any new data so investigation and analysis of such is reflected as soon as feasible in revision of appraisals.

The Acquisition Agent will analyze the new data and determine its applicability to other assigned un-acquired parcels. If the Appraiser determines adjustment is not warranted, the Acquisition Agent will be notified. If the Appraiser determines adjustment is necessary, the following action will be taken:

A Memorandum of Appraisal Update (MAU) will be prepared by the appraiser for Authority approval, considering the new data and setting forth their revised opinion of Fair Market Value.

8.01.15.00 Negotiating With an Attorney or Third Party

Unless otherwise authorized by the property owner in writing, all acquisition discussions shall be with the owner. When an attorney has been retained by the property owner and the Acquisition Agent has been informed in writing of such, 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 authorization of the owner's representative. Such authorization 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.

8.01.16.00 Exchange of Noncontiguous Land or Land Yet to be Acquired

FRA should be provided notice prior to the exchange of lands for which Federal or State-match funds have participated in acquisition and/or damages. All exchanges are subject to approval by the Authority. Excess real property may be used in exchange for all or part consideration for other property required for High-Speed Rail 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 the Director of Real Property, or designee, 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 Acquisition Quality Checklist (AQC) Finding "A" or "B" situations are the most acceptable type exchange. It is Authority's 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 Acquisition Agent must ensure that the outstanding offer reflects current market value. The Authority's 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 Acquisition Agent will provide the appraiser with all pertinent information which has been obtained and which may have an effect on the market value of the property.

Prior to the submittal of a Request for Resolution of Necessity (RON) to the Authority the Acquisition Agent shall ascertain whether the acquisition appraisal represents current market value and that it is no more than 4 months old, to ensure that at the time of RON approval by the PWB the appraisal will not be more than 6 months old.

8.01.18.00 Appearances by Property Owners Before the Public Works Board (PWB)

Initiation of the condemnation process, as it affects a property owner, commences with the mailing of the "Notice of Intent to Adopt Resolution of Necessity." (see 09-EX-01 and Section 9.01.04.00.)

The Notice advises the property owner that the Authority intends to seek authorization from the PWB to institute eminent domain proceedings. Adoption of the "Resolution of Necessity" (Resolution) by the PWB gives the Authority the right to file a condemnation action and, subsequently, with the approval of the Court of authority, 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 PWB to appear before them within 15 days of the mailing of the "Notice" [CCP Section 1245.235(3)]. Upon the PWB's receipt of the owner's request to appear, the PWB will ask the Authority to conduct a Condemnation Review panel to consider the property owners objections. The Director of Real Property, or designee, will chair the panel. The Chair will remind the owner that the PWB will only consider issues of project need, project design, and necessity of purchasing the owner's property; the PWB will not consider issues of compensation.

The Panel will consist of those designated by the Authority and will include a legal representative and a design representative. The Director of Real Property as chairperson will designate a Right-of-Way staff person to serve as the secretary to the Panel. The owner and/or their representative will present their position as to why the property should not be acquired by the Authority and the Authority will present the project scope and project impact.

After this review, the Panel will make either a recommendation to the Authority Program Director for action to resolve the problem or to the PWB with an Appearance Information Sheet (AIS) and a

supporting Fact Sheet requesting them to proceed with the Authorities request for a "Resolution." The determining factor will be whether or not the Authority 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 PWB 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 PWB.

The PWB is limited in its consideration by Section 1245.230 of the CCP to the following four 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; (3) the property described in the resolution is necessary for the proposed project, and (4) that either the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence.

At the PWB 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.

8.01.19.00 Use of Fee Appraisers

Once the decision to proceed with condemnation is made, the Acquisition Agent will submit to the parcels appraiser a "Request for Confirmation of Market Value," (CMV) if the date of value will be more than 6 months old at the time of the Authority's consideration of the RON request or if new market data is available and recognized as indicator that the market value should be updated.

This procedure is intended to ensure that the current offer represents current market value, if:

A. The appraiser confirms that the current offer represents current market value a CMV will be issued.
B. If market data indicates that an update is warranted then the appraiser shall prepare a Memorandum of Appraisal Update (MAU), so a current market value offer can be made to the property owner ***before*** condemnation is started;

8.01.20.00 Payment of Out-of-Pocket Expenses

1. The Authority, in compliance with C.C.P. 1263.025 (a), will reimburse property owners for reasonable expenses, not to exceed five thousand dollars ($5,000.00), incurred to obtain an independent appraisal of their property from a qualified appraiser. It is the Authority's policy at the time of the Notice of Decision to Appraise (NODA) to inform and encourage affected property owners to utilize their opportunity to obtain an appraisal at the Authority's expense (up to $5,000). This offer will be contained within the NODA or be provided as an attachment to the NODA.
2. This process will result in expedited negotiations as ideally the owner will have their appraisal at the time of the Authority's offer to purchase. Since their appraiser will not have the Authority's appraised value, their appraisal will truly be independent. This process should expedite negotiations and reduce the number of parcels that are unnecessarily put into the condemnation process strictly because of project schedule and waiting on an owner's appraisal.
3. The Authority may also reimburse property owners for expenses actually 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 a "Claim for Payment of Expenses Actually Incurred." A copy should be retained by the owner. The executed claim will be presented to the Authority by the Acquisition Agent who must verify the expenses claimed are actual, reasonable and documented and are in their opinion eligible for reimbursement, e.g., map checking fees, building permit fees, architectural plans, materials, services, etc. The documentation presented with the claim should be in an auditable form that will 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.

Thee Director of Real Property, or designee will approve all claims for out of pocket expenses.

Claims for these types of expenses may also be made on un-acquired parcels when negotiations have been suspended on routes that 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 Legal Office in cases involving abandonments or the elimination of contractual obligations) on the same basis as though the Authority were completing the acquisition of the property. (see Exhibit 08-EX-07).

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 Acquisition 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 Authority, 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 Authority 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 08-EX-48 lists guidelines prepared by the State Board of Equalization and Exhibit 08-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 that 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

Although the Authority does not have an approved process to waive normal title services parcels where the indicated value will be $2,500 or less, should the Acquisition Agent identify a situation or parcel that should be considered on an exception basis they should work with the Authority to determine if a waiver is possible. Ownership and legal descriptions of these properties will be initially identified by Right-of-Way Engineering through a preliminary title report and the fee for which normally includes a portion of title services. 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

FRA will not participate in any payments in excess of Just Compensation. When the approved Just Compensation (JC) for all property rights or interests to be acquired from a parcel is $2,500 or less, the value is to be considered "Nominal". As such, the Acquisition Agent shall have the authority to negotiate a Right-of-Way Contract in a total amount up to $2,500.00, but not less than the approved JC for the parcel. When the JC is less than $1,000.00 the minimum payment shall be $1,000.00. The Right-of-Way Contract will be subject to Authority's approval of any amount over the approved JC.

The determination of the amount of the negotiated Right-of-Way Contract will be a judgmental decision based on a project basis as well as the title, size, cost, etc. associated with the acquisition. (see the Appraisal Chapter Section 7.02.14.00).

8.01.27.00 [Hold for Future Use]

8.01.28.00 Administrative Authorizations

Acquisitions described in this section are not 'uneconomic' per the Uniform Act, and therefore Federal funds cannot be used for acquisition. Administrative Authorizations are prepared to authorize the acquisition of a whole property as an uneconomic remnant to the owner or at the convenience to the owner based on an alternate appraised value or, to authorize the use of the condemnation Independent or Staff Independent Appraisals for settlement purposes.

Administrative authorizations may deal with the use of alternate appraised values included in the approved appraisal report (i.e. the total value of a parcel where the primary or only value approved is a partial acquisition and the Acquisition Agent wants to offer a full acquisition). A memorandum requesting authorization to make an alternate offer and explaining the basis and reasoning, will be required to be prepared for review and concurrence of the Director of Real Property.

8.01.29.00 Administrative Settlements

At any time during the acquisition process property may be acquired through settlement at a payment that varies from the approved Just Compensation. A memorandum requesting authorization to proceed with approval of a counter offer from an owner will be prepared by the Acquisition Agent. The Director of Real Property must concur in the proposed settlement.

Proposed administrative settlements will need to be well supported with a professional written request that adequately describes the reasons it is a good decision and why we need to consider settling the parcel. The Administrative settlement request write up must contain a side by side comparison of the approved just compensation with the proposed settlement by component. It will also need to adequately describe what efforts have been taken to settle the parcel without an administrative settlement and document that the Acquisition Agent has asked for and the owner has executed or rejected attempts to obtain a possession and use agreement.

Mentioning of possible delay costs being claimed by the Design Builder may help to justify a proposed administrative settlement but it cannot be the sole reason for the settlement.

It is important to note that Administrative settlements may not be used in lieu of an updated appraisal. When additional information is found or provided which might revise our appraiser's opinion of Market value then it must first be provided to our appraiser for consideration. This additional information must be either considered and or rejected by our appraiser before consideration of an administrative settlement. The Authority has a legal obligation to make an offer of full Just Compensation.

Signatory Authorities for Administrative Settlements are as follows:

Any increase above Just Compensation must be approved by the Authority's Director of Real Property.

The following is being provided as additional guidance in proposing and developing any request for approval of an Administrative Settlement:

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. 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 Authority 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 Relocation Assistance 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 as follows: Administrative Authorizations are prepared to authorize the acquisition of a whole property as an uneconomic remnant to the owner or at the convenience to the owner based on an alternate appraised value or the use of Independent or Staff Independent Appraisals for settlement purposed.

Administrative settlements are prepared to authorize a settlement at variance from the approved just compensation based on factors other than those which are used as market value premises in the preparation of an appraisal

Administrate 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. 8.01 - 16 (REV 2/2007)
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.

49 CFR 24.102(i):

Administrative Settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. (see appendix A, 24.102(i).)

Appendix A 24.102(i):

Section 24.102(i) Administrative settlement. This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including review appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

8.01.29.01 Legal Settlements

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 appraisal is proposed based upon new appraisal data from said witness, the settlement will be considered a Legal Settlement. All Legal Settlement recommendation memoranda shall be written by the attorney assigned to the case. All Legal Settlements are to be recommended for approval by the Director of Real Property and are not delegated. In processing Memorandum of Settlement with a Legal Settlement, the Attorney's Legal Settlement Memorandum must be included, received and approved the same as an administrative settlement, prior to the actual disbursement of any funds. However, when the settlement is to be made through the court as an expedient, issuance of a check by the Authority is required payment and will be requested with the legal settlement memo attached.

8.01.30.00 Easements in Limited Vertical Dimension

The Authority may on an exception basis acquire easement(s) 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 that 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 06-01X and RW 06-01Y). 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 Authority Rental of Residential or Commercial Units Prior to Acquisition (Protective Rent)

Current practice allows the payment of relocation 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 Authority, 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 Authority with additional relocation assistance payment costs and work that can delay project delivery.

To maintain project delivery schedules and avoid delay, vacant residential or non-residential units should be rented by the Authority 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 multi-residential properties, mobile home spaces, mini-storage units and similar properties.

The Acquisition Agents 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 Protective Rent

The Acquisition Agent will obtain the written approval of the Director of Real Property, or designee, prior to instituting this procedure. An estimate of the potential relocation benefits by type of unit affected, along with other justifying material, will be prepared by the Acquisition Agent. 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 Authority. Consider the estimated lead time on the project and the

aggregated rental cost to the Authority versus the estimated relocation expenses which could be incurred if the units were not rented by the Authority.

8.01.31.02 Initiating Protective Rental Agreement

The Acquisition Agent 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 08-EX-04 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 being received by the owner for the units shall be the maximum to be paid by the Authority and it is expected that in many instances the rent paid by the Authority would be less when you consider and financial benefits to owner of having rent paid but no tenant or management costs.

8.01.31.03 Paying and Accounting for Protective Rents

These rental payments are considered to be acquisition costs, not relocation assistance costs. The Federal funding agency may participate 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 08-17) and attaching the documents listed on the form. The rental agreement must provide for pro-ration of rents that are paid/owed at close of escrow.

A copy of Form (RW 08-17), 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 AQC. Acquisition Agent should minimize the rental period by allowing for a reasonable negotiation period and then initiating the condemnation process.

Protective Rent transactions are considered Administrative Settlements. The AQC and Federal Participation Memorandum (Form RW 08-16) must reflect the full cost of acquisition including all protective rents. The total amount of protective rents is entered on the 'Rent' line of Form RW 08-16. The Federal Participation Memorandum Form should not reflect the schedules for protective rent payments made prior to close of escrow. Therefore, the amount of protective rents paid should be entered on the 'Other' line in parenthesis to indicate to the Financial Office to subtract that amount. A full explanation of protective rent aspects of the transaction must be included in the AQC.

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 AQC as applicable Recapitulation of Pre-escrow Rents.

Invoice packages for protective rents to be paid prior to the close of escrow will be reviewed in the same manner as other invoice packages. After the invoice is forwarded to the Financial Office for payment, the supporting documents and a copy of the invoice 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 AQC and Federal Participation Memorandum include all protective rent payments made.

8.01.32.00 Acquisition Offers and Relocation Assistance Benefits on Parcels That Are No Longer Needed for the Project

All offers for acquisition of rights of way and relocation assistance benefits on parcels that are no longer needed for the project should be withdrawn.

Sample letters to be used for the withdrawal of offers from owners and, when applicable, tenants occupying such properties are included as Exhibits 08-EX-09, 08-EX-10, and 08-EX-11. The sample letters refer to the right to appeal the withdrawal of relocation benefits. Such appeal will be to the Authority Relocation Assistance Program Appeals Board in Sacramento. An application to reinstate an acquisition offer should be directed to Director of Real Property, or designee.

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 un-approved contracts that 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 Authority is responsible for ensuring compliance with Federal, State, and Authority policies and procedures. Review of Acquisition parcel files is the responsibility of the Authority. The Director of Real Property or designee may use the acquisition checklist (Exhibit 08-EX-12) as a guide to the items that are the most sensitive. The checklist is not intended to include all items that 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. FRA also requires that property owners have an appeal process available if reimbursement or direct payment by the Authority is unavailable. The expenses listed under 24.106(a) are paid by the Authority as part of the normal process. The Code of Civil Procedure, Section 1265.240, prohibits the Authority from paying the expenses listed in 49 CFR 24.106(b) (Uniform Act). A procedure is in place for reimbursement of expenses listed in 24.106(c). Those listed in 49 CFR 24.106 (Uniform Act) (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 Authority 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

The Authority, in the development of the High-Speed Rail System project, fully considers all potential aspects of hazardous waste (HW) sites. Where a HW site is involved, the adequate protection of employees, workers, and the public both during and after construction must be assured. See Section

8.16.00.00 for a complete discussion on how the Authority is to handle Hazardous Waste and Hazardous Materials. (see Section 7.04.12.00, et seq.)

It is the Authority'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 normally 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 Authority; 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 Authority 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 Authority 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 Director of Real Property.

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.

8.02.00.00 - SUMMARY STATEMENTS

8.02.01.00 General

Appraisal Summary Statements are used only for preparation of Condemnation suit packages (see Chapter 9.02.01.00 for more information.) Valuation Summary Statements are not used by the Authority.

8.02.02.00 Appraisal Summary Statements

Appraisal Summary Statements may be required by the Authority's legal team if an eminent domain action is filed. They are to be used for appraisal reports only, whether full narrative or memorandum format. When an appraisal report was not prepared and a Waiver Valuation was used for acquisition, an appraisal will be required prior to commencement of an eminent domain action.

8.02.03.00 Lessee's Interest

At the initiation of acquisition discussions for an ownership that 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 08-EX-18A and 08-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.

If ownership is agreed to then provide separate offers or but if ownership is not agreed to then an unsegregated offer accompanied by a copy of the appraisal report will be delivered to the lessor and lessee at the time initiation of negotiations are made. (see Sections 8.04.15.00 and 8.04.16.00.)

Each Right-of-Way Contract for 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 offer and a copy of the revised appraisal document with the revised offer.

8.02.05.00 Independent Appraisals Condemnation Reports

When Independent appraisals are obtained for litigation purposes, these are privileged documents.

8.02.06.00 Owner-Occupant's Right to Review Appraisal

A copy of the appraisal will be provided to the owner for their review as a part of the first written offer.

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 required to be completed through use of the approved forms RW 08-03A, RW 08-03A PAU, RW 08-03A LIO and RW 08-03B.

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 Authority contracts consist of standardized clauses. Most aspects of acquisition are covered by use of the appropriate standard and optional clauses.

The wording of the clauses cannot be altered without proper prior approval by Authority Director of Real Property. If situations arise which require modification of these clauses or use of special clauses, any changes or alterations will require prior approval as outlined above. The Acquisition Quality Checklist (AQC) will document the approver and the date of approval.

A minimum of three signed originals of the Right-of-Way Contract shall be secured from the grantor. An unsigned copy of the Right-of-Way Contract that was executed by the grantor will be left with the grantor.

The grantor(s) and the Acquisition Agent shall initial revisions, deletions, additions, or attachments to the Contract.

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 Authority of all other obligations or claims.

The Authority can enter into a contractual obligation involving a contingency occurring more than three years after acceptance of the Contract only in exceptional cases and only upon specific approval as specified in Section 8.03.01.00.

8.03.03.00 Amendments to Right-of-Way Contracts

Changes required by either the Authority or an Owner may require revision of portions of an approved contract. Such revisions are to be accomplished by an amendment to the Contract. The format for an amendment is shown as Exhibit 08-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 Owner only with the written consent of the Director of Real Property, or designee. 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 Authority's warrant should be returned. 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 Agreement supersedes, cancels, and voids all terms and conditions of that certain Right-of-Way Contract previously entered into between the Parties on (date)."

8.03.05.00 Acquisition From an Employee of the Business and Transportation Agency [Hold for Future Use]

8.03.06.00 Payment Clauses

The standard Contract contains a printed payment clause. There are a number of different situations that may require specialized payment clauses. A series of unapproved specialized clauses are provided in Section 8.05.00.00 under .04, .05, .09, .10, .11, and .13 which if the situation requires their use.

8.03.07.00 [Hold for Future Use]

8.03.08.00 Contracts Approval

Prior to acceptance of the Contract on behalf of the State, availability of funds must be certified by the Financial Office.

The signed contracts, shall be processed for acceptance as follows:

The MOS shall be recommended for approval by the Acquisition Agent and the Senior Right-of-Way Agent.

If the Contract meets all of the criteria set forth above, the Director of Real Property, or designee will approve the contract by signing, on behalf of the state, the Contract previously signed by the grantor.

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 Financial Office. Scheduling procedures may be initiated as soon as the contract has been accepted.

8.04.00.00 - TITLE EXCEPTIONS

8.04.01.00 Title Exceptions - General

A preliminary title report is obtained on every property to be acquired. However, there may be approved exceptions where no report will be obtained or just a "Statement of Ownership" will be obtained. Then, it is incumbent on 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 that 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.

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 Owner'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 that 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, the title company should be requested to provide an acceptable instrument. If Owner agrees to clear a subordinate interest, the instrument may be in favor of such Owner rather than the State. The Contract shall specifically obligate Owner to eliminate such interest at grantor's sole cost and expense.

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

"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 Owner's Indemnification - Title

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

A. (To be used when a specific exception is included in Clause 2A.)

"In consideration of the Authority's waiving the defects and imperfections in the record title, as set forth in Clause 2(A), the Owner indemnifies and holds the Authority and the State of California harmless from any and all claims that other parties may make or assert on the title to the Property. Owner's obligation to indemnify Authority and the State of California shall not exceed the amount paid to Owner under this Agreement."

Or

B. (To be used where clause 2A does not specifically identify the items to be taken. This would only apply to low value parcels under $10,000 where the Authority is using an internal escrow or has decided not to get title insurance and the risk is very low. When used, approval documents must include sufficient supporting information for the acceptance of title subject to defects and imperfections.)

"In consideration of the Authority's waiving the defects and imperfections in all matters of record title the Owner indemnifies and holds the Authority and the State of California harmless from any and all claims that other parties may make or assert on the title to the property. Owner's obligation to indemnify the Authority and the State of California shall not exceed the amount paid to the Owner under this Agreement."

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 AQC and escrow letter. It is incumbent on the Director of Real Property, or designee to see that all such easements are satisfactorily cleared prior to certifying the parcel 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 AQC.

8.04.10.00 Utility Easements

Clearance or elimination of public or private utility easements (overhead, surface or underground) if any, from the right-of-way being acquired will be the responsibility of the Authority and its construction contractor.

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 construction contractor. Relocation of a private facility may be handled by Right-of-Way Contract or by the construction contractor.

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

The Acquisition Agent and the Authority 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 Authority. The Authority or construction contractor should enter into an agreement with the company recognizing such future use.

The Authority 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 D construction contractor. The Authority/construction contractor must be advised when a public utility easement exists on property to be acquired, 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 Authority/construction contractor are necessary.

The Authority/construction contractor will arrange for relocation of all facilities installed in public utility easements. The substitute easement will be acquired either by the company or the Authority at the request of the company. If acquired by the Authority, the location shall be agreeable to the company. This replacement area is subject to the same controls and clearances that apply to regular High-Speed Rail 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. Discussions with the Authority /construction contractor 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.

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, Sacramento, California. 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 Authority shall, prior to filing the complaint, forward a letter to the Chief, Tax Collection Section, at the above address informing of the 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 Owner(s) hereby agree(s) and consent(s) to the dismissal of any eminent domain action filed in the Superior Court of the County of _____ case no. _____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 terminates upon acquisition of the property for a public purpose (C.C.P. §1265.110).

When the Authority must take assignment of the lease, the Right-of-Way 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 08-EX-18A and 08-EX-18B).

Sufficient information is to be set forth so that the Authority 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 08-EX-20, "Assignment of Lease-to-Authority," should be attached to grantor's copy of the lease and executed by grantor upon delivery of the lease to the Authority. 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 that is being assigned to the Authority, the Acquisition Agent should submit a copy of the lease to Authority for review and advice before concluding the transaction.

A lessee may have a compensable interest in improvements that 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 un-segregated statement of value is to be made to all of the parties.

The appraiser will usually ascertain ownership of improvements and segregate values in the appraisal.

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 that 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 un-segregated 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 lessor does not claim the items covered in such settlement.

8.04.15.06 Lessor's Right to Cancel Not Available to Authority

After acquiring the leased fee from the lessor, the Authority 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 Acquisition Agent shall advise the lessee that they may not be eligible for relocation payments if they move prior to the Authority initiating of negotiations to acquire the property. Occupants must clearly be made aware that they may lose RAP eligibility if they move before the initiation of negotiations, unless the Authority issues a Letter of intent to Acquire.

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 Agent 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 Authority to secure advice from the Legal Office.

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 un-segregated 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 un-segregated statement of value and why it is being handled in this manner.

The Acquisition Agent should not hesitate to consult with the Authority at the earliest time feasible on areas not covered here or for assistance or interpretation.

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 non-clearance is required. (see Section 8.65.06.00 for provision for CLTA endorsement).

8.04.17.00 Clearance of Oil, Gas, Other Hydrocarbons and Mineral Interest in Fee Takings

The Authority 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 Hydrocarbons and Mineral Leases

When the parcel is encumbered with a lease, a Quitclaim Deed containing the DM-4 Clause should be obtained to eliminate surface rights of lessees. Leases with surface rights potentially endanger the present or future integrity of the High-Speed Rail System and as such shall be cleared and cannot be taken subject to especially if the lease is active and if production is either present or reasonably anticipated in the future.

It is important to note that 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 the right-of-way being acquired is (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 clauses (s) reserving company's rights. See the Right-of-Way Engineering Chapter of the Right-of-Way Manual where the company is operating existing pipelines or other facilities pursuant to a prior right, such pipelines, or other facilities may be handled by an appropriate deed reservation or a joint use agreement depending on the rights and expected longevity.

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 proposing non-clearance of the lease shall be provided to obtain Authority approval of the Acquisition Quality Checklist.

If title is taken subject to a lease or the owner has reserved in the Grant Deed rights within the Authority Right-of-Way (i.e.; DM-4 Clause), the Right-of-Way Contract must show that title is to be taken subject to the lease and the rights reserved by the owner.

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 Right-of-Way 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, propose modifying the above-cited clause for Director of Real Property approval to 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

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 Right-of-Way Contracts should show such interests as an exception to which title will be taken subject to.

8.04.22.00 Reservation of Oil and Gas (O&G) Rights by Grantor

The Grantor has the right to reserve O&G Rights in the Right-of-Way being acquired. They have this right even though there is no apparent O&G activity on the property or in the vicinity and there are no previous reservations or conveyances of O&G rights on adjacent properties. Should the owner request to reserve O&G rights this will be accomplished by the insertion of the DM4 Clause in the Deed to the State. The reserved rights will be limited by the DM4; 100 feet of the subsurface.

8.04.23.00 Real and Personal Property Taxes

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 State may either:

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

   1. 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 that for description purposes may be called "pre-current." It is permissible to take title subject to "pre-current" 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 that 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 Authority 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 taxes, assessments or bonds is generally not required if the compensation is non-substantial. 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 included in all Contracts as Clause 2(C) for clearance of delinquent taxes, judgments, etc. after the phrase "The State shall"

1. "Have the authority deduct and pay from the amount shown in Clause 2(A) above, any amount necessary to satisfy and discharge any obligations which are liens upon the Property, including but not limited to those arising from bond demands, judgments, assessments, delinquent taxes, debts secured by deeds of trust or mortgages and/or to defray any other incidental costs other than those specified in Clause 2(B) above, to be borne by the State. Property taxes for the fiscal year in which this escrow closes, if unpaid, shall be paid by Owner in escrow to and including the date of Close of Escrow. The payment shall be based on the most recent information applicable to the fiscal year and obtainable through the taxing agencies. State shall not be responsible for any tax refund."

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 Authority 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 Owner 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 Owner prior to close of escrow. On partial acquisitions, a partial release of tax lien should be secured covering the property being acquired. For details, the agent should 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 Authority 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 Owners 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 Owner. No request for cancellation shall be made unless the Authority 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 Owner 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.

   The levying body will not normally make cancellation of assessments 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:

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 Owner; and, as between the State and Owner, 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 High-Speed Rail System as now proposed shall be done without an assessment of any kind being placed against the adjacent remaining portion of Owner's property."

8.04.33.00 Franchise Tax Board Withholding

Where the Owner 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 Owner 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 the withholding and transfer, Owner receives a homeowner's property tax exemption, or the sales price does not exceed $100,000. Owner acknowledges receiving a copy of Section 18662 of the Revenue and Taxation Code."

8.04.34.00 Deeds of Trust-Mortgages

Deeds of trust and mortgages are to be re-conveyed 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 of nominal value (less than $10,000) An indemnity clause against potential loss by the State must be included in the Contract (see Section 8.04.04.00).

Clearance of Trust Deeds on Low Value Parcels

If a parcel is valued at nominal ($10,000 or less) the Acquisition Agent shall consider if taking title subject to the trust deed is a good business decision with a low risk to the Authority. Clearing the beneficiary's interest in a parcel valued at a nominal $10,000 or less may cost more than the payment to the owner and in many cases will delay escrow closing and the Authority possession date.

In that instance where the parcel's acquisition cost is $10,000 or less, owner is not in default and the remaining value of the owner's property is more than sufficient security for the remaining balance of the trust deed, then consideration will be given to taking title subject to the trust deed. Taking subject to a trust deed in this situation will save the State money, be an incentive for an owner to sign as they will get the proceeds instead of the leader and will allow escrow to close more swiftly with Authority getting possession of the parcel earlier if there was no possession clause in the Right-of-Way Contract, creating a win situation for all involved with little if any risk to the Authority.

In those instances where the acquisition fits the guidelines spelled out above, the ROWC can propose to the owner that Authority will take subject to the trust deed providing the owner indemnifies State by inclusion of the optional grantor indemnification clause in the Right-of-Way Contract.

Optional Right-of-Way Contract clause: 8.04.04.00 Owners Indemnification:

"In consideration of the State's waiving the defects and imperfections in the record title, as set forth in Clause 2(A), the Owner indemnifies and holds the State harmless from any and all claims that other parties may make or assert on the title to the Property. Owner's obligation to indemnify State shall not exceed the amount paid to Owner under this Agreement."

OR

(To be used where clause 2A does not specifically identify the items to be taken. This would only apply to low value parcels under $10,000 where the State is using an internal escrow or has decided not to get title insurance and the risk is very low. When used, approval documents must include sufficient supporting information for the acceptance of title subject to defects and imperfections.)

"In consideration of the State's waiving the defects and imperfections in all matters of record title the Owner indemnifies and holds the State harmless from any and all claims that other parties may make or assert on the title to the property. Owner's obligation to indemnify the State shall not exceed the amount paid to the Owner under this Agreement."

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 (Owner).

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 Agreement 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 Owner 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:

"Owner shall instruct (escrow agent's name) to obtain a copy of the promissory note(s) referenced above and deliver it (them) to State if Owner wants to be considered for an interest differential payment under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C., Section 4601, et seq., and the California Relocation Assistance Act (Government Code, section 7260, et seq.)."

8.04.37.00 Prepayment Penalties

Land acquired for public use is exempt from pre-payment 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 Agreement (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 Owner through (Name of Bank) shall, on demand, be made payable to the persons entitled thereto. The above-mentioned lender will furnish Owner 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 – Contract of Sale

"Any or all monies payable under this Agreement, up to and including the total amount of unpaid principal and interest on the Agreement of Sale dated _____ between _____ Vendors, and _ Vendee, 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 - Contract of Sale

"$ _____ of the total monies payable under this Agreement shall be paid to _____, Vendor, to apply to the unpaid principal and interest on the Agreement of Sale dated _____ between Vendor, and _____, Vendee. 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 Authority.

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 Authority 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 Authority will send Form UCC-3 (Exhibit 08-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 Authority 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 08-

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 Agreement, 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, and 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 in Sacramento, CA.

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 8.04.04.00). 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 Authority 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 Authority 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 Authority 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 Authority in acquiring properties subject to this type of lien.

If the Authority has bills for the payment of assessments and the Authority 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 Authority 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 Authority in formal escrows by using IRS Form 1099-S.

For internal escrows, the Authority utilizes the Payee Data Record (Financial Office Form STD-204). The Acquisition 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 Authority.

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 as standard clause 1(B):

> "The issuance of any escrow instructions shall be the sole responsibility of the Authority and shall govern the escrow. 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. (Currently included as clause 2(B) of standard Right-of-Way Contract).

> "Pay all escrow and recording fees incurred in this transaction, and if title insurance is desired by the State the premium charged therefore." These escrow and recording charges shall not, however include documentary transfer tax.

8.05.03.00 [Hold for Future Use]

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 (currently included as clause 2(A) of standard Right-of-Way contract):

> "Pay the undersigned Owner the sum of $ _____ for the property or interest conveyed by Document(s) No.'s_____ when title to the Property vests in the State free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes except:"
>
> 1) Item's __of (title companies name) Preliminary Title Report No. _____ Dated _____
> 2) List items not shown in preliminary title report being taken subject to.

8.05.04.01 Property Loss During Escrow

In order to ensure that the grantor has 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 (currently included as clause 1(D) of standard Right-of-Way Contract):

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

8.05.05.00 Payment (No Formal Escrow - Internal Escrows)

This clause to be used for escrows not normally handled by a title company i.e., purchase of mobile homes, tenant owned IPR, etc. including low valued parcels valued at under $10,000 where title insurance is not desired.

"This transaction will be handled through an internal escrow by the State of California, California High-Speed Rail Authority, 770 L Street, Suite 620, Sacramento, CA 95814."

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:

"This Agreement is being signed by , Executor/Administrator/Guardian of the at the request of State, prior to the presentation of the subject matter hereof to the Superior Court of County, and neither said person or estate nor , as Executor/ Administrator/Guardian acquire any liability or responsibility by reason of that signing. All the provisions of this Agreement are subject to the confirmation of the Superior Court of the County of , State of California."

8.05.07.00 Dedication by Executors, Administrators, Guardians [Hold for Future Use]

8.05.08.00 Deeds From Executors, Administrators, Guardians

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

8.05.09.00 Delayed Payment Clause

The following clause shall be included in the Right-of-Way Contract when the owner has not granted early possession and 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 Acquisition Quality Checklist (AQC):

"Authority, at the request of Owner, shall not make payment of the amount set forth in Clause 2(A) until after _____ unless Owner requests, in writing, payment at an earlier date."

"In consideration for this delayed payment Owner agrees that should the condition of the improvements located on the Property 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 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:

"Divide the net proceeds of the amount payable under Clause 2(A) as follows:

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

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.

"State shall accept delivery of the Property or interest being conveyed by Document No. _____ and will record same when title can be vested in the State of California free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded), and taxes, except: ***"(list title exceptions).

"The Property conveyed by Document No. is being donated to State by Owner. Owner, having initiated this donation, has been informed of the right to compensation for the Property donated and hereby waive(s) this 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.

> "Included in the amount payable under Clause 2(A) is payment in full to compensate Owner for the expense of performing the following work: (Insert the cost-to-cure items which grantor is being paid to correct.)"

8.05.12.01 Damages to Owner's Remaining Property (Sound)

"Payment in Clause 2(A) includes, but is not limited to, payment for any and all damages to Owner's remaining property, including damages for noise and vibrations caused by the construction, operation and/or maintenance of the High-Speed Rail System."

8.05.13.00 Payment Where Deposit Money Previously Withdrawn

A. If a condemnation action has been filed and the Security Deposit withdrawn by Owners the following payment clause must be included in the Right-of-Way Contract:

> "Authority shall pay the undersigned Owner the sum of $ __ less the sum of $ _____ previously withdrawn by Owner from the State's security deposit in the action entitled California High-Speed Rail Authority vs._____, County, SCC No._____ for the property or interest conveyed by Document No. _____ when title to the Property vests in the State free and clear of all liens, encumbrances, assessments, easements, and leases (recorded and/or unrecorded), and taxes except (list title exceptions)"

or

B. If a Possession and Use Agreement has been entered into and the Owner has withdrawn the funds deposited into escrow, include the following clause:

"Authority shall pay the undersigned Owner the sum of $, less the $_____ previously withdrawn by the Owner from the Authority's deposit of funds into escrow pursuant to that certain Possession and Use Agreement dated _____, for the Property conveyed by Document Nos._____, when title to the Property vests in the State of California free and clear of all

liens, encumbrances, assessments, easements, and leases (recorded and/or unrecorded), and taxes except: ***"(list title exceptions)

8.05.14.00 [Hold for Future Use]

8.06.00.00 - IMPROVEMENTS AND EXCESS

8.06.01.00 Improvements and Excess - General

The State generally acquires all of the improvements within the right-of-way required. Often the Owner 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 that 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:

"Payment in Clause 2(A) includes, but is not limited to, payment for _____ which are considered to be part of the realty and are being acquired by State in this transaction."

8.06.03.00 Miscellaneous Realty Items Retained by Owner

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.

"Owner shall retain and remove the following items considered as realty (e.g., wall-to-wall carpeting, TV antenna, evaporative cooler, etc.). The items retained by Owner will be removed upon termination of any rental agreement between Owner and Authority or on the day after date of recordation of Document No. _____conveying title to the State of California, whichever date is later. If Owner fails to remove these items within the time limit specified, these items shall become the property of Authority to dispose of as it sees fit. With respect to the payment of the sum stated in Clause 2(A) and other valuable consideration, receipt of which is hereby, acknowledged Owner 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 not available as a right and the retention at in-place value less salvage is merely an alternate acquisition approach that is entirely optional.

When the owner, **prior to agreement**, severs this type of machinery or equipment from the real estate, 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:

Owner (Lessee) is retaining the following listed equipment (specify each and every item being retained). Owner (Lessee) acknowledges that payment in Clause 2(A) includes the in-place value of the retained equipment, less its salvage value. Owner (Lessee) understands and agrees that retention, cost of removal and cost of reinstallation of such equipment is included in the payment made in this Agreement and Owner (Lessee) acknowledges no further payment of any kind will accrue."

The Contract shall list those items that 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. The Director of Real Property or designee must authorize the acquisition of personal property.

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 [Hold for Future Use]

Per Uniform Act, improvements cannot be relocated. FRA will not participate in these costs.

8.06.08.00 Owner Relocation of Real Property Improvements [Hold for Future Use]

(Does not apply to personal Property)

Per the Uniform Act, improvements cannot be relocated. FRA will not participate in these costs.

8.06.09.00 Owner Retention of Improvements [Hold for Future Use]

Per the Uniform Act, improvements cannot be relocated. FRA will not participate in these costs.

8.06.10.00 Removal Time Limitations [Hold for Future Use]

Per the Uniform Act, improvements cannot be relocated. FRA will not participate in these costs.

8.06.11.00 Tax Liability [Hold for Future Use]

Per the Uniform Act, improvements cannot be relocated. FRA will not participate in these costs.

8.06.12.00 Improvements Retained by Owner - Entire Acquisition

The following clause will be used in the Contract:

"Owner reserves the right to remove the hereinafter described improvements located on the Property on or before _____. Upon exercising this reserved right, Owner 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 the 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 Owner shall construct temporary barricades around the holes or basements, to the satisfaction of Authority, for the purpose of protecting pedestrians or animals from falling into these holes or basements."

These improvements, which the Owner reserves the right to remove, consist of: _____.

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

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

(if applicable)

"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 these improvements, Owner, at Owner's sole cost and expense, shall provide these other buildings with adequate, substitute utility service lines in lieu of those affected."

"Included in the amount payable under Clause 2(A) is payment in full to compensate Owner for the expense of performing the following work? (Insert the cost-to-cure items which Owner is being paid to correct.)"

8.06.13.00 Improvements Retained by Owner - 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.

"Owner reserves the right to remove the hereinafter described improvements located in the right-of-way area on or before _____. Upon exercising this reserved right, Owner 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 the 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 Owner shall construct temporary barricades around the holes or basements, to the satisfaction of Authority, for the purpose of protecting pedestrians or animals from falling into such holes or basements."

"The improvements, which Owner reserves the right to remove, consist of: _____. $ _____ of the total payment provided for under Clause 2(A) shall be withheld by Authority 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."
"In the event the right-of-way area has not been cleared of these improvements on or before said date, Authority, or its authorized agent, is hereby granted the right to enter upon the adjacent property of Owner for the purpose of moving the improvements clear of the right-of-way and onto Owner's adjacent property without incurring any liability or responsibility for the location or condition of the improvements, and Owner hereby agrees that Authority shall retain the sum of $ _ as liquidated damages and costs to Authority of removing the improvements from the right-of-way area."

8.06.14.00 Improvements Retained by Owner - 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 Authority's out-of-pocket cost for removal or demolition in clearing the right-of-way area.

"Owner reserves the right to remove the hereinafter described improvements located in the right-of-way area on or before _____. Upon exercising this reserved right, Owner 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 Owner shall construct temporary barricades around the holes or basements, to the satisfaction of Authority, for the purpose of protecting pedestrians or animals from falling into these holes or basements."

"The improvements, which Owner reserves the right to remove, consist of: _____. $_____ of the total payment provided for under Clause 2(A) shall be withheld by Authority until these 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 these improvements are not removed in their entirety, at Owner's expense, on or before said date for any reason whatsoever, the right to remove said improvements shall terminate and Authority shall dispose of the improvements as it may see fit. Authority, or its authorized agent, is hereby granted the right to enter upon the adjacent property of Owner for the purpose of removing the improvements from the right-of-way area, and Owner hereby agrees that Authority shall retain the sum of $ _____ as liquidated damages and costs to Authority of removing the improvements from the right-of-way area."

8.06.15.00 Improvements Retained by Owner - 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 Authority's out-of-pocket cost for removal or demolition in clearing the right-of-way area. The following clause applies:

"Owner reserves the right to remove the hereinafter described improvements located in the right-of-way area on or before _____. Upon exercising this reserved right, Owner 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 the 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 Owner shall construct temporary barricades around the holes or basements, to the satisfaction of Authority, for the purpose of protecting pedestrians or animals from falling into these holes or basements."

"The improvements, which Owner reserves the right to remove, consist of: _____. $ _____ _____ of the total payment provided for under Clause 2(A) shall be withheld by Authority 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 the improvements are not removed in their entirety from right-of-way area at Owner's expense, on or before said date for any reason whatsoever, the right to remove these improvements shall terminate and Authority shall dispose of the improvements as it may see fit. Authority, or its authorized agent, is hereby granted the right to enter upon the adjacent property of Owner for the purpose of removing these 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 Owner shall be conveyed to State, and Authority is granted the right to remove the improvements in their entirety, to dispose of as it may see fit, and Owner agrees that Authority shall retain the sum of $ _ as liquidated damages and costs to Authority of removing the improvements from the right-of-way area."

8.06.16.00 Improvements Retained by Owner - 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.

"Owner reserves the right to remove the hereinafter described improvements partially located in the right-of-way area on or before _____. Upon exercising this reserved right, Owner 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 the 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 Owner shall construct temporary barricades around the holes or basements, to the satisfaction of Authority, for the purpose of protecting pedestrians or animals from falling into the holes or basements."

"The improvements, which Owner reserves the right to remove, consist of: _____. $ of the total payment provided for under Clause 2(A) shall be withheld by Authority 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 the improvements are not removed in their entirety from the right-of-way area, at the Owner's expense, on or before said date for any reason whatsoever, the right to remove these improvements shall terminate and Authority, or its authorized agent, is hereby granted the right to enter upon the adjacent property of Owner for the purpose of severing and removing those portions of the improvements situated in the right-of-way area and may dispose of all these improvements or portions thereof situated in the right-of-way area, in such manner as it may see fit, and Owner agrees that Authority shall retain the sum of $ _____ as liquidated damages and costs to Authority of removing the improvements from the right-of-way area."

8.06.17.00 Improvements Retained by Owner - 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.

"Owner reserves the right to remove the hereinafter described improvements located in the right-of-way area on or before _____. Upon exercising this reserved right, Owner 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 the 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 Owner shall construct a temporary barricade around the holes or basements, to the satisfaction of Authority, for the purpose of protecting pedestrians or animals from falling into the holes or basements."

"The improvements, which Owner 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) shall be withheld by Authority until the 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 the improvements are not removed in their entirety, at Owner's expense on or before said date for any reason whatsoever, the right to remove these improvements shall terminate, and Authority shall dispose of the improvements as it may see fit, and Owner agrees that Authority shall retain the sum of $ _____ as liquidated damages and costs to Authority of removing the improvements."

8.06.18.00 Service Connections - Improvements to be Moved by Owner - Partial Acquisitions

The following clause must be included in the Contract:

"The payment to Owner provided under Clause 2(A) includes any and all costs of Owner 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 the improvements, Owner, at Owner's own cost and expense, shall provide these other buildings adequate substitute utility service lines in lieu of those affected."

8.06.19.00 Relocation of Improvements by Authority

Whenever a Right-of-Way Contract provides for the relocation or installation of improvements by the Authority, the Right-of-Way Contract must be specific in describing the work to be performed. The Authority's estimate of the cost involved shall be incorporated in and made part of the MOS (see 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 Right-of-Way Contract.

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

"Authority shall without cost to Owner, relocate and extend all utility service connections to the buildings to be relocated at their new locations."

8.06.20.00 Permission to Enter Owner'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:

"The payment provided under Clause 2(A) includes payment to Owner for certain improvements located partly within and partly outside the right-of-way area."

"These improvements consist of: _____. Authority, or its authorized agent, is hereby granted the right to enter upon the remaining property of Owner for the purpose of removing these improvements."

(if requested by Owner)

"Authority or its authorized agents will remove these 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 Authority has had the opportunity to review the calculated 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 Authority and/or the Director of Real Property, or designee 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

FRA cannot acquire parcels before NEPA clearance.

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:

a. Uneconomic Remnant in the market: [May be condemned (see Section 9.01.12.00 Specific Statutory Authority)]
b. Uneconomic to Owner: Under this Category, we may condemn with the consent of the Owner.
c. Due to construction costs or large damages

Category 2: Excess Acquisition

a. 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:

> "The purchase of the entire property described in Document [Grant Deed] No. _____ is at the sole request of and as a convenience to Owner, and relocation assistance benefits will not accrue because 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 Authority will obtain 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 obtained by the Authority (see Sections 7.03.04.01 and 8.50.04.01).

8.07.00.00 - WATER WELLS

8.07.01.00 Water 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. Their acquisition must be discussed in the Acquisition Quality Checklist (AQC) and the proper notification sent to the Authority's Construction and Design Team for inclusion in the contract plans/Engineer's file. The replacement of an existing well can be done by a cash payment to the Owner or on an exception basis the Authority contracting for the drilling of a replacement well. Both are discussed below.

8.07.02.00 Cash Payment With Authority's Option

Where the Authority 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 Authority 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.

"The payment provided in Clause 2(A) includes the sum of $ ___, as the cost to Owner for (description of well drilling work to be performed) on Owner's remaining property, and the sum of $ ___ is based on the bid obtained from (Name of Company)."

"It is the intent of the Parties that Owner be reimbursed by Authority 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 Owner and complete copies of the results of the tests shall be supplied to Authority."

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

1. Amend this Contract Agreement to provide additional monies and authorization to Owner to proceed with other attempts to produce a satisfactory water supply on Owner's remaining property.
2. Withhold authorization to Owner to proceed with further attempts to produce water and enter into an Amended Agreement Contract for the purpose of reimbursing Owner 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 any loss or depreciation in the market value cannot be determined by agreement between Owner and Authority, the Authority will then bring appropriate legal proceedings for the purpose of ascertaining the same, and will pay the amount ascertained by the legal proceedings.

"If Authority is not notified in writing prior to __ of the failure of the new well on Owner's remaining property to produce a quantity of water equal to, or greater than, that produced by the existing well, the payment of the sum of $____ shall be considered as full payment by Authority for the existing well, and Owner waives any and all future claims for compensation."

8.07.03.00 Authority Contract - Exception Basis

Because of the difficulty and time involved in compliance with State contracting rules and regulations this option will only be used on an exception basis and then only when project schedule will allow and with Authority written approval. If approved the following clause may be used:

"Authority shall drill a well on Owner'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 Owner shall be supplied with complete copies of the results of these tests."

"If Authority drills one well to a depth as deep as, or deeper than, the existing well, and which fails to produce a satisfactory water supply, Authority 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 Owner's remaining property.
2. Discontinue all further attempts to produce water."

"If Authority, 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, Authority shall reimburse Owner for the loss or depreciation in market value to Owner's remaining property resulting from the decreased quantity of water available therefor. If the amount of any loss or depreciation in the market value cannot be determined by negotiations between Owner and Authority, Authority will, on written notice from Owner, bring appropriate legal proceedings for the purpose of ascertaining the same, and will pay the amount ascertained thereby.

"If Authority 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 Owner's remaining property, the Authority shall reimburse Owner for the loss in the manner provided for in the preceding paragraph."

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 High-Speed Rail System, there will be no points of direct access to the system. In certain situations limited access maybe allowed beneath the High-Speed Rail under a viaduct or via an Authority constructed agricultural or other undercrossing.

8.08.02.00 Interim Access – Delayed Construction

Where interim access is to be allowed prior to High-Speed Rail construction, the following clause will be included in the Contract:

“In the event that the High-Speed Rail construction on the Property is delayed, Owner, and any successors in interest, shall have access to their remaining property over the Property being conveyed by this Agreement in the same manner as they enjoy at the time the Agreement is executed by the Parties up until the time that any construction of the high-speed rail project is commenced on the Property.”

8.08.03.00 Interim Access – Relocated Public Road

Where interim access is required prior to construction of a relocated public road and the owner desires assurance that they will have access until the new public road is constructed, the following clause may be used:

"Until construction of the proposed relocated (name of public road) the Owner’s and any successors in interest, shall have access to their remaining property, over the property being conveyed by this Agreement in the same manner as they enjoy at the time the Agreement is executed by the Parties up until such time as the relocated (name) road has been constructed to a point of providing access to Owner’s property, at which time all rights reserved in this clause terminate.”

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 an Owner.

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

“Owner’s remaining property will be landlocked and without any direct access to any public or private road, and Owner releases and holds harmless the State from any liability or obligation to provide access to the remaining landlocked property.”

8.08.05.00 Encroachments on Federal Aid High-Speed Rail System [Hold for Future Use]

8.09.00.00 - RENTAL AND POSSESSION PROVISIONS

8.09.01.00 Clauses for Grace Period, Early Vacation and Rent Confirmation

It is the goal of the Authority to encourage the vacation of the required Right-of-Way area in the most expeditious way while still assisting and providing occupants with the utmost courtesy and consideration of their situation and ensuring that they are provided with the full benefits to the Uniform Act.

In this spirit and to assist and encourage occupants to move within a short time after the close of escrow, it is the policy of the Authority to grant a 15 day grace period wherein the occupant would not have to pay rent.

This policy is to be implemented for owner occupants by the Acquisition Branchin all cases where rent is not being collected from owner occupants after the close of escrow utilizing the approved optional Right-of-Way Contract clause 8.09.01.00.

It is the responsibility of the Acquisition Branchto ensure that hold over tenants pay market rent from the close of escrow or legal possession by the State. However, to ensure fair and equal treatment the 15 day grace period is to be extended to tenants also. This can be implemented by commencing rent 15 days after the close of escrow.

Contracts with owner-occupants of Parcels being acquired 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:

A. "Owner shall have a 15-day grace period commencing on the day following the date of recordation of Document No._____. Beginning on the day following the expiration of the grace period and thereafter, Authority will rent the Property to Owner using Authority's standard form of Rental Agreement."

   "The rental rate shall be $ __ per month subject to all the terms and conditions contained in the rental agreement, including the right of either party to cancel and terminate the rental agreement upon written notice as specified in the rental agreement. The 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 Authority to establish a new rental rate after one year if the Property remains available for rent."

or (if early vacation is necessary)

B. "Owner shall, on the day following the expiration of the 15-day grace period, vacate and deliver the Property vacant to Authority and in good order and condition, without further notice, and immediately thereafter deliver the keys thereto to (Property manager and address) and also pay all closing utility bills up to and including the date of vacation."

   "In the event Owner does not vacate the Property, Owner shall pay Authority at the rate of

   $ _____ per day for use and occupancy of the Property beginning the day following the recordation of Document No. _____; and the acceptance of any payment by Authority shall not create a new tenancy between the Parties."

   "In the event Owner vacates the Property prior to the recordation of Document No. ___ Authority is hereby granted possession to use, occupy, or rent the Property as it sees fit."

or (if Owner insists)

C. "Authority will rent the Property to Owner, using Authority'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 the (Rental-Lease) Agreement, including the right of either party to cancel and terminate the agreement upon written notice as specified in the (Rental-Lease) Agreement. The (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. Authority 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 Delivery of Property at close of escrow is necessary, the following clause will apply: (currently included in standard Right-of-Way Contract as clause 3(A)

The Owner shall: "On or before the date title vests in State, vacate and deliver the above-described property to Authority in good order and condition without further notice.

And If Property is improved property, add the following:

and immediately thereafter deliver the keys thereto to the (Property Manager at 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

(Grace Period) – Alternate Clause 3A of approved Right-of-Way Contract.

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.

Owner shall "Deliver the Property vacant to Authority on or before (max 15 days)_____ days after the date of recordation of Document No. _____, in good order and condition, without further notice, and immediately thereafter deliver the keys thereto to the (Property Manager, 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 Authority policy to schedule construction projects so that no persons lawfully occupying real property required for High-Speed Rail 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 Authority.

8.09.05.00 Eviction by Authority

The Authority must either own the property or have legal possession under an Order for Possession (OP) or Possession and Use Agreement (PAU) or any other document that gives the Authority legal possession of the Property before eviction proceedings can begin. The Acquisition Branch 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 Provisions

Clauses 4 (G),(H), & (I) of the Standard Right-of-Way Contract provide State with appropriate protections form leases, and should be included in all Right-of-Way.

4(G) Owner has not entered into any other contracts for the sale of the Property, nor do there exist any rights of first refusal, reversions, or options to purchase the Property or any portion of the Property. Owner is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to the Property which would impose an obligation on State or otherwise affect marketability of title to the Property. Since the initiation of negotiations with Authority, Owner has not entered into any agreements or leases with any person for use of the Property.

4(H) As of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Property, including any improvements thereon, and there shall be no improvements on the Property that encroach upon the property of a third party.

4(I) Owner will not hereafter enter into new leases or any other obligations or agreements affecting the Property without the prior written consent of State, which consent the State may withhold or grant in its absolute discretion.

8.09.07.00 Rent Proration and Security Money Collection

The following clause is included as clause 6 (E) in the Authorities standard Right-of-Way Contract:

6 (E) Rents, if any, shall be prorated as of the Close of Escrow and all rents coming due after Close of Escrow shall be paid to Authority. If any rents have been or are collected by the Owner for any period after Close of Escrow, Owner shall refund such rents to the Authority. Owner shall repay to the tenant(s) (or list the tenants by name), any cleaning, key or other deposits, excluding rents paid in advance, and indemnify and hold State harmless from any claim therefor."

8.09.07.01 [Hold for Future Use]

8.09.07.02 Definite Rent Proration Date Established

If Owner insists on a definite date for pro-ration of rents, the following clause may be used.

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

8.09.08.00 Owner Retaining Temporary Possession – Unimproved Property

The following clauses may be used where it is advantageous to allow the Owner 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. This clause is intended to be used for agricultural type properties not to be used for Properties improved with structures, (residential, commercial or industrial) even if the structures are being used to support agricultural

activities. Prior approval of the Director of Real Property 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 Acquisition Quality Checklist (AQC). Without justification it is tantamount to a gift of public funds.

"Until such time as Authority elects to take possession of any or all of the Property, Owner shall have the use and enjoyment of its surface in the same manner as used at the time the Agreement is executed by the Parties, except that in no event shall any advertising sign of any nature whatsoever be placed upon or allowed to remain on the Property. Owner shall keep the Property in a neat and clean condition."

"Owner shall not place, or permit to be placed, any improvements other than those already on the Property; and the planting of any crops, trees, or shrubs, or the making of any alterations, repairs, or additions to existing improvements on the Property are at Owner's risk and will not be entitled to compensation if removed by Authority."

(the next three paragraphs, if applicable)

"Owner shall harvest the existing _____ crop on that portion of the Property being acquired by State. The crop shall be harvested on or before _____ and, if not harvested by said date, shall become the property of State to dispose of as it may see fit. Owner shall cultivate and maintain the existing crop in conformance with the practices of good husbandry, including pest control, up to and including date Owner harvests the crop."

"The Property shall be used only for the purpose of maintaining and harvesting the crop currently on the Property."

"Upon the failure of Owner to comply with any condition or provision of this Agreement, the authorization to harvest the crop by Owner shall immediately cease and possession shall be taken by State."

8.09.09.00 Right of Entry - Waiver Clause

After an appraisal has been approved and an offer made, permission to solicit a Right of Entry from the owner may be granted by the Authority When deemed absolutely necessary to solicit a Right of Entry from an owner before initiation of negotiations, approval of the Director of Real Property must first be obtained. Complete documentation for such action must be in the acquisition file.

Authorization to solicit Rights of Entry prior to the appraisal process and initiation of negotiations shall be restricted to circumstances that are exceptional or emergency in nature. Ordinarily, the Right of Entry will not dislocate people or impact improvements of a significant nature. Typically, Rights of Entry prior to initiation of negotiations involve emergency projects or situations that 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 the Legal Office must be obtained prior to submitting the Right of Entry to the owner for execution.

The Right of Entry - Long Form (Exhibit 08-EX-23) and Agreement for Possession and Use (Exhibit 08-EX-25) contain a standard clause waiving the owner's right to appear before the Public Works Board (PWB).

This clause must be included since omission of the clause would provide the owner with the right to question the validity of a project that 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 08-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 High-Speed rail facility. Under such circumstances, the Authority may rely on its Police Power.

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

In exchange for the Authority's early possession and use of a property, in those infrequent occasions where settlement has not been reached or condemnation does not appear to be the appropriate course of action, a non-"large organization" property owner will be given the option of receiving compensation based on the Authority's estimate of just compensation or payment of interest on the settlement amount. The parcel diary will reflect that such property owners were given this option and their preferred course of action.

If the owner elects to receive payment of interest on the settlement amount and defer immediate compensation, the Acquisition Branch will pursue execution of a Right of Entry document.

If the owner elects to receive immediate compensation, the Acquisition Branch will pursue execution of an Agreement for Possession and Use document.

8.09.09.01 Agreement for Possession and Use

The Agreement for Possession and Use provides the legal right for the Authority to possess and use the owner's property prior to agreement on amount of compensation and the execution of a Right-of-Way Contract. At the same time, the owner is provided the opportunity to receive the amount of the Authority's opinion of just compensation for the Authority's possession and use of the parcel, without agreeing to a settlement amount. Providing a copy of a Possession and Use agreement at the time of the first written offer is required along with the proper explanation of the benefits to the owner. Every effort should be made to obtain the Possession and Use agreement if the owner does not want to sign a Right-of-Way Contract at that time.

Use Exhibit 08-EX-25 for the Agreement for Possession and Use. The Agreement for Possession and Use requires that the Authority record a Memorandum of the Agreement (Exhibit 08-EX-35) and deposit into escrow funds in the full amount of the approved just compensation to allow the owner to withdraw the funds as appropriate. Refer to Sections 8.60.00 through 8.68.00 and Exhibit 08-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 Authority and may be used when the Authority would not condemn the rights secured.

8.09.11.00 Temporary Construction Easements

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

8.09.12.00 Indemnification by Authority

Where the Owner or other party to the agreement requests to be indemnified by the Authority for any damage caused by reason of the uses authorized by such agreement, the following clauses may be used:

A. **General:** State agrees to indemnify and hold harmless the undersigned Owner in so far as it is legally able to do so, 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.

B. **Specific:** This Agreement is entered into with the mutual understanding that Owner's existing well, located on Owner's remainder property, approximately _____feet (east/west/north/south) of State's right-of-way, is not being impacted by State's construction or project and Owner has not been compensated for said well in paragraph 2a of this Agreement. Nothing in this Agreement is a waiver of Owner's right to claim damages for impact to their well resulting from the acquisition of Parcel(s) XXXX and the construction and use of the project in the manner proposed. Should Owner wish to file a State Government Claims Program claim for damages to the well, Owner shall provide certified standard orifice tests performed both before construction and again at the time the claim is filed.

8.09.12.01 Authority Assurance to Owner

Re: Unimpacted Well

This Agreement is entered into with the mutual understanding that Owner's existing well, located on Owner's remainder property, approximately _____feet (east/west/north/south) of Authority's right-of-way, is not being impacted by Authority's construction or project and Owner has not been compensated for said well in paragraph 2a of this Agreement. Nothing in this Agreement is a waiver of Owner's right to claim damages for impact to their well resulting from the acquisition of Parcel(s) XXXX and the construction and use of the project in the manner proposed. Should Owner wish to file a claim for damages to the well, Owner shall provide to the Authority a before and after standard orifice test before the claim will be considered.

8.09.13.00 Right of Immediate Possession - No interest

This clause will be included as a standard clause in all Right-of-Way Contracts at the initiation of negotiations with an Owner. As a Design Build project, possession of your property is critical to project delivery. Where possession has not been previously obtained with an Order for Possession, Right of Entry or Possession and Use Agreement the following clause is to be inserted into to the Contract:

Although inclusion of this clause is voluntary on the part of the owner, the Acquisition Branch should without exception encourage the Owner to grant the Authority immediate possession. In the case of an administrative settlement use of this clause is mandatory.

"Notwithstanding other provision in this Agreement, Authority's right of possession and use of the Property, including the right to remove and dispose of improvements, shall commence on the date of execution of this Agreement or (as an alternate when owner wants a specific date "on xxxx or the close of escrow controlling this transaction whichever occurs first") and the amount shown in Clause 2(A) includes, but is not limited to, full payment for that possession and use, including damages, if any, from said date.

8.09.13.01 Right of Immediate Possession - Pay Interest

In an effort to increase the number of parcels where the owner grants to Authority early possession, it has been determined that Authority will offer to pay interest on the settlement amount from the date of possession to the date escrow closes. This would result in the Authority in affect pay rent (interest) for the term of the granted early possession, which is expected to provide more owners with an incentive to grant early possession.

When asking an owner to grant early possession, the Acquisition Branch will offer the payment of interest from the date of possession to and including the date of escrow closing in this transaction. Payment of interest will be offered on all vacant parcels, and those improved parcels where owner is giving up possession (vacating) on possession date or the owner is willing to give up legal possession and turn over the landlord/lessors interests in occupying tenants to the Authority.

Where immediate possession is to be included as outlined in 8.09.13.00 and the owner has asked for interest to be paid for the early possession the following clause may be used.

"Notwithstanding any other provision in this Agreement, State's right of possession and use of the Property, including the right to remove and dispose of improvements, shall commence upon execution of this Agreement by State (or alternate language if owner wants a specified date, "on xx-xx-xxxx or the close of escrow controlling this transaction, whichever occurs first,"). It is understood that the State will pay interest from the date State takes possession of the property pursuant to this clause, computed on the amount shown in Clause 2A herein. The rate of interest will be the rate of earning 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 escrow closing in this transaction"

8.09.14.00 Confirming Date of Possession

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

"Notwithstanding other provision in this Agreement, Authority's right of possession and use of the Property, including the right to remove and dispose of improvements, commenced (effective date of Order for Possession, Possession and Use Agreement or Right of Entry) and the amount shown in Clause 2(A) includes, but is not limited to, full payment for that possession and use, including damages, if any, and interest from said date."

See the Right-of-Way Engineering Chapter for deed clause confirming date of possession.

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 Authority should use extreme care in implementing it. Under Government Code Section 7261(b)(3), the Authority 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 (25 CCR 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].

"*Owner acknowledges that the sole reason for State's purchase of the Property at this time is to alleviate a hardship condition presently suffered by Owner, and the hardship can only be cured by Owner selling and vacating the Property. It is, therefore, confirmed by the Parties that Owner has received notice of Authority'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 the notice of intent to serve the 30-day eviction notice. Owner will deliver the Property to Authority vacant and in good order and condition without further notice and will immediately thereafter deliver the keys to the Property to the Authority (address) and also pay all closing utility bills up to and including the date of vacation."*

8.10.00.00 - CONSTRUCTION OBLIGATIONS

8.10.01.00 Construction Obligations - General

Construction contract obligations require the Authority to do certain work 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 addressed and justified in the appraisal and clearly and completely described in the Right-of-Way Contract and discussed in the Acquisition Quality Checklist (AQC). The Engineering Branch must have approved and be notified in writing of these obligations. As necessary appropriate clauses for entry on Owner's remainder property to accomplish must be included in the Right-of-Way Contract.

8.10.02.00 Authority Performed Work

The following clause shall, in all cases, be the last paragraph of any clause in a Contract where the Authority 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 Authority shall be left in as good condition as found."

8.10.03.00 Permission to Enter Owner'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.

"Owner grants Authority, or its authorized agent, permission to enter on Owner's 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 Agreement."

"Owner understands and agrees that after completion of the work described in Clause(s) _____of ____ this Agreement, the facility(ies) described in the preceding paragraph will be considered as Owner's sole property and Owner will be responsible for its/their maintenance and repair."

8.10.03.01 Permission to Enter Owner's Land for Utility Service Adjustments

Owner grants Authority, or its authorized agent, permission to enter onto Owner's land, where necessary to reconnect, adjust or relocate existing public utility service connections (ie: water, electrical, telephone, sewer, cable, etc.) to their remaining land as necessary and required due to the relocation or adjustment of the public utility within public rights of way.

It is understood and agreed by the parties hereto that after completion of said reconnection, adjustment or relocation of the existing public utility service that the utility service connection will remain the property of the utility provider who will continue to be responsible for their maintenance and repair.

8.10.04.00 Reconnected / Relocated Driveways

When it is necessary to perpetuate existing private roadways which lie partially or entirely within public road Right-of-Way, the following clause will be included in the Contract:

"At no expense to the Owner(s) and at the time of construction, Authority will reconnect/ or relocate the Owner's existing driveways to the adjacent public road at their present location/or (Optional as shown on the attached map(s)). Upon completion of construction of said driveway/s it/they will be considered as an encroachment under permit onto the adjacent public road, and is/are to be maintained, repaired and operated as such by Owner(s) in accordance with and subject to the laws, rules, and regulations of the public entity controlling said road."

"Permission is hereby granted to Authority or its authorized agent to enter on Owner's land, where necessary, to (relocate or reconnect) Owner's driveways as described herein. Owner understands and agrees that after completion of the work described, said driveways will be considered as Owner's sole property and Owner will be responsible for its/their maintenance and repair."

8.10.05.00 Property Monuments

The Authority's survey unit will notify the Authority Right-of-Way when it is discovered through project survey work that a property monument will be impacted as part of a project's proposed construction. Authority will share this information with the appropriate Acquisition Branch that will be handling the acquisition. If during the negotiations the property owner expresses a desire to have the property monument(s) replaced, the Acquisition Branch will handle each request on a case-by-case basis. Where it is determined that compensation should be provided, it will be handled via a request to Authority for concurrence in proposing an administrative settlement. If it is approved that compensation will be provided for the destroyed monument, the Acquisition Branch must expressly provide in the Right-of-Way Contract 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 is to be used:

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

8.10.06.00 Agricultural Underpass of the High-Speed Rail

Where economically justified through the appraisal and/or administrative settlement process, and physically possible with the approval of the Authority's Chief Engineer, agricultural underpasses are available to mitigate damages and preserve valuable agricultural lands. In this case the following clauses will be included in the Right-of-Way Contract,

> *"Authority shall without cost to Owner and at the time of construction, construct a private agricultural underpass (if desired add the size of the undercrossing) of the HSR. Said underpass shall be for the sole benefit of the Owner's existing adjacent land and for the exclusive use of the Owner and their successors or assigns for the purpose of moving livestock, equipment, machinery and vehicles for agricultural purposes beneath the High-Speed Rail System between the abutting severed lands of the Owner. This right shall terminate upon the discontinuance of the use of the abutting lands for agricultural purposes. Any maintenance required by reason of the allowed use of said underpass for said purposes shall be the obligation of the Owner"*

Required Deed Reservation:

"Excepting and reserving, unto the Grantor, their successors or assigns, an easement appurtenant to the Grantor's existing abutting lands for the sole purpose of moving livestock, equipment, machinery and vehicles for agricultural purposes beneath the High-Speed Rail System at a structure to be owned and maintained by Grantee and constructed at the location (describe the location, i.e.: of owners existing farm road located at approximate Engineer's Station _____); provided that such easement shall not be exercised at the surface of said High-Speed Rail System or by means other than the hereinabove described structure, or for any other purpose or for the benefit of lands other than said existing abutting lands, and that such easement shall cease and terminate upon the discontinuance of the use of said abutting lands for agricultural purposes; provided, further, that any maintenance of said crossings required by reason of the use thereof for purposes of the Grantor's abutting lands shall be the obligation of said Grantor of said abutting lands."

8.10.07.00 [Hold for Future Use]

8.10.08.00 Fencing - Access Control

Fencing is either "High-Speed Rail access control fence" or "property fence" depending on whether the fence is used for access control or to serve the abutting property owner's needs. The Authority's High-Speed Rail 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 property fences are the property of the owner, certain types may satisfy access control requirements.

No condition shall be included in the Right-of-Way Contract that would limit Authority's right to construct access control fences or barriers within the High-Speed Rail right-of-way.

8.10.09.00 Installation of Property Fence

Where it is the Authority's obligation to either build or relocate a property fence, a clause must be in the contract as follows;

"Authority shall without cost to Owner, install a wire mesh and three lines of barbed wire fastened to metal posts spaced at _____ foot intervals or spacing to conform to standard specifications for Authority's project along and immediately adjacent to the High-Speed Rail right-of-way line, but on the Owner's remaining property, and extending from (left or right of) Engineer's Station _____ to Engineer's Station _____."

8.10.09.01 Construction Contract Work

Where the approved appraisal or an approved administrative settlement includes provisions for construction contract work in lieu of cost-to-cure damages the following clause shall be included in the Right-of-Way Contract. "Authority shall without cost to Owner and at the time of construction (list in detail construction contract work provided for in the approved appraisal)."

"This obligation shall survive the close of escrow in this transaction."

It is important to note that the Authority is legally limited to and permitted to include only that construction contract work justified and approved in the approved appraisal or in an approved

administrative settlement, inclusion of additional unapproved construction contract work would be a gift of public funds.

8.10.09.02 Temporary Fencing of TCE Requiring Security/Stocktight Fencing

Where property owner's existing property has existing security or stock tight fencing and the project requirements include a temporary Construction Easement the following clause may be added to the Right-of-Way Contract:

Construction activities within the Property will be done in such a manner as to maintain the existing security/stock tight condition of Owner's remaining property. If installation of temporary fencing is necessary to maintain the existing secure/stocktight condition of Owner's property the Authority will do so without cost to Owner and remove the temporary fencing upon completion of construction.

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:

"Included in the amount payable under Clause 2(A) is payment in full to compensate Owner for the expense of installing fencing between (left or right of) Engineer's Station _____ and Engineer's Station _____. Owner releases State from any obligation to construct that fencing."

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

8.10.11.00 Construction of Sidewalks Within Public Road Right-of-Way

Under no circumstances shall any obligation be assumed to construct or pay for sidewalks within public road rights of way. Construction of sidewalks and curbs and gutters within adjacent public road right-of-way are to be done through agreement with the local public entity that has jurisdiction over the public road. Normally such sidewalks are considered to be a replacement of existing facilities or are required by local road standards and, as such, are not right-of-way obligations.

8.10.12.00 Approval of Changes to Right-of-Way Limits or Appraisal Maps

The Authority has a change control policy that requires submittal of a request form for any changes to the Right-of-Way appraisal maps or Right-of-Way limits. The request form requires approval of the Authority Design Manager if project is in preliminary stages or by the Authority Segment Construction Manager if an RFP for construction has been issued.

8.11.00.00 - TRANSVERSE INSTALLATION OF PRIVATE IRRIGATION FACILITIES WITHIN HIGH-SPEED RAIL RIGHT-OF-WAY

8.11.01.00 General

The Authority has a commitment to preserve valuable agricultural lands where ever possible; however justification of actions on individual parcels to mitigate the impacts of the proposed High-Speed Rail acquisition is the responsibility of the Appraiser. The appraiser must justify from a before and after valuation standpoint any action, cost-to-cure or construction contract work that is proposed to mitigate impacts to the subject property. In the case of many existing farming operations we are impacting, the ability to continue farming of split remainders is predicated on many things, the foremost being the ability to perpetuate irrigation water from its source across the High-Speed Rail Right-of-Way to the remainders.

If an appraiser proposes as mitigation the perpetuation of irrigation water beneath the High-Speed Rail the appraiser through the Authority design team must obtain approval and confirm that it is feasible from a physical/design standpoint. If approved then they must justify the cost in the appraisal and include the proposed irrigation crossing as Construction Contract work.

The following Deed and Right-of-Way contract clauses are to be used to provide the property owner with the necessary rights for their private irrigation water crossings as a part of the acquisition process. There are two types of crossings, pipeline and open ditches within a conduit. The following clause and deed clause set have been approved by CT legal (hc) on 1-29-2015 and should be used as appropriate.

8.11.02.01 Classification of Crossing - Type "A" (Irrigation Pipelines)

"Authority, or its authorized agent, shall at no expense to Owner and at the time of construction, furnish and install (type, size of pipeline) under the high-speed train track bed at Engineer's Station_____. Upon the completion of this work of installation, the pipeline shall become the property of Owner, and it will be Owner's obligation thereafter to maintain and repair the pipeline."

"At no expense to Owner, Authority shall install across the high-speed train right-of-way at Engineer's Station _____an Authority owned conduit (type and size of conduit) within which the above-mentioned pipeline shall be installed. It will be Authority's obligation to maintain and repair the conduit."

"In no event shall Authority be liable for any betterments, changes or alterations in the conduit made by or at the request of Owner for Owner's benefit."

Required Deed Clause to be used with this type of crossing:

> *"Reserving, however, unto the Grantor, Grantor's successors and assigns, the right to install, replace, repair, remove and maintain a (size and type) irrigation pipeline transversely under the High-Speed Rail System at Engineer's Station _____. This underground facility shall be installed beneath the surface of the High-Speed Rail right-of-way within a conduit to be constructed, owned and maintained by the grantee transversely across the High-Speed Rail right-of-way at Engineer's Station _____."*

The rights reserved by the Grantor shall be subject to the following provision:

"The Grantor's right to repair Grantor's facilities existing within the Authority-owned right-of-way is limited to performing such maintenance and repair from outside the Authority's right-of-way. In no instance shall the Grantor have the right to traverse or use the Authority's right-of-way for maintenance or repair of Grantor's facilities without securing the issuance of a permit from the Authority, which approval shall not be unreasonably withheld."

8.11.02.02 Classification of Crossing - Type "B" (Open Irrigation Ditch)

"Authority, or its authorized agent, shall at no expense to Owner and at the time of construction, furnish and install (type, size of conduit) under the High-Speed Rail right-of-way at Engineer's Station ____ within which the Owner's open ditch irrigation water will travel beneath the High-Speed train track bed. Upon the completion of the installation of the Authority-owned and maintained conduit Owner's obligation thereafter will be to maintain the inlet and outlet of the conduit to insure free flow of their irrigation water"

Required Deed Clause to be used for this type of crossing:

"Reserving, however, unto the Grantor, Grantor's successors and assigns, the right to pass irrigation water transversely under the High-Speed Rail System at Engineer's Station _____ ___ within a conduit to be constructed, owned and maintained by the Grantee transversely across the High-Speed Rail right-of-way at Engineer's Station _____."

The rights reserved by the Grantor shall be subject to the following provision:

"The Grantor's right and obligation to maintain the inlet and outlet of the grantee owned conduit is limited to performing such maintenance from outside the Authority's right-of-way. In no instance shall the Grantor in the exercise of said rights traverse or use the Authority's right-of-way for maintenance or repair of grantor's facilities without securing the issuance of a permit from the Authority, which approval shall not be unreasonably withheld."

NOTE: Standard Optional clause **8.10.03.00 Permission to Enter Grantor's Land for Construction Purposes** shall be used in all cases of private irrigation water crossings.

8.11.02.03 Water Source Relocation with Right to Temporary Connection

In those instances where an Owner's water source is being relocated by the project and the owner is unable to reconnect until the relocation is complete, the following clause may be used to provide for the required temporary connection to the existing water source.

"Authority without cost to Owner and at the time of construction will relocate the (District name) irrigation District irrigation valve which is the source of Owner's irrigation water. The relocation of said valve will be done in such a manner that Owner will be connected to irrigation water at all times. Owner shall, until the valve relocation is completed, retain the right to make temporary connections to the existing valves. Upon completion of the valve relocation Owner shall be given 30 days written notice to allow them to complete a permanent connection to the relocated valve. The Authority shall specifically be relieved of any and all obligations on this account should the Owner fail to reconnect to the relocated value in the time frame given."

8.11.02.04 Right-of-Way Contract Clause for Public Irrigation Districts When They Will Not Agree to a PAU

"This Agreement is entered into with the understanding that the Authority and the Owner will continue to negotiate the terms and conditions of a utility relocation agreement. In consideration of those negotiations, Owner shall have the temporary right to continue operating and maintaining its existing utility improvements located within the parcel being acquired by the Authority and consisting of [* insert description of improvements *], until such time as the Authority or its agent determines that the improvements are in conflict with the design and construction of the proposed high-speed rail system for which the parcel is being acquired, and the Authority has either relocated the existing improvements, or provided substitute improvements, [perpetuating the Owner's operations]. In the event eminent domain proceedings are initiated, 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 Authority".

8.12.00.00 - EXCHANGES

8.12.01.00 Exchanges - General

Excess real property may be used in exchange for all or part consideration for other property required for High-Speed rail 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 the Authority.

It is Authority 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 [Hold for Future Use]

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 use the number assigned to the Excess Parcel.

8.12.04.00 Acquisition and Exchange of Excess

The Authority may acquire land in excess of its needs and exchange it for other property needed for High-Speed rail purposes. Title is to be taken in the name of the State and conveyance from the State by Deed. Acquisition of excess land must be in accordance with Sections 1240.150 and 1240.410 to 1240.430, C.C.P.

The Acquisition Branch is responsible for the completion of the excess land acquisition memo, identification, pro-rata cost, and inventory value of the Excess Land. Where excess lands are included in an Order for Possession, an Excess Land memo is to be prepared at the time the Order is filed and immediately forwarded to the appropriate units.

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 that 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 prior to _____, 20___, or if the land so described is acquired by the State, but is subsequently found to be necessary for a High-Speed rail or other public purposes, the State shall, in that event, pay the undersigned Owner, and Owner agrees to accept, the sum of $_____ in lieu of the State conveying the real property described in Clause No.:_____ and Owner agrees to release and forever discharge the State 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 State 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:

"The Authority will deliver to Owner (designating them as joint tenants, or tenants in common, or whatever is desired), a good and sufficient Deed, properly recorded, to the (following described property or 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 there from 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 High-Speed rail right-of-way. 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 the High-Speed rail right-of-way. 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 Authority shall arrange for the recordation of the Deed before delivery to the Owner. The Authority should 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 High-Speed rail purposes:

A. The Acquisition Branch 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 Owner.
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 Authority 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 that will ensure the removal of the improvements by the Owner, 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.

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 Owner, a monetary evaluation of any benefits or savings accruing to the State (such as an offset to severance damages, substitute access to avoid buyout, etc.) shall be provided by the Acquisition Branch 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 Owner the following clause will be included in the Contract:

"In consideration of the proposed recordation and delivery by the State of the Deed referred to in Clause ___, it is agreed between the parties herein that the undersigned Owner shall deposit with the Authority, the sum of $ __. Said deposit will be made at Authority Office located at 770 L Street, Suite 620, Sacramento, CA 95814 or the Title Company handling the transaction as directed within days after Authority, by certified mail, notifies Owner that this Right-of-Way Contract has been accepted by the State."

In the event Owners 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 by Document No.:

8.12.09.00 Release of Liability - Early Possession of Excess

Where the exchange conveyance will be by Deed and the Owner 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 Owner 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 relived 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 Owner indemnifies and saves harmless the State from all liability, loss, cost and obligation on account of or arising out of any such injury, however occurring.

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.

If this transaction is not completed under the terms of this Agreement, any improvements which the Owner erects or causes 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 [Hold for Future Use]

8.12.10.01 Right of First Refusal

The following Clause may be used when the Owner requests that the Contract include a clause confirming that Owner will in the event the Property is not used for the High-Speed Rail Project have the first right of refusal.

"In the event the Property is not used for the High-Speed Rail Project, the Authority shall offer the owner the right of first refusal to purchase the Property at the then current Fair Market Value as determined by Independent Licensed appraisers, pursuant to Code of Civil Procedures section 1245.245(f)

8.13.00.00 - EXECUTION OF DOCUMENTS

8.13.01.00 Execution of Documents - General

Deeds and other documents must be prepared to show the names of Owner 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 Owner 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 Owner or other parties appearing in the caption or the body of the instrument. All parties named as Owner's must sign and the signatures acknowledged.

Improper executions may be cured by Curative statute.

8.13.02.00 Property Vested Separately

When title is vested or recorded as 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 Authority 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. 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. 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 Authority 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 8.08 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 Right-of-Way 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 Acquisition Branch 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.

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.

Subscribing witnesses are not accepted as a form of acknowledgement on grant, easement, or quitclaim deeds, as well as mortgages, deeds of trust, or security agreements.

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

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

8.14.02.00 Parties Authorized to Take Acknowledgements

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

A. A notary public at any place within the State.
B. A county recorder, county clerk, court commissioner, judge of a municipal or justice court and a clerk of a municipal or justice court within the county or city and county in which such officers were elected or appointed.
C. Officers of the Armed Forces per Section 1183.5 of the Civil Code. This section sets forth the requirements regarding acknowledgements by officers of the armed forces of the United States for military personnel and their spouses. If questions arise concerning the validity of an acknowledgement by military personnel, the Acquisition Branch 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 (08-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.

8.15.00.00 - LOSS OF GOODWILL

8.15.01.00 [Hold for Future Use]

8.15.01.01 State Law Requirements

FRA will not participate in any payments for loss of Goodwill. Both Federal and State law provide that just compensation must be paid for private property that 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 the probable retention of old or acquisition of new patronage.

8.15.01.02 Recoverability

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

A copy of the goodwill information sheet (Exhibit 08-EX-30) will be given to each business owner as an attachment to the Appraisal Summary Statement together with the supplemental information sheet (Exhibit 08-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, non-transient, 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 the responsibility of the Acquisition Branch subject to the approval of the Authority. The Acquisition Branch will use the results 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.

The Acquisition Branch must maintain clear lines of communication and responsibility between the acquisition function and the relocation function 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:

"Included in the payment under Clause 2(A) is (the amount of $ to compensate or compensation to) Owner for any and all loss of goodwill. Owner agrees and acknowledges that the statute which authorizes this payment (Code of Civil Procedure section 1263.510) also provides that compensation for this loss will not be duplicated in the compensation otherwise awarded to 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:

"The laws of the State of California (including Code of Civil Procedure section 1263.510) permit the owner of a business located on property, all or a portion of which is to be acquired for a public improvement, to receive compensation for the loss of goodwill to the business provided the owner of the business establishes all of the following:

a. The loss is caused by the acquisition of the property or the injury to the remaining property.
b. 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.
c. Compensation for the loss will not be included in payment under Section 7262 of the Government Code. (The Relocation Assistance Program.)
d. Compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.

"Owner, as required by State law (Code of Civil Procedure section 1263.520), 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. Payment under Clause 2(A) does not include compensation for the loss of goodwill, if any."

"Compensation, if any, for the loss of goodwill shall be payable to Owner at a later date following the establishment of proof of any loss. Claims for this loss must be submitted to the Authority at _____, by * Date____."

"If Owner and Authority cannot reach agreement on compensation, if any, for the loss of goodwill by (**Date ____), Authority shall file a declaratory relief action in Superior Court for the purpose of determining compensation, if any, for loss of Owner's business goodwill, which action, including rights, if any, as to attorneys' fees and litigation expenses shall be governed by the law of eminent domain. The sole issues to be determined in any declaratory relief action will be those contained in Code of Civil Procedure Section1263.510 including the amount of compensation, if any, for Owner's loss of business goodwill and that no other issues will be raised by Owner therein or in preliminary proceedings thereto challenging the public use or necessity of the project, or the utilization therefor of Owner'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)."

8.15.03.01 Alternate Goodwill Clause

"The State of California permits 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 establishes the matters set forth in Code of Civil Procedure §1263.510(a). Owner, as required by State law, shall make the State tax returns of the business available to Authority solely for the purpose of assisting and determining the amount of compensation to be paid for the loss of goodwill. Compensation, if any, for the loss of goodwill shall be payable to Owners at a later date following the establishment of proof of such loss. Owner's claims for such loss must be submitted to the State no later than two (2) years after the effective date of this Agreement."

"Owner and Authority acknowledge that a Resolution of Necessity to condemn Owner's parcel was adopted by the State Public Works Board on _____. If Owner and the Authority cannot reach agreement on compensation, if any, for the loss of goodwill within three (3) years after the effective date of this agreement, the Authority shall file an eminent domain action in superior court for the sole purpose of determining compensation, if any, for loss of Owner's business goodwill. It is understood that the sole issues to be determined in that eminent domain action will be those contained in Code of Civil Procedure Section 1263.510 including the amount of compensation, if any, for Owner's loss of business goodwill and that no other issues will be raised by Owner therein or in preliminary proceedings thereto challenging the public use or necessity of the project, or the utilization therefor of Owner's property. In consideration of this agreement, Owner, waives his right to initiate an inverse condemnation action under Code of Civil Procedure §1245.260, for the three year period following the effective date of this agreement."

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

"The payment made for loss of goodwill in this Agreement has been adjusted to reflect and avoid duplication of payments already made under the Uniform Relocation Assistance Act in the form of 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 business owner has not been compensated 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): "Payment for loss of goodwill under this Agreement 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 Authority 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 functions and to ensure compliance with the law. It is essential, therefore, that when a payment is to be made for Loss of Goodwill, the Authority 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 be reviewed regarding the status of payments on claims when Loss of Goodwill/in-lieu payments are involved.

8.16.00.00 - HAZARDOUS WASTE

8.16.01.00 Hazardous Waste - General

Hazardous Waste (HW) is of great concern to Authority. The Authority 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 Authority to the option of (1) delaying the project or (2) acquiring property with possible contamination. To achieve this, it is critical that the all parties of the Authority project delivery team coordinate their activities.

Properties required for right-of-way that 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 approval by the Director of Real Property, or designee. Once contamination is known, the property owners shall be advised of their responsibility under the law to clean up all identified HW. Although project schedule on a design build project may not allow, 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. Acquisition Branch is to immediately advise the Authority in writing.
B. The Acquisition Branch will inspect site and advise:
    1. The Acquisition Branch to proceed with acquisition if, in the opinion of their HW sub-contractor, no significant problem exists and further investigation is unnecessary; or
    2. The Acquisition Branch, in coordination with Authority and their HW sub consultant 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. Authority may advise the Acquisition Branch to proceed, because it is in the best interest of the Authority 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 Authority and must be fully documented in the parcel file. Prior approval of the Director of Real Property 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, the acquisition agent 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. If 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 Authority doing the cleanup based on the primary appraisal (or separate clean-up estimate), 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 Authority and appropriate documentation are required.
3. If settlement is not reached where money is withheld, it may be necessary to acquire based on an alternate appraisal wherein the State is purchasing the property as is, after the consideration of cleanup is reflected in the acquisition offer. Again, prior written approval of Authority and appropriate documentation in the file is 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 PWB for approval of a Resolution of Necessity.

8.16.01.01 Approval Process for Acquisition of Hazardous Waste (HW) Contaminated Property

Authority approval 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 PWB 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 that is subject to local, state, and/or federal reclamation requirements.

Requests for approvals should be sent to the Director of Real Property, or designee.

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 Authority or its agents 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 Authority activity and specific as to location.

A. Voluntary permit to allow Authority to perform test. See Exhibit 08-EX-13 for underground tank testing and Exhibit 08-EX-14 to be modified as necessary for other testing.
B. Refusal of voluntary entry
    1. Contact the Legal Office 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 that must also be obtained by the Legal Office, 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 Phase 1 and Phase 2 Site Assessments

The Acquisition Branch shall cause to be performed a phase 1 site assessment and if recommended by the Phase 1 a Phase 2 prior to completing an appraisal report. Preliminary appraisal work may prior to the Phase 1 but appraisal reports cannot be approved until completed

8.16.01.04 Contaminated Properties

Properties known or suspected to contain HW should be cleaned up by the grantor, to the satisfaction of the Authority 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.

Underground tank removals must be given a high priority and completed well ahead of construction.

8.16.02.00 Tested - No Contamination Found

When the Director of Real Property has authorized Acquisition to proceed with acquisition, because the property has been examined and/or tested and no contamination has been found, the following clause is included in the Authority's standard Right-of-Way contract as Clause 6(A):

"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 hazardous waste 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."

8.16.03.00 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)

"The Property has been used for ___ and there is contamination of the soil and/or groundwater. Therefore, funds in the amount of $ _____ have been withheld from Owner by Authority to be used for cleanup costs. If actual cleanup costs exceed the deducted amount, Owner will reimburse Authority for the additional costs. If actual cleanup costs are less than the amount withheld from Owner, the excess withheld will be refunded to Owner."

(Alternate, but not preferred language)

"The Property has been used for and there is contamination of the soil and/or groundwater. The payment in Clause 2(A) reflects a deducted amount of $ _____ to be used for the anticipated costs of cleanup of this contamination."

8.16.04.00 Not Tested - Present Owner's Hazardous Material Use

When the Authority has advised the Acquisition Branch 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 clause will be included in the Contract:

"The Property has been used for _____, and there is a possibility of _____ _____ contamination of the soil. Owner shall be responsible for the costs of any mitigation required by any regulatory agency as the consequence of _____ _____ contamination of the soil and/or groundwater."

8.16.05.00 Not Tested - Known Past Hazardous Material Use

When the Authority has advised the Acquisition Branch 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 may be included in the Contract:

"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 [Hold for Future Use]

8.17.00.00 - ACQUISITION OF MOBILE HOMES

8.17.01.00 Acquisition of Mobile Homes - General

Mobile homes which are either non-DS&S and owner-occupied or which cannot be moved from their present locations due to the manner in which they are affixed to the site, may be purchased in cases where a suitable relocation site is not available in the market.

The Relocation Assistance will be responsible at the appraisal stage for recommending to the Authority if a mobile home should be purchased.

The reasons underlying this decision will then be communicated in a request to the Authority that the mobile home be appraised and acquired. If approved this memorandum should be included in and become a part of the property file.

The acquisition of the mobile home will be handled by the Relocation Assistance 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 will be used with appropriate clauses added. The following clauses have been prepared especially for use in acquiring mobile homes.

8.17.02.00 (Acquisition of Mobile Homes) 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:

(A) "Pay the Owner [seller] the sum of $ ___ for the _____ mobile home, a vehicle manufactured by_____, manufacturer's vehicle serial number __, and bearing State of California vehicle license plate number __ within 90 days after title to the vehicle vests in the State of California free and clear of all liens, encumbrances, taxes, assessments and leases."

8.17.03.00 (Acquisition of Mobile Homes) Transfer Fees

This clause will be used to clarify the fees to be paid by the Authority. It will be included under Clause 2 as Item (B):

(B) "Pay all fees and charges required by the California Department of Housing and Community Development in connection with the transfer of title to the vehicle to State of California, except as provided in Clause 2(C)."

8.17.04.00 (Acquisition of Mobile Homes) Lien Clause

This clause will be used to provide the Authority with authorization 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):

(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 the Authority."

8.17.05.00 (Acquisition of Mobile Homes) 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, Owner [seller] shall deliver to Authority the Certificate of Ownership to the above-described vehicle. In the event the Certificate of Ownership and/or other documents required to effect transfer of title to the vehicle is not available, Authority may act as Owner's [seller's] Attorney in Fact to secure the Certificate and/or other documents on Owner's behalf."

8.17.06.00 (Acquisition of Mobile Homes) Clearance of Lienholder's Interest

The Acquisition Branch must obtain a release of lien and demand from the lien holders if any exist. The lien holders should be informed that they would 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 lienholder's named in the Bill of Sale, shall, on demand, be made payable to the person or persons entitled thereto. The lienholders shall furnish Owner with good and sufficient receipt showing the sums credited against the indebtedness."

8.17.07.00 (Acquisition of Mobile Homes) Miscellaneous Personal Property 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:

"Payment under Clause 2(A) 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 (Acquisition of Mobile Homes) Closing Procedures

An AQC will be prepared and submitted with the signed Contracts. Upon approval of the Contract, the Authority can process the transaction through the Housing and Community Development (HCD).

Prior to presenting the forms to HCD, a decision must be made as to whether the State will re-rent the mobile home to other than the occupant at the time of purchase. If the intent is to re-rent, 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 re-rented, 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 lien holders 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 Federal Lands - General

The Authority may require a temporary or permanent use of property that is owned by the United States and controlled by a federal agency.

8.18.02.00 [Hold for Future Use]

8.18.03.00 Early Coordination

In the early planning stage, each affected governmental agency must be advised of the Authority's proposed High-Speed rail project so the impact of the transportation facility can be evaluated.

8.19.00.00 - MINING CLAIMS

8.19.01.00 Unpatented Mining Claims - General

An unpatented mining claim establishes an interest in land that 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 Acquisition Branch 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 Director of Real Property 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 Branch 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.

8.20.00.00 - INDIAN LANDS

8.20.01.00 Indian Lands - 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 (25 CFR 169.1 (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 Authority's Right-of-Way Engineer 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 (06-EX-01).

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 High-Speed rail facility 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 08-06, 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 High-Speed rail to the Bureau of Indian Affairs, the Acquisition Branch should confer with Director of Real Property to determine if any of the stipulations should not be included in the letter. It is also advisable for the Acquisition Branch 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 Authority 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 the Financial Office. The receipt is forwarded to the Financial Office. 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 High-Speed rail facility immediately adjacent thereto.

8.20.06.00 Acquisition Quality Checklist (AQC)

Acquisition Quality Checklists (AQC) 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 Authority, 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 Authority by the Bureau.

8.20.08.00 Certificate of Completion

When construction of the related High-Speed rail facility is completed, the Authority's Construction Manager should notify the Director of Real Property by submitting an executed Certificate of Completion. (see Form RW 08-07.) It will be submitted to the Director of Real Property, or designee, along with Form RW 08-08, signed by the Authority, designee. The Director of Real Property, or designee, will forward both forms to the Bureau of Indian Affairs.

8.21.00.00 - PUBLIC LANDS – STATE

8.21.01.00 Public Lands - State – General [Hold for Future Use]

8.21.02.00 Sovereign State Lands – General [Hold for Future Use]

8.21.02.01 Preparation of Maps

Right-of-Way Engineering 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 Right-of-Way Engineering Chapter.

The tracings shall be prepared for the approval and signature of the person authorized to sign such maps on the Authority's behalf.

Access control on rights of way over State lands shall be handled generally in the same manner as that affecting other public or private lands.

8.21.02.02 Procedure by the State Lands Division

The tracings are transmitted to the State Lands Commission with a letter of explanation and a copy of the Environmental Report.

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

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

8.21.02.03 Authority Closing Procedures

The Authority shall file the tracing in the Office of the County Recorder of the county in which the land is situated.

The reasonable value of the rights secured shall be scheduled for deposit into the State Parks and Recreation Fund.

An AQC will be prepared.

8.21.03.00 State School Lands - General

The State Lands Commission has the authority to grant easements and rights of way to the Authority to, or over, vacant school lands of the State (surveyed Section 16 and 36 or designated in lieu lands).

8.21.03.01 Acquisition of Rights-of-Way

This authority shall be used for securing rights of way over vacant school lands of the State. Rights of way secured under this authority are conveyed by a patent and the market value of such right-of-way must be paid into the State School Lands Fund.

8.21.03.02 Application Procedure

The Authority'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 Right-of-Way Engineering Chapter.

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

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

8.21.03.03 Recordation

The patent will be transmitted to the Authority for recordation.

8.21.03.04 Purchase of Excess - State School Lands

In some instances, High-Speed rail construction over State School Lands may result in "land lock" 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 Authority finds that fee acquisition of State School Lands in excess of net right-of-way and access requirements is indicated, the Director of Real Property 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).

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 High-Speed rail facility 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 the Director of Real Property.
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 Director of Real Property. The letter

will constitute authority for the Authority 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 Authority. 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 Authority, upon service of a copy of the complaint upon the Attorney General, will accompany such complaint with a copy of the approved letter and agreement.

E. The Attorney General will file an answer on behalf of the Department of Parks and Recreation and the State park and Recreation Commission and will set up in the answer, the conditions under which the High-Speed rail is to be constructed, in accordance with previous agreement between the Authority and the Department of Parks and Recreation.

F. The Attorney General and the attorney appearing for the Authority 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 High-Speed rail facility and will present the matter to the Superior Court and obtain a judgment and a final order of condemnation.

8.21.05.00 Transfer of Land Between State Agencies

Section 14673 of the Government Code provides that control or possession of land owned by the State may be transferred from one State agency to another State agency with the approval of the Director of General Services.

In such a transfer, the Director of General Services may authorize the payment of such considerations as deemed proper from available funds of the receiving agency to the transferring agency.

Upon request and without fee, the Recorder of each county in which any portion of land so transferred is located shall record any instrument executed for such a transfer.

The Department of General Services, 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 Authority

In cases where the land to be acquired for High-Speed rail 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, "Transfer of Jurisdiction of State-Owned Real Property" (see Exhibit 08-EX-33), 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 Director of Real Property, or designee, with an AQC.

The Authority is responsible for obtaining execution of the instrument by the other agency. If feasible, have the other agency execute the agreement before submission to the Director of Real Property, or designee, for execution by Authority.

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

Original - Returned to Authority if access rights are being acquired as part of the transaction, the Authority 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 "Authority File Copy" and is to make provision for recommendations for approval as set out in Exhibit 08-EX-33. This copy, following signatures by all parties and approval by the Department of General Services, is also sent to the Director of Real Property, or designee.

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

Third signed copy - For distribution to "other agency" by Authority

Note: If the other agency requires more than one fully executed copy, the Authority should submit the necessary additional signed copies when requesting execution by the Department of General Services

In addition to the original and three signed copies, also submit two conformed copies to Director of Real Property, 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 by the Authority and in the Department of General Services. Only the Authority file copy is to contain signatures of either the Director of Real Property, or other Authority personnel. The original document to be recorded, and the second, and third signed copies are to be signed only by the Director of Real Property, on behalf of the Authority and the person of the other agency authorized to execute the document.

8.21.05.02 Internal Procedure for Processing of "Agreement for the Transfer of Control and Possession of Land Owned by the State for High-Speed Rail Purposes" [Hold for Future Use]

8.21.05.03 [Hold for Future Use]

8.22.00.00 - CALIFORNIA VETERANS' PROPERTY

8.22.01.00 California Veterans Property - 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 High-Speed rail 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 Authority. The Deed and Contract, in duplicate, should be signed by the contract purchasers as well as by the DVA.

In the case of a full acquisition the DVA shall be notified by letter of the necessity to acquire the property, with the request that a Deed from the DVA to Authority'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 Authority, to complete the chain of title.

8.23.00.00 – PUBLIC AGENCIES [Hold for Future Use]

8.23.01.00 [Hold for Future Use]

8.23.02.00 Public School District Lands [Hold for Future Use]

8.24.00.00 - TAX-DEEDED LANDS

8.24.01.00 Tax Deeded Lands - General

Division 1, Part 6, Chapter 8 of the Revenue and Taxation Code authorizes the Authority to acquire by Tax Deed any property available for sale by reason of tax delinquencies. The Authority 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 County for nonpayment of taxes;
(2) That the property is needed for High-Speed Rail purposes;
(3) The selling price the Authority agrees to pay for the property; and,
(4) That the cost of giving notice of said agreement will be paid by the Authority. An agreement is included as Form RW 08-09. 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 County, 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 Authority with proper resolution attached, attested to by the city clerk.

8.24.02.02 Approval Process

The agreement is recommended for approval by the Authority and executed on behalf of the Authority. After execution 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 Authority 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 Authority has 30 days from the effective date in which to make payment.

8.24.03.00 [Hold For Future Use]

8.24.04.00 Procedure by County After Receipt of Payment

The payment for Tax Deed land and cost of advertising is funded from the Real Property Branch fiscal year budget.

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 County.

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 County 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 Authority 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

The Federal Soldiers and Sailors Civil Relief Act withholds from sale or foreclosure property owned and occupied by persons on duty in the armed services. The Federal statute has not been repealed or amended and, therefore, the tax collector should be careful to avoid the sale of those properties that come under the provisions of the Federal Act. In some counties, the tax collector, for protection, requires an affidavit 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 (Authority) has been in possession for one year.

Therefore, when one year has elapsed since the recordation of the Tax Deed, the Authority 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 Authority's 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 Authority. 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 Authority will obtain an appraisal report and purchase title reports. When the appraisal report has been prepared and approved, acquisition will be authorized.

8.25.03.00 Search of Title

The responsibility for determining the status of title will rest with the Acquisition Branch. If there are any apparent complications in the ownership, the Acquisition Branch 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 parcel number.

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 High-Speed Rail Purposes" (see Form RW 08-10) or Grant of Right to Dispose of Material (see Form RW 08-11).

8.25.06.00 Payment to Owner's Agent

(Materials Agreement Only)

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.

"Owner hereby empowers and appoints_____ to act as agent for Owner to receive and collect any and all monies from the State which may become due and payable under the provisions of this Agreement State 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 Authority 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. Authority 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 Authority elects to utilize and said payment of royalty shall be made in accordance with the Authority'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 Authority'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 Acquisition Branch to the Director of Real Propertyfor approval and execution.

8.25.09.01 Material Agreements

The letter of transmittal for material agreements should state:

A. The department or unit initiating the request;
B. Termini and status of the portion of the project on which the material is to be used;
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 Acquisition Branch 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 High-Speed Rail facility. 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; and,
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 unit originating the request;
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 Acquisition Branch 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 High-Speed Rail facility. 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 Authority files.

8.25.10.00 Securing Material from Military Sites

When the Authority 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 Authority, the Authority shall submit an application 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.

8.26.00.00 - MUTUAL WATER COMPANY STOCK

8.26.01.00 Mutual Water Company Stock - General

Corporations Code sections 14300-14307 and Article XII, Section 13 of the Constitution cover the laws applicable to mutual water company stock.

The Authority 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.

Ultimate disposition of acquired water stock differs depending upon whether it is appurtenant or non-appurtenant 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 Authority 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 Authority 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 Authority 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 Authority proposed to acquire;
B. Determine whether a certified copy of the articles or by-laws has been recorded;
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, bylaws and other information to the Director of Real Property, or designee, 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.

8.27.00.00 - SPECIAL ACQUISITIONS

8.27.01.00 Parcels Acquired for Mitigation Purposes

Occasionally, properties may be proposed for acquisition by the Authority to mitigate environmental impacts created by the High-Speed Rail. The Director of Real Property, or designee, is primarily responsible in the determination of whom or what agency will hold title to mitigation parcels, when acquired. The process for accomplishing this, if not clearly defined, may result in the Authority acquiring mitigation parcels in its own name and assuming unwanted maintenance and liability burdens. Once title is vested in the Authority, it becomes difficult to transfer title to another agency or environmental group if no prior agreement as to final vesting exists. The Authority is concerned regarding the type of maintenance and its volume of work when mitigation parcels are acquired in the state'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 that required the Authority to undertake the mitigation process. It is essential that the Authority 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 Authority 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 Authority if the property is not used for the purpose for which it was acquired.

8.28.00.00 – DONATION

8.28.01.00 Donation - General

Donation is the voluntary conveyance of property, without compensation, for the improvement of a public project. Donation of real estate for High-Speed rail purposes may be accepted at any time.

8.28.01.01 Definitions

The following definitions apply to this procedure:

"Right-of-Way" - real estate required for High-Speed Rail 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.

"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 High-Speed rail facilities that can be used for other purposes subject to any reservations, restrictions, and conditions necessary to ensure protection to the safety and adequacy of High-Speed rail 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.

"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 Authority. A financial resume shall be prepared to confirm that Authority will not incur obligation, or potential obligation, to pay more than the property is worth (RAP, Goodwill, and 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 Authority'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 Authority with any reservation, restrictions, or conditions that it determines necessary for High-Speed rail 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. If the property is conveyed by donation, the clause in Section 8.05.11.00 must be included in the Right-of-Way Contract.
   4. Donations will not be accepted until a hazardous waste assessment has been completed. 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 Authority and any reservations, restrictions, or conditions they determine necessary for the safety and adequacy of High-Speed rail facilities and to assure conformity with abutting or adjacent land uses.

B. The Authority 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 Authority's acquisition of property.

D. Where right-of-way is sold to the Authority at less than fair market value, donor's share of the airspace development leave revenue will be determined by the following formula:

   A. = B x C x 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 have 180 days to respond to the Authority 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 Authority will give each interested donor 180 days in which to submit an offer and proposal, with detailed economic terms. The offer and proposal will be analyzed by the Authority. The one most advantageous to the State will be submitted to the Authority 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 FRA 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 Authority 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 Authority policies and procedures, including approval by the FRA.

8.28.03.01 Processing

Signed transactions will be processed as follows:

A. All contracts that provide for reservation of development rights or revenue sharing will be reviewed by the Authority prior to their execution.

B. The Authority will notify the unit responsible for inventory of donations and Right-of-Way 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 that were acquired through donation, or at less than fair market value, will be specially designated as such in the Excess Land inventory.

D. Development offer and proposal processing and selection, and airspace leasing and compliance monitoring, will be conducted by Authority designees.

E. Excess Land will coordinate with Financial Office for airspace development lease revenue share accounting and disbursements.

F. The Authority 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. The Authority will develop an accounting of revenue shared on an annual basis. This information will also be included in the Right-of-Way Annual Report.

G. 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 [Hold for Future Use]

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 Authority shall notify Grantor, in writing, in the event airspace becomes available for revenue producing non-transportation 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 Authority that the opportunity is declined, Grantor waives the right to develop and the Authority may proceed to the open market in accordance with established procedures to obtain revenue producing ground leases."

NOTE: THIS DOES NOT PERTAIN TO TRANSACTIONS WHERE DONATIONS ARE LESS THAN TOTAL VALUE.

8.28.03.04 Contract Clause Where Donor to Share Revenue

Where the Authority has entered into an agreement with a donor of real property to share revenue from the donated real property, the revenue sharing agreement shall include the following clause:

"In the event the Authority enters into revenue producing airspace leases using the donated property referred to above, revenue shall be shared with Grantor in accordance with established Authority 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 Authority 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."

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 Authority's plan to build the high-speed rail project or to change the design or review the project and thereby eliminate or reduce the potential for airspace leasing."

"Grantor understands that if the project for which the property is being acquired is constructed either totally or partially with Federal funds, the available lease revenue will be reduced in the event FRA 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 Authority adds said property to its Excess Land inventory."

"Grantor waives any claim for damages of any kind in the event the property is not added to said inventory."

"Airspace development leases will be allowed only after completion of construction of the transportation project and said leasing shall be conducted in accordance with existing Federal, State and Authority laws, rules, regulations, procedures and policies in effect at the time of lease including approval by the FRA."

8.28.04.00 Local Match for Donations [Hold for Future Use]

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 that 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.

8.29.00.00 – DEDICATION

8.29.01.00 Dedication - 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 this process impacts transportation facilities and a logical connection can be established between the development or land use change and a transportation project, the Authority should encourage local agencies to impose reasonable dedication requirements. This process will typically involve the Authority's designated 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 Authority 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 Authority, 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).

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 the high-speed rail system, the Authority may compensate the property owner by functionally replacing the publicly owned real property with another facility that will provide equivalent utility, in lieu of paying fair market value for the real property.

Functional Replacement may be used if all of the following conditions are met:

(1) The property in question is in public ownership and use;
(2) The replacement facility will be in public ownership and will continue to be devoted to or held for the same public use function as the acquired facility;
(3) The Authority has informed, in writing, the public entity owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement; and
(4) The real property is not owned by a utility or railroad.

If federal participation is sought, then the Authority must seek and obtain FRA concurrence in the Authority determination that functional replacement is in the public interest.

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 be applied to State funded or federally funded projects.

Reimbursement of functional replacement costs are limited to:

(1) Costs for facilities that do not represent increases in capacity or other betterments, except when such costs are necessary to replace utilities; to meet legal, regulatory, or similar replacement requirements; or to meet reasonable prevailing standards for the type of facility being replaced; and
(2) Costs for land to provide a site for the replacement facility.

Note: The provisions of 23 CFR Subpart B, Section 710.509 should be reviewed and considered, and any subsequently adopted FRA functional replacement regulation(s) should be reviewed and complied with if use of functional replacement is contemplated.

Before offering functional replacement, the Director of Real Property shall determine in writing that replacement of real property in public ownership is necessary, and offering functional replacement to an owner is in the public interest.

8.30.02.00 FRA Approval Steps

If the Authority will seek federal participation in the costs of functional replacement, then prior to the acquisition, the Authority must obtain FRA concurrence that functional replacement of the subject property is in the public interest. The FRA should be consulted as early as possible.

8.40.00.00 - OUTDOOR ADVERTISING STRUCTURES

8.40.01.00 Outdoor Advertising Structures - General

No new structures shall be placed on Authority-owned properties whether the properties are considered excess or being held for future High-Speed rail 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 Authority for future use.

Removal or relocation of outdoor advertising company structures from right-of-way for High-Speed rail to a location outside the area being acquired shall conform to applicable State and federal laws and regulations.

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.

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 Authority'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 summons when Authority 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:

1) When the Outdoor Advertising Company owns the fee title to the property:

A Grant Deed and ROW Contract will be obtained from the company owning the outdoor advertising structure and the fee ROW being acquired, the ROW Contract will include the following clause:

"Pay the undersigned Owner the sum of $ _____ for the interest conveyed by Document No. ___ when Owner's advertising structure(s) located at _____ has (have) been removed. Payment shall be made within 90 days following the date Authority receives from Owner a statement certifying to the removal of the structures."

"Owner shall remove the structure(s) not later than 10 days after receiving written notification from State to do so. In the event the structure(s) has (have) not been removed by said date, State, or its authorized agent, is granted the right to remove and dispose of the structure(s) as it may deem fit."

2) When the Outdoor Advertising Company does not own the fee:

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 Authority'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 summons when Authority acquires property subsequent to the date the summons was issued.) In this instance a Quit Claim deed and ROW Contract will be obtained. The ROW Contract will include the following clause:

"The undersigned Owner 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 Owner would otherwise be entitled and is in lieu of the just compensation that Owner might have received if the removal had been required by the Authority while exercising its right of eminent domain."

Where a structure is located on a total acquisition that 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:

if applicable include

"The Owner 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. State'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:

if applicable include

"The undersigned Owner 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 Owner's lessor or permitor at the time of initial removal, the Owner shall be entitled to only a relocation allowance." If Owner does relocate said structure(s) Owner shall, within 90 days following the date of such relocation, pay to the Authority 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 Authority receives, from the company, a certificate of removal of a structure and completion of such other forms as the Authority 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 Authority and the property owner.

8.50.00.00 – ACQUISITION QUALITY CHECKLIST (AQC)

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 an Acquisition Quality Checklist (AQC) Form RW 08-12C. The AQC shall be signed by the Acquisition Branch. Such signing will constitute the agent's assurance that the related transaction meets State and Federal requirements. Scheduling procedures should be initiated as soon as the Contract, Amendment or other Agreement has been executed.

8.50.02.00 Preparation

The AQC 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 AQC totally reflect the agreement between the Authority 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 AQC is included with the Form.

8.50.03.00 Disposal Records

The Acquisition Branch may need to complete two documents that provide information on property acquired.

The Improvement Demolition Record (Form RW 12-01) 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 Notification of Purchase of Excess Land (Form RW 08-EX-12A) 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 which is to be prepared and attached as one of the DOCUMENTS IN FILE. The document is attached to the AQC. 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 AQC. The Forms should be prepared at the time the AQC is prepared.

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 pre-coded Federal Participation Memorandum (Form RW 08-16). 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 that 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 08-EX-4), Agreement for Possession and Use, or other agreement by which Right-of-Way agrees to pay monies to an owner or lessee.

The Acquisition Branch is responsible for accurate segregation of acquisition costs. The Federal Participation Memorandum is forwarded by the Authority Real Property Branch to the Financial Office who records the costs into the accounting system. The Financial Office is not to change any entry without prior consultation and approval of Authority Real Property Branch, who ultimately 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 AQC in the Acquisition file.

On an Order for Possession (OP), a "Request for Transfer of Funds" (Form RW 09-19) provides for the segregation of values for the Financial Office to charge or not charge Federal funds. This "Request" shall also be forwarded to the Financial Office.

When settlement occurs after the taking of an OP, the Financial Office 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

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. The cost of purchasing an uneconomic remnant. An uneconomic remnant is defined in 49 CFR Subpart A section 24.2(a)(27) as, "…a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Agency has determined has little or no value or utility to the owner." Under 49 CFR Subpart XX section 24.102(k),"If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project," is eligible for Federal participation.

Direct costs that are identified specifically as an authorized acquisition such as the costs of acquiring the real property incorporated into the final project and the associated direct costs of acquisition, except where an exception exists. The cost of purchasing an "excess acquisition" is not Federally Participating. The Authority will seek Federal participation for any and all damages attributed to an acquired excess parcel to the extent permitted.

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. 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 Director of Real Property will be notified by memorandum, of these changes. Changes in the area of excess, of necessity, require adjustment of the Excess Land Inventory. The Financial Office is expected to make any necessary coding adjustments on an as-learned basis.

The Director of Real Property has the responsibility to coordinate these Right-of-Way activities with the Financial Office.

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 Acquisition Branch is cautioned that the prior concurrence of the Authority/FRA 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 (DS&S) 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 FRA allows 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, 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 affects the amount of the settlement for eligible interests in real property, and in the judgment of the Director of Real Property, 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 8.01.31.00. These costs are eligible for Federal reimbursement and are to be listed as damages in a partial acquisition and included with the land payment in a total acquisition. If excess is acquired, prorate these costs between the right-of-way and the excess. Authority 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 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 49 CFR 24.107. 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 AQC, 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 the Financial Office.

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 the condition that required the withholding of funds has been eliminated or complied with, The Director of Real Property notifies the Financial Office by submitting a supplemental Federal Participation Memorandum (RW 08-16) and a completed Acquisition Invoice (RW 08-17). The Federal Participation Memorandum must clearly indicate the adjustment to be made, (i.e., adjust the withheld amount from [reference]FAE 8 to charge either [reference]FAE 6 or [reference]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 08-16 also be attached with the payment request package for the withheld amount.

I. 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 AQC and eliminating the applicable portion of the payment from the Federal Participation memorandum.

The Contract and AQC 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 Acquisition Branch /Director of Real Property 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.

J. 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.

K. The Director of Real Property has the option to review how capital and support costs actually appear in the accounting system.

8.60.00.00 - ESCROWS, TITLES AND SCHEDULING

8.60.01.00 Escrows, Titles and Scheduling - General

All Right-of-Way transactions are processed by the Real Property Branch. The assigned Acquisition Branch is responsible for assembling all necessary documents for submission to the escrow company and the submission of the payment package to the Financial Office. 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 08-EX-37 is a suggested form. Use is optional; however, the Authority 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.

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, County, Segment; High-Speed Train (HST) Parcel Number, Assessor's parcel number and the escrow company order number.
B. A list of enclosures necessary to the processing of the escrow (grants 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 Owner.

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 08-EX-36 Escrow Instructions - Sample.

8.61.02.00 Right-of-Way Consultants Responsibility to Provide Required Instruments

The Acquisition Branch 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 Owner'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 Branch, the Authority 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.

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 Acquisition Branch 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 Director of Real Property, who 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.

The Acquisition Branch 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 Authority and the escrow company is reasonably certain when escrow will close.

The 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 the State's 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 Financial Office. The Financial Office will deposit the check in Special Deposit Account unless they are able to credit the Acquisition account. 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 the Authority. If the Schedule amount is incorrect, the Schedule must be corrected.

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 17097-Government Code.)

8.61.06.00 Warrants Delivered to the Authority

A notification to this effect must be submitted with the original claim schedule payment package. The Financial Office will make the necessary arrangements with the State Controller for the warrant to be mailed to the Authority for delivery.

The Authority may transmit the warrant to payee by first class mail or by the Title Company's free courier service when offered. The Acquisition Branch agent cannot handle the Controller's Warrant.

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

Title insurance will only be obtained for the amount of the Authority's payment for the permanent right-of-way being acquired. No title insurance will be requested for the amount of damages (cost-to-cure or severance) paid to the owner or for the amount of any payment for a Temporary Construction Easement. These payments will specifically not be included in the amount of title insurance requested.

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 Acquisition Quality Checklist.

Where more than one working file is maintained 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 8.01.33.00.

8.62.00.00 - ESCROW PROCEDURE WITHIN THE AUTHORITY

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 Authority for funding availability and proper coding, immediately after the Contract has been approved. The Acquisition Branch 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 08-17)

The Acquisition Invoice will show the distribution of funds in accordance with the demands, 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 08-17.

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 08-16. See Section 8.50.04.01, Item J.

8.62.03.00 Preparation of Closing Instructions

The title report will be processed by the Acquisition Branch with closing instructions to show the disposition of each exception as explained in the Acquisition Quality Checklist (AQC). Exception handling in the Contract and AQC 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 Authority's office. If all required instruments are not deposited, the Acquisition Branch 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 Authority 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.

8.63.00.00 - PAYMENT PACKAGE

8.63.01.00 Authorization 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 08-16)

This form is to be completed on all settlements or agreements that 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 08-17)

This form is designed for use when requesting payment. (see Form RW 08-17) 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.

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 08-17)

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 08-16)
2. Right-of-Way Contract, 2 certified copies
3. Acquisition Invoice (Form RW 08-17) 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 08-17) which will accompany the warrant mailed by the Controller.

8.63.07.00 Approval Signatures

The Federal Participation Memorandum (Form RW 08-16) shall be completed and signed by an authorized Authority representative. The signature on the RW 08-16 shall represent the Authority's 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 Authority, a schedule amount is found to be incorrect, the Financial Office should be immediately notified so a request can be made to the State Controller's Office to withhold mailing of the related warrant. The Financial Office will advise the Director of Real Property if additional information is necessary. After receiving an amended schedule, the Financial Office will correct the scheduled amount.

If the warrant has been mailed to the payee, the Authority should immediately contact the Acquisition Branch and 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 Chapter 9 of the Right-of-Way 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.

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 08-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 Real Property. The power of attorney must be recorded in each county in which the Authority is acquiring Property.

8.64.03.00 Deeds Containing Nonstandard Recitals

The Director of Real Property has the authority to approve deeds which contain exceptions or reservations to the Owner or which impose an obligation on the Authority 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. Some Recorders have insisted upon fees being paid by the Authority for recordation of documents that would appear to qualify for free recordation. In these cases the Authority 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.

_____
Director of Real Property

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 Authority 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 Authority policy to pay documentary transfer tax either directly or indirectly.

8.64.08.00 State Deed Recordation

All State Deeds shall be recorded before delivery to the grantee. On recordation, the Real Property Branch shall report the recording data to the Director of Real Property on forms provided with each package of executed State Deeds.

When the Real Property Branch has been advised that the sale has been approved, the buyer shall be requested to submit a check to the Authority, 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 Authority checks are eliminated.

8.64.09.00 Recording Temporary Construction Easements

It will be the general policy of the Authority to NOT record Temporary Construction Easements (TCE) irrespective of their value.

The TCE deeds are to be executed, signatures notarized and accepted by the state and then held in the parcel file in recordable form. This will allow the Authority to record the TCE at any time that a particular situation is recognized and for which the Authority deems that recordation is in their best interest.

This specifically does not prevent the Authority from determining at the time of acquisition, no matter what the value is, that the risk of not recording is too great and that recordation is in their best interest. This could come about because of a pending sale, proposed development or any other activity that would potentially impact the ability of the Authority to utilize the TCE area being acquired and public notification of its existence is desirable.

It is the responsibility of the Acquisition Branch to alert the authority and recommend recordation if the circumstances warrant.

8.65.00.00 - TITLE REPORTS AND POLICIES OF TITLE INSURANCE

8.65.01.00 Title Vested in People

All title acquired by the public to any real property, or interests therein, used for High-Speed Rail right-of-way is vested in the name 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 "The reports are not abstracts of title, nor are any of the rights, duties or responsibilities applicable to the preparation and issuance of an abstract of title applicable to the issuance of any report. Any such report shall not be construed as, nor constitute, a representation as to the condition of title to real property, but shall constitute a statement of the terms and conditions upon which the issuer is willing to issue its title policy, if such offer is accepted.." 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; however, exceptions may be made with Authority approval in the following cases:

A. Parcels having a land value of $2,500 or less which do not involve access rights or improvements. With pre-approval the Acquisition Branch 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 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 all cases the Acquisition Branch will prepare a report titled "Certification of Title" (Form RW 08-14), addressing the same information as would normally appear in a title report. The certificate will be signed by the Acquisition Branch and approved by the Authority.

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
- Resolution of Necessity Requests
- Summons, Complaint, and Lis Pendens
- Right-of-Way Schedules

8.65.04.00 Title and Escrow Services

All services, including the issuance of preliminary title reports, litigation guarantees, and policies of title insurance, shall be obtained from an appropriate Title company. Title and Escrow services are considered vendor provided services and are exempt from competitive bidding.

- The Director of Real Property, or designee, approves selected title companies, 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 Authority work. The Authority's office should maintain a file and document the rejection by firms contacted.

8.65.05.00 Certificate of Regularity

When the Title 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 Authority 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 Authority for property is $2,500 or less. In all other circumstances, the Authority 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 Authority and the California Land Title Association (CLTA) and its affiliated members:

A. CLTA Relinquishment of Abutter's Rights 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 Endorsement Form 106.1 is applicable where access rights only are being acquired.

D. CLTA Relinquishment of Abutter's Rights 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 Endorsement Form 106.2 is a combination of Forms 106 and 106.1 and is to be used when the Authority 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 acquired for High-Speed rail purposes are releasing their rights of access.

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 Authority. 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 Requests for Refund of Prepaid Current Taxes

The Authority shall maintain a procedure whereby the amount of prepaid taxes paid by the Authority, on properties acquired through eminent domain, is refunded by the appropriate tax collecting agency. See the Condemnation Chapter 9.

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 Notices for Removal of Property From Tax Rolls

Exhibits 08-EX-42 through 08-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 08-EX-47 is to be used with property acquired by judgment. Whenever an OP has been secured, it will be incumbent on the Authority to notify the appropriate taxing authorities by letter of this fact.

Some city and county taxing authorities will require other types of notices. The Acquisition Agent must determine the form of notice that the various taxing authorities 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.

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 by the Authority Memorandum of Final Title shall reflect the escrow closing date and what documents are in the file (Form RW 08-15).

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 Authority's Right-of-Way Record Maps. The Authority shall for this purpose provide a space on the record map for the required information and 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 08-15.

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 08-15 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 Owner 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 a Construction Segment the Director of Real Property 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 Director of Real Property designated representative or delegate. The Authority's 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

Segment _____, Co. __ _____

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 ___

_____
Director of Real Property 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 Authority must provide complete information with respect to the identification of the condemnation suit, county, segment, HST parcel number, assessor's parcel 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 and paid by the California Department of Transportation (Caltrans) and are reimbursed pursuant to the Authority-Caltrans legal services contract. 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.

A court refund of any unused balance of a deposit will be sent to the Financial Office.

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 Authority 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 Authority 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 Authority 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.

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CHAPTER 9

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9.01.00.00 - EMINENT DOMAIN

9.01.01.00 General

Eminent domain is the inherent power of government to acquire private property for public use. The owners of such private property shall not be deprived of their property without just compensation as provided in the Fifth and Fourteenth Amendments to the United States Constitution and Article I of the California Constitution.

Condemnation is the legal proceeding by which the power of eminent domain is exercised.

The Authority may condemn property to be used for high-speed rail and related purposes by authority of Public Utilities Code section 185036(b). The Public Works Board (PWB) must first adopt a Resolution of Necessity (RON) pursuant to Section 1245.230 of the Code of Civil Procedure.

9.01.01.01 Authority's Contract Attorney's

The Authority has contracted with the California Department of Transportation Legal Division (CT Legal) to represent the Authority in all condemnation actions.

9.01.02.00 Record of Condemnation Case Status

The Authority/CT Legal shall maintain a record of the status of condemnation cases commencing with submittal of the Request for Resolution of Necessity to PWB. The record is kept current through the duration of the action.

9.01.03.00 Condemnation Process

The condemnation process requires continuous communication between the Authority and CT Legal often throughout the process since it is crucial to help identify and offer guidance for the resolution of issues.

Condemnation must be completed within a short time frame, and all eminent domain actions are subject to fast track rules that accelerate the process (see Section 9.02.15.00). Although timelines may vary depending on local court rules, the typical time frame should closely follow the indicated schedule.

9.01.04.00 Notice of Intent to Adopt Resolution of Necessity

CCP Section 1245.235(a) states that "The governing body of the public entity may adopt a resolution of necessity only after the governing body has given each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll notice and a reasonable opportunity to appear and be heard on matters referred to in Section 1240.030." The PWB initiates condemnation by mailing a Notice of Intent to Adopt Resolution of Necessity (NOI) to property owners whose property is required. The NOI must be signed by a delegated representative of the PWB.

Notice requirements are shown on the table below:

NOTICE REQUIREMENTS
• Include one of the following forms of property identification as "Exhibit A:" Resolution of Necessity Maps and/or Legal Description, **or** • Specific property address and appraisal map clearly showing property, or tax assessors map, **or** • Authority's Grant Deed • Send NOI, via First Class Mail, to owners listed in the last equalized county assessment roll, other verified owners of the real estate that are not identified on the tax rolls, and lessees and month-to-month tenants only if they own realty improvements within the acquisition area (as opposed to possessing a right to occupy) and are on the tax rolls. • Serve or mail Notice no later than 15 days prior to the date of the meeting at which the PWB will consider the Request. Notices may be sent even earlier to accommodate an anticipated Condemnation Review Panel Meeting and avoid rescheduling a selected PWB meeting.

If the owner(s) cannot be located with reasonable diligence, the Notice should be mailed to the last known address and to the person on the tax rolls at the address listed with the tax assessors. Documentation of all research to locate the owner must be included in the parcel diary. This documentation may be needed for inclusion in a Declaration of Due Diligence and, when signed by the agent, may be required as a support document for the Application to Publish (CCP 1245.230 and 1245.235).

9.01.05.00 Change in NOI

If either of the following occurs, the PWB must immediately notify the owner(s) by mail that the Request will not be considered on the date of which they were notified and that a new NOI will be provided.

- If for any reason (such as a design change) information in a Notice or legal description already provided to the owner(s) ceases to be correct prior to adoption by the PWB.
- If the Authority elects to defer PWB consideration from the time set forth in the original Notice.

The PWB must provide a new NOI, subject to all of the above requirements, before a resolution request may be submitted for PWB consideration.

A new NOI is not required if the PWB consideration has been deferred at the owner's request or if the owner's request to appear results in a Condemnation Review Panel Meeting. The PWB must, however, provide written notification of the deferred date and location to the owner at least 15 days in advance of the new meeting. This notification should be in the form of a one-page letter informing the owner of the deferred date and location, and must have the original Notice of Intent as an attachment.

If the NOI was mailed and the date of the PWB meeting or the location is in error or has changed, a Correction Letter Notice to Owner Regarding a Change in the Date or Location of the PWB Meeting (see Exhibit 09-EX-06A) may be mailed in lieu of a new NOI. The letter should be sent by First Class Mail.

9.01.06.00 Grantor's Request for Appearance

If an owner believes that their property should not be required or that the high-speed rail project should be modified to avoid their property, the owner may request an appearance before the PWB regarding the Resolution of Necessity. Pursuant to CCP 1245.235, this request must be made in writing and on file with the PWB prior to the PWB meeting. In response to the request, the Authority will evaluate the appearance letter to determine if design issues need to be re-evaluated. If it is determined that further review is needed, the RON will be pulled from the PWB meeting and the Authority may conduct a Condemnation review panel, which continues the negotiating process and assures that all issues are identified and resolved. In order for the Authority to adequately address the owner's issues, it must fully review all proposals presented by the owner. Design and other functional units' responses to the issues raised during the negotiation process may vary in the level of analysis and consideration.

To assure that the owner is receiving fair consideration and that the Authority is presenting a credible argument for its design criteria, Right-of-Way agents are to document property owner specific issues and forward these issues in writing to the appropriate functional unit(s) for a written response to facilitate the agents' follow-up discussions with the property owner. By formalizing the response process, the issues, the consideration and justification or modification for the design will be clearly defined and conveyed to the owner at the earliest possible time in the negotiation discussions.

9.01.06.01 [Hold for Future Use]

9.01.07.00 Authority's Condemnation Review Panel (CRP) Meeting

The purpose of the Authority's CRP is to identify and resolve as part of the panels review all of the property owner's issues, if possible.

If during negotiations the Authority determines that there is a high probability that the owner will request an appearance before the PWB, to facilitate project scheduling control the Authority may hold a CRP Meeting either prior to sending the NOI, or thereafter, but prior to receiving a formal request to appear by the owner. The decision to have the CRP Meeting prior to sending the Notice of Intent will be considered on a case-by-case basis and requires the prior approval of the Director of Real Property. This is another option that allows the Authority total control and timing of the CRP Meeting, and the opportunity to identify and find early resolution of issues with the property owner.

Prior to the CRP Meeting, the Authority shall have a Management briefing meeting with appropriate design, construction and Right-of-Way representatives regarding all the issues related to the parcel, as well as a strategy for moving forward. Having a full understanding of the issues, alternatives, and the legal or design limitations will improve the decision process for Authority Management.

The Director of Real Property will designate a member who will act as the Panel chairperson and designate a Real Property Branch staff person to serve as the secretary to the Panel.

Attendance at the CRP Meeting shall include the owner and/or their representative(s), the Panel, the Panel secretary, and the designated personnel. The meeting should be limited to active participants and decision makers only. Authority representation at this meeting should be minimized and limited to the appropriate managers, with potential expert presenters and other staff available on standby, if necessary.

The Panel chairperson or designated secretary to the Panel will begin the CRP Meeting by explaining the purpose of the meeting and the procedures to be followed. Authority personnel will make a presentation to the CRP and the owner(s) describing the project using suitable maps and plan exhibits. This

presentation may be conducted by management level persons from the Authority or designees. The Engineering Services Branch will present the design portion and the Real Property Branch will present the real estate portion. The property owner will be asked to present their concerns about the project or the proposed acquisition as presented, along with any suggestions they may have to reduce or mitigate project impacts.

9.01.08.00 CRP Recommendation

The purpose of the CRP is for the Panel to conduct an independent review of the project, its impacts to the subject parcel, and to evaluate all issues brought forward. Should the Authority be unable to reach a mutual agreement with the owner, the Panel's review serves to validate that the proposed design provides the greatest public good while imposing the least private injury. This step can be important in order to provide the Director of Real Property with an appropriate recommendation that will allow the Authority to move forward with the request for the PWB to consider a RON if appropriate.

If issues remain unresolved at the conclusion of the CRP Meeting, the Panel secretary in coordination with the Panel members prepares a Panel report and recommendation to the Director of Real Property.

If the CRP's recommendation is to proceed with the project as planned, the CRP secretary prepares an Appearance Information and Fact Sheet. This document includes a complete report of the CRP Meeting and is sent to the Authority's Director of Real Property with their recommendation.

In response to this submittal, the Director of Real Property may take the following actions:

1. Refer the request to the PWB for consideration of passage of a resolution of necessity, or
2. Refer the project back to the CRP for additional design studies or modifications.

9.01.08.01 Authority's Condemnation Review Panel (CRP) Evaluation and Review Meetings

Responsible Party	Action
PWB	Sends notice to the owner of the PWB meeting at which the Resolution of Necessity will be considered.
Owner	Notifies the PWB of intent to appear at the PWB meeting to object to the Resolution of Necessity.
PWB	If PWB deems it appropriate for the property at issue, notifies the owner and the Authority that consideration of the Resolution of Necessity by the PWB will be delayed pending further investigation (see Exhibit 09-EX-03).
Authority	Arranges time and place with owner to conduct a CRP Meeting (see Exhibit 09-EX-04).
Authority	Notifies owner of the specific date, time, location, and purpose of the CRP Meeting (see Exhibit 09-EX-05).
Authority	Conducts meeting to brief Authority Management on all known issues prior to the CRP.
Authority	Conducts CRP Meeting.
Authority	CPR Secretary with the assistance of Acquisitions prepares a draft Appearance Information and Fact Sheet and submits to Director of Real Property Right-of-Way. If after review, statutory and Authority requirements are met, the Director of Real Property authorizes the preparation of a final CRP Report requesting that the PWB proceed with consideration of the Authority's request for a Resolution of Necessity. **OR –** Obtains a written withdrawal of the owner's request to appear.
PWB	If owners issues have not been resolved and the CRP recommends and the Director of Real property approves that the Authority should move forward with their request for a resolution of necessity, the PWB notifies owner of the date and location of the PWB meeting (see 9.01.05.00).
PWB	Prepares PWB package and notifies the owner by certified mail of the PWB hearing (see Exhibit 09-EX-07).

9.01.09.00 Requesting the Resolution of Necessity

A separate Resolution must be obtained for each ownership. An ownership may consist of more than one parcel, but no more than one ownership may be included in a Resolution, Request, or NOI.

The legal and policy requirements in the table below must be met for each ownership prior to submitting the Authority a Request for Resolution of Necessity.

LEGAL AND POLICY REQUIREMENTS

- There must be an approved appraisal report on the property, and the full amount of that appraisal must have been offered. A "Waiver Valuation" is not an appraisal and cannot be used for condemnation purposes. It must be upgraded to an appraisal prior to requesting a Resolution of Necessity (see 8.01.08.00). In addition, a minimum value offer of $1,000 is required prior to submitting a request for a Resolution of Necessity (see 8.01.26.00).
- A reasonable number of acquisition calls must have been made on the property owner, and the owner must have been allowed a reasonable time to consider the State's offer [49 CFR 24.102(f)]. For most properties, no less than three personal calls and 30 days would be considered reasonable.
- Where improvements on the remainder or that straddle the Right-of-Way line are to be acquired, Acquisitions must advise Right-of-Way Engineering of the necessity of including either the Condemnation Improvement Removal Clause (6.08.07.01) or the condemnation Improvement Severance Clause (6.08.07.02) in the legal description.
- A personal acquisition call must have been made on the owner within 30 days prior to serving or mailing the NOI. The owner(s) must have been advised that:
  - The Authority will proceed with condemnation and PWB will serve or mail the NOI soon.
  - The owner has a right to appear before the PWB to be heard on matters referred to in CCP 1240.030; the PWB may not consider issues of compensation.
- The owner must file a request to appear prior to the PWB meeting. Otherwise, the right to appear before the PWB will have been waived.
- A NOI must have been provided to all parties with an ownership interest in the real estate. (see 9.01.04.00.)
- There must be an updated Litigation Guarantee for condemnation purposes, or a Preliminary Title Report must have been upgraded to a Litigation Guarantee. The Litigation Guarantee, Title Report, or Title Report Supplement must be current (no older than six months) at a time the NOI is mailed. If a Title Report is used in lieu of a Litigation Guarantee, a Litigation Guarantee must be ordered at the time of mailing the NOI. An update of the Litigation Guarantee must be ordered after recording of the Lis Pendens. see Section 9.02.22.00.

9.01.10.00 Submission of Request for Resolution

Acquisitions should submit the Request for Resolution to the Director of Real Property, or designee, a minimum of six weeks prior to the PWB meeting to assure processing.

The PWB annually establishes dates and locations of PWB meetings. The Director of Real Property, or designee, sends this information for schedule planning purposes to Acquisitions as soon as it is available.

9.01.11.00 Preparation of Resolution

The Director of Real Property, or designee, reviews the Request for Resolution based on information provided in the request package. Each package must contain the following items:

RESOLUTION REQUEST
• Resolution of Necessity (RON) Request (Form RW 09-08) or, alternately, the electronic request from the RON Generator (for Authority use only). • Completed Request for Confirmation of Market Value (Exhibit 08-EX-05). Current appraisal or Confirmation of Market Value, not older than six months. • Word template of NOI for one owner. • The RON legal description. • Resolution of Necessity Maps: Index Map marked "Exhibit A" and detailed Resolution of Necessity Map marked "Exhibit B," etc. Exhibit maps must have single identifying Exhibit Number of each map per RON. • Summary of acquisition history and copy of a current litigation guarantee or date down or a copy of a current preliminary title report and the request for title company to upgrade the preliminary title report to a litigation guarantee.

Per existing delegations, all Resolution Packages are to be reviewed and approved by the Authority's Real Property Branch and CT Legal prior to submittal to the DOF for mailing of the NOI.

9.01.12.00 Specific Statutory Authority

See the table at the end of this section for a summary of condemnations for which specific statutory authority must be cited in the Resolution.

9.01.13.00 Adoption of Resolution

If the PWB votes to adopt the Resolution, Authority staff attending the PWB meeting will update geoAMPS and notify Acquisitions the Resolution was adopted. PWB will follow up with notice to the RON Coordinator to pick-up two certified copies of the adopted RON.

One certified copy of the adopted RON will be included in the Authority's RON folder and one certified copy will be delivered to CT Legal for their file.

9.01.14.00 Rescission of Resolution

The Authority should request a rescission of a Resolution where it is impractical, due to design revisions or for other reasons, to pursue acquisition of a parcel based on the original resolution authorizing condemnation.

The Authority will submit a request to the PWB for rescission of a Resolution by submitting a copy of the adopted Resolution and an explanation as to why the Resolution is being rescinded. Prior to rescinding the Resolution, the Authority must interface and confer with CT Legal if the case has been assigned and/or filed.

The rescission will become a voting item on the PWB agenda of a specific month. Adoption of the rescission by the PWB removes the Authority's right to condemn the subject property rights. If the Authority subsequently decides to condemn the parcel, the Resolution of Necessity process must begin anew.

9.01.15.00 Filing of Suit Within Six Months of Adoption

The Authority should request a Resolution only if it intends to file a suit within six months after the Resolution is adopted. CCP sec. 1245.260 provides that if eminent domain is not commenced within six months, the property owner may bring an inverse condemnation action. It is important, therefore, that the Authority immediately after a Resolution is adopted request at a minimum the filling of the law suit. Service of suit papers may for negotiation reasons be delayed after consultation with the CT legal office. If the suit is not filed within six months due to design modifications, the Authority must request rescission of the Resolution. If the parcel is settled by Right-of-Way Contract within the six month window, a suit does not need to be filed.

Note: To speed the filing process, the Authority should consider requesting the suit papers when issuing the NOI.

SPECIFIC STATUTORY AUTHORITY			
Type of Condemnation	**Explanation**	**Requirements**	**Authority**
Substitute	Whenever the Authority requires property for High-Speed Rail purposes and the property is devoted to, or held for, another public use for which the power of eminent domain might be exercised, the Authority may condemn substitute property to be exchanged for the required Right-of-Way if the owner of the required Right-of-Way consents in writing to the exchange. When the Authority acquires substitute property in its own name, relocates the public use, and then conveys the improved property to the owner of the required Right-of-Way, the Authority is acting under CCP § 1240.330. The Authority must follow this procedure when either a	It is necessary to set forth: • Date and terms of the agreement between the Authority and the other party. • Degree of title owned by the other party. • Degree of title the Authority will condemn for exchange purposes. In addition, the map forwarded with the Resolution Request shall delineate the Right-of-Way the Authority will acquire from the other party. The Resolution shall specifically reference CCP § 1240.320 (see Form RW 09-09). The Resolution shall include a statement that the property is necessary for the purpose specified in CCP § 1240.330, if applicable. When the Authority acquires	CCP § 1240.320 CCP § 1240.330 CCP § 1240.350

	court order, a judgment in eminent domain proceeding, or a written agreement requires the acquisition of substitute property that will be devoted to the displaced public use. If the owner of the required Right-of-Way does not have the power to condemn substitute property, the Authority must rely on either CCP § 1240.330 or 1240.350. (see Form RW 09-10.) If the Authority is condemning property pursuant to CCP § 1240.350 to provide utility service to, or access to a public road from, property that is not acquired for public use but that is cut off from utility service or public road access as a result of the Authority's acquisition, the owner's consent is desirable, but not a prerequisite. However, the Authority must take into consideration the cost and hardship to the owner whose property is to be condemned or acquired to provide the utility service or access.	rights for a utility company, care should be exercised to ensure the legal description includes all rights, restrictions, and limitations required by the company. As a general rule, the legal description should not provide for acquisition of greater rights than the utility company holds in its present Right-of-Way. However, special circumstances may dictate otherwise. For example, the PUC may impose higher standards on replacement construction. If the Legal Office wants to amend the utility company's legal description for the Resolution, the Legal Office and utility company should confer and agree upon the change.	
Of Excess Land	If the Authority proposes to condemn property that is excess to its needs, the property is classified as either a remnant or excess. (Condemnation of a remnant is discussed below.) The Authority may acquire property as excess when the remainder or a portion of the remainder	Section 1240.150 provides broad authorization for the Authority to acquire remainders by a voluntary transaction or a condemnation action initiated with the owner's consent. If acquisition of only a portion of a property would leave the remaining portion in such shape or	Acquisition by any means is authorized under CCP § 1240.150 when owner expressly consents.

	will be left in such size, shape, or condition as to be of little value to its owner or to give rise to a claim for severance or other damages.	condition as to constitute an uneconomic remnant, the Authority shall offer to acquire the entire property and may do so if the owner agrees. Since exercise of authority under this CCP section depends upon consent and concurrence of the owner, the language is broadly drawn to authorize acquisition whenever the remainder would have little or no value to its owner rather than little market value.	
For Compatible Use	The Authority may acquire property appropriated to public use if the proposed use will not unreasonably interfere with or impair the existing public use or future public use that can be reasonably expected.	The Resolution must specifically reference CCP section.	CCP § 1240.510
	If the property is needed for public use and a structure is located partly on the property to be acquired and partly on other property, the Authority may acquire the entire structure by agreement with the owner or by condemnation initiated with the owner's consent.	There are a number of alternatives available to the parties that may be less costly or more convenient than taking only part of the structure and paying severance damages on this basis. In some cases, severance may so destroy a structure that total demolition in one operation is the only economically or practically feasible alternative. The parties may also agree that the Authority will purchase the structure and relocate it.	CCP § 1240.150 For authority to condemn the structure where the parties cannot agree, see CCP 1263.270 (court order to acquire entire improvement). For other possibilities, see CCP § 1263.610 (Authority to relocate structure or perform other work for owner).
For More Necessary Public Use	The Authority may acquire property appropriated to a public use if the Authority's use is a more necessary public use. The Authority's authority	A Letter of Consent should be obtained. If not, the Authority must be able to prove to the Court that its use is a more necessary public use than the use to	CCP § 1240.610

	under this CCP section will not prevent continuance of the appropriated use if such use will not unreasonably interfere with, impair, or require a significant alteration of the Authority's project (see CCP sec. 1240.630).	which the property is appropriated. A statement as to the more necessary public use is required. The Resolution must specifically reference CCP section.	
For Future Use	The Authority may condemn property for future use only if there is a reasonable probability that its date of use will be within seven years from the date the Complaint is filed or within such longer period as is reasonable. The date of use is the date the property is actually devoted to the use or project construction is commenced (i.e., the date the contract is awarded).	All projects, except Federal advance Acquisition Fund projects and those requiring reasonably longer periods should be commenced within the seven-year period. The Resolution and Complaint must reference CCP § 1240.220 and give estimated date of use. If the project will be awarded within such longer period as is reasonable, and not within the seven years, the Resolution and Complaint must give the estimated date of use.	CCP § 1240.210 Through 1240.250.
Of an Easement to Remove Improvements	see Manual Section 6.08.07.01, CCP sec. 1263.270, and Form RW 09-12.	The legal description shall include the Condemnation Improvement Removal Clause.	CCP § 1263.270
Of an Easement to Sever Improvements at or near the Right-of-Way Line	see Manual Section 6.08.07.02.	Consent of the owner is required, and the legal description shall include the Condemnation Improvement Severance Clause.	CCP § 1263.610
Of Remnants	The Authority may acquire property as a remnant when it would be left in such size, shape, or condition as to be of little market value. Owners may prevent condemnation if they prove the Authority has reasonable, practicable, and economically sound means to prevent the property from becoming a remnant.	Facts establishing the applicability of reasonable, practicable, and economically sound criteria should be specifically stated. Even where these criteria apply and consent of owner is not a condition precedent to the taking; the Authority is required to seek such consent. The CT Legal Office and Authority should	CCP § 1240.410

	A taking of excess property is not authorized to: • Avoid the cost and inconvenience of litigating the issue of damages. • Preclude payment of damages, including substantial amounts in appropriate cases. • Coerce the owner to accept whatever price the Authority offers for the property actually needed. • Afford the Authority an opportunity to recoup damages or unrecognized benefits by speculating on the future market for the excess property. (see Form RW 09-11).	confer on any proposal to condemn as a remnant. The request shall contain the following information: • Area and value of the Right-of-Way including improvements. • Area and value of the excess or remnant before acquisition. • Value of the excess or remnant after acquisition. • Amount of damages in excess of benefits if not acquired. • Discussion of any new easements proposed for the excess land in the "after" condition. • Reasons why there are not reasonable, practicable, and economically sound means to prevent the property from becoming a remnant. • Owner's opinion or reasons for refusing consent to acquisition.	

9.02.00.00 - CONDEMNATION SUITS

9.02.01.00 Request for Suit Papers

Immediately after passage of the Resolution by the PWB, the Authority requests the appropriate CT Legal Office to prepare the papers necessary for filing suit.

One Resolution covering each larger parcel ownership is mandatory, and a separate condemnation suit on each larger parcel is the normal practice. However, a multi-ownership condemnation suit is permissible when the CT Legal Office agrees such action is desirable, or when the parcels meet the "larger parcel" test.

INFORMATION REQUIRED FOR SUIT PREPARATION	
Type	**Description**
Parcel Resume	Brief parcel description.
Appraisal	Appraisal report obtained by Authority
Appraisal Summary Statement	Appraisal Summary Statement prepared and signed.
Title Reports	Furnish litigation guarantee report and supplemental reports bringing title up to date. Preliminary title reports must be upgraded to litigation guarantees prior to obtaining a resolution of necessity. Make explanatory notations as to specific exceptions in the left-hand margin of the reports where title is to be taken subject to exceptions or the exceptions do not affect the parcel sought to be condemned. A copy of the title exception identified as "excluded" by the agent may be requested by Legal to confirm that it is unnecessary to include the defendant identified in the exception. Easements and other interest identified as exceptions in the Title Report/Litigation Guarantee which are excluded, due to the belief they are outside of the needed right-of-way, should be confirmed by Acquisitions /title company prior to note of exclusion by the Right-of-Way Agent. Make note on Title Report that exception was omitted with concurrence from Right-of-Way Engineering.
Maps & Exhibits	Two copies of the identified exhibits are to be included in the suit request: one for the legal pleadings and one for the legal file. **Legal Description –** a copy of the legal description that was approved as part of the PWB adopted Resolution is included. The legal description is incorporated into the Complaint, Lis Pendens, and Final Order of Condemnation.

	Exhibit Maps – The Maps that were submitted as part of the Resolution package must be included. The maps are attached as Exhibits "A" and "B," etc., in the Complaint. "Exhibit A" is the Index Map. "Exhibit B," etc., are the Parcel Maps. **Appraisal Summary Statement –** The Appraisal Summary Statement is included as an Exhibit for the Summary of the Basis of the Appraisal. **CA-13 (Transfer of Funds) –** is attached as an Exhibit for the Notice of Deposit in some County Courts. **Copy of Certified PWB Resolution –** is attached as an Exhibit for the Declaration in Support of the Order for Possession in some County Courts.
Names	Include full names of owners and tenants owning realty. Also identify and include full names of any persons, including spouses, actually in possession of the property or claiming an interest therein that do not appear in the title report so they can be properly named as defendants. Include lessees impacted by project if unrecorded lease and not in Title Report. If vesting indicates a married person, as to his sole and separate property, the spouse must be identified and the name included in the interests not named in the Title Report. California is a community property State and all care must be taken to clear potential ownership interests.
Taxing Agencies	Name counties only if they have interests other than *ad valorem* property taxes. Review CCP Section 1250.250 for specific requirements. (see also Sections 9.02.08.00 and 9.15.04.00.)
Order for Possession	When requesting an OP, include the appraiser's name and qualifications to allow preparation of the Summary of the Basis for the Appraisal. Segregate the summary as to value of the property to be acquired, severance damages, benefits, and goodwill, if applicable.
Other Information	Include any other advice or information on the various exceptions that may assist the CT Legal Office in the preparation of suit papers.

9.02.02.00 Information Required for Suit Preparation

The Authority reviews the parcel legal description prior to requesting suit papers to assure it is identical to the legal description in the Resolution of Necessity. If the legal description differs from the legal description in the adopted resolution, a note needs to be included communicating why and how the descriptions differ. The information in the table on the preceding page is forwarded to the CT Legal Office with the suit request, along with the declarations of appraiser.

The Index Map and Parcel Map submitted in the resolution package are to be included in the suit request forwarded to the CT Legal Office, as well as a copy of the Appraisal, Appraisal Summary Statement, Transfer of Funds, and a copy of the Certified PWB Resolution. The information in the table on the preceding page is forwarded to the designated CT Legal Office with the suit request.

9.02.03.00 Suits Involving Public Utilities

Suits involving public utilities usually are not necessary, especially if the utility owns easement title. Arrangements normally can be made by using a Joint Use Agreement or Consent to Common Use Agreement that will satisfy all parties.

When fee-owned public utility land is necessary for High-Speed Rail project, a controversy may arise regarding valuation of the property or the type of interest the State is to acquire. If either is probable, the appraiser should consult with the Authority immediately.

If no agreement is reached and eminent domain appears likely, the Authority's request to the PWB for a resolution will specify the type of title to be condemned, i.e., fee reserving an easement to the utility or an easement out of the utility company's fee. The Authority must identify the relevant Code Sections to be included in the Resolution Request (see CCP §§ 1240.320, 1240.330, 1240.510, and 1240.610).

The Authority should not presume that Rights of Entry with or without the waiver clause will always be available from the utility company.

9.02.04.00 Suits Involving Railroads

Suits involving non-operating property owned by railroad companies are handled like any other property.

If the required property is used for operating railroad purposes, approval of the Director of Real Property, or designee, is required before initiating condemnation procedures. Every effort should be made to avoid condemnation of railroad operating property by obtaining rights of entry and construction agreements (See the Railroad Section of the Acquisition Chapter).

When a project involves crossing the railroad Right-of-Way at grade or by a grade separation structure, the California Public Utilities Commission (CPUC) may need to approve the construction. Approval by CPUC is subject to an agreement between the State and the railroad. The Director of Real Property, or designee, will prepare and process Service Agreements for grade crossings and Construction and Maintenance Agreements for grade separations.

If the railroad disagrees with the State's plans for the project, the CPUC will hold a hearing. The CPUC hearing process can take six months or more to complete.

9.02.05.00 Filing Suit Papers

The assigned CT Legal office prepares the following and may either perform the following or forwards the originals to the Authority for filing and/or recording:

Summons and Complaint - original
Lis Pendens - original
Application and Declaration for Order for Possession - original, if requested
Order for Possession - original, if requested
Notice of Deposit and Summary of the Basis for the Appraisal - original, if requested
Civil Cover Sheet - original
Declaration in Support of the Order for Possession - original

Pursuant to Government Code Section 6103, the Authority does not pay filing fees.

For purposes of determining date of value, suit papers should be filed prior to depositing the amount of probable compensation with the court.

9.02.06.00 Recordation and Service of Lis Pendens

Immediately after filing of the suit, the original Lis Pendens must be recorded with the county recorder of each county in which the property affected by the suit is located. Service of the Lis Pendens is concurrent with service of the Summons and Complaint (see CCP sec. 1250.150). Court rules and County Recorder's procedures vary in each county. The original Lis Pendens should be forwarded to the attorney upon receipt, as it is used as a trial exhibit.

9.02.07.00 Filing Complaint and Issuance of Summons

The assigned CT Legal office shall arrange for filing of the original Complaint and for issuance of original Summons by the clerk of the court within six months of adoption of the Resolution. In most cases, the county clerk acts in the capacity of the clerk of the court. The original Summons is retained until such time as proof of service or return to the court is necessary. The original Summons must be submitted to the Court when filing a Default.

The assigned CT Legal office shall provide the safekeeping of the Original Summons to ensure it is not misplaced. See Section 9.03.04.00 for return of original Summons to the court.

9.02.08.00 Request for Segregation of Taxes on Partial Takings

For partial takings of locally assessed properties, the Authority processes a request for segregation or prorating of taxes immediately after the taxes are subject to cancellation. This occurs on the effective date of possession as set forth in the OP or, in the absence of an OP, upon the recordation of the document (Deed or Final Order of Condemnation) conveying the property to the State.

9.02.09.00 Conforming Copies of Summons, Complaint, and Lis Pendens

When filing the Suit Papers with the Court, it is recommended that CT Legal submit the following to the Court:

Civil Cover Sheet, Summons and Complaint - one original copy and at least one copy to be confirmed.

Lis Pendens - one original copy to be retained by the agent and at least two copies. The original and copies should be stamped by the Court to identify the case number and other identifying information which the County Court stamps (Judge, Authority, etc.). Some Courts will retain a copy to be made a part of the Court file. This practice varies depending on the County and the Branch. The Original must be retained to be filed with the County Recorder. If the parcel crosses county lines, two original documents must be prepared so an original can be filed with the County Recorder of each county in which the parcel is located. The original must be stamped with the Government Code section 6103 to alleviate the requirement of paying recording costs.

Application and Declaration for Order for Possession - one original copy, one copy to be marked "received" and one copy for conforming.

Notice of Deposit and Summary of the Basis for the Appraisal - one original copy, one copy to be marked "received" and one copy for confirming.

Order for Possession - one original copy, one copy to be marked "received" and one copy for confirming to be left with the Court Clerk.

Ex-Parte - Application for Order for Possession

Before they are served on the defendants, each copy of the Summons, Complaint, and Lis Pendens must be conformed to agree with the originals. Maps must be inserted in the copies of the Complaint in the same manner and form as contained in the original. see Section 9.08.03.00 if an OP is also being served.

9.02.10.00 Coordination With Caltrans Legal Office

The assigned CT Legal office is responsible to maintain copies of each pleading filed with the court or received so that a complete file is maintained. CT Legal and the Authority should coordinate activities and maintain communications necessary to meet timetables required by the CCP or the courts. The Authority should advise the designated CT Legal office of the status of action and any settlements made through Right-of-Way Contract. The appropriate CT Legal office must be advised by the Authority immediately when escrow closes so the case can be dismissed.

9.02.11.00 Status of Title When Suit is Filed

When the necessary suit filing procedures have been completed and the Lis Pendens has been recorded, the Authority orders a litigation guarantee report or supplemental report from the title company to show the condition of title as of the recordation date of the Lis Pendens. This permits a current review of the status of title to assure that all parties having an interest in the property are served. It is essential that status of title is current in the event of a withdrawal of deposit application and that all parties with a vested interest in the eminent domain action are correctly included in said action and served with all necessary suit papers. see Section 9.09.03.00.

9.02.11.01 Review Litigation Guarantee

The CT Legal office should review the updated litigation guarantee to identify additional interests to be added to the suit as "Does" (new defendants), and to identify exceptions that have been cleared and may be dismissed from the suit.

9.02.12.00 Suits With Orders for Possession

see Sections 9.03.00.00 and 9.08.00.00 for procedures to follow after the filing of the Complaint.

9.02.13.00 Rearrangement of Improvements Involved in Condemnation Action—Stipulations

After a condemnation action has been filed, expenditures shall not be made for rearrangement of buildings, fences, or roadways; restoration of water supply; changes in irrigation pipelines; construction of ditches; etc.; for the purpose of mitigating damage except under specific agreement (stipulation). The stipulation shall be executed by all parties who would have to execute an agreement for the sale of the property. The lead CT Legal office drafts the stipulation based on information provided by the Authority and the defendant.

The terms of any partial settlement of a transaction shall be included in a stipulation to be filed in the proceeding. The stipulation shall provide that in the event of trial, the defendant will not claim damages for any of the items covered by the stipulation.

9.02.14.00 Memorandum of Case Status

Promptly after filing the suit, CT Legal must complete and maintain a Condemnation Status Report in the form required by the CT legal and the Authority. The Authority will coordinate with the designated CT Legal office to establish format, content, and scheduling of the memorandum.

9.02.15.00 Fast Track Procedures

[Note; These procedures have been substantially revised and this section should be reviewed and edited by an attorney.]

9.02.15.01 General

The Trial Court Delay Reduction Act of 1986 (Fast Track) is intended to expedite the processing of condemnation cases through the court system. The Act is contained in the Government Code, commencing with Section 68600, and is implemented by Title 4 (Rule 1901-1914) of the Rules of Court. It requires that each county adopt rules to implement the Act. Each assigned CT Legal office should obtain the rules for its respective counties.

The program ensures that general civil matters filed in the Court are expeditiously pursued from filing to trial. To accomplish this early resolution of cases, the Court will monitor and, where necessary, direct the progress of proceedings.

9.02.15.02 Procedure

CT Legal has overall responsibility for compliance with the Act. Since procedures and forms vary from county to county, the assigned attorney should check with the Local court of jurisdiction on procedures to be followed.

At the time the Complaint is filed, the case is set for a Case Management Conference within 120 days and may be assigned to a judge. At the time of the conference, the Court will review the status of proceedings and make orders necessary to ensure that the matter is ready for trial at the earliest possible date. Where appropriate, the Court will set the matter for further conferences.

CT Legal must file an At-Issue Memorandum in order to secure a trial date. The Court Executive Officer will set the trial within 90 days of the Case Management Conference, unless specifically ordered otherwise by the Court.

The Judicial Council of California has adopted two forms that are important in the implementation of the Act.

They are Notice of First Case Management Conference, Form DR-100, and Case Management Conference Questionnaire, Form DR-110.

All the following documents must be served to all defendants within 60 days and proof of service returned to the court as soon as practicable.

- **Summons** - one endorsed copy.
- **Complaint** - one endorsed copy.
- **Lis Pendens** - one recorded copy of the Lis Pendens and one endorsed copy. The original is forwarded to Legal after recording is completed.
- **Notice of First Case Management Conference**

CT Legal is responsible for serving a copy of Notice of First Case Management Conference on each defendant and providing the Court with proof that such service was accomplished.

The following is suggested language to use as a Notice:

In accordance with the California Rules of Court 1901 through 1914 and the Trial Court Delay Reduction Rules of _____ County. The matter is set for a Case Management Conference on _____. Pursuant to Rule 1905, this case is assigned to The Honorable _____.

9.03.00.00 - SERVICE OF SUMMONS, COMPLAINT, AND LIS PENDENS

9.03.01.00 General

The assigned CT Legal office is responsible for arranging service to all defendants. The Authority may on occasion be asked to perform and/or assist with these services. If the Authority is asked to proceed with service they will do so as directed by the CT Legal Office.

9.03.02.00 Time for Defendant to Answer

After personal service has been made, the defendant has 30 days to appear.

9.03.03.00 Establishing Date of Value

CT Legal shall promptly serve all defendants in the condemnation action. The date of value is the date the complaint is filed (commencement of the action) if the case is brought to trial within one year of the filing. To retain the date of value, extended delays should not be allowed.

If the case is not brought to trial within one year, the date of value is the date the trial begins. Except, if the delay is caused by the defendant, the date of value is the date the complaint is filed. A date of value is also established on the date when a deposit of probable compensation has been made (CCP 1263.110 through 1263.150).

To reduce appraisal revisions, re-appraisals, or revising offers due to challenges of a fair market value offer (Government Code 7267.2), the deposit of probable compensation should be made after the suit is filed. This ensures that, if they so desire, withdraw the amount deposited which they are entitled to up to the amount of said deposit, which reflects current market value.

9.03.04.00 Return of Summons

A condemnation action shall be dismissed without prejudice and no further proceedings taken if Summons and Complaint have not been served and returned into court within three years from the commencement of the action (CCP sec. 583.210 and 583.250). Local “fast track” rules may require return of summons within a short period of time, e.g., 60 days, after commencement of the action. Violation of these rules may result in sanctions, including dismissal of the action if lesser sanctions are ineffective. Therefore, return of summons or other proof of service must be made to the CT Legal Office within 50 days so the documents can be filed with the court within 60 days. This requires the Authority to check services of Summons, as shown by the condemnation record on any given action, sufficiently in advance of the expiration of the three-year period. This permits the service of any un-served defendants with whom settlement has not been made or who have not filed an answer or other appearance in the action.

As noted in Section 9.03.20.00, subsequent or additional Summons may be issued. However, an additional Summons does not extend the three-year period within which the Summons must be served.

In some cases, it may be necessary to publish Summons, ordinarily for 30 days. Time is required to investigate and prepare papers to obtain an Order for Publication. The defendant is allowed an additional 30 days after completion of publication to answer before a default can be entered. For these reasons, matters relating to service of Summons must be checked and final decisions made and implemented not later than two and one-half years (30 months) after the case has commenced.

9.03.05.00 [Hold for Future Use]

9.04.00.00 - USE OF INDEPENDENT EXPERTS

9.04.01.00 Qualified Independent Experts

CT Legal shall maintain records of individuals and firms qualified as experts in appraising property rights in their geographic area. These records shall show the education, experience, and other qualifications of each individual and firm. Although a contract may be entered into with a firm, the name of the individual must be designated to guarantee the report is prepared by a qualified expert.

9.04.02.00 Pre-qualification of Independent Experts

When it is necessary to contract for independent expert services with individuals or firms not previously qualified, CT Legal shall obtain from a candidate for qualification:

- A completed application for independent expert.
- An appraisal report previously prepared as an example of the expert's work.

CT Legal is responsible for approving in consultation with the Authority the qualifications for all independent experts. Their investigation of an expert's qualifications should reveal if an expert is already pre-qualified in Caltrans or another agency which hires this type of expert. Information obtained from another agency may be useful in determining an expert's qualifications.

9.04.03.00 Time and Method of Selection

As soon as it becomes apparent an eminent domain complaint will be filed, the Director of Real Property or the delegated representative shall consult with the CT Legal on whether to employ independent experts.

The assigned CT Legal office and Authority shall coordinate their efforts in determining the experts qualified to appraise the particular property and deliver the report within a specified time.

9.04.04.00 [Hold for Future Use]

9.05.00.00 – CONTRACTS WITH INDEPENDENT EXPERTS

9.05.01.00 Pre-trial Settlements Over Approved Appraisal Amount

To meet State and Federal requirements for establishing and updating just compensation, the Authority and CT Legal will handle all settlements that exceed the amount of the approved appraisal as follows:

- Prior to filing of an eminent domain suit and hiring of an independent expert witness, any settlement for property that exceeds the amount of the approved appraisal is considered an Administrative Settlement (see Section 8.01.29.00).
- Once an eminent domain suit has been filed and independent expert witness has been hired, any settlement proposal based upon new appraisal data from the expert witness is considered a Legal Settlement (see Section 8.01.29.01). For Legal Settlements, an Attorney's Legal Settlement Memo recommending approval must be received and attached to any Legal Settlement.

9.06.00.00 – [Hold for Future Use]

9.07.00.00 - TRIAL PREPARATION PROCEDURES

9.07.01.00 General

It is Authority policy to strive for settlement in each case, including the time during which the parcel is subject to condemnation proceedings. Acquisitions should attend all settlement and pretrial conferences.

9.07.02.00 Final Offer of Compensation to Defendant

Subsequent to trial, the Court may determine that the State's final offer of compensation was unreasonable and defendant's offer of settlement was reasonable in light of evidence submitted and compensation awarded. In this case, costs allowed to defendant shall include defendant's litigation expenses (CCP Sections 1250.410 and 1033.5. Litigation expenses include reasonable attorney fees, appraisal fees, surveyor fees, and fees of other experts.

A statutory offer, while made in contemplation of the possible exposure to litigation costs, is not to be justified solely on that basis. The CFRs must also be used to justify such an offer.

Since it is imperative that the required final offer reflect all the compensation in the proceeding, the Director of Real Property, or designee, and the State's attorney must discuss and have complete understanding on all matters relating to the compensation in the proceeding.

The Authority must observe the following procedures in cooperation with the CT Legal Office.

PROCEDURES FOR FINAL OFFER OF COMPENSATION
• The fee appraiser submits the appraisal to the CT Legal Office 90 days or more prior to trial. • The CT Legal Office forwards a copy of the independent appraisal to the Authority with a recommendation that it be authorized for use in negotiation or trial. • Once Authorized by the Authority, Acquisitions or CT Legal may use the condemnation appraisal for either negotiation or trial purposes. • Forty-five (45) days or more prior to trial, the State's attorney and the Director of Real Property determine whether it is in the best interest of the Authority to file a final offer of compensation (statutory offer) with the Court in an amount that exceeds the authorized appraisal. • The CT Legal Office files the statutory offer at least 20 days prior to the date of the trial (CCP Section 1250.410). A statutory offer should be supportable by the CFRs and the Administrative Settlement/Legal settlement guidelines. Said statutory offer shall include all elements of required compensation, including compensation for loss of goodwill, if any, and shall state whether or not interest and costs are included. • If the final offer is accepted, the Authority summarizes the discussions with the attorney in writing to support and document acceptance and settlement. This agreement may be placed in the Parcel file if no confidentiality is intended.

9.07.03.00 Photographs

The Authority shall have sufficient photographs taken showing the condition of the subject property so the State's attorney will have a complete picture of its condition. Preferably photographs will be taken during the appraisal, acquisition and relocation meetings to document the condition of the property and assist in creating an inventory for appraisal and relocation purposes. The photographs should be taken prior to construction and conform to the date of the commencement of the action, as nearly as possible.

9.07.04.00 Court Exhibit Maps and Engineering Witness

Right-of-Way Engineering provides testimony and preparation of exhibit maps for use in the court trial. See the Right-of-Way Engineering Chapter for instructions.

9.07.05.00 Setting Case for Trial

A parcel in condemnation should be set for trial after all parties having an interest therein have been served, have filed appropriate appearances, or are in default. The Director of Real Property, or designated representative, is responsible for advising t the assigned CT Legal attorney to request that the parcel be set for trial.

9.07.06.00 Jury Fees

Once a jury has been demanded, it is CT Legal/Authority's responsibility to ensure that jury fees are deposited with the court at least 25 days prior to the trial date. It is also CT Legal/Authority's responsibility to ensure jury fees and court reporter fees are paid during and after a trial. County courts vary on their requirements of the paying of jury costs during the trial. If the Court is able to delay receipt of the costs until the trial concludes, obtain an invoice from the Court Clerk and order an expedited check. CT Legal/Authority is responsible to deliver the check to the Court and obtain a receipt.

9.07.07.00 Other Court Deposits

Allowance of fees and payment procedures are included in Sections 8.01.35.00, 8.63.11.00, and 8.68.02.00.

9.08.00.00 - POSSESSION PRIOR TO JUDGMENT

9.08.01.00 Order for Possession

CT Legal should not obtain an Order for Possession (OP) until physical possession of the property is needed for construction or related purposes. An OP may be applied for *ex parte* concurrently with filing of the Summons and Complaint papers or later. The Court issues the OP if it determines the Authority is entitled to acquire the property by eminent domain and has deposited the probable compensation. An OP is supported by depositing probable compensation in the Condemnation Deposit Fund of the State Treasury.

The deposit is made on a case based on the just compensation value in the appraisal as an unsegregated offer, regardless of the number and kinds of interests in the parcel. No deposit is made for fictitious defendants or any separate interest. The need for the OP and variations in amount requested from the approved appraisal must be explained.

A completed Request for Transfer of Funds (Form RW 09-19) is sent in sufficient time to allow for verification of funding availability and encumbrance of the required amount prior to application to the court for an OP. See Condemnation Flowchart Item 10. The condemnation support personnel will transmit the Form RW 09-19 to Authority's Financial Office to request issuance of CA-13, Notice of Transfer of Funds.

9.08.02.00 Issuance of Order for Possession

Based on information supplied by the Authority, the State's attorney will prepare a Notice of Deposit and Summary of the Basis for the Appraisal for signature by the Appraiser. The date of the deposit of funds is inserted in the Notice using the CA-13 date. The Notice and Summary must accompany the Application and Order for Possession when it is the submitted to the Court. Actual appearance in court may be required in some jurisdictions manner as provided in CCP Section 1255.450 for service of OPs. This fulfills technical service requirements set forth in CCP Section 1255.020. A Superior Court judge must sign the OP submitting the CA-13, Notice, and the Application.

The original OP is filed with the County Clerk, together with the Notice and the Application. The Court may ask to see the CA-13 when the OP is signed, or it may require the CA-13 to be attached as an exhibit for the Notice of Deposit in the County Clerk's case file. When the documents are filed, sufficient copies must be conformed and sent to the CT Legal Office for service.

9.08.03.00 Service of Notice of Deposit and Summary of the Basis for the Appraisal

CT Legal initial service of the Notice of the OP is to be served after deposit of funds and the service of the Summons and Complaint. CCP Section 1255.020 requires such service to be made on all parties named in the suit in the same manner as provided in CCP Section 1255.450 for service of OPs. This fulfills technical service requirements set forth in CCP Section 1255.020.

A court award draws interest from the date possession is to be taken, as specified in the Order. If any portion of the deposit is withdrawn prior to judgment, that portion does not draw interest.

9.08.04.00 Increase or Decrease in Amount of Deposit

The Authority, or any other party having an interest in the property, may move to have the Court re-determine and order the appropriate deposit. Or, the Court on its own motion can order the deposit increased (CCP Section 1255.030). The CT Legal office will notify the Authority immediately when re-determination of the deposit is sought by the any of the parties, or the Court.

If the deposit is to be decreased pursuant to CCP 1255.030 (a) and (e), the CT Legal Office prepares a Notice of Motion for Order to Decrease Deposit and to Release Balance of Deposit to Plaintiff, at the request of the Real Property Branch. CT Legal serves the Notice of Motion on all parties along with the Declaration in Support of Motion for Order to Decrease Deposit and to Release Balance of Deposit to Plaintiff. Decrease below the amount already withdrawn is prohibited by statute.

The State's attorney prepares the Motion and Order. After the Order is signed by the Court and filed, and served on all parties.

9.08.05.00 Deposit Initiated by Defendant

When the property to be acquired is a dwelling of not more than two units and at least one is occupied as a residence by a defendant owner, or the property is subject to a leasehold interest, the resident or the lessor may initiate a deposit. The resident or lessor serves a notice on the State requiring the State to deposit the probable compensation at a specified date and not earlier than 30 days after service of said notice. CCP Sections 1255.040 and 1255.050 provide certain sanctions against the State if such deposits are not made. The Authority should contact the CT Legal Office if it receives such a notice.

The CT Legal Office will probably receive the notice and will forward the notice and request for deposit to the Authority to arrange for the deposit.

The Authority may obtain an OP, if it chooses, 30 days after making a deposit under this section. The Authority should inform the CT Legal Office whether possession is desired.

9.08.06.00 [Hold for Future Use]

9.08.07.00 Preparation of Excess Land Inventory Record

The assigned CT Legal Office, at the time of filing the OP, notifies the Authority whenever excess lands are included in an OP. The Authority must prepare an Excess Land Inventory and Disposal Record inventory card.

9.08.08.00 [Hold for Future Use]

9.08.08.01 Time Requirements

If the property is lawfully occupied by a person dwelling thereon or improved as a farm or business operation, service of the OP and the 90-Day Notice to be issued by the Authority's Relocation Assistance may be made concurrently. When there is concurrent service, the effective dates of both documents must coincide. The Relocation Assistance will serve a 30-Day Notice to Vacate at the end of the first 60 days of the Information Notice. Close coordination is required between the Authority's Relocation Assistance and the CT Legal office to have the effective dates coincide (see Section 10.03.10.00).

In all other cases, service shall be made not less than 30 days prior to the time possession is to be taken. If uncertain, always give 90 days' notice. Service of the OP may be made at the same time as or following service of Summons.

9.08.08.02 Circumstances

Service shall be made not less than 30 days prior to the time possession is to be taken pursuant to the Order under the following circumstances:

1. The Authority has deposited probable compensation pursuant to a deposit initiated by an owner (CCP 1255.040 and 1255.050) **or**
2. The Authority has deposited the probable compensation and the defendant in possession has either:
   - Expressed in writing a willingness to surrender possession of the property on or after a stated date, or
   - Withdrawn any portion of the deposit.

If the Authority seeks possession on either of the two conditions in 2. above, CCP Section 1255.460 requires that the OP:

- Recite that the OP is made pursuant to CCP Section 1255.460.
- Describe the property to be acquired. The description is in the Complaint.
- Include the date after which the Authority is authorized to take possession. This can be the date requested by the defendant, or, if a portion of the deposit is withdrawn, not less than 30 days after the date the deposit was made.

9.08.09.00 Emergency Situations - No Appraisal

Emergency projects are those that preserve health, safety, welfare, or property. In emergency situations where there is insufficient time to complete an appraisal of a required property prior to the date possession is needed, The Authority may approve use of an estimated compensation. The appraiser executes an affidavit stating:

- The reasons why possession must be obtained immediately.
- That an adequate appraisal cannot be made in time.
- The status and estimated date of availability of the appraisal.
- A good faith estimate of the probable amount of compensation.

CCP Section 1245.230 requires an appraisal and offer thereof be made within 90 days of the adoption of a Resolution of Necessity. The CT Legal Office prepares a motion requesting the Court to accept the estimated compensation as the deposit. The motion accompanies the Notice of Transfer of Funds, the OP, and the affidavit. The Court issuance of the OP requires compliance with the affidavit, which must be as accurate as possible.

9.08.10.00 Order for Possession - 3-Day Notice

The Court may make an OP to be effective in not less than three days and as it deems appropriate under the circumstances of the case if a deposit of probable compensation has been made and the Court finds:

- The Authority has an urgent need for possession, and

- Possession will not displace or unreasonably affect any person in actual and lawful possession.

When asking the CT Legal Office for a 3-day OP, the Authority shall state the justification. CT Legal prepares the Application, the Declaration, and the OP and sends them to the Authority. The designated Authority Right-of-Way Agent shall review and sign the Declaration and follow procedures for filing the OP.

9.08.11.00 [Hold for Future Use]

9.08.12.00 Notice of Tax Cancellation

Upon securing possession under OP, the Authority must notify the appropriate local taxing authorities of the action taken. (see Acquisition Section 8.66.04.00 for variations in notice requirements.)

9.08.13.00 Stay of Order for Possession Because of Hardship

Within 30 days of service of an OP, a defendant or occupant may request the Court to stay its Order and set a new possession date or impose terms and conditions on the property's use. The Court may do this upon a dual finding of fact, e.g., substantial hardship on the defendant or occupant versus the Authority's need in seeking early possession. The Court may make an Order appropriate to the circumstances.

A defendant may make a motion to stay the Order, in which case the assigned CT Legal Office coordinates with the Authority to present evidence in support of obtaining the OP.

Where a person occupying property refuses to move by the possession date indicated in the OP, possession can be obtained through a Writ of Assistance. The Authority notifies the CT Legal Office to initiate this process as necessary.

9.08.14.00 Disposing of Building Improvements on Property Under Order for Possession

The right to use the land under OP includes the right to dispose of improvements. The Property Management chapter includes instructions covering the issuance of Bills of Sale for such improvements. Right-of-Way Improvements and Personal Property Inventory and Disposal Record must be prepared at the time of obtaining possession. If there is a dispute as to whether an item is an improvement, the court can be asked to make a determination. (see CCP 1260.030.)

9.08.15.00 Owner Abandons Personal Property

If an owner refuses to remove personal property or abandons it, the Authority shall refer the problem to the CT Legal Office. It may be necessary to arrange through a law enforcement agency for removal and storage of the personal property in a public warehouse for the account of the owner.

9.09.00.00 - WITHDRAWAL OF DEPOSIT BEFORE JUDGMENT

9.09.01.00 Defendant's Rights

Under CCP Section 1255.210, a defendant may file and serve a verified application for withdrawal of all or a portion of the deposit. Defendant can also have the deposit invested for the benefit of all defendants upon proper motion to the Court (CCP Section 1255.075). Interest on the amount withdrawn ceases at the time of withdrawal.

9.09.02.00 Objections to Withdrawal

The Authority has 20 days after receipt of service of the Application to object to the withdrawal or until the time for all objections has expired, whichever is later. CT Legal shall immediately prepare the necessary objection on verification from the Authority that there are currently other parties to the proceeding or parties believed to have interests in the property.

The Authority may file an objection to the withdrawal when other parties to the proceeding are known or believed to have an interest or when the bond filed by the applicant (or sureties therein) is insufficient. The Court may require that a bond (undertaking) be filed when there are conflicting claims to the amount sought to be withdrawn or when the amount to be withdrawn exceeds the original deposit, which had been increased. (see CCP Sections 1255.230 and 1255.240.)

CT Legal must file the objection with the Court and serve the applicant within 20 days of receipt of service. CT Legal must expeditiously serve all other interests with a notice advising that they may appear within 10 days of service of the notice to object to the application for withdrawal.

9.09.03.00 Application for Withdrawal of Deposit

Because of the limited time involved, CT Legal must send, without delay, a verified application to the Court. The application shows the applicant's interest in the property and the amount to be withdrawn. The State's attorney contacts the Authority to get the names and addresses of all parties having an interest in and/or possession of the property. Since this information must be provided at once, it is imperative that the Authority have a current title report or litigation guarantee. The State's attorney prepares a Notice of Application for Withdrawal of Deposit and Declaration of Service and serves it on the parties whose names and addresses are set forth therein. The Notice must be served in time for a return of service to be made to the Court within the required 20-day period.

At the time the suit is requested, Acquisitions should provide to the Authority a list of all recorded and unrecorded interests. The agent should identify which funds are to be allocated to a lessee and which amount to the owner. The Authority will provide said list to CT Legal as part of the suit request. The attorney should be informed if the defendants are disputing allocation of funds.

9.09.04.00 Service of Application for Withdrawal and Declaration of Service

CT Legal prepares a Notice and Declaration of Service of Application of Withdrawal and forwards it to the Authority. CT Legal serves the Notice and Declaration on all parties who have not previously appeared or who have not been served with a Summons. Service is by personal service unless the party resides out of state, has departed from the state, or cannot be found with due diligence within the state. Then, service may be made by registered or certified mail sent to such party's last known address.

CT Legal serves, by regular mail, those parties who have previously been served with a Summons or who have appeared in the proceeding and their attorneys of record. The service includes parties whose default has been entered, but not parties who have disclaimed or who have been dismissed.

The server shall forward the Declaration of Service to the State's attorney without delay once all parties have been served. CT Legal prepares a report of service and files and serves the report on the applicant. The report contains the names of parties served and the dates of service, as well as the names and last known addresses of parties known to or believed to have an interest but who have not previously appeared or who have not been served personally.

It is important that the Authority's records reflect any withdrawal so the amount is credited when settlement is reached. The withdrawal must also be reflected in the record of deposits to assure that any subsequent Order authorizing withdrawal of Deposit directs the release of no greater amount than the balance remaining on deposit after payment of the earlier withdrawal.

The Court order to withdraw all or any portion of the amount deposited by the State will not include interest on such amount to the date of withdrawal. Payment of interest is made only after judgment has been rendered. Separate computations are necessary in all cases where a withdrawal has been made from the deposit. Interest is computed in the judgment on the principal amount of compensation from the OP date to date of payment of the amount withdrawn. A separate computation is made on the balance of the award from the date of withdrawal to the date of payment of the remaining balance.

9.09.05.00 Procedure for Withdrawal

After all notices are given, the Court holds a hearing to determine the amounts to be withdrawn and who shall withdraw them. If no other party has a monetary interest in the property, no hearing is necessary. If no party having an interest in the property appears and objects within 10 days after service of notice, all objections are waived and a hearing is not necessary.

The Order of the Court authorizing the withdrawal directs either the State Treasurer or the Court (County Clerk) to pay the amount authorized to the defendant or other persons determined to have an interest in the property. Prior to issuing payment, the defendant or other persons authorized to receive payment are to complete the Payee Data Record (STD. 204). This information is to be forwarded to the appropriate entity processing the payment request. Whether the Order is directed to the State Treasurer or to the County Clerk depends on whether the original deposit was made with the County Clerk or into the Condemnation Deposits Fund in the State Treasury. In most cases, the deposit is in the State Treasury (CCP 1255.070).

It is preferred that CT Legal take the lead on the mailing of the Certified Order to the State Treasurer rather than have the owner's attorney. Payment is made as directed by the Order, usually to the defendant or defendant's counsel. The Authority will provide the State Attorney, with a copy of a Claim Schedule. Payment is made directly to the defendant or other parties authorized in the Order. The Authority should follow up on applications for withdrawal to determine whether such payments have actually been made. CT Legal obtains copies of the Order and forwards one copy to the Authority.

9.09.06.00 Waiver of Defense

If any portion of the money deposited is withdrawn, the party waives all defenses to the action except a claim for greater compensation. The amount withdrawn shall be credited upon the judgment ultimately entered in the proceeding.

9.09.07.00 Waiver of Objection

If no other party has objected and there is no independent reason for the Authority's objection, the Authority's objection shall be waived when CT Legal forwards the Report of Service, Notice of Application for Withdrawal and Declaration of Service to the Court. CT Legal shall file a copy of the waiver signed by the attorney with the Court and serve it on the applicant.

9.09.08.00 Deposit—Conflicting Claims to Amount Withdrawn

The Court must determine whether the applicant shall file a bond (undertaking) to secure a third party claimant. If the Court allows withdrawal and parties have not been served, the Court may require a bond by the applicant to indemnify the Authority against liability. Unless the bond is required because of an issue as to title, the applicant can recover premiums paid as part of recoverable costs in the eminent domain proceeding.

9.09.09.00 Repayment of Amount of Excess Withdrawal

A party who withdraws an amount in excess of any entitlement, as finally determined, must pay the excess to the party entitled thereto. The Court enters judgment to that effect.

The judgment does not include interest except in the following cases:

- **Withdrawal by Another Defendant** - An amount to be paid to a defendant shall include legal interest from the date of its withdrawal by another defendant.
- **Excess Withdrawal -** If the defendant who requested the Authority to increase the original deposit has made an excess withdrawal, any amount of the excess attributable to the increased deposit shall be repaid to the Authority including legal interest from date of withdrawal.

In the case of an excess withdrawal, the Court may grant a defendant up to one year to repay the Authority. If the Court authorizes such delay in repayment, the Authority records an abstract of the judgment in the appropriate county. If repayment has not been made by the expiration of the authorized delay period, the Authority shall notify CT Legal. It determines the appropriate means to recover the excess withdrawn plus interest, if applicable.

9.10.00.00 - JUDGMENT OF CONDEMNATION

9.10.01.00 General

CT Legal prepares the Judgment for filing with the Court.

9.10.02.00 Judgment by Default

The Authority takes defaults in condemnation proceedings only after making a diligent effort to induce the property owner to answer or file a Disclaimer. Prior to entering a default under any condemnation proceeding, CT Legal sends a letter to the property owner giving a final date for appearance.

The Court requires military affidavits before granting a judgment by default. The party serving the Summons and Complaint must obtain sufficient facts to thereafter make a military affidavit, if required.

9.10.03.00 Time of Paying Judgment

CCP Section 1268.010 requires the plaintiff to pay the full amount required by the judgment within 30 days after final judgment.

The Authority will make every reasonable effort to pay the amount of the award on the date the judgment is entered to keep payment of interest to a minimum. The Authority should not have the judgment signed until it is in a position to deposit the award, plus interest under OP if any, computed to the date the judgment will be signed and entered. If a motion for a new trial will be made by the State, State's attorney will request the Authority to delay making the deposit.

9.10.04.00 Method of Paying Judgment

Payment is made by either or both of the following methods:

- **Payment of Judgment Directly to the Defendant** — Any amount that the defendant has previously withdrawn shall be credited as a payment on the judgment.
- **Deposit of Money with the Court Pursuant to CCP Section 1268.110** — It is State's practice to pay the defendant directly rather than deposit into Court. The State may deposit with the Court when there are outstanding issues regarding settlement.

9.11.00.00 - DEPOSITS AND SCHEDULES

9.11.01.00 Deposit of Award and Costs

The Authority makes two separate deposits and/or payments:

- **Amount of Award** - plus interest on possession (if any), computed to the date of payment of the award computed at the apportionment rate. (see CCP Sections 1268.310 and 1268.350.)
- **Amount of Defendant's Costs** - the State's attorney will advise the Authority of the amount of the property owner's legal costs. (see Section 8.01.35.00.)

9.11.02.00 Interest for Possession

If an OP is involved, the Authority pays the award, together with interest, to the party directed in the judgment. The payment may be made to the defendant, defendant's counsel, or to the court.

9.11.03.00 Interest on Award

Compensation, including damages, awarded in an eminent domain proceeding draws interest pursuant to CCP Section 1268.310 from the earliest of the following dates:

- The date of entry of judgment.
- The date the plaintiff takes possession of the property.
- The date after which the plaintiff is authorized to take possession of the property as stated in an OP.

The compensation award ceases to draw interest pursuant to CCP Section 1268.320 on the earliest of the following dates:

- The date the amount deposited as probable compensation has been withdrawn by the person entitled thereto.
- The date of deposit of the amount of the award.
- The date a person is paid the amount to which they are entitled.

9.11.04.00 Offset Against Interest

If after the date interest begins to accrue (date of possession), the defendant continues in actual possession of or receives rent, issues, or profits from the property, the value of such possession and of such rents or other income is offset against the interest that accrues during such period. [CCP Section 1268.330(b)] Value of possession should be presumed to be the rate of interest on the compensation award for the period defendant continues in possession and receives rent or other income. The Authority gathers the necessary facts to determine whether an offset against interest should be made so this issue may be tried in the condemnation proceedings.

9.11.05.00 Payment of Judgment

When the judgment payment is deposited with the Court, the Authority must obtain a Certified Judgment directing a warrant to be issued to the Clerk of the Superior Court (Clerk) in order to obtain the Final Order of Condemnation (FOC) and CT Legal will schedule delivery of the warrant and a copy of the Judgement to the Clerk and obtain a receipt. The receipt by the Clerk is necessary.

When the judgment payment is paid to the defendant or to the defendant's counsel, the Authority/CT Legal must have the party sign a receipt of funds and provide a satisfaction of judgment or partial satisfaction of judgment for the defendant or the defendant's counsel to sign. The Authority or CT Legal will determine who will file the document once it is accepted.

9.11.06.00 Appeal or Motion for New Trial by Defendant - State in Possession

The Authority should deposit the amount of the judgment at time of entry of judgment to stop the accrual of interest. Except where the defendant has withdrawn the judgment award, the State should not obtain the FOC until the appeal is terminated and the judgment becomes final. Otherwise, the State would be responsible for creating a cloud on the title should the judgment be reversed.

It is particularly important that the Authority not release or cancel the deposit under an OP during the pendency of an appeal. If the judgment is reversed, State's possession would not be supported by the constitutionally required deposit.

9.11.07.00 Scheduling of Judgments for Payment

To schedule payment for judgments, the Authority submits Form RW 09-20, Condemnation Check Request-Invoice, to Authority Financial Office together with, but not limited to, the following items:

- **Judgment in Condemnation** - A certified copy specifying the amount of compensation to be paid by State.
- **Interest Calculation Worksheet** - one copy, if applicable.
- **Federal Participation Memo** (Form RW 08-16) - two copies.
- **Payee Data Record (Form STD. 204)**

Explain in detail any difference between the amount of the judgment and the amount being scheduled and not accounted for above.

A copy of the Judgement is retained in Authority files.

9.11.08.00 Tax Identification Numbers

Requirements for securing Tax Identification Numbers in condemnation cases are identical to the regular acquisition procedures described in Manual Section 8.04.43.00. Every effort should be made to secure Payee Data Records for all condemnees.

9.12.00.00 - FINAL ORDER OF CONDEMNATION

9.12.01.00 Recording of Final Order of Condemnation (FOC) - Vesting of Title

CCP Section 1268.030(c) provides that title to the property described in the FOC vests in the State upon the date that a certified copy is recorded in the Office of the Recorder of each county in which the property is located. After the judgment has been entered and the judgment is paid, the Judge signs the FOC upon being shown the receipt for deposit or a signed, full Satisfaction of Judgment. A Satisfaction of Judgment signed by the defendant or defendant's attorney must be presented with the FOC if payment has been made directly to the defendant. Since payment for the property will have been deposited prior to issuance of the FOC, it is essential that the required certified copy be recorded immediately to vest title to the property in the State.

After the FOC is recorded, CT Legal prepares, serves, and files a Notice of Entry of Judgment, Deposit Pursuant to Judgment, and Notice of Recording of Final Order on all defendants or the defendant's counsel unless Notice has been waived in the judgment. If Notice is waived, a courtesy copy of the FOC may be mailed to the previous owner of the property.

9.13.00.00 - SETTLEMENT AND DISMISSAL

9.13.01.00 Settlement by Judgment After Entry Into Right-of-Way Contract

In some cases where a negotiated settlement has been made with a defendant through a Right-of-Way Contract, it may be necessary to secure a Judgment in Condemnation or a Default Judgment for technical or other reasons, such as clearing the remaining interest from title. Before Judgment in Condemnation is secured, a written agreement should be entered into with the defendant or the defendant's attorney providing for the cancellation of all contractual obligations included in the Judgment. Failure to do this creates duplicate obligations.

The Agreement of Cancellation should be executed in duplicate and distributed as follows:

- One copy to the defendant or the defendant's attorney.
- One copy affixed to the executed original Contract in the Authority's file.

If the defendant, or the defendant's attorney, refuses to enter into such a written agreement, the Authority should submit complete information to CT Legal with a request for instructions on how to proceed to complete the acquisition.

A DM Series - Actual Possession clause must be included in the Deed whenever the State has the right to take possession under Court order or has taken actual possession through Right of Entry or OP. (see Section 6.06.11.00.)

9.13.02.00 Settlement by Right-of-Way Contract

Whenever a parcel included in a condemnation suit is settled by Right-of-Way Contract, the action shall be dismissed. If a deposit has been made for an OP, provision should be made for its release. CT Legal should not request a dismissal until it obtains consent from all attorneys who have filed an answer alleging an interest in the parcel and escrow has closed. The attorneys representing such interests should be advised of the proposed settlement and the provisions concerning the distribution of the payment.

9.13.03.00 Settlement After Withdrawal of Deposit

Whenever a withdrawal of funds has been made by the defendant and a negotiated settlement is subsequently reached, the Contract shall include a provision wherein the defendant acknowledges receipt of the amount withdrawn as a credit to the State against the total payment provided for in the Contract. A similar provision shall also be included if settlement is by stipulated judgment.

9.13.04.00 Approval of Stipulated Judgments

CT Legal will secure approval from the Director of Real Property, or designee, before entering into a Stipulated Judgment whenever:

- The amount of the stipulation is substantially in excess of the highest value based upon an authorized appraisal report that would have been testified to if the action had proceeded to trial. Any limitations under current delegations will apply.
- When the proposed payment is not substantially at variance with the authorized appraisal report but where the settlement (with the exception of the form of the instrument) does not conform to the criteria and conditions for Authority-approved contracts. (See Acquisition Chapter.)
- When it is proposed to exchange noncontiguous excess land. (see Section 8.03.07.00.)

9.13.05.00 Release of Deposit - Settlement by Judgment

The Order for Release of Deposit can be filed with the Final Order of Condemnation. CT Legal should notify the attorney of record upon payment of the judgment, as specified in the judgment, so the FOC and Release can be prepared.

9.13.06.00 Abandonment of Proceedings

Under certain circumstances, the Authority may abandon all or part of a parcel after suit has been filed. If abandonment is contemplated, the Authority should consult with CT Legal.

9.14.00.00 - DEPOSIT RELEASES

9.14.01.00 Responsibility for Release of Deposit

The Director of Real Property, or designee, is responsible for the prompt release of deposits. The Authority should review the status of these deposits periodically to ensure release immediately following the vesting of the property in the State, regardless of whether title was acquired through Court proceeding or by deed.

9.14.02.00 Release of Deposit, or Cancellation of Deposit, After Filing of Suit

When a parcel is settled by a Judgment in Condemnation, the condemnation deposit is released by court order (Request and Order for Release of Deposit). CT Legal will prepare said document and will coordinate with the Authority, for the filing of the Order. It is preferred that the Order for Release of Deposit be filed concurrently with the Final Order of Condemnation. Three copies of the Order should be delivered to the Court. One of the copies is to be received by the Court along with a request that the Court certifies two copies of the Order, upon filing of said documents.

If the case is dismissed, the Authority is responsible to cancel the deposit. The standard release request form, RW 09-21, should be filled out canceling the deposit and stating the reason the deposit is canceled. The reason for the cancellation is identified on the form by checking the appropriate box. A court order is not required.

9.14.03.00 Cancellation of Deposit Prior to Filing of Suit

A condemnation deposit on a parcel settled by Right-of-Way contract or decertified prior to a case being filed needs to be canceled by the Authority. The standard release request form, RW 09-21, should be filled out by the Authority canceling the deposit.

The standard release request form, RW 09-21, Release of Condemnation Deposit, contains the necessary language for the Authority's affidavit; necessary explanatory data is added in the appropriate boxes. In addition, for stipulated and court-ordered judgments, one court-certified copy of the Request and Order for Release of Deposit must be included.

9.14.04.00 Processing of Order for Release of Deposit

The Authority shall transmit the Release of Condemnation Deposit (RW 09-21) and one certified copy of the Order for Release of Deposit. Authority Financial Office arranges for the transfer of the deposit from the Condemnation Deposits Fund to the Authority.

9.15.00.00 - GENERAL CLOSING PROCEDURES

9.15.01.00 Ordering Policy of Title Insurance

After recordation of the FOC, Acquisitions shall secure a Policy of Title Insurance to insure the interests acquired by State.

9.15.02.00 Record of Condemnation

Upon completion of a trial, CT Legal forwards a copy of the attorney's Trial Report to Director of Real Property. Trial Reports are not required for stipulated judgments, but written concurrence the Director of Real Property for all Legal Settlements. CT Legal submits Supplemental Memoranda to Director of Real Property, or designee, as events occur covering retrials, appeals, or situations where the Court has amended the original verdict.

9.15.03.00 Improvements Acquired

The Authority shall list all improvements acquired through condemnation trial or secured under an OP on Right-of-Way Improvements and Personal Property Inventory and Disposal Record in the same manner as those acquired through Right-of-Way Contract. When improvements are acquired by condemnation but without an OP, the inventory is prepared concurrently with Page 3 (Alternate) of the AQC.

9.15.04.00 Prepaid Tax Cancellation

Prepaid current taxes on property acquired after the lien date, which would have been subject to cancellation if unpaid, are recoverable from the State. Money owed by the State for the tax refund is paid as part of the defendant's cost bill. The State arranges to recover this money from the taxing agency pursuant to the Revenue and Taxation Code.

When property is acquired by eminent domain, the following requirements apply to recovery of prepaid taxes:

- If the State has taken possession of the property prior to judgment, the property owner must claim payment for these taxes as part of the cost bill filed after judgment in condemnation.
- If the State has not taken possession of the property prior to judgment, the property owner must claim payment for these taxes by means of a supplemental cost bill filed not later than 30 days after recording of the FOC (see Section 8.66.03.00 of the Acquisition Chapter).

9.15.05.00 Filing of Recorded Document

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CALIFORNIA High-Speed Rail Authority

CHAPTER 10

RELOCATION ASSISTANCE
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10.01.00.00 - GENERAL

10.01.01.00 Relocation Assistance Program

This chapter covers procedures for implementing the Relocation Assistance Program (RAP) in accordance with applicable laws, regulations, and policies. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (as amended), Title 49 Code of Federal Regulations (CFR) Part 24, Government Code 7260 et. seq. and 25 California Code of Regulations Section 6040, et. seq. serve as the basis for the policies and procedures of the California High-Speed Rail Authority (Authority).

10.01.01.01 Purpose

The purpose of RAP is to ensure that persons displaced as a result of the high-speed rail project are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and to ensure that the Authority implements the Uniform Act and 49 CFR 24 in a manner that is efficient and cost effective.

All relocation services and benefits are administered without regard to race, color, national origin, persons with disabilities, religion, sex or age in compliance with Title VI of the Civil Rights Act (42 U.S.C. 2000d, et seq.), Title II of the Americans with Disabilities Act of 1990, Executive Order 12250, and the Age Discrimination Act of 1975.

10.01.02.00 Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970 (as amended)

Public Law 91-646, which is known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), became effective January 2, 1971. For the first time, the United States had adopted measures to be uniformly applied whenever the federal government acquired real property or when property acquisition involved the use of federal funds.

The Uniform Act sets minimum standards of benefits and compensation for relocation advisory and financial benefits, and established basic standards and requirements for appraisal and acquisition to be followed in acquiring real property. The Uniform Act is not an entitlement program, but rather a reimbursement program to assist in relocating to a new site.

10.01.02.01 Title 49 Code of Federal Regulations Part 24 (49 CFR 24)

The CFRs provide the rules that must be followed in order to comply with the law. 49 CFR 24 ensures Uniform Act compliance. Its purpose is:

> *To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs.*

Compliance with the Uniform Act is required for all transportation projects (regardless of funding source).

The policies and procedures in this chapter will ensure that all persons impacted by the high-speed rail project are treated fairly and equitably. Further, the uniform application of these policies and procedures will prevent fraud, waste, and abuse of the Authority's resources. Periodic reviews of delegations, quality, and compliance are conducted to ensure full compliance [49 CFR 24.4(c)].

Note: Appendix A of 49 CFR 24 is an integral part of the regulations; and, while it does not impose mandatory requirements, it does provide additional guidance and information concerning the purpose and intent of a number of provisions in Part 24.

The Uniform Act was amended on July 6, 2012. Many of the changes are effective October 1, 2014. This Chapter includes all new requirements contained in the Uniform Act effective October 1, 2014.

10.01.02.02 Compliance with Other Laws and Regulations

The application of this chapter must be in compliance with other applicable state and federal laws and regulations. 10.01.03.00 Displacements

Any person, household, business, farm, or nonprofit organization displaced by a public project may be entitled to relocation benefits if they are in occupancy of the property being acquired at the time of the Initiation of Negotiations (ION). Persons and entities displaced by a project and determined to be eligible for benefits are classified as a "displacee".

In some cases, the occupants of the property to be acquired may need to relocate prior to the ION. The Authority may issue a Notice of Intent to Acquire (NIA) to the owner-occupants to preserve their relocation benefits (10.01.08.01).

The amount and type of benefits will vary depending upon the type and length of occupancy (Table 10.01-A).

10.01.03.01 Displaced Person [49 CFR 24.2(a)(9)(i)]

The term "displaced person" (or displacee) means any person who moves from the real property or moves his or her personal property from the real property as the direct result of:

- A written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.
- A written notice of intent to acquire, or the acquisition, rehabilitation, or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under the Uniform Act applies only for purposes of obtaining relocation assistance advisory services under 49 CFR 24.205(c), and moving expenses under 49 CFR 24.301, 24.302 or 24.303, 24.304.

This includes persons who occupy the real property prior to its acquisition, but who do not meet the length of occupancy requirements of the Uniform Act (10.01.03.04).

Displaced persons must be fully informed of their rights and entitlements to relocation assistance and payments provided by the Uniform Act.

10.01.03.02 Persons Not Displaced [49 CFR 24.2(a)(9)(ii)]

Persons not considered "displaced" for purposes of obtaining relocation benefits are those who:

1. Move before the initiation of negotiations unless a Notice of Intent to Acquire has been authorized by the Authority and issued.
2. Initially entered into occupancy of the property after the date of its acquisition for the project.

3. Occupied the property for the sole purpose of obtaining benefits under the Uniform Act. (The burden of proof is on the Authority).
4. Are not required to relocate permanently as a direct result of a project as determined by the Authority. This can be because it is a temporary easement or because the partial acquisition does not require they relocate from the remainder. However, if the remainder has been determined to be an Uneconomic Remnant [49 CFR 24.2(a)(27)], then the occupant on the property is considered a displacee.
5. After receiving a Notice of Eligibility, are notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Authority agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility.
6. Retain the right of use and occupancy of the real property for life, or some other fixed term, following its acquisition by the Authority.
7. Are not lawfully present in the United States and who have been determined to be ineligible for Federally reimbursed relocation benefits in accordance with 49 CFR 24.208. The term "citizen," for purposes of this part, includes both citizens of the United States and noncitizen nationals. The term "State" refers to any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of these jurisdictions.

   It is important to note that the AUTHORITY may determine that eligibility may exist under provisions of STATE statutes utilizing STATE only funds.
8. Voluntarily sell or donate their property to the Authority under the following conditions:
   i. The property is not a specific site that is required for the project.
   ii. The property is not part of an intended, planned, or designated project area where all of the property within the area is to be acquired within specific time limits.
   iii. The property will not be acquired if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
   iv. The owner will be provided in writing of what the Authority believes to be the market value of the property.

Please note: The displacement of a tenant on real property that was acquired by the Authority through a voluntary transaction is entitled to relocation benefits.

There are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered "displaced person" under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, a tenant-occupant of a property will not be displaced, but is required to relocate temporarily in connection with the project. The temporarily occupied housing must be decent, safe, and sanitary, and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation (10.10.05.00).

Any person that disagrees with the Authority's determination that he or she is not a displaced person may file an appeal in accordance with 10.09.00.00.

10.01.03.03 Tenured Occupants

Tenured occupants are those occupants that meet the minimum occupancy requirement for full benefits. They are:

- 90-Day Owner-Occupant - Occupants of the household who have lived in AND owned the residence for at least 90 days immediately prior to the ION.
- 90-Day Occupant of the household who have lived in but not owned the residence and paid rent for at least 90 days prior to the ION.

And

- Business, Farms, and Nonprofit Organizations that occupy the property on the day of the ION.

10.01.03.04 Non-Tenured Occupants and Subsequent Occupants

Non-Tenured occupants are occupants that do not meet the minimum occupancy requirement, but may still be entitled to some benefits. Non-Tenured occupants include:

- Less than 90-day occupant - a tenant or an owner who has lived in the residence less than 90 days prior to the ION, but is in occupancy at the time of the ION.
- Subsequent occupant - a tenant or owner who moves into the residence after the ION, but before the Authority obtains control of the property.

And

- Business, Farms and Nonprofit Organizations that occupy the property after the ION.

While displacees in residence for less than 90 days are eligible to receive payments upon vacating the displacement property at any time after the Initiation of Negotiations, **Subsequent** occupants must be in occupancy on the day the Authority obtains control of the property (Close of Escrow, Effective Order of Possession, or Effective Right of Entry) in order to receive monetary benefits (e.g., moving for residential and nonresidential, replacement housing payments for residential).

Replacement Housing Payments (RHP) for non-tenured residential occupants (both less than 90 days and subsequent) are based on either their rent or their income [49 CFR 24.2(a)(6)(viii)(C)]. The RHP is paid under Last Resort Housing Provisions. Non-Tenured occupants are entitled to Advisory Assistance.

Anyone who moves into the residence after the date the Authority obtains control of the property is not entitled to benefits under the Uniform Act.

10.01.03.05 Unlawful Occupancy [49 CFR 24.2(a)(29)]

Unlawful occupants are not entitled to relocation benefits. Unlawful occupants are considered to be:

- Squatters - someone who occupies the property to be acquired but without the owner's permission.
- A person who occupies the property to be acquired that is owned by another, and has received an Eviction Notice or other court action to cause the property to be vacated.

Per 49 CFR 24.206, "Eviction for Cause" is any person who occupies the real property, and is determined to be in unlawful occupancy on the date of the ION, is ineligible to receive relocation payments and advisory assistance. A person is determined to be unlawful if:

(a) The person received an eviction notice prior to the ION and, as a result of that notice is later evicted; or
(b) The person is evicted after the ION for serious or repeated violation of material terms of the lease or occupancy agreement; and
(c) The eviction was not initiated by the owner for the purpose of denying the occupant the right to receive relocation benefits.

10.01.03.06 Constructive Occupancy

To qualify an occupant for replacement housing payments, the dwelling must be the displacee's primary residence. (Payment of moving costs does not require occupancy.)

Where the cause of the displacee's absence is temporary, displacee shall be considered in occupancy. For example, the dwelling is maintained as principal residence, but displacee is:

1. temporarily employed in another location,
2. hospitalized,
3. on vacation,
4. on temporary military duty, or
5. not able to occupy because of a major disaster.

Displacee can be considered to be in "constructive occupancy" provided that another party has not established eligibility during displacee's absence.

Cases of constructive occupancy that differ substantially from examples listed above or cases where another party has occupied property and become eligible during the absence must be decided on an individual basis and be fully documented.

Occupancy Type and Time	90 Day Owner-Occupant	90-Day Tenant-Occupant	Non-Tenured (Less than 90-Day Occupant)	Subsequent Occupant (Post-Offer)
Conditions	Eligible to receive payments upon vacating displacement property at any time after ION			Must be in occupancy at COE or date of possession
Advisory Assistance	Yes	Yes	Yes	Yes
Moving Expenses	Yes	Yes	Yes	Yes
Replacement Housing Payments				
A. Price Differential (PD), *Mortgage Differential (MD), and Incidental Expenses (IE). Limited to $31,000 before LRH rules apply.	Yes	No	No	No
B. Rent Differential (RD) Requirement for an Income Certification: Limitations:	Yes (in lieu of PD, MD, IE) No RD based on economic rent & utilities but cannot exceed the calculated PD.	Yes Optional - at time of determination	Yes Optional - at time of determination	Yes Optional - at time of determination
OR-				
C. Down Payment (DP) including eligible Incidental Expenses	N/A	Yes If RD is zero, DP is $7,200	Yes If RD is zero, DP is $7,200	Yes If RD is zero, DP is $7,200

Table 10.01-A - Explanation of Residential Benefits by Occupancy

*To be eligible for a mortgage interest differential, the owner occupant must have had a mortgage in place for 180 days prior to the initiation of negotiations.

Cases of constructive occupancy that involve the right to occupy a property prior to initiation of negotiations must also be decided on an individual basis and be fully documented. Such cases are submitted to the Authority for review. Proof of the right to occupy property can include a written agreement such as a lease, canceled checks, testimony of witnesses, or partial occupancy such as the storage of property.

10.01.03.07 Consequential Displacement

Consequential displacement is displacement of a person, business, farm, or nonprofit organization from the unacquired remaining property as a direct result of acquisition for the proposed project.

Where only a portion of a property is acquired for public purposes, occupants are eligible for relocation payments only insofar as the Authority determines that their displacement is a direct result of the acquisition. Care must be taken to avoid creating relocation assistance obligations, expressed or implied, by premature or unnecessary delivery of RAP packages or information.

The benefits for which an approved consequential displacee is eligible are determined by the category of occupancy in which displacee falls.

Examples of possible consequential displacements are:

- Rearrangement of remainder property causes displacement of occupants; e.g., acquisition of a portion of a mobile home park or similar operation that causes displacement on remainder in order to restore functional utility by rearranging interior roads or buildings.
- Acquisition of a significant portion of parking area in a business development causes the business to suffer a substantial decrease in net income. Decrease in income must specifically result from reduced parking and not from other causes.
- A business operation (such as a lumberyard) moves from the part taken to the unacquired remainder. Payment for cost of reasonable and necessary rearrangement of personal property on remainder to accommodate the move is proper.
- Residential or business occupants on remainder are left without utility connections as a result of partial taking. Since the Authority cannot force owners to reestablish utility connections, occupants can be considered displaced and eligible for applicable benefits.
- Acquisition of a business causes move from unacquired residence because the business and residence need to be in close proximity. In this case, the Authority must also find that replacement business location is not available within reasonable distance of acquired property. (Since the Authority will relocate a person whose residence is acquired to a comparable location, a finding of consequential displacement of business to be near owner's residence may not be made.) Applicable benefits in this case are limited to reimbursement of moving expenses and relocation advisory assistance.
- A business that operates at two sites, one of which is acquired. If the operation at the acquired site cannot relocate within a reasonable proximity of the second site, the Agent must determine if the operation of the unacquired site is detrimentally impacted because the two sites were linked by either operation or reliance.

Whenever an appraisal or acquisition settlement indicates taking of access rights will result in substantial impairment of access to a property, the Authority will investigate to see if any consequential displacement would occur.

Frequently, the need to relocate a business may not be obvious until the relocation assistance stage. The relocation of a business may be necessary even though there are no damages to the real estate and the appraisal does not indicate a business displacement.

The request from the occupant to be considered as a displacee may come through the appraiser, acquisition agent, or Relocation Agent. As soon as the request is made, the Relocation Manager must discuss the matter thoroughly with the Senior Right-of-Way Agent. Then the displacee must be advised in writing of the Authority's determination by the Senior Right-of-Way Agent.

If it is denied, the occupant's right to appeal must be explained fully. All appeals on a determination of consequential displacement must be heard by the Authority RAP Appeals Board (10.09.07.00).

When design changes result in revised settlement offers that cause consequential displacement, the date of the revised offer is used to determine eligibility. Explanations to potential displacees must be stated so they are aware that potential eligibility cannot be firmly determined until after settlement is reached. If settlement is ultimately based on a plan that will not cause displacement from remainder, the occupant must be immediately informed that there is no eligibility for RAP benefits.

10.01.03.08 Persons Not Lawfully Present in the United States

The phrase "person not lawfully present in the United States" means someone who is not "lawfully present" in the United States as defined in 8 CFR 103.12 and includes:

1. A person present in the United States who has not been admitted or paroled in the United States pursuant to the Immigration and Nationality Act, and whose stay in the United States has not been authorized by the U.S. Attorney General, and/or
2. A person who is present in the United States after the expiration of the period of stay authorized by the U.S. Attorney General, or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the United States.

10.01.04.00 Promissory Estoppel

The Doctrine of Promissory Estoppel holds that a promisor is held to a promise if the following conditions are met:

- A promise is made, representing a material fact that something would happen, normally to the benefit of the promisee.
- The promisor could reasonably expect to induce a substantial action on the part of the promisee. In other words, the representation made was such that a person would reasonably believe it.
- The promisee actually takes a substantial action in reliance on the representation, and the promisee substantially changed their position in reliance on the representation.

A monetary loss, one that is actually suffered or one that will be suffered by the promisee, can only be avoided by enforcement of the promise made.

10.01.05.00 Global Settlements

49 CFR 24 separates the acquisition and relocation activities. The intent is to preclude 'global settlements,' which is the packaging of relocation entitlements with the fair market value to reach an administrative settlement in the acquisition. In addition, 49 CFR 24.207(f) prohibits agencies from requesting that displaced person waive relocation benefits.

Global settlements are not consistent with the requirements of the Uniform Act or 49 CFR 24 in that relocation benefits must be determined in accordance with specific fact based criteria. Relocation benefits are a reimbursement of eligible expenses which requires certain actions on the displacee's part prior to receiving a payment. Any settlement of relocation benefits is considered to be in noncompliance with statutory and regulatory requirements.

10.01.06.00 Certificates of Occupancy

All persons occupying property to be acquired for a public project must certify to the Authority that the displacement property is their primary residence. The Certification requires they list the number of occupants, the length of time the persons have occupied the residence, their status as owner or tenant, and their U.S. Residency status. This is accomplished by completing the Certificate of Occupancy and Receipt of Relocation Benefits (RW 10-25) for owners, the Owner's Certificate of Tenants (RW 10-01), and/or the U.S. Residency Certification (RW 10-44, RW 10-44s). The information on these forms will determine the occupants' eligibility and status as tenured or non-tenured.

Each form must be acknowledged and initialed by the Agent that interviewed the occupants who completed the form.

If an owner cannot provide or refuses to provide necessary information on tenant and lessee occupancies, Relocation Assistance shall canvass the property and secure the information directly from the occupants. (Other reasonable methods such as regular or certified mail may also be used.) In such cases, length of prior occupancy may be documented from sources such as rental receipts, canceled checks, and utility bills.

Generally, the same relocation census data (occupancy dates, number of occupants, etc.) required of owners is required for tenants and lessees. At the first personal contact with tenants and lessees, Relocation Assistance will confirm any census data (plus rent payments and utility costs) provided by the owner and obtain any missing information. Variations shall be resolved and explained in the RAP Diary.

10.01.07.00 Moves Prior to Initiation of Negotiation

The Agent shall advise initial owner-occupants and initial tenant-occupants that relocation payments cannot be made until the Authority has initiated negotiations to acquire the property, except as otherwise provided for in connection with a Notice of Intent to Acquire. Occupants must be made aware that they may lose RAP eligibility if they move before initiation of negotiations.

10.01.08.00 Initiation of Negotiations

The term "initiation of negotiations" is the day the Acquisition Agent presents, in writing, the amount of just compensation (determined to be fair market value) to acquire the property for a public project, defined as the First Written Offer (FWO).

However, if the Authority has issued a Notice of Intent to Acquire (NIA), then the date of the letter becomes the date of the ION.

10.01.08.01 Notice of Intent to Acquire

In rare cases, an owner-occupant may need to relocate prior to the anticipated ION. That person is to contact the Authority to determine the time frame for the ION and if the occupants are issued a Notice of Intent to Acquire (NIA) to preserve their relocation benefits.

Issuing an NIA informs the owner-occupants that the Authority will be acquiring their property for the high-speed rail, a public project, and that they can relocate prior to the FWO without jeopardizing their relocation benefits.

A NIA to preserve relocation benefits is available to tenants or lessees under certain circumstances. see Section 10.03.04.00 for more information.

10.01.08.02 Move Prior to Control of the Property

Any tenured occupant may move from the property to be acquired after the ION and receive full benefits. However, to prevent a non-tenured occupant from moving in and possibly receiving benefits, the Acquisition Agent shall recommend to the Authority that they consider an agreement for protective rents from the owner. and then immediately proceed with completing the acquisition (including condemnation action).

Non-tenured occupants must be in the property at the time the State obtains control in order to receive any relocation benefits (Table 10.01-A).

10.01.09.00 Relocation Benefits

Eligible displacees may be entitled to Advisory Assistance, Moving Costs, and Replacement Housing Payments.

- Relocation Assistance is available to anyone who occupied the real property when acquired by the Authority.
- Moving Costs will be reimbursed for actual, reasonable and necessary expenses and are available to anyone who must move personal property from the real property acquired by the Authority.
- Replacement Housing Payments are available for residential occupants based on type and length of occupancy at the time the Authority initiates negotiations to acquire the real property.

10.01.09.01 Relocation Assistance [49 CFR 24.205(c)]

The Uniform Act requires that the Authority establish a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offers the services described below (see 10.01.09.02).

The specific goal of Relocation Assistance is to minimize the hardships people might experience in adjusting to their relocation. Where a particular section of the project requires a significant number of displacements, the establishment of a relocation office may be required by the Authority in a convenient location for the displaced persons if the Authority's field office is not easily accessible to those displaced.

10.01.09.02 Specific Advisory Services

Relocation assistance advisory services are provided primarily to assist:

- Persons in relocating to "decent, safe, and sanitary" (DS&S) housing that meets their needs and is within their financial means.
- Businesses, non-profits, and farm operators in obtaining and becoming established in a suitable replacement location.

In addition, Relocation Assistance is intended to emphasize that if the comparable replacement properties are located in areas of minority concentration, minority persons shall be given reasonable opportunities to relocate to replacement properties not located in such areas.

A personal interview shall be conducted with each occupant to determine the relocation needs and preferences of each person being displaced. An explanation of available relocation benefits should also be provided at this time. If personal contact cannot be made, the Agent shall document the file to show that conscientious efforts were made and explain why such efforts were unsuccessful.

Relocation Assistance is responsible for providing current and continuing information throughout the relocation process, including:

- an explanation of eligibility requirements for relocation payments and the appeal process
- translation services to adequately explain the RAP to persons with limited English proficiency
- information on the availability, purchase prices, rental costs, and financing terms of comparable replacement dwellings and/or non-residential sites
- assurance that no one will be required to move unless at least one comparable replacement dwelling is made available
- an explanation about the eviction policies to be pursued in carrying out the project
- address, in writing, of the specific comparable replacement dwelling used to establish the maximum replacement housing payment
- inspection of the replacement property to ensure it meets DS&S standards
- offer of transportation for all persons to inspect housing to which they are referred
- assistance in locating and obtaining a replacement property, including assistance in completing required applications and other forms
- assistance in completing the Authority's claim forms, and if necessary, a request for a Relocation Assistance Appeal
- counseling, advice as to other sources of benefits that may be available, such as information on Federal and State housing programs, disaster loans, and other programs (e.g., SBA, FHA, HUD).
- Other advisory assistance, as needed, to minimize hardship

10.01.09.03 Eligibility for Advisory Assistance

Services shall be offered to all persons occupying property:

- acquired or to be acquired
- immediately adjacent to the acquired real property if the Authority believes they may have difficulty adjusting to changes resulting from the acquisition
- that was acquired, and choose to relocate their adjacent residence, business, or farm operation
- after it was acquired by the Authority, when displacement causes a hardship for that person because of a critical housing shortage, age, handicap, infirmity, lack of financial means, or other circumstances.

No federally reimbursed services shall be offered to persons or businesses not certified as lawfully present in the United States; however the Authority may determine that eligibility may exist under provisions of STATE statutes utilizing State only funds.

10.01.09.04 Moving Costs

Any occupant who qualifies as a "displacee" is entitled to payment for the actual moving and related expenses of personal property on the displacement property to the replacement property for up to 50 miles. The cost of relocating Improvements Pertaining to the Realty (IPR) retained by the owner is the responsibility of the owner and under no instance shall the Authority be responsible for or liable for moving or relocating retained IPR.

The payment varies between residential and nonresidential occupants. see Section 10.04.02.00 for residential and 10.05.04.00 for nonresidential.

10.01.09.05 Replacement Housing Payments (RHP)

A residential displacee is eligible for an RHP that may assist them in relocating to a replacement property. The type and amount of the payment vary between tenured and non-tenured occupants, and between owners and tenants.

- 90-Day Owner-Occupants may be entitled to an RHP which is comprised of a Purchase Differential, Incidental Expenses, and an Mortgage Interest Differential*.
- 90-Day Occupants and Non-Tenured Occupants (owner or tenant) may be entitled to a Rental Differential or a Down Payment.

*Please note to be eligible for a mortgage interest differential, the displacee must have had the mortgage in place for 180 days prior to the initiation of negotiations.

The amount of the Purchase Differential and the Rental Differential is determined by preparing a Replacement Housing Valuation (RHV) (10.06.00.00) that ensures there is a replacement property available on the market that is comparable to the property beig acquired by the Authority, and meets the DS&S standards established in the Uniform Act (10.06.05.00).

Additionally, the residential occupants must meet the following requirements in order to receive the full amount of their calculated RHP:

- Occupy a DS&S residential dwelling, within one (1) year of the eligibility date (10.08.01.00).

- Spend at least the amount of the comparable replacement property (as determined by an approved RHV) on the actual replacement property.
- Submit a claim for their eligible RHPs within 18 months of the eligibility date (10.08.03.00).

RHPs are not payable after death of the displacee, unless there has been some reliance on the part of the displacee's family or business operation [49 CFR 24.403(f)]. Items of personal property needing to be moved may be reimbursed to the displacee's family or estate.

Relocation Housing Payments are limited to $31,000 for 90-day owner-occupants and $7,200 for 90-day/less than 90-day occupants before consideration must be given to Last Resort Housing (LRH).

Moving and RHPs are not subject to income tax, nor should they impact a displacee's eligibility for social security or most other benefits provided by Federal law.

49 CFR 24.209 specifically states that relocation payments shall not be considered as income for the purpose of the Internal Revenue Code, nor shall the payments be considered in determining the eligibility of any person for benefits under any provision of federal law (e.g., social security benefits), except a federal law providing low-income housing assistance.

10.01.09.06 Relocation Payments

According to Federal reguations the relocation program is considered a "spend- to -get" program. In other words, when the displacee incurs an relocation expense, the Authoriry will reimburse any approved eligilible expense which is actual, reasonable and necessary. In addition, the Authority reserves the right to review and audit by a representative of the Authority all relocation expense records. All bids and claims must be supported with detailed documentation per 49CFR 24.207(a) which includes but not limited to : labor costs broken down by labor hours and rate of pay, materials list along with corresponding costs, and any rental equipment showing hours used and rate per hour.

The Authority's expectation is Relocation Assistances will ensure all bids and claims are properly supported. The Authority will only reimburse expenses which have been proven to be actual, reasonable and necessary(49 CFR 24.301(a); however if the displacee does not agree with the Authoriy's decision they have the right to appeal the decision per 49 CFR 24.10 (b).

10.01.10.00 Relocation Assistance Program Package

The RAP package is a collection of information given to eligible displacees to explain RAP. Although content will vary among residential and nonresidential occupants and between tenured and non-tenured, the material must include:

- **Standard Relocation Brochure** – residential, mobile home or nonresidential, as appropriate.
- **Title VI Brochure (if not received from a prior contact)**
- **Notice of Eligibility** - stating kinds of benefits the specific displacee may be eligible to receive. (This will be followed by a Conditional Entitlement Letter outlining the specific amounts of benefits the displacee may be eligible to receive.) Forms are found in Chapter 10 Exhibits.
- **U.S. Residency Certification Form** (signed in accordance with 10.01.11.00).
- **Certificate of Occupancy -** appropriate form or forms.

OPTIONAL INFORMATION:

- **Other Information** - pertinent to the specific type of eligibility involved; e.g., "Fair Housing" pamphlets and Small Business Administration loan information.

The Acquisition Agent delivers the RAP Package at the time of the Initiation of Negotiation (ION) to the owners (or by a Relocation Agent who accompanies the Acquisition Agent). Relocation Assistance delivers the RAP Package to tenants within 14 days of the ION to the owner.

IMPORTANT: The RAP package must be delivered and an offer of relocation benefits made to initial tenants and lessees within 14 days of the ION, either in person or by certified mail. If delivery is by certified mail, the Agent must make a personal call to review the program and answer questions within 30 days following the ION.

10.01.11.00 Certification of U.S. Residency Requirement [49 CFR 24.208(a) and (b)]

Each person seeking federally reimbursed relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

1. In the case of an individual, that he or she is either a citizen or national of the U.S., or a person who is lawfully present in the U.S.
2. In the case of a family, that each family member is either a citizen or national of the U.S., or a person who is lawfully present in the U.S. The certification may be made by the head of the household on behalf of other family members.
3. In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the U.S., or a person who is lawfully present in the U.S. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons who have an ownership interest.
4. In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the U.S.

The certification shall indicate whether such person is either a citizen or national of the U.S., or a person who is lawfully present in the U.S.

Certification will be made on form RW 10-44 or RW 10-44s and must be in the RAP File prior to giving relocation advisory assistance and prior to approval of any claims. It should be obtained at the time the owner or tenant signs the Certificate of Occupancy or receives the Notice of Eligibility, whichever is earlier.

It is important to note that the AUTHORITY may determine that eligibility may exist under provisions of STATE statues utilizing State only funds.

10.01.11.01 Federally Reimbursed Benefit Computation [49 CFR 24.208(c)]

In computing relocation payments under the Uniform Act, if any member of a household or owner of an unincorporated business, farm, or nonprofit organization is determined to be ineligible because of a failure to be legally present in the U.S., no relocation payments may be made to him or her using Federal funds. Any payment for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners. If some of the displacees (residential and non-residential) do not meet the requirements for federal reimbursement, State funds will be used to compute relocation payments.

10.01.11.02 Validity of Certification for U.S. Residency [49 CFR 24.208(d)]

Relocation Assistance shall consider the certification that is signed under penalty of perjury by the displacee to be valid. Documentation will not be requested from the displacee.

If the person signing the Certification for U.S. Residency is unsure if their status qualifies for purposes of relocation benefits, Relocation Assistance must refer them to the Bureau of Citizenship and Immigration Service (BCIS) for clarification. Relocation Assistance must retain the Certification until BCIS has verified the person and status, then the person can request Relocation Assistance return the form for execution. As a matter of practice, Relocation Assistance should advise the person in writing, that receipt of the Certification would be required before relocation benefits can be discussed. If no information is received from the person, the Senior Right-of-Way Agent should investigate and follow up with a letter advising the person that a nonresponse or an unexecuted Certification within 60 days will be considered as the person's admission that they are not present in the U.S. legally, and thus they will be denied federally funded relocation benefits.

10.01.11.03 Documentation [49 CFR 24.208(e)]

Since the certification is signed under penalty of perjury, it will not be necessary to verify the validity of the information provided by the displacees. However, should the displacee request assistance in determining if all occupants are legal residents, the agent can provide information on what documentation is considered proof of legal status. The displacee can provide any documentation they have on hand and ask the Agent to determine if it meets the requirements established by BCIS.. If the displacee has documentation that is not on the list, they can pursue the matter directly with BCIS to determine their legal status, and, once their legal status is verified by BCIS, the displacee can sign the Certification. Documentation will not be requested from the displacee unless the displacee has volunteered the information to ensure they meet the requirements. The certification will be kept in the RAP file, and the RAP diary will note that the Agent obtained a signed document. The diary should also note if the number of legal occupants is less than noted in previous documents (e.g., Occupancy Data Sheet, Certification of Occupancy).

10.01.11.04 Denial of Benefits [49 CFR 24.208(g)]

No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the U.S., unless such person can demonstrate to the displacing agency's satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the U.S., or is a person lawfully admitted for permanent residence in the U.S.

Persons not lawfully present in the U.S. are not eligible for federally reimbursed relocation benefits or advisory assistance, but may be eligible under State statutes for State only funded relocation benefits.

10.01.11.05 Return of Payment

The claim form for relocation benefits signed by the displacee shall state that only lawful U.S. residents are entitled to federally reimbursed relocation benefits.

If within 18 months after the following dates the Authority determines that the displacee's certification was invalid, the displacee will be contacted and advised that all relocation payments must be returned unless the Authority has approved relocation benefits under STATE statutes.*

1) For tenants, the date of displacement.
2) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

see 10.08.13.00 for information on how to process a request for the return of the payment.

*The Authority will notify The Financial Office to adjust the payments from Federal funds to State Funds.

10.01.11.06 Hardship Situations

In extremely rare circumstances, the denial of benefits to an uncertified occupant may create a severe hardship on the remaining certified occupants. The eligible occupants may submit a claim for benefits for the uncertified occupant and request that the denial of the benefits be reconsidered because of their particular situation. In order to claim benefits, the certified occupant must demonstrate to the Authority satisfaction that denial of the additional benefits to the uncertified occupant will result in an extreme hardship to the remaining occupants, particularly the spouse, parent, or child who is a legal resident. The Authority will determine if the displacee's situation is a hardship. Hardship is defined as:

1) Significant and demonstrable adverse impact on the health or safety of the spouse, parent, or child; or
2) Significant and demonstrable adverse impact on the continued existence of the family unit of which the spouse, parent, or child is a member.

Note: Income alone will never be considered as the sole criteria in determining hardship.

10.01.12.00 Coordination of Right-of-Way Activities

As mandated by the 49 CFR 24, all relocation activities must be coordinated with project work and other displacement causing activities (e.g., appraisals, acquisition, and property management). To ensure that persons displaced receive consistent treatment, and the duplication of functions is minimized, the following sections explain the various roles and responsibilities of the Authority.

10.01.12.01 Responsibilities of Authority

Authority's Director of Real Property is responsible to:

- Develop policy.
- Establish procedures.
- Conduct Quality Enhancement Reviews.
- Evaluates Right-of-Way agents performance.
- Provides project continuity and leadership, technical assistance for solving unusual problems, and training programs.
- Acts as liaison with the Federal Government, other states, and other State agencies.

10.01.12.02 Responsibilities of Right-of-Way Consultant

The Prinicipal Right-of-Way Agent is responsible for implementation and application of the Authority's Relocation Assistance Program:

- Plans and provides all relocation services and payments.
- Provides staff.
- Requests funds.
- Sets project priorities per the Authority's directives.
- Trains staff.
- Manages resources.

(see 10.01.13.00 for specific activities related to managing the RAP under the Single Agent ($10,000 and under acquistion.)

10.01.12.03 Relocation Assistance Staff Responsibilities

All Relocation Assistance staff who have public contact should have sufficient knowledge of RAP to explain the benefits and how to obtain them. At the very least, they should know whom displacees should contact to obtain this information.

Anyone who contacts occupants of property that might be acquired by the Authority should ensure the following message is conveyed (preferably in writing):

> *"You may be eligible for possible relocation payments if you are in occupancy of the property at the time the Authority initiates negotiations. If you plan to move before receiving a written offer to acquire your property, immediately contact Relocation Assistance or Authority's Office "*

10.01.12.04 Responsibility of the Senior Right-of-Way Agent and/or Appraisals

- Give accurate basic relocation information to all potential displacees encountered during the appraisal process.
- Complete the Parcel Occupancy Data Sheet (RW 07-02) at the first meeting or contact with the owner when a primary or alternate appraisal indicates a displacement of people, business, or personal property. Provide the form to Relocation Assistance or Senior Right-of-Way Agent within 24 hours of the initial inspection of the property.
- Inform Relocation Assistance or Senior Right-of-Way Agent of any special relocation problems involving either people or personal property.
- In situations involving appraisal of commercial, industrial, or other properties that include valuation of machinery, equipment, fixtures, and miscellaneous items of realty, provide information on these items as part of the appraisal report in accordance with instructions in the Appraisal Chapter.
- Require that goodwill appraisers indicate in the goodwill appraisal the items and amounts that are or might be a part of a reestablishment or an in-lieu relocation benefits payment.
- Complete a Machinery and Equipment appraisal of trade fixtures and other personalty that will be acquired by the Authority. All personalty not acquired must be relocated, so it is imperative the Appraiser works closely with Relocation Assistance to determine the appropriate classification of all personalty.
- Notify Relocation Assistance of any alternate appraisal or damage element that could result in displacement of people or businesses not contemplated by primary appraisal or readily identified by reference to partial acquisition requirements.
- Show economic and/or actual rental rates for all improved properties in fair market value appraisal (see Appraisal Chapter). Show an unsupported estimate of fair rental rate (economic rent) in market value appraisal for all owner-occupied dwelling units.
- If the Authority has a policy of initially notifying displacees of monetary benefits under all replacement options, it may also require that supported economic rent for owner-occupied dwelling units be shown in market value appraisal. In these cases, the requirement for support of economic rent determination is the same as for tenant-occupied units.
- Make a determination of real property versus personal property (49 CFR 24.303). This is critical because all payments for moving and related expenses for displaced businesses relate to the moving of personal property. Neither the Uniform Act nor the implementing regulations provide payment for moving real property. The Uniform Act places the determination of real property under State law, and requires that all real property be appraised and acquired as part of the real estate being acquired.

Relocation Assistance will interview all business displacees immediately after receiving the Parcel Occupancy Data Sheet. To increase the effectiveness of the interview, Relocation Assistance should accompany the appraiser during the initial and/or subsequent inspections. (see 10.05.02.00 for additional information.)

10.01.12.05 Responsibilities of the Acquisition Agent

- At time of initiation of negotiations for the property a RAP Package (10.01.10.00) is personally delivered to each owner-occupant with whom negotiations are conducted and secure a receipt for each Package delivered.
- Explain RAP procedures and benefits to potential displacees using the RAP Package as a guide.
- Obtain a Certificate of Occupancy (RW 10-25) and the U.S. Residency Certificate (RW 10-44) from the owner-occupants.
- Secure a completed Owner's Certification of Tenants (RW 10-01) from owner of the property immediately when negotiations are initiated.
- Contact the Authority prior to completing a goodwill settlement.

Note: None of the Certificates regarding occupancy need to be signed if it can definitely be established that no personal property will be moved and no relocation benefits payments will be paid. However, because RAP valuations are dependent on proper information, verification of size and composition of family is mandatory.

- Coordinate service of 90-Day, 60-Day and 30-Day Notices to occupants of properties with the service of the Order of Possession when the Authority has initiated condemnation action.
- Ensure a Relocation Impact Document is requested when a request for early acquisition due to a hardship is received. Approval of the hardship is contingent upon review and approval of the RID by the Environmental Services Branch.

Assure that their Relocation Agent is provided with the following information and documentation within two working days of receipt:

1. Certificate of Occupancy (RW 10-25).
2. United States Residency Certificate (RW 10-44).
3. Owner's Certification of Tenants (RW 10-01). If the owner or owner's agent refuses to provide the Owner's Certification of Tenants, contact the Relocation Assistance immediately.
4. Date the Authority has control of the property (e.g., Close of escrow, effective Order of Possession, executed Order of Condemnation).
5. The final price paid to the owner (e.g., Right-of-Way Contract, Administrative Settlement, Stipulated Judgment).
6. List of all items purchased and/or paid to relocate in lieu of purchase, and any real property (i.e. IPR) included in the appraisal but retained by the owner.

The Acquisition Agent must work with Relocation Assistance regarding the status of the negotiations on all properties, especially complex properties that will entail relocation of personal property or the retention of IPR by the owner for which the Authority shall not pay relocation. The intent is to afford Relocation Assistance an opportunity to become familiar with potential large scale business relocations prior to completion of acquisition and possible commencement of a move. An appropriate notation on Certificate of Occupancy or separate notice may accomplish this. Relocation Assistance should be afforded an opportunity to accompany the Acquisition Agent to acquire property or otherwise be allowed to inspect property for the purpose of determining scope of potential relocation problem.

The Real Property Branch must work closely with the Authority's Legal Office handling any eminent domain actions in order to ensure that global settlements do not include relocation benefits payments.

10.01.12.06 Responsibilities of the Right-of-Way Acquisition / Property Management Agents

- Inform Relocation Assistance, in writing within 24 hours of first knowledge, of vacation of State-owned property by any RAP eligible tentant.
- Coordinate requests for 30-Day, 60-Day and 90-Day Notices with eviction proceedings (e.g., 30-Day Notice to Vacate, 3-Day Notice to Quit) sufficiently in advance to ensure orderly relocation of all occupants.
- Inform all noneligible tenants occupying premises leased under Master Tenancy that they are not eligible for relocation benefits payments.
- Provide Title VI Survey Form RW 10-01, and Title VI Brochure to tenants of Authority-owned property.
- Coordinate sale of excess land or building improvements with Relocation Agent to ensure that occupants receive required notices and any relocation payments due.
- Coordinate increase of rental rates with Relocation Agent to ensure that increases for RAP-eligible occupants are in accordance with rental policy for residential rental rates. Increases in rental rates for 90-Day Occupants may drastically affect their RHP entitlements.
- Inspections of the real property just prior to or at the close of escrow to determine if the acquired items of realty are still on-site, and explain to displacees who will remain in occupancy that they are responsible for maintenance of the property until they vacate.
- Describe Grace Period, if any, for businesses renting from the Authority, in the rental agreement.

10.01.13.00 Single Agent ($10,000 and Under)

Occasionally, the Single Agent will encounter the need to relocate personal property from the part-take to the remainder, which requires a payment under the relocation assistance program. This may be a permanent relocation; or in the case of a temporary construction easement, a temporary relocation requiring a second move back to the original location after construction work is complete.

The move of the personalty is paid with the "Self-Move Agreement and Claim Form for Under $10,000 Acquisition" (SMA $10K), Form RW 10-47. A certified inventory of personal property must be included in the RAP file to support the payment.

The document only needs to be completed when personal property such as a swing set, a cord of wood, the contents of a shed, or other personalty needs to be moved away from the property needed for the project. If the need for the property is temporary in nature, e.g., a temporary construction easement for a sound wall, the displacee should be paid to move the personal property back upon notification by the agent.

To expedite the relocation process in conjunction with the appraisal and acquisition process, this minimal relocation payment can be paid in advance of the move, but must be paid separate from the acquisition payment (which may be paid directly out of escrow). It is important to note the ownership of the personal property, since some residential and nonresidential sites are occupied by a tenant or lessee. However, the SMA $10K process and form can still be used by the Single Agent who would then ensure payment for the realty is paid to the owner (nonoccupant) and payment for the relocation is paid to the occupant.

The SMA $10K Form includes required clauses governing when the relocation must occur, the mandatory 90-Day notice, and liability clauses. Once the document is signed by the displacee (claimant) and the Single Agent (Right-of-Way Agent), it can be processed for payment.

The need to incorporate this form into the existing acquisition process is based on FRA's requirement that acquisition and relocation activities be kept separate, and that no payment for relocation be included in an acquisition payment.

10.01.14.00 Senior Right-of-Way Agent

The Senior Right-of-Way Agent should ensure sufficient staff are assigned to the Relocation function and that there is adequate time to spend with each displacee to ensure the appropriate level of advisory assistance is provided and that claims are processed timely.

Senior Right-of-Way Agent may also be responsible for the preparation of the Relocation Impact Documents (RID) and the Right-of-Way Planning Documents (10.02.00.00), and Replacement Housing Valuations (RHV) (10.06.00.00).

10.01.14.01 Training

Agents assigned to the Relocation Function should receive adequate training before they have the responsibility to relocate any residential or noncomplex business displacee. Agents assigned to the more complex relocations (e.g., major commercial establishment) or ancillary activities (RHVs, RIDs, or public hearing presentations) should be at the Associate level, 3-4 years of RAP field experience, and have received the appropriate advanced training sessions.

The Senior Right-of-Way Agent should ensure all staff have adequate training and experience to accomplish assigned tasks in a professional manner.

10.01.14.02 Right-of-Way Certifications

The Relocation Assistance Agent must provide information to the Authority who is responsible for finalizing the Right-of-Way Certification for the Parcel or project segment. The Relocation Assistance Agent must verify that all displacees have vacated and that they were relocated in accordance with applicable Federal and State laws and procedural requirements. See Certification Chapter for a full discussion.

10.01.14.03 Policy and Procedural Manuals

The Senior Right-of-Way Agent should ensure each Relocation Agent has the current Relocation Assistance procedures outlined in the Relocation Chapter with Exhibits and Forms (with the capability to download the current form onto their computer system), along with any other written guidance and instructions.

The Senior Right-of-Way Agent should also keep a stock of current Relocation Assistance Brochures (Residential, Business, and Mobile Home) for use at public hearings, public meetings, and the first RAP call.

Another important tool is the Authority's SharePoint site which has a RAP tab with the newest information on policies, procedures, and interpretations. Agents should be encouraged to utilize the Internet throughout their relocation career.

Most importantly, the Senior Right-of-Way Agent is responsible for reviewing their Relocation Agent's work products and the parcel files to ensure they comply with all applicable laws and policies, and certify that the work is being done on time and in accordance with the project schedule.

10.01.14.04 RAP File

Relocation Assistance must maintain a separate file for each parcel and for each entity (e.g., apartment, multiple households, sublessee) that is considered a displacee. A file should also be kept for each person that has been determined not a displacee because of their U.S. residency status, length of time in occupancy, unlawful status, or other reason. RAP Files are numbered with the parcel number and a sub number to indicate the number of displaced units on the parcel. Review 6.02.03.00 on parcel numbering.

RAP File Parcel Numbering Example:

Owner who has personal property on the site:	123456-01
Tenant who occupies the property:	123456-02
Second and separate household as determined by the agent:	123456-03

The Parcel Occupancy Data Sheet initiates the RAP file; however, any previous correspondence to or from the displacee regarding RAP or their possible status should be included in the file as soon as it is created.

The RAP file shall contain the following information:

- RAP Diary - see below for further details.
- Certificates - of occupancy, of income, and of residency status.
- Correspondence - to and from the displacee or pertaining to the displacement, including Notices of Eligibility, Conditional Entitlements, and Notices to Vacate.
- Replacement Housing Valuation report for all residential units, or the Certified Inventory and photos for a nonresidential unit.
- Claims - copy of claim form and supporting documents.

10.01.14.05 RAP Diary

Relocation Diary RW 10-03 shall be used to maintain a complete and legible diary that can be clearly reproduced. Each diary entry must be entered in pen or typed. Preprinted diaries or diaries maintained in a word processing program are acceptable documents. The use of lead pencils and felt pens should be avoided. Each diary entry must be dated and signed, not initialed. The entries must be signed by the person involved in the conversation, they should not be signed by anyone not present in the conversation.

The following are mandatory entries that will ensure a complete chronological account of the relocation activity:

- Date case was assigned to Relocation Agent.
- Date, status, and pending required action when transferred from Agent to Agent.
- Date and place of each personal contact, list of persons present, and particulars of the discussion.
- Date and particulars of all significant phone calls.
- Date of first RAP Call, including delivery of the RAP Package, and a statement that the relocation program was explained and assistance was offered.
- Amounts of relocation payments offered. Copies of benefit letters delivered or mailed are included in the file.
- Claimant's response to offer of assistance (accepted or refused) and relocation intentions, if known.
- Date claim forms were delivered and kinds and amounts of payments involved.
- Date payment amounts are reviewed. If revised, the date claimant was advised of change in entitlement and amounts involved.
- An entry to the effect that replacement housing or rental replacement housing valuation was current as of date displacees moved out. Case file will contain written backup that valuation is current.
- Addresses and prices of replacement properties offered to displacee and methods used to transmit information.
- Dates correspondence or documents were received or transmitted.
- Delivery dates of official notices, such as 90-Day Notice.
- Diary entry when a moving claim is processed indicating circumstances of vacation; e.g., voluntary self-relocation, eviction, subject to 90- or 30-Day Notice, advisory assistance used.
- Relocation Assistance Program Manager sign-off for closed files (10.01.14.08).

Relocation diaries are confidential and should not be provided to the displacee or any other parties. However, during eminent domain actions or a relocation assistance appeal, diaries in whole or in part can be requested by the displacee, an attorney, or an interested party. Prior to providing copies of any diaries, the agent should obtain approval from the Authority's Legal Office. (see 10.01.14.09.)

10.01.14.06 Records

All Relocation Parcel Files must be maintained in sufficient detail to demonstrate compliance with 49 CFR 24.9(a). The files must be retained in the Authority's office for at least three (3) years after the latter:

- When each displacee receives the final relocation payment to which they are entitled, or
- The final voucher for construction is submitted.

10.01.14.07 Tickler Files

Relocation Assistance must maintain a database or tickler system to assure, among other things, that all potential displacees are notified prior to the expiration date of any period in which they must:

- Occupy DS&S housing.
- File a claim.
- File an appeal.

All notices should provide ample time for displacee to act. The tickler file will also provide a reminder to make a mandatory three (3) month follow-up call.

It is strongly suggested that the Agent send the displacee a letter detailing time periods and criteria to receive their full entitlements at the time they vacate the state-acquired property.

Time constraints for purchasing and occupying replacement dwelling vary for owners and tenants. see Section 10.08.02.00 for a detailed explanation of the various time constraints for purchasing or occupying replacement properties and/or filing a claim.

The Authority may approve time extensions for residential owners and tenant-occupants for good cause.

10.01.14.08 RAP File Closeout

Relocation AssistanceRelocation Assistance shall review every closed relocation case file in a timely manner to determine that:

- All benefits were fully paid.
- Certified Escrow Closing Statement was reconciled with amounts the Authority placed into escrow.
- Supporting payment documentation was placed in the file or adequate diary entries were made to support nonpayment.
- Payments were made in a timely manner.
- Relocation assistance advisory service was offered and given, if requested.
- Ensure that the Authority's Right-of-Way database has been adequately updated.

Relocation Assistance completes the file closeout with the appropriate supervisor signing the front page of the diary, certifying to its adequacy. The supervisor should note and correct any inadequacies and give appropriate instructions to ensure future compliance. Relocation File Closeout Checklists are available to assist the Senior Right-of-Way Agent assigned to Relocation (see Exhibit 10-EX-01).

The reviewing Supervising Right-of-Way Agent must not certify the adequacy of any case file in which they have personal knowledge or relationship with the displacees, or if they were Relocation Assistance for any significant period of time. In these instances, The Principal Right-of-Way Agent must review the file.

10.01.14.09 Confidentiality of Records [49 CFR 24.9(b)]

Records maintained by or for the Authority are confidential regarding their use as public information, unless applicable law provides otherwise.

The Public Records Act favors disclosure of public records unless there is a specific exemption against disclosure. Since the Act requires the Authority to respond to a request for information within 10 days, even if the request falls within one of the exemptions, it is important not to ignore such a request. See "Public Access to Authority Records and Personal Information" for additional information on Public Records Act requests.

Care must be taken to ensure that confidential information such as tax records, social security information, and Title VI surveys are not retained in the parcel file.

10.01.14.10 Reports [49 CFR 24.9(c)]

The Authority submits an annual report to FRA on its real property acquisition and displacement activities.

The Authority prepares the Statistical Report Form for the 12-month period of each calendar year. The data is gathered from various tracking systems (e.g., GEOAmps, SharePoint).

To ensure accurate reporting, Relocation AssistanceAssistance must maintain the geoAMPS database that tracks the number of residential and nonresidential displacees, the total of their relocation payments, the date of their move, and any funds paid that are classified as Last Resort Housing (LRH) (above the regulatory limits).

10.01.14.11 Accounting Information

The Right-of-Way Consultant is responsible for forwarding accurate RAP payment cost information to Authority.

To ensure all RAP payments are properly coded, Relocation AssistanceAssistance completes a separate Form RW 10-05, Relocation Cost Summary, for each claim scheduled for payment; e.g., moving expense claim and subsequent rent supplement payment.

Instructions for completing the form are printed on page 2 of the form. The need to provide the proper Review Indicator(s) on the form is of particular concern since this box is used to highlight certain payments where coding errors can occur.

10.01.15.00 [Hold for Future Use]

10.02.00.00 - RELOCATION IMPACT DOCUMENTS

10.02.01.00 Relocation Planning

49 CFR 24.205 requires each agency to plan projects in a manner that ensures the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed prior to initiating any right-of-way activities, and the project reports (PR, PSR, PID, ED, etc.) shall address the complexity and nature of the anticipated displacements.

Generally, speaking the Authority Real Property Branch is responsible for the preparation of the Relocation Impact Document (RID) that addresses these potential impacts. If the Real Property Branch does not prepare the RID,a Senior Right-of-Way Agent assigned to Relocation will review the document to ensure compliance with 49 CFR 24.205.

10.02.02.00 Purpose

The purpose of the RID is to evaluate the project's impact on residences, businesses, farms, and nonprofit organizations. The RID will include data on the following:

1. An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.
2. An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.
3. An estimate of the number, type, and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.
4. An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes, or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.
5. Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

The RID studies the direct impacts of the project and provides the:

- The Real Property Branch with information on relocation issues that will impact the project delivery schedule.
- Environmental Services Branch staff with data to analyze the project's impact on socio-economic issues.
- Director of Real Property with an estimate of the resources needed (schedule, capital dollars) to deliver the Right-of-Way Certification.

10.02.03.00 Environmental Document

The Environmental Services Branch staff is responsible for analyzing the project's impacts on:

- Land use - development trends, community growth.
- Farmland - types of agricultural land in accordance with the Williamson Act.
- Social issues - changes to the community patterns.
- Economic issues - impacts to a community's tax revenues, employment, or accessibility.
- Relocation issues - types of occupants and projected needs.

(see 10-EX-08.)

It is the latter issue that will generate a request from the Project Manager or the Environmental Services Branch staff for the Real Property Branch to prepare the RID.

The Environmental Services Branch staff is responsible for information on population, tax revenues, growth rates, ethnicity, income levels, etc.

The requirements for the RID are explained in detail in Table 10.02-A, but as a minimum must always include:

- The number of occupants displaced,
- The typical vacancy rate for each type of displacement (e.g., 5% vacancy rate for multi-residential units),
- Identification of any special needs such as elderly or handicapped displacees, and
- A statement that the Real Property Branch has sufficient resources (experienced staff, consultants and capital dollars) to complete the relocations in accordance with policies and procedures.

The data provided in the RID will enable the Environmental Services Branch staff to address pertinent issues and develop a mitigation plan as needed.

On occasion, Environmental may request additional data from Real Property Branch to be used in the analysis of the project. This may include:

- Real estate market trends (e.g., increase or decrease in affordable housing).
- Types of residential units available in the displacement area and potential replacement areas.
- Demographics for the displacement and replacement areas [e.g., low income (below poverty), minority, elderly, handicapped].

Real Property Branch should provide whatever information is available, but the data should not be included in the RID unless it is significant to the availability of replacement housing (e.g., low income per surveys or census data may indicate the need for Section 8 housing or excessively high Rent Differentials). Clarify in the report whether low income is 30% of rent, or below poverty level for the report.

Note: Environmental Services Branch will study the impacts on low-income housing stock.

10.02.04.00 Relocation Impact Documents

The Relocation Impact Document is prepared in support of the Environmental Document and will be completed at the draft (DRID) and final (FRID) stages of the project. The RID format is dependent upon the complexity of the project as determined by the number of displacements and the availability of replacement property.

A Relocation Impact Memorandum (RIM) is prepared if there are fewer than ten displacements and there is ample replacement property. The standard format for the RIM is a memorandum (10-EX-03).

A Relocation Impact Statement (RIS) is prepared if there are ten or more displacements and ample replacement property is available. The standard format is 10-EX-03A, but can be a narrative report if needed.

The Relocation Impact Report (RIR) is prepared if there are complex relocations because of available replacement property, displacee special considerations, or major impacts to minorities, the elderly, large families, and/or persons with disabilities when applicable [49 CFR 24.205(a)(1)]. The standard format is 10-EX-04, but this should be used as a checklist when reviewing the issues with Environmental Services Branch to determine what information is needed and how the data will be collected. The actual report may be in the form of a checklist or a full narrative report. See Table 10.02-A for minimum requirements for each type of document.

Generally, a draft RID (DRID) that is prepared for the draft Environmental Document (ED) will require a final RID (FRID) when the project alternative has been selected and the final environmental report is prepared. The same applies for a draft and final RIR. However, it is possible that a draft RIR that considers several alternatives that cause many different types of displacements, may only need a final RIS when the project alternative is selected, which impacts only a few occupants.

Minimum Requirements for all Relocation Impact Documents (Draft/Final) (Statement/Report – Checklist or Narrative)	
Section	Attachments
Project Description	– Project Location Map – Project Limits Map – Project Alignment Map – Project Summary Sheet
Displacements: A full discussion of the type of displacements, replacement property, plans to mitigate relocation problems or address special needs.	– FRIR Data Sheet and Recommendation Summary that includes, as appropriate, a "No Re-rent Statement," "Field Office Statement," or "Appraisal/Acquisition or Relocation Priorities" – Number of Displacement Units – Type of Residential Units Displaced (Multi-Res, SFR, Apt, MH, etc.) and estimated value/rental rate – Type of Nonresidential Units Displaced (Commercial, Agricultural, Nonprofit) and estimated size of the operation (e.g., Mom-and-Pop retail store, small business) – Survey of Displacees (Data Analysis) if interviews conducted – Chart arraying the residential units by type and price in the displacement area against the replacement area, including subsidized housing
Project Relocation Resources	– Identification of Special Problems – Proposed Solutions for Noted Problems

Table 10.02-A

10.02.05.00 Minimum Requirements

The minimum requirements for each RID are explained below:

1. Identification of the project (Construction Package (CP)., and description) including a general location map.
2. Identification of the displacement area and the potential replacement area, by alignment.
3. Number and type of occupants that may be displaced by each alignment.
4. Availability of replacement property by type and a statement of its affordability.
5. List of all sources of information, including interviews with potential displacees (usually conducted for final documents only).
6. Statement of how relocation will occur in a manner that minimizes the hardships on the displacees.
7. Project map showing the alignment.

10.02.05.01 Identification of Project Segment

The Project Segment location and description must be included in the RID. Example:

Construction Package (CP). This information is readily available from the CP Project Director and should be copied verbatim from the PID.

A map of the general area showing the proposed project alignment must be attached.

10.02.05.02 Displacement and Replacement Areas

The impact of the project cannot be determined until the displacement area has been defined. This should be a joint effort by Real Property Branch, Environmental Services Branch, and the Project Manager.

Real Property Branch determines the potential replacement area (i.e., local housing market). Adjacent project neighborhoods should be considered first; larger areas may be used if an explanation is included. The most important criterion for defining the replacement area is homogeneity of type (single family and/or multifamily) and price range of the housing. Other important information to consider are the characteristics of the resident population of an area including tenure, location, income level, age of structure, employment type, and availability of transportation.

A typical method of identifying the replacement area is by city, a grouping of census tracts, part of a city (neighborhood), or other recognizable area.

10.02.05.03 Number and Type of Occupants Impacted

The total number of households, businesses, farms, and nonprofits must be included in the document. Residential households must be classified as single-family, multi-residential, or mobile home; and by the number of owner or tenant occupied. Businesses must be classified by type (e.g., commercial, retail, industrial).

Draft reports do not need an exact count of the number of persons being displaced. Census information for the displacement area can provide the average number of persons per household (e.g., 2.6).

Existing and potential rental rates, fair market values should be discussed in its relationship to the replacement area (e.g., the average rental rate for the apartment complex impacted is within an acceptable range of the rental rates available in the replacement area). The data can also be presented in a table or spreadsheet.

Draft reports should also address environmental issues and responsibilities as to affordable housing, demographic characteristics, and senior citizens/disabled persons.If at any time during the preparation of the draft, Real Property Branch and Environmental Services Branch determine that a significant number of the displacees have special needs as to finding suitable replacement property, personal interviews must be conducted when completing a survey developed from 10-EX-05. Surveys cannot be mailed. These special needs of the displacees must be discussed in the document. If the displacement area negatively impacts a significant number of handicapped, elderly, or low-income (below poverty) residents, or residents in low-income housing, then the RIS cannot be used. A full narrative discussion on how these special needs will be addressed in the relocation activities must be included in the RIR. Interviews must be conducted with all potential displacees who have special needs to ensure that issues are fully identified and a plan for assistance is prepared.

If the proposed project is considering more than one alternative, the document must identify the number and type of occupants by each alternative. A table or checklist can be used to simplify the data.

Charts listing the properties by Assessor's Parcel Number (APN), address, owner's name, or impacts should be retained in the working file and not included in the RID.

10.02.05.04 Availability of Replacement Property

Information on available replacement property by type (residential, commercial, and agricultural) must be included in the report. If a statement is being prepared because there are few displacements, then the document can state "there are ample single family residential replacement properties on the market similar to the displacement properties, or similar wording for commercial properties."

If there are limited replacement properties available by type or cost, then an RIR must be done which will include a plan on how the relocation activities will address this issue. Relocation payments over the last resort housing limits may mitigate affordability issues. Scheduling the relocations over a longer period of time can mitigate low vacancy rates.

10.02.05.05 Contact With Data Sources, Property Owners, and Displacees

Good public relations are critical to a project's success. The Project Manager and/or Environmental Services Branch staff will keep the local agencies and the community aware of the project. Public meetings and public hearings are conducted throughout the process. Real Property Branch staff may be asked to participate to explain the Relocation Assistance Program.

Contacts with local agencies, community, and other impacted groups for information to be included in the RID should first be coordinated with the Project Manager and/or Environmental Services Branch staff.

There are two types of data sources, primary and secondary, to consider when analyzing displacement impacts. A "primary" data source is information obtained directly from the potential displacee whether it is through surveys or public meetings and hearings. A "secondary" data source is information obtained from civic or community organizations, governmental agencies (e.g., housing authority, health department), schools, churches, nursing care programs, as well as census tract data, real estate statistics, periodicals, GIS (Geographic Information Systems), and the Internet's World Wide Web. "Secondary" data sources are the preferred method for analyzing displacement impacts during the relocation impact document phase.

Contact with owners or tenants should be minimal because of the relocation impact document's general nature. Census data and other sources of gross data, including windshield surveys, can be used. Only in distinct problem areas when it is necessary to obtain essential data not available from any other source should the Authority'contact owners or tenants. When problems are identified in the RIR, the Authority should consider the possibility of establishing a field office (10.02.13.00) as one of the methods for providing advisory assistance during the right-of-way phase.

If relocation problems are identified early in the process, personal surveys and interviews with the potential displacees may be conducted for the draft Relocation Impact Report, and must be conducted for the final Relocation Impact Report (10.02.05.07.). Surveys cannot be mailed during the draft process. Additionally, Relocation Assistance brochures and "Your Property, Your High Speed Rail" cannot be provided during the environmental phase.

Census data may be used for gross information (e.g., average persons per household). Other information (average vacancy rate in the displacement area) can be obtained from newspaper advertisements, telephone and postal surveys, multiple listing services, and real estate and rental offices. Information published by governmental offices (e.g., HUD, HCD, FHA, FRA and Section 8) may be used to supplement other replacement housing data.

One of the more likely sources of data is through a field review of the displacement and replacement neighborhoods.

At a minimum, the document will list all external sources, including personal interviews, used to obtain the data (rental rates, vacancy rates, average number of persons per household) that is included in the document.

10.02.05.06 Relocation in Compliance with Uniform Act

Each document will state the manner in which relocation will occur that minimizes the hardships the displacees may incur. This includes the level of advisory assistance, the possibility of a temporary field office during relocations, requesting assistance from HUD in finding affordable housing, and more lead time to complete the relocations.

At a minimum, each document will include the following statement:

> *"All activities will be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Relocation resources shall be available to all displacees without discrimination."*

Federal Uniform Acquisition RelocationAssistance Act Benefits description is included in every ED as Appendix A. It does not need to be included in the RID. However, the Real Property Branch is responsible for providing Environmental Services Branch with the most current Exhibit. Real Property Branch will ensure the Exhibit in this Chapter is current and provide copies to Environmental Services Branch.

10.02.05.07 Survey Methods

The survey format should be reviewed with the Environmental Services Branch staff to ensure additional questions are added that will provide the Environmental Services Branch staff with data needed to analyze the impact of the project. The survey for the RIR should not include questions about the potential displacees' desire or lack of desire to relocate, nor anything about their preferences for location, type of property, or preferred amenities.

The format of the questionnaire should be carefully considered. The sequencing and phrasing of questions can be critical not only to the type of response, but to the quality of response as well. This is particularly true of cross-cultural surveys and mail outs.

If possible, liaison with owners by personal or telephone contact (not by letter) through reverse listing sources should be made prior to tenant contact to explain the survey's purpose and obtain owner permission for tenant interviews. Absentee owners are never asked to complete the survey. Owners' refusal to allow contact with their tenants must be documented in the study.

If surveys are mailed to potential residential displacees during the final phase for the Relocation Impact Report, a cover letter (10-EX-06 NEW) must be attached explaining the purpose of the questionnaire. Follow-up on nonrespondents may be by phone or personal contact, within a reasonable time (between 7 and 14 days).

If personal contact is made, personnel making the contact must be fully briefed to answer questions and explain the survey's purpose. Regardless of the technique used, the purpose of the survey must be clearly stated to ensure maximum understanding by the public.

Bilingual specialists may be necessary to assist with translations of questionnaires and conducting the interviews.

Information obtained from the potential displacees is confidential. Displacees should be so assured that any personal information will be controlled in accordance with the California Information Practices Act and used only as an unidentifiable portion of summarized data.

The following actions are recommended if interviews are conducted:

- Document attempts to contact displacees. Normally, four attempts at various times of the day/evening and week are sufficient.
- Deliver a copy of appropriate RAP brochure. Note: Non-English translations can be ordered. A minimum of 90 days is needed to obtain the translations.
- Discuss general questions about the project and relocation. Avoid questions about appraisal and acquisition; refer them to the appropriate function.
- Fill out displacee questionnaire.

The following points must be explained in each field interview:

- To qualify for relocation payments, the person must occupy their dwelling at the initiation of negotiations for the parcel.
- Only occupants who are considered U.S. residents are eligible for federally reimbursed relocation benefits, but nonresident occupants may qualify under provisions of California statues for state funded reimbursed relocation benefits.
- The purpose of contact is to determine replacement-housing needs based on current project requirements.
- Potential displacees should not take any actions concerning their potential displacement that would create personal or financial loss or hardship if the property they now occupy is not acquired.

10.02.06.00 Complex Segments of Project

The full narrative report (RIR) must be completed forCP of the project that impact more than ten occupied units (residential or nonresidential) and should cover the relocations that could be complicated (e.g., an alcohol rehabilitation center, an assisted living complex).

All RIRs should be arranged as shown in Table 10.02-A. A summary of effects and alternative mitigation actions must be included in the FRID. Each issue must be fully addressed in the report.

The checklist (10-EX-04) can be used as a basis for the full narrative report.

10.02.07.00 Accountability

Relocation impact documents will be completed by Relocation Assistance under the supervision of the Senior Right-of-Way Agent and may be contracted out to qualified Third Party Contractors. All documents must conform to this chapter.

RIDs are written and completed by a Right-of-Way Agent who:

- Is at least Associate level as determined by Authority standards.
- Is fully trained.
- Has background or experience in relocation assistance and market studies.
- Has good writing skills.
- Has a minimum of 3-4 years relocation field experience.

Relocation Assistance is responsible for:

- Preparing Draft Statements/Reports and Final Statements/Reports.
- Preparing updates as required.

Any legal opinion shall be requested early. Although the legal opinion is not part of the RID, it is kept as backup documentation.

10.02.08.00 Annual Reviews and Updates

The Real Property Branch will annually review all FRIDs for current segments of the project. Project segments are subject to changes in alignment, Right-of-Way limits, real estate market, and Federal, State, or local policy.

Environmental Services Branch or Engineering Branch may request annual review of draft documents, even though it is not required. The Real Property Branch should maintain a tickler system to track the time frame when the draft is due for a final report.

10.02.09.00 Record Retention

The Real Property Branch must maintain the RID and all supporting documentation until the project has been constructed.

These records must be retained for an additional seven years after completion of construction on the project if legal action or injunctions were part of the project process.

10.02.10.00 Right-of-Way Planning Document

Final Relocation Impact Documents provide Real Property Branch with the scope of relocation requirements in a single project. The information in the RID should be used to prepare Right-of-Way's Planning Document.

The Right-of-Way Planning Document (10-EX-04A) facilitates the orderly relocation of everyone in the right-of-way and gives advance warning of special problems that may necessitate more lead time than normal. The Document will address, in detail, special relocation problems, timing considerations, relocation phasing, and general relocation alternatives.

Table 10.02-B will ensure that the Authority Director of Real Property can plan the appropriate resources to complete the relocations. The document provides the Director of Real Propertywith information on the number of displacements, type, availability or lack of affordable housing, the likelihood of last resort housing payments, possible impacts on persons unlawfully in the U.S. and identification of special needs that will have to be addressed before the initiation of negotiations begin.

Right-of-Way Planning Document – Internal Document (10-EX-04A)	
Basic Assumptions	State basic assumptions that could invalidate all or part of the study if changed, including: • Certification dates for the project segment. • The reservation that the design will remain essentially unchanged. • That critical recommendations in the Relocation Plan are implemented. • All approvals are obtained as scheduled.
Number of Housing Units Needed vs. Number Available*	Complete a table or spreadsheet that: • Compares by price range, number of bedrooms, and occupancy status. • Summarizes the total available dwellings by price range, number of bedrooms, and occupancy status. • Outlines (one for each year of right-of-way acquisition for the project) the basis for relating the various kinds of housing needs and the housing available to fulfill them.
Mobile Home Relocations	If it is necessary to relocate people in mobile homes, provide a complete separate analysis, the results of which are correlated into the project segment Relocation Plan.
No Special Effort Required	Describe those classes of housing where no special effort will be necessary, including the areas where RAP payments will easily accomplish relocation. Provide an analysis showing that displacees will be able to pay for their housing in the new area.
DS&S Problems	Discuss problems where the normal market may not have enough DS&S housing to absorb the demand within the time span allowed for relocation.
Time Schedule	If the time scheduled for acquisition and relocation is insufficient to allow orderly relocation based on what the market can absorb, state the best estimate of the time required and recommend changes that would allow for this additional time.
Scarcity in Some Housing Classes	If there is scarcity in some classes of housing and the Authority has other similar project segments, follow-up studies on actual RAP displacees may enable the report to generalize on the percentages of people by housing class who tend to leave the area completely. A reasonable estimate of people expected to leave the area, based on solid facts, may show that no availability problem exists where there appeared to be one.
Large Number of Ineligibles	If the survey indicates a housing area where there are or may be a large number of ineligible occupants in the right-of-way, discuss along with any foreseeable problems connected with them. Examples are student housing and motel/hotel occupants.
Sequencing	State which parcels should be appraised and acquired first and what special recommendations for handling them are most appropriate.
Special Problems - Extra Time Required	Identify those parcels where extra time will solve special problems. If there is low availability of one type of unit, such as very large houses, more time may well solve the relocation problem. Other such problems may include rest homes, old hotels with permanent residents, housing for elderly, and mobile home parks.
Business Relocation Problems	If research indicates a lack of available relocation sites or significant relocation problems, bring issues to the attention of the Authority Appraisals and Acquisition in writing. Include a discussion of possible solutions to the identified problems.
Special Project Reports or Community Data	The Real Property Branch may be asked to provide special project reports or community data (affordable housing cost calculations) to various Authority functions. Complete these activities only after there is full understanding between Real Property Branch and the requesting party as to the scope of the particular project and its priority relationship with ongoing Right-of-Way activities.

Table 10.02-B * Include in RIS and RIM

10.02.11.00 Lead Time

The Right-of-Way Planning Document must estimate the lead time required to adequately carry out a timely, orderly, and humane relocation program. Factors to consider are:

- Concurrent projects that create displacements.
- Availability and experience level of Relocation Assistance staff.
- Total number of displacees.
- Relocation problems indicated in study.
- Available budgeted money.
- Replacement housing availability.
- Vacant land availability.
- Re-rent policy.
- Project Segment certification date.

Note: A short statement about the estimated lead time should also be included in the FRID, especially if additional time is required to conduct the relocation activities.

10.02.12.00 Re-Rent Policy

- The Authority has a no re–rent policy because of the nature of a design-build project. Typically the Design Builder is waiting for the parcel to immediately commence construction. If special circumstances exist that indicate a re-rent is needed to mitigate critical needs the Director of Real Property must approve.

10.02.13.00 Field Offices

The Authority's decision to establish a local field relocation office should be based on:

- Number and type of displacees.
- Distance of the project from an Authority office.
- Mobility of displacees.

The decision should be made on an individual segment basis and included in the Right-of-Way Planning Document. Establishing a field office is advisable on complex segments of the project.

The office must be convenient to public transportation or within walking distance of the project.

Field offices must be staffed with knowledgeable Right-of-Way Agents. A bilingual or ethnic aide may also need to be available in any area with a high percentage of non-English speaking displacees. The field office shall be open during hours convenient to displacees, including evenings and weekends, if necessary.

10.02.14.00 Advanced Acquisition [Hold for Future Use]

10.03.00.00 - RELOCATION NOTICES AND OCCUPANCY CERTIFICATIONS

10.03.01.00 Notices

The Uniform Act and 49 CFR 24 prescribe general requirements governing the provision of relocation payments and other relocation assistance. The requirements mandate that potential displacees receive appropriate and timely notices that explain the relocation program and their entitlements.

As such, the Authority must provide all potential displacees with the appropriate notice described in this section, in writing and within the time frame prescribed.

If the person is unable to read and understand the notice, Relocation Assistance must provide the person with appropriate translation and counseling.

Each notice will include the name and telephone number of Relocation Assistance to be contacted for answers to questions or other needed help.

All notices should be personally served. If personal service is impossible (occupants are in the armed forces, impacted property is for storage only), the notice is to be sent by certified or registered first-class mail (return receipt requested and received), with another copy of the notice sent simultaneously by regular first-class mail. The date of service shall be 5 days for California residents, 10 days for U.S. residents, and 20 days for all others.

10.03.02.00 General Information Notice [49 CFR 24.203(a)]

The first notice provided to the potential displacees is the General Information Notice (GIN) (RW 10-07). The mandatory format should not be changed except to add the potential displacee's name and the project segment identification [Seg-County code number-Parcel number] and the date the Notice is sent.

The GIN is mailed to the potential displacee as early as practical after the completion of the Parcel Occupancy Data form (RW 07-02) obtained by the Appraiser. If the GIN is not mailed within three (3) working days of the date Relocation Assistance receives the RW 07-02, then a diary entry shall explain the reason why it was not practical to send sooner.

The GIN should be mailed with a copy of the appropriate Relocation Brochure and the assigned Relocation Agent's contact information.

Since Title VI information is provided to the owners by either the Appraiser or the Acquisition Agent, Relocation Assistance needs only to send the Title VI information (see 2.04.01.02) to tenants or lessees.

The purpose of the GIN is to briefly describe the relocation program and to inform the potential displacees that they will be:

- displaced by a public project,
- given relocation advisory services, including referrals of replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate,
- given 90 days' advance written notice before they are required to move,
- given the address of at least one comparable replacement residential property before they are required to move,
- and they have the right to appeal if they question the Authority's determination of eligibility or benefits.

Relocation Assistance must send the GIN to all owner and tenant/lessee occupied properties. The owner cannot prevent the Authority from notifying tenants of the benefits they may be eligible to receive under the Uniform Act. Relocation Assistance should advise the owner that it is necessary that the tenants receive a full explanation of the relocation program which includes advising them that there is no immediate urgency for them to relocate. If the owner is concerned the tenants will move and there will be a loss of rental income, the Authority may offer to make a payment to replace lost rent for vacancies occurring due to relocation for a reasonable period of time.

10.03.03.00 Legal Residency Requirement to Obtain Benefits

All relocation notices must inform the persons that anyone not lawfully present in the United States is ineligible for federally reimbursed relocation advisory services and relocation payments; however the Authority may qualify the occupants under State Statutes.

Notice to potential displaced persons will be made at the earliest possible time, but no later than the provision of the GI Notice (RW 10-07). Information on residency requirements will be included in the RAP package made available to owners and tenants.

Requirements for Certification Concerning Legal Residency in the United States will be included in the GI Notice, the Relocation Brochure, and all Notices of Eligibility and Conditional Entitlement Letters.

10.03.04.00 Notice of Intent to Acquire (NIA)

Normally, the first notice the owner of the property receives is a Notice of Intent to Appraise or a Notice of Intent to Inspect ($10,000 and under approach) from Appraisals. However, the owner could have contacted the Authority earlier because of a need to relocate prior to the Appraiser's inspection. If the Authority determines that there is a need to protect the owner's relocation benefits, then they will approve sending an NIA (RW 10-08) to the owner-occupants to:

- Protect the eligibility of prospective displacees who need to move prior to the first written offer on the parcel.
- Prevent dual eligibility.
- Assure that all persons are fully aware of relocation assistance benefits and requirements.

The Authority should use the following to determine if an NIA is appropriate:

- Tenants/lessees (residential/nonresidential) only qualify provided the owner agrees to rent the property to the Authority (10.03.04.01).
- The owner-occupant must meet the same criteria for a hardship outlined in Section 5.03.04.01.
- The owner-occupant must agree to rent the property back to the Authority for economic rent.
- The appraisal must be complete and a first written offer made within 10 days. In some instances, the appraiser may have already issued the Notice of Decision to Appraise and/or inspected the property, but the determination of fair market value (and the subsequent FWO) will be delayed beyond a reasonable period of time, and the owner-occupant must relocate immediately.
- If the owner-occupant does not accept the offer within the prescribed time (30 days), condemnation proceedings must be initiated, or the acquisition offer withdrawn (see 5.03.04.06).
- The NIA limitations have been met (see table below).

The Agent issuing the NIA to the owner must provide the RAP package. The Conditional Entitlement Letter with the specific amount of the RHP cannot be provided to a residential owner-occupant until the appraisal is complete and the first written offer made by the Acquisition Agent. It is strongly suggested that Relocation Assistance accompany the Acquisition Agent on the FWO as eligibility for relocation benefits and initial information was already provided.

NIA LIMITATIONS	
Project Type	Issuance
Regularly funded	Do not issue the NIA until the initiation of negotiations for the project has been authorized.
Federally funded	In addition to the above, do not issue the NIA prior to /FRA authorizing acquisition on the project.
Not regularly funded	Appropriate formal approval of a Hardship Acquisition is required, along with the owner-occupant's statement that they must relocate prior to the FWO.

In some cases, the owner-occupant may not be available for a personal call to deliver the NIA, ION/FWO, or RAP Package because they have relocated out of the area. In that case, all documents must be mailed certified to the owner.

The NIA shall be dated the day that it is served. It shall contain the anticipated date of the offer and specify how additional information pertaining to relocation benefits can be obtained.

Be aware that if a Notice of Intent to Acquire (RW 10-08) is furnished to an owner, all tenants become immediately eligible for relocation assistance benefits. Tenants must be furnished a notice (RW 10-10) as soon as possible in this event.

10.03.04.01 Notice of Intent to Acquire - Tenants

A Notice of Intent to Acquire - Tenant (RW 10-10) may also be furnished to a tenant or lessee provided the owner has agreed to rent the property to the Authority. An Informational Letter to Nonoccupant Owner Re: Notice of Intent to Acquire (RW 10-09) shall be furnished to the owner along with a copy of the Protective Rental Agreement (08-EX-04). In this instance, it is important that the owner of the displacement unit is not served a Notice of Intent to Acquire at this time. To do so will make all occupants of the displacement unit eligible for relocation assistance payments, which may not be the intent of the Authority.

Providing RW 10-10 enables business tenants to be eligible for reimbursement of search costs, move coordinator fees and other move-related items that may be necessary early on to relocate their business in a timely fashion. In certain circumstances, renting vacant residential or nonresidential units may expedite project delivery and minimize relocation assistance costs. see 8.01.31.00, State Rental of Residential or Commercial Units Prior to Acquisition.

10.03.05.00 Certificates of Occupancy

To be eligible for relocation benefits, status of the occupants must be obtained via a certification of occupancy.

The Appraiser provides the Parcel Occupancy Data Sheet to Relocation Assistance stating the type of occupants on the property (residential or business, owner or tenant/lessee) and the approximate time period they have occupied the property.

The Acquisition Agent obtains a signed Certificate of Occupancy and Receipt of Relocation Benefits at the time of the FWO (and first RAP Call) for all owner occupied properties. This will determine the number of occupants that are eligible for DS&S housing and their tenure.

The Acquisition Agent obtains a signed Owner's Certificate of Tenants from the owner at the time of the FWO. Relocation Assistance will make the first RAP Call on the tenants and verify the information on the Certificate.

All occupants must certify their residency status at the time of the first RAP Call.

10.03.06.00 U.S. Residency Certification

Certification should be done by completing RW 10-44 at the time the owner or tenant signs the Certificate of Occupancy or receives the Notice of Eligibility, whichever is earlier.

For residential occupants, the head of household will certify himself/herself and may also certify other family members.

A sole proprietor will certify himself/herself.

For partnerships and corporations, the certification may be signed by a person authorized to sign on the entity's behalf.

The Authority must receive certification before any claim can be paid.

10.03.06.01 Securing the U.S. Residency Certification Prior to Issuing a Notice of Eligibility

It is necessary that each person in the household or the nonresidential unit certify as to their residency status in the United States **prior** to receiving a Notice of Eligibility, which states "you are entitled to certain benefits under the Authority's Relocation Assistance Program (RAP)." This will ensure that persons ineligible for relocation benefits are not led to believe they will receive advisory assistance, moving expenses, and for residential persons, a possible replacement housing payment. (see 10.01.03.08.)

All owners (90-day, Nonresidential) must receive the appropriate Notice of Eligibility immediately after the First Written Offer (FWO) is made. Depending on the Real Property Branch staff functional assignments, this notice may be delivered by Acquisitions orRelocation AssistanceAssistance who accompanied the Acquisition Agent at the time the FWO was made. All tenants must receive the appropriate Notice of Eligibility within 10 days of the FWO from Relocation Assistance.

Before providing the Notice of Eligibility, the agent will first request that the person(s) complete and sign the Certification Concerning Legal Residency in the United States (RW 10-44/RW 10-44s) to determine federal eligibility. If the person(s) do not want to complete the Certification at the first RAP Call, then the agent must state that an explanation of relocation benefits cannot be provided at that time. The agent should further explain that until the Certification is complete and verified as to its accuracy, the person(s) are not considered eligible for federal relocation benefits. They may however be eligible for benefits under state statutes.

The agent may leave the form with the person(s) and follow up with personal and telephone calls as to the status. After 21 days have passed, and a Certification has not been received, Relocation Assistance must advise the person(s) that if the completed Certification is not returned within 15 days, they (including all other persons in the household or nonresidential unit) may be considered permanently ineligible for relocation benefits. Again, if no form is received as a result of the letter and follow-up calls, and the occupants are not found to be eligible under state statues the person(s) are to be treated as nondisplacees even if a Certification is provided later on in the process. A letter denying benefits to the persons not certified as U.S. residents must be sent by Certified Mail to each occupant.

These persons will have the right to appeal the decision of ineligibility.

10.03.07.00 Notices of Eligibility [49 CFR 24.203(b)]

Eligibility for relocation assistance shall begin on the date of initiation of negotiations (generally the FWO, but possibly the date of the NIA) for the occupied property. When this occurs, the Authority must promptly provide the occupants with a notice, in writing, of their eligibility for applicable relocation assistance via a Notice of Eligibility.

This makes the Notice of Eligibility the most important RAP document that is provided to the displacee because it informs them that they have been determined to be eligible for relocation benefits. There is a different Notice of Eligibility for each type of occupancy, so care must be exercised to ensure that the appropriate Notice of Eligibility is provided in a timely manner.

The Notice of Eligibility for owners (residential and nonresidential) MUST be provided to the owner on the day of the FWO and to tenants or lessees (residential and nonresidential) within 14 days of the initiation of negotiations.

Notices of Eligibility are delivered with the RAP Package:

a) to the owners by the Acquisition or Relocation Agent during the FWO.
b) to tenants by Relocation Assistance within 14 days of the FWO (exception: 10-EX-46 and 10-EX-50).

10.03.08.00 Conditional Entitlement Letter

The Conditional Entitlement Letter (entitlement letter) is prepared for persons being displaced from their residential homes after the Replacement Housing Valuation (RHV) has been completed. This document provides the occupant: 1) with at least one available comparable replacement dwelling, 2) with the amount of the maximum entitlement they are eligible to receive for replacement housing and moving expenses, 3) with the requirements that need to be met to receive part or all of the entitlement and 4) with a reminder of the right to appeal. The displacee should be presented with the entitlement letter as soon as reasonable after the completion of the RHV.

If an updated RHV indicates a change in entitlement amount, Relocation Assistance must provide a revised entitlement letter to displacee.

The timing and format for each type of Notice of Eligibility and Conditional Entitlement Letter is described in Table 10.03-A. Refer back to Table 10.01-A if there is a question about type of occupancy. see 10.04.00.00 (residential) and 10.05.00.00 (nonresidential) for specific details about the type of relocation benefits.

DELIVERY OF NOTICES OF ELIGIBILITY and CONDITIONAL ENTITLEMENT LETTERS		
Notice	Timing	Exhibit
90-Day Homeowner Occupants	Notice of Eligibility: As part of the RAP Package, at the time of the FWO by the Acquisition or Relocation Agent.	10-EX-49
	Conditional Entitlement Letter with specific amounts for the Fixed Move Schedule and the PD, within 30 days of FWO.	10-EX-45
90-Day Occupants and Non-Tenured Occupants	Notice of Eligibility: As part of the RAP Package, at FWO of a 90-day owner. For a 90-day tenant, or a non-tenured tenant (less than 90 days), within 14 days of FWO by Relocation Assistance.	10-EX-39
	Conditional Entitlement Letter: When displacees indicate they are actively looking for a replacement dwelling, or when the Authority has control of the property (e.g., COE, Effective OP, Executed R/E or APU, FOC) - whichever occurs first.	10-EX-40
Subsequent Occupants	Notice of Eligibility: For occupants who move in after the FWO, within 14 days of notification that they are in occupancy.	10-EX-41
	Conditional Entitlement Letter: When displacees indicate they are actively looking for a replacement dwelling, but not before the Authority has control of the property (e.g., COE, Effective OP, Executed R/E or APU, FOC).	10-EX-42
Business, Farm, or Nonprofit Organization	Notice of Eligibility: Owner-Occupants - at the time of the FWO by Acquisition or Relocation Agent. Lessee/Tenant Occupants - within 14 days of FWO.	10-EX-43
Personal Property Only	Notice of Eligibility: Owner - at FWO. Tenant – 14 days.	10-EX-46
Nonoccupant Owner Leasing Space to Others	Notice of Eligibility: Owner - at FWO.	10-EX-50

Table 10.03-A

10.03.09.00 Reminder Notice

Relocation Assistance shall send timely written notification of the possible loss of rights and expiration dates to persons who:

- Are eligible for monetary benefits, and
- Have moved from the acquired property, but
- Have not filed a claim.

Notification shall be sent every 30 days throughout the qualification period. If no response to the written notification is received, Relocation Assistance should make telephone contact within the appropriate time limit and document the contact in the parcel diary.

10.03.09.01 Timing

Timing for service of notices is based on project certification dates. Notices should be delivered with adequate lead time to carry out a timely, orderly, and humane relocation program. Displacees may be given a 90-Day Information Notice as early as the date the Authority provides the Conditional Entitlement Letter (residential) or 30 days after the Notice of Eligibility is provided (nonresidential). When at least 60 days have passed, the appropriate Notice to Vacate must be delivered IF the effective date is after the state obtains control of the property.

Notices to Vacate cannot be given if control of the property has not been initiated via a Right-of-Way Contract, an Agreement for Possession and Use (PAU), or initiation of condemnation, and the Authority will have control of the property prior to the "date certain" provided in the notice.

Residential displacees must be informed of the maximum relocation housing payment (RHP) amount prior to receiving a 90-day notice (with the appropriate Conditional Entitlement Letter), along with at least one address of a comparable replacement property that is available and within the range of the RHP.

Absentee owners of personal property are considered to be occupants of real property to be acquired and ARE entitled to 90-day information notices and notices to vacate. Any person who exercises physical control over the land, including the right to store personal property on the land, is a lawful occupant and is entitled to 90-day information notices and notices to vacate.

See Table 10.03-A for timing of the delivery of Notices of Eligibility. See Tables 10.03-B and 10.03-C for time frames related to service of notices for acquisition by right-of-way contract and by eminent domain (order for possession).

10.03.09.02 [Hold for Future Use]

10.03.10.00 90-Day Notices [49 CFR 24.203(c)]

No eligible displacee shall be required to move unless he or she has received at least 90 days' advance written notice of the earliest date by which he or she may be required to move. The preferred method is to provide a 90-Day Information Notice (RW 10-18, RW 10-19) followed by an appropriate Notice to Vacate (RW 10-22, RW 10-23, RW 10-24) with a date certain. Where project needs dictate, a 90-Day Notice to Vacate may be issued indicating a date certain (RW 10-20, RW 10-21).

10.03.10.01 Timing

Timing for service of notices is based on right-of-way certification dates. Notices should be delivered with adequate lead time to carry out a timely, orderly, and humane relocation program. Displacees may be given a 90-Day Information Notice as early as the date the Authority provides the Conditional Entitlement Letter (residential) or 30 days after the Notice of Eligibility is provided (nonresidential). When at least 60 days have passed, the appropriate Notice to Vacate must be delivered IF the effective date is after the state obtains control of the property.

Notices to Vacate cannot be given if control of the property has not been initiated via a Right-of-Way Contract, an Agreement for Possession and Use (PAU), or initiation of condemnation, and Relocation Assistance is certain sure that the Authority will have control of the property prior to the "date certain" provided in the notice. Right of Entries (R/Es) should be used only on an Authority approved exception basis when there are relocation issues on a parcel.

Residential displacees must be informed of the maximum relocation housing payment (RHP) amount prior to receiving a 90-day notice (with the appropriate Conditional Entitlement Letter), along with at least one address of a comparable replacement property that is available and within the range of the RHP.

Absentee owners of personal property are considered to be occupants of real property to be acquired and ARE entitled to 90-day information notices and notices to vacate. Any person who exercises physical control over the land, including the right to store personal property on the land, is a lawful occupant and is entitled to 90-day information notices and notices to vacate.

See Table 10.03-A for timing of the delivery of Notices of Eligibility. See Tables 10.03-B and 10.03-C for time frames related to service of notices for acquisition by right-of-way contract and by eminent domain (order for possession).

10.03.10.02 Content

The 90-day information notices state that the displacement property will be acquired for High-Speed Rail purposes. The Information Notice states a Notice to Vacate will follow; providing at least 30 days' notice before they will be required to move (60 days for some residential situations). For residential occupants, it provides the addresses of comparable replacement properties.

10.03.10.03 90-Day Information Notice

The 90-Day Information Notice is not a notice to vacate. Relocation Assistance serves the 90-Day Information Notice in person on eligible and ineligible lawful occupants who:

- Are required to vacate because of the proposed construction or other State use, and
- Have personal property located on the acquired property.

Since replacement housing must be available and offered to eligible displacees before a Notice to Vacate can be issued, Relocation Agent must coordinate acquisition, property management, and RAP functions to ensure appropriate notices are issued in a timely manner to vacate the property and for Right-of-Way Certification.

10.03.10.04 Notice to Vacate with Right-of-Way Contract

For residential owner-occupants, a 30-Day Notice to Vacate may be issued after 60 days have passed since the 90-Day Information Notice was issued if control of the property is expected within 30 days. If control of the property is by either close of escrow or a right-of-way contract with a possession date clause in it, then the 30-Day Notice to Vacate shall be served 30 days prior to that date. Owner-occupants do not become state tenants. They are provided a 15-day grace period in the right-of-way contract. Property Management will move forward with eviction after the grace period has ended. Revisions can be issued if the anticipated date of control is delayed. Extending the 30-Day Notice to Vacate may affect the validity of any notices issued by property management preceding an unlawful detainer action. Close coordination with Property Management is essential.

For residential tenants, the possession date clause in the right-of-way contract or the close of escrow date governs service of a 60-Day Notice to Vacate. The 60-Day Notice to Vacate is provided instead of a 30-Day Notice to Vacate to provide adequate time as addressed in both federal and state statutes.

For residential Personal Property Only situations, issue the 30-Day Notice to Vacate and state "Not applicable – Personal Property Only move" where the residential replacement comparables would be inserted.

Since no eligible residential displacee shall be served a 90-day information notice unless appropriate housing is available, the address of at least one available comparable property replacement, but preferably three, must be offered to displacee simultaneously with each notice. The property must be available and must not exceed the "probable replacement value or rent" provided to the displacee in the latest Conditional Entitlement Letter.

For nonresidential owner-occupants, a 30-Day Notice to Vacate may be issued after 60 days have passed since the 90-Day Information Notice was issued if control of the property is expected within 30 days. If control of the property is by either close of escrow or a right-of-way contract with a possession date clause in it, then the 30-Day Notice to Vacate shall be served 30 days prior to that date. Owner-occupants do not become state tenants. Grace periods for business displacees to remain in state-acquired property are subject to Authority specific approval. See 10.05.25 for more information. Coordinate closely with both the acquisition agent and the property manager.

Nonresidential tenants usually sign a quitclaim deed giving the Authority possession of the property. Once the Authority has possession (either by quitclaim deed, possession date clause in Right-of-Way contract or close of escrow), Relocation Assistance shall serve the 30-Day Notice to Vacate. In these instances, Property Management will write a lease with the tenant. Coordinate closely with the acquisition agent and the property manager.

Control of the property is obtained on the date escrow is closed, the Final Order in Condemnation is recorded, the date of possession in the Right-of-Way Contract (RWC), or Agreement for Possession and Use (PAU) or the effective date of the Order for Possession (OP) before the Authority can have physical possession. The owner of the property must have the acquisition funds available to purchase replacement property before the effective date of the Notice to Vacate. While an approved Right of Entry (R/E) is considered as giving the Authority control of the property, it is not appropriate to use R/E's when there are displacements associated with the property.

Either a Relocation Agent or Acquisition Agent must serve the 90-Day Information Notice and the Notice to Vacate in person. If the Agent makes repeated attempts to deliver the notice in person and is unable to

meet with the displacee, they must post the notice at the displacement property and mail a copy to the displacee. The diary must show their good faith effort to comply with this section.

If the address of the most comparable residential replacement property is no longer available, Relocation Assistance must ensure some comparable replacement property is available, within the displacee's financial means, but it is **NOT** necessary to reissue a 90-Day Information Notice. The original 90-day period can continue to run.

10.03.10.05 Notice to Vacate with OP

For residential owner-occupants, the Relocation Assistance issues a 90-Day Information Notice as early as the date the Conditional Entitlement Letter is provided and before the court issues the OP and then issues a 30-Day Notice to Vacate with a date certain after the court issues the OP. The person making service must calculate the effective date. In this case, displacee must receive a full offer of their entitlements and must be furnished the address of at least one comparable replacement dwelling with the notice to vacate. The effective date of the 30-Day Notice to Vacate cannot be earlier than 30 days from the date the last record owner of the property and last occupant was served the OP.

For residential tenants, the Relocation Assistance issues a 90-Day Information Notice as early as the date the Conditional Entitlement Letter is provided and before the court issues the OP. After the court issues the OP, a 60-Day Notice to Vacate with a date certain is served. A courtesy copy of the OP is served with the notice to vacate. The person making service must calculate the effective date. In this case, displacee must receive a full offer of their entitlements and must be furnished the address of at least one comparable replacement dwelling with the notice to vacate. The effective date of the 60-Day Notice to Vacate cannot be earlier than 60 days from the date the last record owner of the property and last occupant was served the OP.

For nonresidential owner-occupants, the Relocation Assistance issues a 90-Day Information Notice as early as 30 days after the Notice of Eligibility is provided and before the court issues the OP. The Relocation Assistance then issues a 30-day Notice to Vacate with a date certain after the court issues the OP. The person making service must calculate the effective date, which cannot be earlier than 30 days from the date the last record owner of the property and last occupant was served the OP.

For nonresidential tenants, the Relocation Assistance issues a 90-Day Information Notice as early as 30 days after the Notice of Eligibility is provided and before the court issues the OP. The Relocation Assistance then issues a 30-day Notice to Vacate with date certain after the court issues the OP. For nonresidential tenants NOT named in the suit, the Relocation Assistance provides a courtesy copy of the Summons and Complaint and the Notice to Motion.

10.03.11.00 90-Day Notice to Vacate

Under rare circumstances, such as when condemnation proceedings have begun and the displacee then decides to settle by Right-of-Way contract, it may be appropriate to issue a 90-Day Notice to Vacate. This should only occur when a 90-Day Information Notice has not been issued, the date certain has been determined, and at least 90 days are available before the Authority obtains control of the property. Use Form RW 10-23 for residential displacees and Form RW 10-24 for nonresidential displacees.

10.03.12.00 Notices to State-inherited Tenants

Eligible displacees who are either delinquent in their rental payments to the Authority, or in violation of their rental agreement with the Authority, are considered unlawful occupants for property management purposes. They are still entitled to their RAP benefits as stated in their Notice of Eligibility and Conditional Entitlement Letter. Property Management will serve either a 3-Day Notice to Pay Rent or Quit or a 30-Day or 60-Day Notice of Termination of Tenancy and Notice to Quit. Property Management is responsible for advising Relocation Assistance that Property Management will begin eviction proceedings.

Relocation Assistance must ensure service of the 90-Day Information Notice and appropriate Notice to Vacate prior to the Authority's control of the property. Property Management and RAP need to coordinate appropriate action in the event a displacee does not vacate the property in a timely fashion. Copies of the RAP notices should be sent to Property Management to be retained in their file.

Once Property Management decides to evict an unlawful eligible tenant, the eviction process should be carried to conclusion.

Eligible tenants who are evicted by the Authority because of unlawful occupancy must be advised that they retain eligibility for relocation advisory assistance and payments.

Property Management will proceed with unlawful detainer (UD) action when displaced tenants do not move from the property after control has been obtained from the owner. Relocation Assistance must work closely with the Legal Office, Property Management, and Acquisition to ensure this process proceeds smoothly. At a minimum, tRelocation Assistance will oversee the move of personal property into storage. Relocation Assistance is therefore usually present when the UD is served by the Sheriff.

Ineligible displacees (e.g., non-U.S. residents, occupants after Authority's control, unlawful occupants as determined by 10.01.03.05) will not receive relocation benefits. Generally, these occupants are Authority tenants who rent the property after acquisition by the Authority. There are no requirements to provide ineligible displacees with the RAP 90-Day or 30-Day Notices.

Although the Authority is under no obligation to the ineligible displacee, Relocation Assistance staff are encouraged to provide advisory services to help them find replacement property. There is no requirement to provide advisory assistance to Authority tenants.

10.03.13.00 Urgent Need

In extremely rare circumstances, an eligible displacee may be required to vacate the property on less than 90 days' advance written notice. The Authority must determine that delivery of the 90-day notice is impracticable in order for this to occur (i.e., the person's continued occupancy of the property would constitute a substantial danger to health or safety to those occupants or others). The RAP diary should fully document the circumstances that required someone to move prior to issuing 90-day notices.

TIME FRAMES WHEN RIGHT-OF-WAY CONTRACT WITH POSSESSION DATE CLAUSE

Day 1 →	**Day 30** →	**Day XX** ←	**Day of Control**	**Day of Control + 1**
First Written Offer (FWO) First RAP Call Owner = Same Day Tenant = Within 14 days **NOTICE OF ELIGIBILITY**	**RESIDENTIAL** Conditional Entitlement Letter (RHP and Room Count Costs) **NONRESIDENTIAL** Completed Inventories, Estimates and Bids, Advisory Assistance First opportunity to serve 90-Day Information Notice	Right-of-Way Contract signed Open escrow	**NOTICE TO VACATE** OWNERS Residential & Nonresidential Serve 30-Day Notice to Vacate 30 days prior to date of possession in Right-of-Way contract or COE (if earlier) **TENANTS** Residential Serve 60-Day Notice to Vacate 60 days prior to date of possession in Right-of-Way contract or COE (if earlier) Nonresidential Serve 30-Day Notice to Vacate with Quitclaim Deed 30 days prior to date of possession in Right-of-Way contract or COE (if earlier)	Property Management = Rental Agreement @ Economic Rent for tenants If not, notice to increase rent within 60 days Unlawful Detainer for breach – Coordinate with P. M. **STATE HAS CONTROL** COE/APU Possession date clause in Right-of-Way contract RAP has served all its notices Property Management now in charge RAP will continue to find replacement property

Table 10.03-B

TIME FRAMES WHEN ORDER FOR POSSESSION (OP)

Day 1 →	**Day 30** →		← **Day of Control**	**Day of Control + 1**
First Written Offer (FWO)	**RESIDENTIAL** Conditional Entitlement Letter (RHP and Room Count Costs)	**Day XX**	**NOTICE TO VACATE**	Property Management = Rental Agreement @ Economic Rent for tenants
First RAP Call		Commence to Eminent Domain	OWNERS Named in suit Residential & Nonresidential Serve 30-Day Notice to Vacate concurrent with completion of service of OP on all occupants	If not, notice to increase rent within 60 days
Owner = Same Day		Obtain RON		Unlawful Detainer for breach – Coordinate with P. M.
Tenant = Within 14 days	**NONRESIDENTIAL** Completed Inventories, Estimates and Bids, Advisory Assistance	Suit filed	**TENANTS** Residential Serve 60-Day Notice to Vacate & Nonresidential Serve 30-Day Notice to Vacate concurrent with completion of service of OP on all occupants	**STATE HAS CONTROL** FOC Effective OP and Possession
NOTICE OF ELIGIBILITY	First opportunity to serve 90-Day Information Notice			RAP has served all its notices
				Property Management now in charge
				RAP will continue to find replacement property

Table 10.03-C

10.03.13.01 Notice to Withdraw or Modify Relocation Benefits

There are situations when it is appropriate to withdraw or modify the relocation benefits that have been provided in a Notice of Eligibility or a Conditional Entitlement Letter. Any time there is a change in the benefits that will be provided to a displacee, the Agent must immediately provide a Notice to Withdraw or Modify Relocation Benefits. The Notice must be personally delivered if possible, but at the very least sent by certified registered mail. However, if the displacee has relied on the promise of relocation benefits and has committed themselves financially or via a contract, the Authority may be obligated to pay those relocation benefits in question. Refer to 10.01.04.00 for discussion of Promissory Estoppel and 10.09.07.00 for discussion on appeals due to Promissory Estoppel.

There is no standard form for a Notice to Withdraw or Modify Relocation Benefits. The Agent must obtain Authority approval before a Notice to Withdraw or Modify Relocation Benefits is issued. The Agent should prepare a letter that addresses the particular benefit(s) that is impacted (previous amounts, new amounts, reason for the change, etc.) and the right for the person to appeal the determination. A copy of the Appeal Form (RW 10-06) should be provided upon request.

A person who receives a Notice of Withdrawal or Modification of Benefits that decreases a monetary benefit is entitled to appeal the determination.

10.03.13.02 Withdrawal of Benefits

If the Authority determines that a person or persons who has received a Notice of Eligibility is no longer eligible for any of the relocation benefits discussed in the letter, then withdrawal of all relocation benefits must be provided. Note: “All relocation benefits” include Advisory Assistance.

The following situations require an immediate notification to the displacee that their benefits are being withdrawn:

1. A long-term postponement of the project creates a situation wherein only irrevocable commitments are allowed under Authority policy. (see Section 10.17.00.00.)
2. A design modification reduces the requirement for some or all of the property, and the person is no longer required to relocate.
3. The occupant’s status as a tenured resident or a valid business is in question, and the Agent has determined they no longer qualify for relocation benefits.
    - A resident purporting to be in occupancy for 90 days is only a seasonal resident and has a primary residence elsewhere.
    - A business claims to operate on the property, but in fact only stores personal property at the site and the business license (and other documentation) shows the primary place of business is at another site.
4. The Authority and the occupant are no longer pursuing advanced acquisition, and tenants who have already made efforts to relocate but continue to occupy the property.

A person who receives a Notice of Withdrawal or Modification of Benefits is entitled to appeal the determination. If the person claims Promissory Estoppel, the Authority Appeals Board must hear the appeal. (see 10.09.07.00.)

There may be other situations that require an immediate withdrawal of benefits. Contact the Authority if there are questions about whether a notice should be issued.

10.03.13.03 Modification of Benefits

A modification of benefits includes increases and decreases of a monetary benefit, but the person is still entitled to some of the relocation benefits discussed in the Notice of Eligibility.

1. A change in the real estate market indicates the cost of a comparable replacement property is lower than the previous entitlement.
    - A 90-day owner-occupant's price differential is rarely reduced, and only when the Authority can document that the person has made no effort to find replacement property based on the amount in the Conditional Entitlement Letter.
2. The 90-day owner-occupant wants to rent.
3. The residential occupant has requested, and received, approval to occupy non-DS&S housing as to size and number of bedrooms.
4. The residential occupant has vacated the displacement property, but has not found replacement property within the one-year time period. (see 10.08.02.00.)
5. A change in the acquisition offer (revised appraisal, administrative settlement) requires a change in Replacement Housing Valuation adjustment (major exterior attribute) or carve-out value (typical residential lot), which modifies the RHP.
6. A further review of the nonresidential operation's documents indicates a change in the previously discussed in-lieu payment, reestablishment payment, or other moving payment.
7. A member of a residential household dies prior to relocation, and the need for a larger replacement property, or a property that is barrier free, no longer exists.
    - The Modification of Benefits can only be mailed after a new RHV is prepared, and only if the occupants have not made a commitment to rent or purchase replacement property.

There may be other situations that require an immediate modification of benefits. Contact the Authority if there are questions about whether a notice should be issued.

10.03.13.04 Waiver of Relocation Benefits

49 CFR 24.207(f) specifically prohibits agencies from proposing or requesting a displacee waive relocation benefits. Since the Uniform Act imposes requirements on displacing agencies to provide relocation benefits, the displacee cannot relieve an agency from the Uniform Act's requirements by agreeing to waive relocation benefits. 49 CFR 24.207(f), Appendix A, states that a displacee may, after having been fully advised of all relocation benefits to which they are entitled, provide a written statement stating they choose not to accept some or all of such benefits. In the unlikely event that a displacee refuses to accept some or all of the benefits, and refuses to provide a written statement to that effect, Relocation Assistance will document such refusal in writing.

10.04.00.00 - RESIDENTIAL DISPLACEMENTS

10.04.01.00 Residential Relocation Benefits

Residential displacees are entitled to advisory assistance (10.01.09.01), moving expenses, and RHPs. Eligibility is based on their status as an owner or a tenant, and based on the length of occupancy in the residence at the time of the Initiation of Negotiations (ION), and their status as a U.S. resident (10.01.11.00). The ION begins with either a Notice of Intent to Acquire (NIA) or a First Written Offer (FWO).

To receive the full amount of the calculated RHP, the displacees must occupy a DS&S (10.06.05.00) property within the prescribed time period (10.08.02.00) and file a claim (10.08.03.00). The Uniform Act is a reimbursement program designed to assist displacees in relocating to a new site. Displacees must spend at least the amount calculated by the Authority on a replacement property in order to receive the full amount of the RHP.

Except for Subsequent occupants, the displacees may receive relocation benefits prior to the close of escrow (or any other date the State takes possession) as long as other criteria have been met (e.g., occupied the property on the date negotiations were initiated). (see 10.01.03.04.)

10.04.01.01 U.S. Residency Requirement for Moving Expenses

Residential moving expenses will be paid, provided the person has certified the household's legal status and signed the claim form.

When no member of the household is lawfully present in the United States, no federally funded moving expenses will be paid; however they may be eligible for benefits provided in the state's statues provided funds are available.

If state funding is not available and some of the occupants are not lawfully present, their personalty must be relocated at their own expense. Relocation Assistance must prorate the moving expenses so that only those who can certify as to their status receive a moving expense allowance or reimbursement.

The MSA should not be used when some members of the household are not eligible for moving expenses.

EXAMPLE:- If State Funds not available

Two of the five occupants cannot or will not certify they are legal U.S. residents. The head of the household has certified that he/she and the other two occupants are present in the U.S. legally. The moving expenses must be prorated 3/5ths as follows:

A. Fixed Moving Schedule(FMS): Normally, the eight (8)-room house would receive $2,365; but because only three (3) of the five (5) occupants are U.S. residents, the fixed moving schedule is $1,419, payable when all the personalty has been moved from the property.

B. Actual Move: The moving company with the lowest bid must be advised that the displacees will be responsible for paying the ineligible 2/5ths of the entire cost. If the non-U.S. residents remove 2/5ths of the entire household's personalty prior to the moving companies preparing their bids, then an adjustment is not necessary.

10.04.02.00 Moving and Related Expenses - Residential Entitlement [49 CFR 24.301(b)]

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person [defined at 24.2(a)(9)] is entitled to payment of his or her actual moving and related expenses determined to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Authority determines that relocation beyond 50 miles is justified (10.04.02.01).
(b) Packing, crating, unpacking, and uncrating of the personal property.
(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.
(d) Storage of the personal property for a period not to exceed 12 months, unless the Authority determines that a longer period is necessary.
(e) Insurance for the replacement value of the property in connection with the move and necessary storage (10.05.02.08).
(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
(g) Other moving related expenses that are not listed as ineligible under 49 CFR 24.301(h) as the Authority determines to be reasonable and necessary.

10.04.02.01 Transportation

Displacee's cost of one-way transportation to the new location is allowable. Displacee may be paid on a mileage basis not to exceed the current rate established by the State Board of Control or fares charged by commercial transport (e.g., taxis). Special conveyance, such as the cost of an ambulance, may be paid. Actual, reasonable costs for meals and lodging are eligible when the Authority finds such costs are necessary.

Moving payments for more than one move are not made, except where found to be in the public's best interest and with the Authority's prior approval.

Generally, the displacee is responsible for costs beyond 50 miles, based on the most commonly used routes between move points. If it is determined that the move cannot be accomplished within 50 miles, the additional expenses for the longer distance may be allowed, but shall be limited to the nearest available site beyond 50 road miles.

49 CFR 24.205(c)(ii)(E) states that the Authority shall offer all persons transportation to inspect housing to which they are referred. It is the responsibility of Relocation Assistance to decide how the displacees will be transported to inspect replacement properties. If access, safety or liabilities are a concern, then Relocation Assistance will offer reimbursement for other transportation such as a taxicab or rental car. Care should be exercised to ensure the expenses are actual, reasonable and necessary.

Relocation Agents must preapprove the use of alternate transportation by the displacee, including a limitation of the number of trips (reasonable), the distance (within 50 miles), the locations to be viewed (addresses of properties that are comparable), and the method of transportation (excluding transportation by real estate brokers). Expenses are paid on a standard claim form as "other" moving expenses.

10.04.02.02 Types of Moving Payments

Residential displacees have the choice of either a Fixed Moving Schedule (based on a room-count schedule see 10.04.02.04) or the actual cost to move the personalty:

.Actual: Lowest of two bids from moving companies, and, after the move is complete, the displacee may:

- pay carrier directly and seek reimbursement, or
- assign payment to carrier, and Relocation Assistance pays carrier directly.

Except for the fixed payment, the displacee is eligible for all other necessary and actual moving expenses listed under 10.04.02.00.

10.04.02.03 Fixed Moving Schedule [49 CFR 24.302]

Any person displaced from a dwelling or a seasonal residence is entitled to receive a fixed payment for moving expenses and dislocation allowance as an alternative to a payment for actual moving and related expenses. FRA, looking to FHWA, has approved the following schedule for California for displacee moves including dislocation allowance for utility service connections. The fixed moving schedule is available online at http://www.fhwa.dot.gov.

The schedule includes a provision of $100 for the expense and dislocation allowance to:

- a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons, or
- a person whose residential move is performed by the Authority at no cost to the person (an extremely rare situation).

10.04.02.04 Fixed Moving Schedule (Chart) [Effective August 24, 2015 (Updated Approximately Every Three Years)]

SCHEDULE A (OCCUPANT OWNS FURNITURE)	
Number of Rooms	Payments
1	$ 725
2	$ 930
3	$1,165
4	$1,375
5	$1,665
6	$1,925
7	$2,215
8	$2,505
Each additional room	$ 265

SCHEDULE B (FURNITURE PROVIDED BY LANDLORD)	
One room	$ 475
Each additional room	$ 90
Dormitory Style rooms (Includes hotel/motel rooms, caretaker facilities, assisted living rooms, and "rooms for rent.")	$ 100

"Room" for the Fixed Moving Schedule means space in a unit containing the usual quantity of personal property. Normal division includes living room, dining room, bedroom, kitchen, recreation room, library, study, laundry room, basement, garage, workshop, and patio. Other rooms, garages, or storage areas having personal property equivalent to one or more normal rooms may be counted as additional rooms. Most bathrooms do not count as a room.

Counting rooms requires judgment. A large room may have so much furniture that it can be considered two rooms. An alcove or dining area may be a separate room if it has dining room furniture. Relocation Assistance must record all room equivalents and briefly explain any judgments. Generally, 1,000 pounds and/or 142 cubic feet of personal property and furniture is equivalent to a "room." Examples: 100 pounds would represent four floor-to-ceiling 3′ wide bookshelves filled with books, or a well-stocked, walk-in pantry. Additionally, two small rooms with minimal items of personal property might be counted as one room.

Schedules A and B also apply to eligible moves from mobile homes.

Unusual items such as piles of junk, classic cars, or welding equipment should not be counted as an additional room. Relocation Assistance should advise the displacee to utilize the Actual Move option for these items.

10.04.02.05 Fixed Payment Limitations and Variations

No temporary storage, utility hookups, lodging, or transportation expenses shall be paid to displacees receiving a fixed payment for moving expenses.

A multi-use property owner-occupant who elects to use Schedule A for the residential portion is still eligible for a business move from the other portion of the property.

Where the landlord partially furnishes the rental units, tenants may choose Schedule A to the nearest full room and Schedule B for the remaining rooms. The landlord may be paid for relocation of personal property only as a business move (see 10.05.10.00 or 10.05.09.01 Actual Move).

Scheduling payment based on either Schedule A or B requires only a "Claim for Relocation Assistance - Residential" (RW 10-02).

The displacee cannot receive the payment based on the Fixed Moving Schedule until Relocation Assistance verifies that all personal property has been removed from the displacement site. Also, the Fixed Moving Schedule payment cannot be advanced, nor can it be retained by the Authority's Property Management section to pay for delinquent rent.

10.04.02.06 Moving Service Authorization (MSA) [Hold for Future Use]

10.04.02.07 Payment for Other Services – MSA [Hold for Future Use]

10.04.02.08 Requirements for Scheduling Payments – MSA Method [Hold for Future Use]

10.04.02.09 Actual Reasonable Cost of Move by For-Hire Carriers

A displaced individual or family may be paid actual reasonable cost of a move accomplished by a qualified carrier. Displacee shall secure at least two firm bids based on a list of the personal items to be moved and submit to Relocation Assistance for approval prior to the move. If displacee will not make direct payment, they must inform carriers that the Authority will pay for the move. Bids must be on company letterhead signed by a person authorized to bind the firm and must contain the following statement:

> *"As this move is the result of displacement from real property acquired for public purposes and cost is to be borne by the State of California, the costs and charges for this move are exempt from regulations by the Public Utilities Commission. The cost of performing the work in connection with this move will not exceed cost quoted herein. All work performed under this bid shall be accomplished in a good and workmanlike manner and in accordance with standards normally applied by the industry. The company shall be responsible for the actual replacement cost of all loss or damage incurred in the performance of the work."*

Either the displacee or Relocation Assistance can request estimates from the moving companies. Relocation Assistance must review the estimates to determine appropriateness of charges and then advise the displacee of the lowest bid. The displacee may choose any moving company to perform the move; however, the payment will be limited to lesser of the actual amount or the amount of the lowest bid. The displacee may request the payment be assigned directly to the moving company.

Often, reasonable moving expenses cannot be completely determined until after the move has been completed. Appropriate adjustments to the final bill should be made if the bid or estimate could not reasonably have been expected to include the additional charges.

10.04.02.10 Dislocation Allowance

Displacees who elect an actual move are also entitled to reimbursement for the dislocation and hookups of household appliances and other personal property that are moved from the displacement property to the replacement property. Reimbursement is limited to those amounts that are actual, reasonable, and necessary as supported by documentation from the displacee. Typical charges are:

- Cable and telephone installation hookup fees (exclusive of any deposits for equipment or services).
- Retuning a piano or resetting a grandfather clock.
- Connection for an icemaker, a water softener, or a gas/electric dryer (not to include changes to the replacement property to accommodate the appliances).

If the Authority moves the personal property from a dormitory style room that is shared by two or more persons, the dislocation allowance is limited to $100.

10.04.02.11 Paying the Moving Company

Relocation Assistance may pay a moving company after all personal property has been removed from the displacement site, by either:

Written Arrangement- signed by displacee, Authority, and mover. Displacee pays the moving company, and presents itemized bills and a proper claim to the Authority after the move is completed. Relocation Assistance reviews the bills and deletes any ineligible costs, processing the claim for payment to the displacee. Displacee is responsible for any ineligible costs.

Assignment of Payment - Displacee assigns the moving payment directly to the moving company, who agrees to accept payment after the invoices have been reviewed and the claim is processed. The Assignment of Payment is executed by displacee and carrier. Before assignment is accepted, Relocation Assistance shall examine all documentation supporting the carrier's cost. Ineligible costs shall be deleted; only an assignment in the proper amount shall be accepted. Displacee is responsible for paying the moving company for all ineligible costs.

When scheduling payments directly to the moving companies, a copy of the written arrangement or assignment shall be attached to the Claim (RW 10-02).

10.04.02.12 Storage

A residential displacee MAY be entitled to storage of their personal property if the Authority determines that it is absolutely necessary in order to vacate the displacee for the project.

Storage of personalty is not an automatic benefit and should only be authorized when it is in the best interest of the public and the project. The determination should be based on the needs of the Project, the nature of the displacee's operation, the plans for permanent relocation, the amount of time available for the relocation process, and whether storage would facilitate relocation. It is Property Management's

responsibility to establish the terms (e.g., monthly rate, term, comparable unit, storage accessibility). Examples of justifiable storage are:

- Displacee has diligently looked for replacement property, but has not been able to locate something because of the DS&S requirements.
- Construction of the replacement property has been delayed by some unforeseen circumstance, again not the result of the displacee's actions.
- The project's time schedule supports relocating the displacee's personalty immediately.

The displacee's storage must be preapproved by the Authority based on the maximum period of time the displacee will need before permanent occupancy of the replacement property can take place, up to 12 months. Displacees are not automatically entitled to a full 12 months of storage.

Authority may authorize a flat storage rate for the displacee's storage based on a market analysis of storage rates for comparable units. The displacee can be reimbursed at the end of the agreed upon time period after submitting a claim, including invoices and paid receipts. An optional method of payment is for the displacee to execute an Assignment of Funds wherein the Authority may advance the first and last month's storage rent to the Storage Facility, and make periodic payments (e.g., quarterly) for the agreed upon time period.

All arrangements for storage should be documented in writing between the Authority and the displacee, and if applicable, the storage facility.

Displacees are also entitled to the actual, reasonable, and necessary costs to move their personalty into and out of storage, up to 50 miles for each move (including necessary unloading and stacking). The Authority is only responsible to move the same amount (or less) of personal property out of storage to the replacement site. The displacee must be advised that they cannot move other personal property items into the storage unit during the period of storage.

Extensions beyond 12 months should be rare and only when the displacee's circumstances are so unusual that an additional month or two of storage is warranted.

Note: Displacees are entitled to insurance for the replacement value of the personal property in connection with the authorized storage.

10.04.03.00 Replacement Housing Payments (RHPs)

49 CFR 24.2(a)(6)(viii) requires the replacement property to be within the financial means of the displaced person as determined by the following:

(i) A replacement dwelling purchased by an eligible 90-day owner-occupant is considered to be within the displacee's "financial means" if the homeowner will receive the maximum calculated Price Differential (PD) (10.04.09.00), the full Mortgage Differential (MD) (10.04.12.00), and the reimbursement for all eligible Incidental Expenses (IE) (10.04.13.00).

(ii) A replacement dwelling occupied by an eligible 90-day occupant is considered to be within the displacee's financial means if, after receiving the maximum calculated Rent Differential (RD) (10.04.15.01), the displacee's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling.

10.04.03.01 Maximum RHP

To receive the maximum RHP (PD or RD), the displacee must purchase or rent, and occupy a DS&S residential property within the time frame prescribed in 10.08.02.00. The actual replacement property does not have to be comparable to the displacement property nor the probable replacement property from the Replacement Housing Valuation (RHV). However, the actual price or rent paid for the property must be equal to or greater than the amount of the probable replacement property ("spend-to-get").

In rare cases, a 90-day Owner-Occupant may not be entitled to a PD (calculation is zero, or does not "spend-to-get"); however, an MD and/or IE may still be paid if the displacee meets the same time frames to occupy a DS&S property.

10.04.04.00 Inspections of Replacement Dwelling [49 CFR 24.403(b)]

Before making an RHP or depositing a payment into escrow, Relocation AssistanceRelocation Assistance shall inspect the replacement dwelling and determine whether it meets DS&S standards.

The inspection must be complete **prior** to the displacee committing to the purchase/rental of the property.

Relocation AssistanceRelocation Assistance shall complete a DS&S Inspection Report (RW 10-40) as a prerequisite to any replacement housing or rental RHP. The form is completed, signed and dated in ink, and filed in the RAP file. A copy of the form is not included in the claim package.

For a displaced person with a disability, the replacement dwelling shall be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person (49 CFR 24.2(8)(vii). Features that exist at the displacement property must be available at the replacement dwelling, either as existing or as being added via last resort housing. If medical substantiation is provided, additional features may be added to the criteria for decent, safe and sanitary. (see 10.06.06.00 for replacement housing valuation criteria.).

All specifications relating to the replacement must be answered "yes" to qualify it as a DS&S replacement dwelling.

The three data sections at the top of the Inspection Report provide a means of comparing the area and room requirements of the people who will occupy the replacement dwelling with its habitable area and room count. The replacement dwelling area and room count must equal or exceed comparability requirements before payment can be made. Estimated dimensions may be used when computing areas for the various rooms.

10.04.04.01 DS&S Inspections for Others

Authority staff may be contacted to provide DS&S inspections for other states. If appropriate the Director of Real Property will assign the inspection to Relocation Assistance and respond promptly to the request and to ensure that any relevant issues related to the inspection are obtained in advance of the actual inspection, with appropriate remarks returned to the requesting agency.

There may also be situations that require the Authority to request another agency to perform the DS&S inspection for a displacee that has relocated out of California or the United States. These requests should be made through that area's regional FRA office or the main governmental body.

10.04.05.00 Inability to Meet Occupancy Requirements [49 CFR 24.403(d)]

No person shall be denied eligibility for an RHP solely because the person is unable to occupy the replacement property within the time frames set forth in 10.08.02.00 for a reason beyond his or her control, including:

1. A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the displacing agency; or
2. Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Authority.

A displacee may enter into a construction contract for rehabilitation of a replacement dwelling or into a legally binding contract for purchase of a replacement dwelling, but cannot secure title and/or occupy the dwelling within the required period for reasons beyond reasonable control. In these situations, Relocation AssistanceRelocation Assistance shall consider displacee as having purchased and occupied the dwelling as of the date of the construction or purchase contract. Displacee must have entered into the contract, however, before the normal one-year replacement period expired.

Relocation Assistance shall secure a statement signed by displacee summarizing the reasons beyond their reasonable control and retain it in the case file.

The RHPs under the above situations shall be deferred until the person actually occupies the replacement dwelling. When replacement housing is being built or rehabilitated, partial payments may be made from escrow.

10.04.06.00 U.S. Residency Requirement for Federally Funded RHPs

Displacees who are not present in the U.S. legally cannot receive a federally funded RHP. If the household has some occupants that cannot certify they are legal U.S. residents, the RHP for the remaining U.S. residents must be adjusted [49 CFR 24.208(c)]. The unlawful occupants are not counted as part of the family and its size is reduced accordingly. Thus, a family of five, one of whom is a person not lawfully present in the country, would be counted as a family of four.

For owners, the number of bedrooms to satisfy DS&S requirements will be based on the number of occupants having legal status, but will not be less than the number of bedrooms at the displacement property. For tenants, the number of bedrooms to satisfy DS&S requirements will be based on the number of occupants having legal status. For example, a household of seven (including one displacee not present legally, individually occupying one bedroom) would receive an RHP based on a comparable with three bedrooms, even if the displacement dwelling contains four bedrooms. In determining whether or not the "thirty percent of income" rule should be used in calculating the RD, the income of a family member who is not certified must still be considered in determining household income, or the entire household's income cannot be considered for the "thirty percent rule."

10.04.07.00 RHPs - 90-Day Owner-Occupant's Eligibility [49 CFR 24.401(a)]

A displaced person is eligible for the RHP for a 90-day homeowner-occupant if the person:

1. Has actually owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations (FWO or NIA); and

2. Purchases and occupies a DS&S replacement dwelling within one year after the later of the following dates (except that the Authority may extend such one-year period for good cause);
   (i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or
   (ii) The date the displacee is advised, in writing, of the address of a comparable replacement property, within their financial means.

10.04.07.01 90-Day Owner-Occupant RHP [49 CFR 24.401(b)]

The RHP for an eligible 90-day homeowner-occupant is limited to the amount necessary to relocate to a comparable replacement dwelling. The payment shall be the sum of:

1. The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling (PD); and
2. The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling (MD); and
3. The reasonable expenses incidental to the purchase of the replacement dwelling (IE).

If the sum of these three payments exceeds $31,000, then LRH provisions apply.

A 90-day owner-occupant may receive an RD in lieu of the entire RHP (10.04.14.00).

10.04.07.02 Purchase of Replacement Dwelling [49 CFR 24.403(c)]

A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

1. Purchases a dwelling; or
2. Purchases and rehabilitates a substandard dwelling; or
3. Relocates a dwelling which he or she owns or purchases; or
4. Constructs a dwelling on a site he or she owns or purchases; or
5. Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or
6. Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

10.04.07.03 Rehabilitation of Replacement Dwelling

A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling;

(2) Purchases and rehabilitates a substandard dwelling;

(3) Relocates a dwelling which he or she owns or purchases;

(4) Constructs a dwelling on a site he or she owns or purchases;

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

There are significant sources of home improvement mortgage financing via the HUD loans that may be available for displacees who choose to improve their replacement properties.

10.04.08.00 Payment Procedures

Payment Into Escrow: All or a portion of the estimated RHP can be placed into escrow to assist the displacee with the financial aspects of the purchase based on estimated closing and loan documents. The escrow instructions for the displacee's actual replacement property require the final closing statement state the total price of replacement dwelling.

Payment After Escrow Has Closed: Displacee may choose to complete the purchase of the replacement property without any of the RHP deposited into escrow in advance. After close of escrow, displacee must submit certified copies of the closing statement and the Truth-In-Lending statements, along with a claim form for reimbursement. Relocation Assistance will review all documentation and pay the eligible expenses.

10.04.09.00 Price Differential Calculation

The PD is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with 10.06.00.00.
(ii) The purchase price of the DS&S replacement dwelling actually purchased and occupied by the displaced person.

Procedures for computing PD are shown on Table 10.04-A.

10.04.10.00 Owner Retention of Displacement Dwelling [49 CFR 24.401(c)(2)]

If the owner retains ownership of the displacement dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

1. Cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and
2. The cost of making the unit a DS&S replacement dwelling; and
3. The current fair market value (vs. historical cost) for residential use of the replacement unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site.
4. The retention value of the dwelling, if such retention value is reflected in the 'acquisition cost' used when completing the RHP.

The combined costs of relocation, rehabilitation, and improvement to DS&S standards are eligible for reimbursement to the extent they do not exceed the maximum PD entitlement based on comparable

replacement properties. This may include construction of features such as garages if they cannot be moved. Interim or construction financing costs can be considered in the total construction costs to meet the "spend-to-get" requirements for the maximum PD.

Relocation Assistance is not required to prepare an expensive or sophisticated valuation report to determine the value of the property. Relocation Assistance should ensure that its valuation is reasonable and supportable as its determination could be appealed.

Refer to 8.06.08.00 and 8.06.09.00 for additional information on owner retention or relocation of improvements. Under Section 8.06.08.00, Acquisition does not participate in the cost to move the dwelling but pays the "in-place" value of improvements, minus salvage value. Under Section 8.06.09.00, Acquisition pays the cost to move the dwelling to the remainder and reconnect all utilities. In both cases, RAP can pay the PD based on the RHV for a DS&S comparable replacement property based on the fair market value of the DS&S dwelling reestablished on the remainder.

10.04.11.00 Previously Owned Replacement Dwellings [49 CFR 24.403(c)(6)]

A displacee who moves into a previously owned replacement residential property is still entitled to the RHP (PD, MD, and IE) regardless of how long the property has been previously owned, or how it was acquired (inherited, gifted, purchased, built).

To receive the maximum PD, the previously owned replacement property must have a current fair market value equal to or greater than the price of the comparable replacement property (RHV).

> The displacee may also be entitled to an MD based on the existing loan that was obtained sometime prior to vacating the displacement property, or a new MD and related expenses (IE) if the displacee chooses to refinance the existing loan on the previously owned replacement property. To be eligible for an MD, the new loan rate on the previously owned replacement property must be less than the existing loan, but more than the loan rate on the displacement property. To be eligible for a mortgage interest differential, the displacee must have had a mortgage in place for 180 days prior to the initiation of negotiations.

If the owner buys back the dwelling at the Authority's auction, the reestablished dwelling on the new site or even the remainder qualifies as a previously owned replacement dwelling.

BASIC COMPUTATION - PD	
Type of Replacement	**Computation**
Purchase of Existing DS&S Replacement Dwelling	The PD is the difference between the acquisition cost of the displacement dwelling and the lesser of the following two amounts: • The price displacee actually paid for a replacement dwelling. • The price of a comparable dwelling as determined by the Authority.
Rehabilitation of an Existing Non-DS&S Dwelling	Generally, the purchase price for "spend-to-get" requirements is the amount established in an escrow or written contract as the agreed selling price. The State will consider as part of the purchase price certain work required on the replacement dwelling, provided all such work is completed or contracted for within one year following the close of escrow for the replacement property. If displacee purchases a non-DS&S dwelling on the remainder or other land, the following costs are eligible for reimbursement: • Work necessary to meet DS&S standards. • Major exterior attributes found in both the displacement property and replacement property used to determine maximum payment.
Construction of a New Dwelling	With prior notification, displacee may build a replacement. PD is the difference between the acquisition cost of displacement dwelling and the least of the following two amounts: • Cost of an existing comparable replacement dwelling. • Current fair market value of a comparable newly constructed dwelling.
Ownership of Replacement Dwelling Prior to Displacement	A replacement dwelling owned by displacee prior to State's first offer may be used as a replacement dwelling in the computation of a PD payment. Regardless of the date or the manner in which the residence was acquired, the current fair market value of the residence is used to determine the amount spent by the claimant.

Table 10.04-A

10.04.12.00 Mortgage Differential (MD) [49 CFR 24.401(d)]

The payment for increased mortgage interest cost shall be the amount, which will reduce the mortgage balance on a new mortgage to an amount, which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs (e.g., points and loan origination fees). The payment shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations, and is contingent upon a mortgage being placed on the replacement dwelling.

The MD calculation will result in an amount that is needed to reduce the mortgage balance on the actual replacement property to an amount that would result in the same monthly payment at the displacement property, if there was no change in the term or the mortgage balance.

Payment for increased mortgage cost is contingent upon displacee purchasing, occupying, and obtaining a mortgage on a DS&S replacement dwelling.

EXAMPLE:

The displacee had a $50,000 mortgage at the displacement property with a remaining term of 240 months at 7% = $387 PI

If the new mortgage at the actual replacement property were $50,000 at 10%, the payment for 240 months would be $482 PI. (Remember: assuming no change in term or balance between the displacement and replacement loans.)

How much money is needed to reduce the mortgage at the replacement property to an amount that would result in the $387 PI?

MD calculator will determine the Present Value of a 10% loan for 240 months with a $387 payment.

Present Value: $40,100

The MD payment to the displacee is the difference between the $50,000 and the $40,100, which should be used by the displacee to buy down the loan and reduce the payments (not mandatory).

MD Payment: $9,900

10.04.12.01 MD Factors

The following factors shall be considered when computing the MD:

1. The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling.
   Note 1: In the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buy-down determination, the payment will be prorated and reduced accordingly.
   Note 2: To compute the buy-down if the term of the new mortgage is shorter than the remaining term of the displacement mortgage, a hypothetical monthly payment that assumes the displacement mortgage had the same shorter term must be used.
2. The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.
3. The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.
4. Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:
   - They are not paid as IE;
   - They do not exceed rates normal to similar real estate transactions in the area;
   - Relocation Assistance determines them to be normal expenses and necessary for the replacement area, and
   - The computation of such points and fees shall be based on the lesser of the unpaid mortgage balance on the displacement or replacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

5. The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known (see Exhibits 10-EX-13 and 10-EX-14); and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

see 10-EX-15 for example calculations, and the MD Calculator on the Right-of-Way Intranet.

10.04.12.02 Items Not Eligible for Mortgage Differential

The following items are not eligible for MD:

- Interim financing or construction loans.
- Mortgages on all types of personal property.
- Mortgages that were materially changed less than 180 days before initiation of negotiations. This includes any change in rate, term, or monthly payment, excluding variable rate mortgages. A new trustee or beneficiary is not a material change.

Exceptions: Adjustable Rate Mortgages (10.04.12.13) and Home Equity Loans (10.04.12.08).

10.04.12.03 Determination of Rates, Points, and Fees

Relocation Assistance must document interest rates, purchaser's loan points, and origination or assumption fees and retain all support documentation in Authority RAP files.

Relocation Assistance shall contact three lending institutions in the replacement area, if available, to determine the prevailing interest rate. Additional lenders may be contacted at the Authority option. Information shall be updated quarterly or more often if necessary.

10.04.12.04 Mortgage Interest Rates

The MD calculation is made on rates available as of the date of move from the displacement property, not when the displacee enters into a contract to purchase a replacement property (within the one year time period).

The prevailing interest rate shall be the highest interest rate generally charged. In unusual circumstances, the Authority may authorize using an interest rate that exceeds the prevailing fixed interest rate, in which case full documentation must be included in the file. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage or other similar reasons.

Additionally, if the displacee is required to pay an interest rate that is higher than the prevailing rate due to his or her unique circumstances (e.g., poor credit risk), the higher interest may be used subject to Authority approval in calculating the MD if the Supervising Right-of-Way Agent determines that the additional cost could prevent the displaced person from obtaining comparable housing. The diary must be documented to show justification for the rate used.

10.04.12.05 Points and Origination or Service Fees

These fees shall be the highest generally charged by lenders in the replacement area. The same sampling and updating requirements apply as with interest rates. See the above section for information on using higher than prevailing rates.

These fees may be paid as an IE if an actual increased interest rate is not incurred on the replacement dwelling. Where a loan did not exist on the displacement dwelling of a long-term owner, fees related to a loan on the replacement dwelling will not be reimbursed.

The purchaser's (displacee's) points and loan or assumption fees on a down payment should be considered IE. Relocation Assistance shall determine rates and document data sources. If interest rates vary, Relocation Assistance shall use the mortgage rate closest to the actual mortgage being replaced.

10.04.12.06 Mortgage Differential Calculation

The MD can be calculated by hand by utilizing the MIDP Calculator on the FHWA Web site: http://www.fhwa.dot.gov/realestate/midpcalcs/index.cfm. Use the following definitions in determining which data and which format must be used.

TERM	DEFINITION
Buy-Down	Increased mortgage interest costs are commonly known as the buy-down. The buy-down is the payment required to reduce the balance on a new mortgage to an amount that can be amortized with the same monthly payment for principal and interest as for the mortgage(s) on the displacement dwelling. The payment includes purchaser's points and loan origination or assumption fees if not paid as incidental costs.
Old Mortgage	Existing mortgage balance on the displacement property.
New Mortgage	Mortgage on the replacement property.
Computed Amount for a New Mortgage	Amount to be financed to maintain the monthly payment (principal and interest) of the old mortgage (the present worth of the current payment of principal and interest on the displacement property).
Standard Buy-Down	New mortgage dollar amount is the same or larger than the computed amount for a new mortgage, and the term is the same or longer than that of the old mortgages.
Reduced New Mortgage Buy-Down	The new mortgage dollar amount is less than the computed amount for a new mortgage.
Reduced New Mortgage Term Buy-Down	The term of the new mortgage is less than that of the old mortgage.
Reduced New Mortgage and Term Buy-Down	The new mortgage dollar amount and term are less than these factors for the old.

10.04.12.07 Multi-Use Properties - Segregation of MD Payments

The value of the owner's unit is the base for determining payment where displacement or replacement property is more than a single-family dwelling (10-EX-19). The percentage that the owner's unit contributes to the total value of property is used to compute payment. When rental rates are used, the economic rent of the owner's unit is used.

10.04.12.08 Home Equity Loans [49 CFR 24.401(d)]

To compute an MD when the displacee has a home equity loan on the displacement property, the loan balance is the lesser of the present unpaid mortgage balance, or the unpaid balance that existed 180 days prior to the initiation of negotiations. This is important because a home equity loan mortgage instrument could allow the borrower to increase the mortgage balance at will. The interest rate is the prevailing interest rate for the same kind of home equity mortgage instrument. If the home equity mortgage encumbering the acquired property has no set amortization of principal, use the prevailing amortization period of the current market.

10.04.12.09 Government Subsidized Loans

When the displacee has a loan with a government subsidized interest rate that produces a reduced payment on the displacement dwelling, the terms of the loan usually require that the interest subsidy (the cumulative difference between what the displacee paid with the subsidized rate and would have paid without it) be paid upon the sale or other conveyance of the property. Thus, while the subsidy creates an accumulating debt for the mortgagor (displacee), the mortgagor is not required to make monthly or other periodic payments against that debt prior to conveyance. The interest subsidy, therefore, is not a "mortgage" within the meaning of the Uniform Act and, as such, should not be part of an MD. The interest subsidy is a liability to the owner and paying it out of the proceeds of the sale of the displacement property is no different from paying back a mechanic's lien or other similar liability. To compute an MD when a subsidized loan is present, the loan balance is the balance without the subsidy, the term is the remaining term on the loan without additional time for repaying the subsidy, and the interest rate is the subsidized interest rate.

10.04.12.10 Balloon Payments

On a mortgage with a balloon payment, use the mortgage balance, interest rate, and monthly payment amount that are in effect on the date of acquisition. The monthly payment is normally predicated on a term longer than the actual term of the mortgage, so the computed remaining term is greater than the actual remaining term of the mortgage. Use of the computed remaining term provides the appropriate MD payment.

10.04.12.11 Multiple Mortgages

If there is more than one mortgage, compute the buy-down by completing the computations for each mortgage using the terms of that mortgage. If there is an old second mortgage that has a higher interest rate than any available rate, the buy-down amount will be zero, but you then add points to arrive at an MD. The points are still eligible even though the new mortgage is at a rate that does not exceed the old mortgage.

Relocation Assistance must compare the total loan balances when there are multiple mortgages at the displacement and/or replacement properties to ensure that the "lesser of" is used in calculating the MD.

10.04.12.12 Reverse Mortgages

The purpose of the Mortgage Differential (49 CFR 24.401) is to reduce the mortgage balance on a new mortgage to an amount, which could be amortized with the same monthly payment for principal and interest as that for the mortgage on the displacement dwelling. A reverse mortgage, such as a Federal Housing Administration (FHA) home equity conversion mortgage (HECM), is a first mortgage lien. A property owner who has an HECM is entitled to be placed in similar circumstances. Therefore, payments to enable an in-kind replacement, including costs to create another HECM, are eligible expenses. To date, very few reverse mortgages have been written. If Relocation Assistance encounters a reverse mortgage, Relocation Assistance should contact the Senior Right-of-Way Agent to review.

10.04.12.13 Adjustable Rate Mortgages (ARM)

If the displacement mortgage is an Adjustable Rate Mortgage (ARM), use the mortgage balance, interest rate, and monthly payment amount that were in effect on the date escrow closed or the Authority had control and possession.

It is expected that replacement ARM mortgages are the more cost-effective replacement mortgage financing for a predisplacement ARM that has not yet adjusted or has interest adjustment specifications that remain more favorable than currently available fixed rate mortgage financing. If a replacement ARM with equivalent rate adjustment specifications and terms at the displacement ARM is available that would result in a lower MD than the fixed rate mortgage, the available ARM should be used to compute the amount of the MD.

10.04.13.00 Incidental Expenses (IE) [49 CFR 24.401(e)]

The displacee may be eligible for reimbursement for those necessary and reasonable costs actually incurred by the displaced person incidental to the purchase of a replacement dwelling, and customarily paid by the buyer including:

1. Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
2. Lender, FHA, or VA application and appraisal fees.
3. Loan origination or assumption fees that do not represent prepaid interest (limited to the amount of the displacement mortgage). Only points not paid as part of the MD are eligible.
4. Certification of structural soundness (e.g., home inspection) and termite inspection when required. Other inspections normally required by the buyer that are in the interest of protecting the health and safety of displacees are also an allowable expense:
   - Roof inspection
   - Lead based paint
   - Asbestos
   - Water Heater strapping
5. Credit report.
6. Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.
7. Escrow agent's fee (limited only by what is actual and reasonable for the selected Escrow Company).

8. State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).
9. Such other costs subject to Authority approval as Relocation Assistance determines to be incidental to the purchase, and a standard expense for purchases in the actual replacement area. Examples:
    - Tax report service fees.
    - Sales or use tax on mobile homes.
    - Mortgage Insurance Premium (MIP) or Private Mortgage Insurance (PMI) payments that have been paid in escrow (limited to the amount of the displacement mortgage), and not part of the monthly payment.
    - Association fees that are required on a one-of-a-kind basis as part of displacee's equity position in the replacement property.
    - Home warranty can be paid if existing on displaced residence, otherwise requires justification and Authority approval.

Fees associated with a new loan (e.g., appraisal report, credit report, lenders processing or packaging costs) can only be paid if the displacement property had a bonafide mortgage at the time of acquisition.

10.04.13.01 Incidental Expense Limitations (IE)

The following expenses are not reimbursable:

- Expenses incurred by the Authority's grantor in the acquisition of grantor's property.
- Points that are paid as part of the MD payment.
- Costs paid in advance by the seller of the replacement property and prorated in escrow, such as taxes, insurance, and condominium fees.
- Mobile home sales or use tax on the difference if the actual cost exceeds the calculated replacement cost.
- Motor vehicle registration fees on mobile homes.
- MIP that has been added to the loan amount.
- Warranty insurance.
- Additional costs incurred in securing a larger mortgage on the replacement dwelling than existed on the displacement dwelling.

10.04.13.02 Proof of Payment

Proof of payment of actual expenses is documented by showing separate items on the certified copy of the closing escrow statement, receipts or statements, and canceled checks.

10.04.13.03 Incidental Expense and Mortgage Financing [49 CFR 24.401(b)(3) and 24.401(e)]

Where there is no mortgage on the displacement property, the costs incurred in connection with securing mortgage financing on the replacement property should not be considered as an eligible IE. These costs are not considered necessary to enable the displacee to relocate to a comparable property.

10.04.13.04 Mortgage Insurance Premiums (MIP)

The Department of Housing and Urban Development (HUD) has established a process for collecting MIP for certain mortgages that HUD insures. Information about MIPs for HUD should be obtained from the local HUD Office or displacee's lender.

Under the new system, the borrower can:

1. Pay a single premium on the mortgage as an up-front cost paid into escrow. This payment represents the total premium obligation for the insured loan; or
2. Finance 100% of the MIP by adding the premium obligation to the loan amount. In effect, this option allows the borrower to finance the MIP over the term of the mortgage loan at the same interest rate.

Mortgage Insurance Premium is reimbursable as an eligible IE if the total premium is paid through escrow for the replacement property (Item #1). It may also be reimbursed as part of the MD expense if the premium is financed as part of the mortgage (Item #2). Reimbursement is limited to the actual amount of MIP that would be required on the unpaid balance of the old loan or the amount of MIP required on the new loan for a comparable replacement dwelling, whichever is less.

Relocation Assistance should inform all displacees eligible for MIP reimbursement of both options and advise them that they can maximize their entitlement dollars by selecting the single-premium option.

The amount of MIP varies depending on the term of the loan, credit status of the borrower, and whether the premium is paid up front or financed.

A factor developed by HUD is multiplied by the amount of the mortgage to determine the amount of MIP. Exhibit 10-EX-16 shows the MIP factors and procedures for the two options.

10.04.13.05 Private Mortgage Insurance (PMI)

In certain instances, conventional lenders require borrowers to pay PMI to obtain a loan. Since the rates charged by firms providing PMI are competitive in nature, no set formula can be used to establish a payment reimbursement procedure.

Generally speaking, a borrower is required to pay the first year's premium up front in escrow. The premium for the remaining term is added to the monthly mortgage payment and collected accordingly. The amount of PMI paid up front in escrow is eligible for reimbursement as an incidental expense.

Payment is based on the proportional share of PMI applied to the remaining balance of the loan on the displacement dwelling or the loan on a comparable replacement dwelling, whichever is less.

10.04.14.00 Converting the Price Differential (PD) to a Rent Differential (RD) [49 CFR 24.401(f)]

A 90-day owner-occupant may elect to rent, instead of purchase, a DS&S replacement dwelling. If so, the 90-day owner-occupant should be advised that they can receive an RD in lieu of the entire RHP (PD, MD, and/or IE) for purchasing a replacement dwelling. Inform the displacee a new RHV will be prepared and Conditional Entitlement Letter provided. A new 90-day occupant Conditional Entitlement Letter will be accompanied by a cover letter stating that the new comparable rental address and computation are being provided per their request.

The maximum RD is calculated in the same manner as with 90-day occupants, except that the rent at the displacement property is based on economic rent, and the RD cannot exceed the calculated Price Differential. If the PD is zero, then the RD is zero. No new RHV is necessary.

Any advanced monies from the RHPs (e.g., credit report and appraisal fees paid into escrow for a potential purchase) that have already been paid should be deducted from the RD to avoid duplicate payments.

The 90-day/30-day Notices required under 49 CFR 24.203(c) that are sent to a 90-day owner-occupant who chooses to rent will provide the addresses of comparable replacement properties that are available for rent, not sale.

EXAMPLE - 90-day Owner-Occupant who rents:

Comparable Replacement Property lists for: $180,000
Fair Market Value of Displacement property: $170,000
Maximum Price Differential: $ 10,000

Actual fair market rental of the replacement property: $1,800 per month
Fair market rental of the displacement property: $1,600 per month
Difference of $200 per month x 42 months = $8,400 Rent Differential

Owners can receive a $8,400 Rent Differential since it is less than the maximum Price Differential ($10,000). They also have one year from the date they occupied the replacement property rental to convert back to an owner and receive the balance of the Price Differential ($10,000 - $8,400 = $1,600), plus any entitlement they may qualify for as a Mortgage Differential and Incidental Expense. However, they would not be entitled to an additional moving payment for the second move.

10.04.15.00 Last Resort Housing (LRH) Guidelines

The usual method for providing Last Resort Housing (LRH) is by making payments exceeding the statutory limits. When an LRH Super RAP payment (>$31,000) will be made to a 90-day owner-occupant, every effort should be made to deposit all the funds into escrow. However, should the displacee file a claim after the close of escrow on the replacement property, the displacee can be paid any RHP due directly.

Other methods of providing Last Resort Housing include those outlined in Table 10.04-A.

For additional Last Resort Housing Guidelines, see Exhibit 10-EX-44.

10.04.15.01 Last Resort Housing for 90-Day Owner-Occupants

If possible, all funds must be deposited into escrow. However, should the displacee file a claim after the close of escrow on the replacement property, the displacee can be paid the full RHP directly.

10.04.16.00 Replacement Housing Payment for 90-Day Occupants Eligibility [49 CFR 24.402(a)]

A tenant occupant displaced from a dwelling, who has occupied the property for at least 90 days prior to the ION, may be entitled to an RHP in the form of an RD or a Down Payment (DP) if the displacee rents,

or purchases, and occupies a DS&S replacement dwelling within one (1) year after the date he or she moves from the displacement dwelling.

Only one replacement housing or rental payment shall be made for each dwelling unit, except in the case of multifamily occupancy of one dwelling unit (10.04.17.00).

10.04.16.01 Rent Differential (RD) Offer

The RD is the amount offered to the displacee, in writing, which provides displacees with an estimate of monthly payments they can rely on as they seek replacement dwellings. If the RD offer is not acted on within 180 days, it shall be automatically withdrawn and a new RD will be calculated based on the new monthly rent at the displacement dwelling.

The displacee must be advised in advance that the time period to act on the original RD offer will be withdrawn if a replacement property is not located soon and that the new RD may be more or less than the original RD offer, depending on the market and the monthly rent the displacee has been paying.

10.04.16.02 Amount of Payment [49 CFR 24.402(b)(1)]

An eligible displaced person that rents a replacement dwelling is entitled to a payment not to exceed $7,200 for rental assistance, prior to LRH provisions. Such payment shall be 42 times the amount obtained by subtracting the base monthly rental (10.04.17.00) for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or
(ii) The monthly rent and estimated average monthly cost of utilities (10.04.17.01) for the DS&S replacement dwelling actually occupied by the displaced person.

10.04.17.00 Base Monthly Rent [49 CFR 24.402(b)(2)]

The base monthly rent for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for the three (3) months prior to the ION.
- For an owner-occupant, use the economic rent for the displacement dwelling.
  - if owner rents the property back from the Authority after escrow closes, use the actual rent paid (including estimated utilities) after a three (3)-month period has passed.
- For a tenant who paid little or no rent (10.04.17.03) for the displacement dwelling, use economic rent,
  - unless its use would result in a hardship because of the person's income or other circumstances; or

(ii) Thirty (30) percent of the person's average monthly gross household income (10.04.18.00) if the annual amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Low Income Limits (see HUD's Low Income Chart at http://www.fhwa.dot.gov/realestate/ua/ualic.htm), or

(iii) The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities. The portion of the

welfare assistance designated for food (e.g., food stamps) is specifically excluded from being considered as income [7 USC Section 2017(b)].

10.04.17.01 Utilities

Utilities are defined as expenses for electricity, gas (and other heating and cooking fuels), water, and sewer/septic. Other utilities normally included in a local utility agency bill such as street cleaning, neighborhood cleanup, storm drains, etc., must not be included in the Rent Differential.

The term "average monthly cost of utilities" means the average monthly cost of the displacee's utility costs for the last 12 months.

The term "estimated average monthly utility cost" means Relocation AssistanceRelocation Assistance's estimate of utility expenses for the comparable replacement property considering its size and location.

The cost for heat is usually included in a natural gas or electric bill. It is appropriate to consider the cost of wood or coal if they are typically used for heat in the area. Liquefied gas is also an appropriate utility expense.

Relocation AssistanceRelocation Assistance is responsible for developing estimated average utility costs related to the replacement comparables. Each project segment, and often each neighborhood, will have different data sources. The utility companies often have the most reliable information; HUD or local housing agencies may also have useful information. If there are no reliable data sources, then area survey methods are used. Unless absolutely necessary, an area wide survey is not needed. Contacts with local utility companies are usually sufficient.

10.04.17.02 Calculating Utilities

Relocation AssistanceRelocation Assistance will obtain a list of utilities included in the rental rate from the landlord unless the information was obtained during the FWO and noted on the Owner's Certificate of Tenants. The tenants will be instructed during their First RAP Call to obtain actual costs from their utility providers. Ideally, the utility providers should respond to the tenant's request by sending a formal letter stating that:

> "monthly average of your actual utility bill for *(type of utility)* for the last 12 months of service at the *(displacement address)* was $*(average monthly payment)*."

The RHV report must show the utilities included in the displacement rent and the comparable replacement rents. The RD calculation is based on the displacement rent plus the actual average monthly utilities that are the responsibility of the displacee, and the most comparable replacement rent plus the estimated average monthly utilities that would be the responsibility of the displacee.

10.04.17.03 Little or No Rent [49 CFR 24.402(b)(2)(i)]

Little or no rent is defined as a rental rate that is unreasonably below the market rental rate for a comparable dwelling in the area. The term "little rent" is defined as 25% below the market rent established in the appraisal.

The provision of little or no rent addresses payment computation for occupants who pay no rent or unreasonably low rent and for whom a payment based on such rent would result in a windfall. If the

occupant's actual rent is below market rent, the RAP Manager must document in the RAP file that no kinship, friendship, or contrivance exists and that the actual rent will be used in the payment computation.

If Relocation AssistanceRelocation Assistance determines that a situation exists, such as tenant is providing a service in lieu of all or a portion of rent, or the tenant's relationship to landlord (e.g., kinship or friendship) may not result in an arm's length transaction, then economic rent (without including the actual average utilities) must be used to calculate the RD.

However, if the use of economic rent will create a hardship for the displacee, Relocation AssistanceRelocation Assistance must use the actual rent and document the RAP file justifying the use of actual rent vs. economic rent.

In the event a displacee enters into a kinship friendship situation at the replacement dwelling for an amount known to be much higher than market rent for the area (but which would maximize their RHP), claims should be supported by such documentation as may be reasonably required to support expenses incurred [49 CFR 24.207(a)]. Relocation AssistanceRelocation Assistance may verify claims by asking for supporting documentation.

These procedures do not apply to Authority-owned properties where actual rent is less than fair market rent due to the Authority's affordable rental rate policy.

If displacee's rental rate is lower than market rent because of a public subsidy and the subsidy of a similar private or public subsidy program is available to displacee and will be continued after displacement, the market rent of displacement dwelling is used in the computation. If the subsidy will be discontinued after the tenant vacates, actual rent is used. It must be documented that public housing is not available.

10.04.18.00 Subsidized Housing

Rent Differentials (RD) for tenants who occupy publicly subsidized rental housing and relocate to private housing or publicly subsidized housing are calculated so a tenant will not receive duplicate payment for a rental subsidy through both the Relocation Assistance provisions and a Federal Rental Subsidy Program. Publicly subsidized housing is defined as:

> "Low rent public housing, FHA Sections 221(d)(3), 236 and other existing projects where rates are set on the basis of the tenant's income."

Subsidized housing can also be any rental assistance from a federal, local or other quasi-governmental authority (including stipends from BIA or other tribal entities). The person's RD will be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.

Occupants of publicly subsidized rental housing must be identified, and all replacement housing valuations and procedures must comply with the following options :

- Tenant moves from publicly subsidized housing to publicly subsidized housing - the displacement rent and actual replacement rent are the amounts actually paid by the tenant.
- Tenant moves from privately financed housing to publicly subsidized housing - the existing rent is calculated in accordance with the provisions of Section 10.04.20.00. The replacement rent is the amount the tenant pays for the subsidized housing
- Tenant moves from publicly subsidized housing to privately financed housing - the

existing rent is the amount the tenant pays for the publicly subsidized displacement housing, not including the supplemental rent furnished by the public agency

The third option is to be used only when it can be documented that DS&S publicly subsidized housing is not available to displacee.

However, if the tenant qualifies for comparable DS&S subsidized housing that is available in the replacement area, but the tenant chooses to rent nonsubsidized housing, the RD is based on what the tenant would have received if relocating to subsidized housing.

Relocation AssistanceRelocation Assistance should explain to the displacee that if they go off the government housing subsidy program, then the relocation housing payment is considered as income for the purposes of determining if they are eligible to return to a subsidized housing program in the future. Additionally, there is no guarantee they would be able to do so, and if so, when.

10.04.18.01 Section 8 Security Deposits [Hold for Future Use]

10.04.18.02 Section 8 Comparable Replacement Housing

49 CFR 24.2(a)(6)(ix) states that comparable replacement housing for a person receiving government housing assistance before displacement may reflect similar government housing assistance. In such cases, any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit. A privately owned dwelling with a housing program subsidy tied to the unit may qualify as comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing. A housing program subsidy that is paid to a person (not tied to the building) such as a HUD Section 8 Housing Voucher Program may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately owned subsidized unit or public housing unit before displacement.

10.04.19.00 Monthly Gross Income

Thirty percent (30%) of a household's gross income can be used to determine the RD, but only if the annual income is classified as low income under the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits (usually updated February of each year). Relocation Agents can find the list at FHWA's link: http://www.fhwa.dot.gov.

The RD is based on the lesser of the base monthly rent and utilities at the displacement dwelling OR 30% of the household's average monthly gross household income if the total amount is classified as low income for the displacement area [U.S. Department of Housing and Urban Development (HUD)].

To determine if the 30% rule applies, Relocation AssistanceRelocation Assistance shall advise the displacee of this method of computing the RD and ask if the actual monthly rent (plus estimated average monthly utilities) of the displacement dwelling exceeds 30% of monthly gross income. If the answer is "no," the Agent annotates the parcel diary. If the answer is "yes," the Agent:

- Secures an Income Certification (RW 10-39) from the displacee using 10-EX-39 as a guide on appropriate sources of income.

- Compares the annual gross income on the Certification to the amount identified as low income for the displacement area on HUD's survey (see Web site above). If the income is higher, the displacee's income cannot be used in the RD calculation. Relocation AssistanceRelocation Assistance must use the annual income for the entire household and compare it to the total number of persons living in the displacement area regardless of age or residency status.
- Computes the rental RHP per Section 10.04.16.02.

EXAMPLE:

1. Husband and wife live alone in a residence, but the Income Certification shows that all income is from only one person. Follow HUD's list for '2 persons.
2. Husband and wife live in a residence with two minor children. Follow HUD's list for '4 persons.
3. Husband and wife live in a residence with two minor children, and a relative who is not a legal U.S. resident. Follow HUD's list for '5 persons.

Monthly gross income is based on all income from all persons over 18 years old for the 12-month period preceding the date of determination of income. Do not include the income of a full-time student over the age of 18 UNLESS that person is the head of the household or the person's spouse.

HUD's survey is usually updated in February of each year and lists all the counties in California.

10.04.20.00 Income Verification

When displacees claim that income should be the basis for calculating the RD, all household members with an income must complete the Income Certification (RW 10-39). Relocation benefits vest at the time of the Initiation of Negotiations (ION). Therefore, the date of determination is either the date of the Notice of Intent to Acquire (NIA) or the First Written Offer (FWO).

The income stream in existence at the time of the ION should not be adjusted if the displacee's income changes at a later time. The income is verified once and is not adjusted for subsequent events. There is no statutory provision for adjusting relocation claims or payments based on changes in income after the eligibility determination has been made.

Relocation AssistanceRelocation Assistance must verify all income-based computations by reviewing displacee's income records. [A copy of an income tax return for the tax year preceding the determination should not be the only source for verifying income for the last 12 months. However, it can be used as an indicator of low income if no other documentation is available. The displacee may have to request a copy of their most recent tax return from the State Franchise Tax Board. (Note: Advise the displacee that they may have to pay for the copies.)] Both the Agent and the displacee should review "Gross Income When Calculating Rental Differential" (10-EX-26) prior to completing and reviewing the Income Certification to ensure the appropriate type of income is considered.

Relocation AssistanceRelocation Assistance must document the type of documentation used to verify the household's gross income for the last 12 months, such as employers or credit reporting sources, pay stubs, benefit statements, bank deposits, and other periodic receipts of payment.

A diary entry is made indicating the method and result of the income verification. When income has been verified and documented in the RAP file, return any documents that were used to verify the Income Certification to the displacee. After Relocation AssistanceRelocation Assistance has verified all the information on the Income Certification, a decision must be made as to its validity. Because of the nature

of the payments based on income, the burden of proof rests on the displacee. If Relocation AssistanceRelocation Assistance has reason to believe the information is incomplete or incorrect because the rent and utilities to gross income ratio is too high (60% to 85%), the file should be documented and the displacee advised that the Rent Differential will be based on the actual rent or the economic rent, with utilities.

Exclusions to income are listed on 10-EX-26. Household income for purposes of this regulation does not include program benefits that are not considered income by federal law. An additional list of income exclusions can be found at http://www.fhwa.dot.gov which is continually updated. If there is a question on whether or not to include income from a specific program, contact the Authority
If the documentation provided is determined to be accurate and reasonable, the file must be documented outlining how the 30% was verified and calculated.

Non-tenured occupants MUST provide an Income Certification prior to determining if they are eligible to receive any RHPs.

If any member of the household will not complete their portion of the Income Certification or provide evidence of income, the entire household's income will not be considered in computing the RD.

10.04.21.00 Computing the Rent Differential (RD)Payment

The RD is calculated by multiplying 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent plus estimated average monthly utility costs for a comparable replacement dwelling; or

(ii)The monthly rent plus estimated average monthly utility costs for the decent, safe and sanitary replacement dwelling actually occupied by the displaced person.If the computed rental assistance payment exceeds $7,200, see 10.04.23.01.

The utility cost used to verify "spend-to-get" in the actual replacement property is the amount of the estimated average utility costs used in the calculation of the RD. It is not necessary to determine the estimated average utility costs in the actual replacement area.

EXAMPLE

Displacement Rent	$400 month
Average Cost of Utilities	150 month
Base Monthly Rent	$550 month
Most Probable Comparable Rent	$500 month
Estimated Average Cost of Utilities	175 month
Comparable	$675 month

Scenario 1:

Actual Replacement Rent	$475 month
Estimated Average Cost of Utilities	175 month*
Actual Replacement Rent	$650 month

Must pick the lesser of Actual Replacement Rent or the Comparable to calculate the RD = $650 - $550 x 42 months = $4,200

Scenario 2:

Actual Replacement Rent	$550 month
Estimated Average Cost of Utilities	175 month
Actual Replacement Rent	$725 month

Must pick the lesser of Actual Replacement Rent or the Comparable to calculate the RD = $675 - $550 x 42 months = $5,250

* Always use the Estimated Average Cost of Utilities from the RHV when determining "spend-to-get" at the actual replacement.

CALCULATING RENTAL ASSISTANCE PAYMENTS	
Situation	**Method**
Average or estimated average rent and average monthly utility costs of the displacement dwelling do not exceed 30% of monthly gross income.	Step 1 - Find the lower of estimated monthly replacement rent or actual rent paid on replacement property, including average monthly utility costs. Step 2 - Determine the average monthly rent and average monthly utility costs of displacement property. Step 3 - If Step 2 result is larger than or equal to Step 1, the answer is zero (0). Step 4 - If Step 2 result is smaller than Step 1, subtract Step 2 amount from Step 1 and multiply the result by 42 (months).
Average monthly rent on the displacement property, including average monthly utilities, exceeds 30% of monthly gross income, and displacee qualifies as "low income," per HUD chart (http://www.fhwa.dot.gov/realestate/ua/ualic.htm).	Step 1 - Find the lower of estimated monthly replacement rent or actual rent paid on replacement property, including average monthly utility costs. Step 2 - Consult HUD chart to determine if displacee qualifies as low income. If so, continue to Step 3. Step 3 - Determine 30% of monthly gross income of the displacee. Step 4 - If Step 2 result is larger than or equal to Step 1, the answer is zero (0). Step 5 - If Step 2 result is smaller than Step 1, subtract Step 2 amount from Step 1 and multiply the result by 42 (months). NOTE: When rental assistance payments by other public agencies are involved, the average monthly rent is the amount actually paid by displacee excluding any rent subsidy. Calculate the payment as above.

10.04.22.00 Conversion of Payment [49 CFR 24.403(e)]

A displacee who initially rents a replacement dwelling and receives an RD may be able to convert their status to homeowner if a DS&S replacement property is acquired within the one-year prescribed period (see Section 10.08.02.00).

An eligible 90-day owner-occupant that initially rents a replacement property (see 10.04.14.00) may still be eligible for the full RHP if a DS&S replacement property is acquired within one year of the prescribed period. The "spend-to-get" requirement for the purchase of the replacement property is based on the last RHV. The amount of the RD paid when the initial replacement property was rented must be deducted from PD, MD, and/or IE that the displacee may be eligible to receive.

An eligible 90-day occupant that initially rents a replacement property may still be eligible for a DP if a DS&S replacement property is acquired within one year of the prescribed one-year period (see Section 10.08.02.00). The amount of the RD paid when the initial replacement property was rented must be deducted from the total RD based on the last RHV. The remaining amount can be used as the down payment and incidental expenses.

However, an eligible displacee who occupies a replacement dwelling that costs less than the comparable property used in the RHV, and would otherwise qualify for the full RHP, cannot relocate into a higher-cost DS&S dwelling at a later time and claim the remaining RHP. Once the replacement property has been inspected and any or all of the RHP paid, the displacee is vested and the maximum amount of the RHP is established.

10.04.23.00 Manner of Disbursement [49 CFR 24.402(b)(3)]

An RD may be disbursed in either a lump sum or in installments. However, the full amount of the RD vests immediately when the displacee occupies a DS&S replacement dwelling and "spends-to-get," even if there is a later change in the person's income or rent, or in the condition or location of the person's housing.

Although rental assistance payments of $7,200 or less are usually made in one lump sum payment, displacee may request annual installment payments that are not to extend more than 42 months beyond the move-out date.

Disbursement of rental assistance payments in excess of $7,200 is made in accordance with the last resort housing guidelines.

10.04.24.00 Rent Differential Payment Procedures - Last Resort Housing (LRH)

Rent Differential payments in excess of $7,200 must be paid in accordance with Last Resort Housing provisions. Such payments that do not exceed $10,000 are usually paid in a single lump sum payment. Payments in excess of $10,000 are paid in a maximum of four payments (see RW 10-41).

A displacee may request that installment payments are made even if the Rent Differential is less than $10,000. Relocation AssistanceRelocation Assistance must fully document that displacee requested the installment payment option and any subsequent changes in the manner of payment.

Regardless of the amount, displacee's Rent Differential is fully "vested" immediately when they occupy DS&S housing and meet the "spend-to-get" requirement, even if there is a later change in the person's income, occupancy, family characteristics, rental rate, or in the condition or location of the actual replacement property. Recertification of DS&S housing is not required after the initial qualifying inspection.

10.04.24.01 Installment Payments

Last resort housing rental assistance payments in excess of $10,000 are to be disbursed in four payments as follows:

Rent Differential Payment Schedule			
Advanced Payment:	Prior to Occupancy	June 15th	First month's rent, last month's rent, and security deposit.
1st installment:	Date of Occupancy	July 1st	6 months of the Rent Differential divided by 42, OR the balance if the total amount remaining after the 1st installment would be less than $10,000.
2nd installment:	Six months later	January 1st	6 months of the Rent Differential divided by 42, OR the balance if the total amount remaining after the 2nd installment is less than $10,000.
Final Payment:	Six months later	July 1st	Balance of the Rent Differential

EXAMPLE:

Comparable Rent including $75 utilities $1,500

Displacement Rent including $25 utilities $ 500

= $1,000 x 42 months = $42,000 Rent Differential

Actual Replacement Rent of $1,550 plus the $75 utilities used to calculate the Rent Differential = $1,625

Installments:

Advance Payment to Landlord for the security deposit of $1,000, first month's rent of $1,550, and last month's rent of $1,550 (if requested by the displacee) = Total $4,100.

Balance of Rent Differential ($37,900) paid in three installments. First and second installments of $6,000 ($1,000 x 6 months). The first installment is due within 15 days of displacee's occupancy of the actual replacement property.

One year from the date of occupancy, the balance of $25,900 is paid to the displacee.

There may be times when it is in the Authority's best interest to make periodic payments directly to the landlord. (see Exhibits 10-EX-17, Authority/Displacee Agreement for Special Installment Payments, and 10-EX-18, Tenant/Landlord Rental Agreement for Direct Payment.)

RW 10-41 (Computation of Rent Differential Payment) must show total entitlement, installment amount, and payment periods. Approval of the first installment constitutes approval of the total entitlement and periodic payment schedule.

10.04.24.02 Subsequent Installments

The displacee must be provided with claim forms for subsequent installment payments and the schedule for submitting the claim forms. Displacee must also be advised to inform Relocation AssistanceRelocation Assistance of any changes in address or location during the 12-month period.

Thirty days prior to the anniversary date, the RAP Agent shall provide a claim form to displacee. Upon return of signed form, the installment may be paid. No DS&S inspection is required.

If displacee has vacated replacement property and cannot be found after reasonable effort, no further action is taken with respect to that or subsequent installments unless displacee reappears. When payments are suspended because displacee disappears, Relocation AssistanceRelocation Assistance shall document the file to show extent and results of efforts made to locate party.

The suspension time counts toward displacee's eligibility for relocation assistance payments; e.g., disappeared for 42 months, no further payments are authorized.

10.04.25.00 RD Payments - Documentation

Documentation in support of the claim should be in the RAP file, including:

- Claim form, Form RW 10-02.
- Computation of Rent Differential Payment, Form RW 10-41.
- Current Replacement Housing Valuation.
- Copy of Rental Agreement for replacement property or evidence of rent paid on the replacement property.

10.04.26.00 Down Payment (DP) [49 CFR 24.402(c)(1)]

An eligible 90-day occupant (tenant or owner), or Non-tenured occupant, who purchases a DS&S replacement dwelling may convert the RD to a DP. Even if the Rent Differential is zero, an eligible 90-day occupant or Non-tenured occupant is entitled to the minimum DP of $7,200 if they meet the "spend-to-get" requirements.

A 90-day occupant or Non-tenured occupant whose RD is $7,200 or less automatically qualifies for a $7,200 DP. If the RD is over $7,200, the DP is limited to the amount of the RD (10.04.13.01). Example:

- RD $4,200 = DP $7,200RD $9,100 = DP $9,100

A displaced person eligible to receive a payment as a 90-day owner-occupant is not eligible for this payment.

A Subsequent occupant is not eligible for this payment. If the RD calculation is zero, then the DP would be zero.

10.04.26.01 Application of Down Payment (DP) [49 CFR 24.402(c)]

The DP is designed to help eligible displacees purchase and relocate to DS&S comparable housing. Eligible displacees may be entitled to receive the full amount of the RD if it is applied toward the down payment for the purchase of the replacement property, even if this results in a 100% purchase. Any remaining RD can be applied to the incidental expenses related to the purchase, including nonrecurring items paid in escrow.

10.04.26.02 Conditions (DP)

The following conditions apply to entitlement of the DP:

- Displacee must meet eligibility requirements in Section 10.04.01.00.
- Displacee may finance by any means or may pay cash.
- Displacee must apply the funds to the DP and nonrecurring IE, up to the amount of the RD.
- Displacee must pay for anything in excess of the calculated entitlement. The Authority is not committed to paying for DP actually made or required for a replacement.

10.04.26.03 Manner of Disbursement (DP)

If the DP is $7,200, and the displacee is entitled to the full amount after submitting supporting documentation that all the funds will be used for the down payment and the qualifying incidental expenses, the displacee can be paid directly after the close of escrow on the replacement property, or the funds can be assigned by the displacee to the escrow account. If the amount of the DP is over $7,200, the RD must be placed into escrow and applied toward the purchase of housing. The only exception is to repay funds advanced by displacee (e.g., credit report, appraisal fee). Displacees cannot be reimbursed for funds deposited with the Offer and Acceptance (a.k.a. earnest deposits).

10.04.26.04 Conversion of Payment (RD to DP) [49 CFR 24.403(e)]

A displaced person who initially rents a replacement dwelling and receives an RD that is less than $7,200 or the full amount (e.g., because an installment payment was made, or the displacee did not "spend-to-get") is eligible to receive a DP if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed one (1) year period. Any portion of the RD that has been previously paid shall be deducted from the DP.

EXAMPLE:	
Non-LRH (RD = $2,100)	
DP allowance	$7,200
Less lump sum rental assistance already paid	-2,100
Additional State payment toward DP and eligible IE	$5,100

EXAMPLE:	
LRH (RD = $21,000)	
DP allowance	$21,000
Less installment payment of RD already paid	-2,100
Additional State payment toward DP and eligible IE	$18,900

The remaining cash entitlement must be applied toward the DP or IE for the replacement dwelling being purchased. Escrow instructions must clearly state that none of the remaining entitlement may go directly to displacee.

10.04.26.05 Down Payment into Escrow

The following procedures for DPs into escrow are in addition to those outlined above.

If displacee has agreed to buy a replacement, they shall be advised of the amount available and the need to apply all funds to the purchase of a replacement.

When escrow is opened, Relocation AssistanceRelocation Assistance must inform the escrow agent of the DP arrangements and must request:

- A copy of the escrow instructions or a similar document.
- The itemized estimate of escrow expenses, if possible.
- A certified copy of the closing escrow statement and Regulation "Z," if applicable, at the time escrow closes.

After the above information is received and reviewed, the Agent should:

1. Calculate the exact amount of payment.
2. Prepare a claim form and have displacee sign it (Form RW 10-2).
3. Prepare an Assignment of Funds Letter (Exhibit 10-EX-09) and have it signed.
4. Prepare an Escrow Instructions (Format) Work Sheet (Exhibit 10-EX-11) to escrow company.

If necessary, the advance payment may be based upon estimated IE with reconciliation at the close of escrow. Relocation AssistanceRelocation Assistance should recalculate the DP entitlement and pay any additional costs as soon as they are known, assuring the funds are distributed properly between the loan account and displacee. If correct instructions are given, overpayments will be automatically refunded from escrow. A copy of the certified closing statement is attached when the additional claim is processed.

When escrow has closed, a certified copy of the closing statement is placed in the Authority RAP file.

10.04.26.06 Down Payment to Displacee

When escrow on the purchase of displacee's replacement closes before the Authority makes any payments, displacee is reimbursed for the DP actually applied to the loan and all IE paid in escrow. Any remaining amount of the RD can be paid directly to the lender using an assignment from the displacee.

10.04.26.07 Incidental Expense for 90-Day Occupants and Subsequent Occupants

When an eligible 90-day occupant or Subsequent occupant decides to purchase rather than rent replacement property, a portion of the DP benefit may be attributed to IE. In LRH situations, these amounts may be substantial. The following factors must be taken into consideration when the Authority pays for these expenses:

- The cost to displacee must be ordinary and necessary for a buyer to pay in a normal transaction where the replacement dwelling is located. Costs may vary from county to county and city to city within California.
- Loan broker, origination, and application fees are usually all inclusive in the MD reimbursement for homeowner-occupants. For tenants, these fees may be added together and paid to the extent they do not exceed predetermined prevailing loan establishment fees.

Eligible IE must be limited to those nonrecurring costs that would have been reimbursable for the 90-day Owner-Occupant (e.g., loan origination fees, title search, recording fees, but not prepaid expenses such as estate taxes and property insurance) but without the usual restrictions that the amounts be limited to the amount of the displacement mortgage or the value of the comparable replacement property.

10.04.27.00 Owner-Occupants with Partial Ownership Interests

When a dwelling is owned by several persons and occupied by one or more owners, the RHP is the lesser of:

- The difference between the owner-occupant's share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling.
- The difference between the total acquisition cost of the acquired dwelling and the amount determined by the Authority as necessary to purchase a comparable dwelling.

When the partial owner-occupant purchases a replacement that is less costly than the estimated replacement cost and is DS&S for the owner-occupant, then "spend-to-get" is that party's share in the acquisition price plus the PD. The other partial owner that does not occupy the property is not entitled to a relocation assistance payment (RHP, Non-Occupant Owner who Leases Space to Another) except for possible moving of personal property that is stored on site.

EXAMPLE:	
Cost of replacement	$150,000
Cost of acquisition	-130,000
PD	$ 20,000
Assume there are two partial owners of the acquired dwelling. The partial owner-occupant has a one-half interest in the displacement or $130,000 ÷ 2 = $65,000. The total "spend-to-get" for this partial owner-occupant is $85,000 ($65,000 + $20,000).	

However, if Relocation AssistanceRelocation Assistance determines that the displacee needs to obtain a loan in order to relocate, e.g., in the case of an owner-occupant with a partial interest who must obtain a loan to purchase a replacement property, the cost of obtaining the loan could be considered "necessary" and would be an eligible expense.

49 CFR 24.401(c)(1) requires that the RHP for an owner-occupant with "partial interest" in the property being acquired is computed using the full acquisition cost of the displacement dwelling. To receive the maximum payment, an owner-occupant with a partial interest must spend his or her share of the acquisition payment, plus the amount of the computed RHP, in order to receive the maximum computed RHP. Owner-occupants with partial interests who cannot secure financing or who cannot afford to purchase comparable replacement housing may be treated as tenants and receive an RD. The Authority is not required to provide owner-occupants with partial interests a greater level of assistance to purchase a replacement dwelling than what would have been required to provide such persons if they owned fee-simple title to the displacement property.

10.04.28.00 State Rental Prior to Acquisition

Whenever a tenant-occupied property has been appraised, the owner has received the Authority's offer, and control of the property by the Authority (by Grant Deed, Order for Possession, Right of Entry, or other means) is imminent, the Authority may enter into an agreement with the owner whereby the Authority will rent the property if it becomes vacant. Such properties include, but are not limited to, apartment units, commercial buildings, and mobile home park spaces.

The Authority must consider and document whether or not:

- Comparable vacant rental properties in the subject area are scarce.
- There is a good probability that the property would be re-rented prior to the Authority gaining control of the property.
- The Authority's possible cost of relocation benefits to any subsequent tenants (Non-Tenured) will exceed the cost to rent back the property from the owner.
- Reoccupation of the parcel might delay Right-of-Way's delivery of the property for construction.

If justified and approved, the Acquisition Agent will offer to rent the property in accordance with procedures in the Acquisition Chapter of the Right-of-Way Manual.

Rental payments to the owner must cease when the Authority gains control of the property.

10.04.29.00 Mixed-Use Properties

If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the PD.

Where a displacee lives on the same premises as a displaced business, multi-use/mixed use property, farm, or nonprofit organization, a determination must be made as to whether that living situation falls within the definition of "dwelling" in the federal guidelines. 49 CFR 24.2(a)(10) defines "dwelling" as "the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit." If the displacee was legitimately living in such a circumstance, then the residential value must be segregated (10.06.18.00).

10.04.30.00 Multiple Households of Displacement Property

If two or more individuals are living together and occupying one dwelling unit as one household, the Authority is not obligated to provide them with more than one replacement dwelling. Relocation eligibility is based upon the displacee's share of the replacement dwelling.

However, when two or more occupants maintain separate households within the same dwelling, they have separate entitlements to relocation payments. The decision as to whether two separate households were maintained within the same dwelling is a judgment determination by the Senior Right-of-Way Agent. The parcel file should be sufficiently documented to support the decision reached.

Issues to consider are:

- The use of the dwelling (sharing of cooking and food storage facilities, bathroom facilities).
- The relationship of the occupants. Note: Students sharing a house together shall be considered as one household.
- One or more of the occupants are paying rent to others in the household as evidenced by rent receipts, tax returns claiming a renter's credit, or tax returns claiming rental income.

AND

- It is clear (by signed statements) that the occupants are not moving to a replacement site together.

The payment computation for each household should be based on the part of the dwelling that the household occupies and the space that is shared with others. An attempt should be made to locate similar comparable DS&S living facilities that the households can share - if it is the most cost-effective method. The record should be sufficiently documented to support the decision reached.

see 10-EX-34 for additional guidance on determining multiple households.

Note: If the owner rents or leases a room(s) in the displacement dwelling to another party, there should be no reduction of rooms when considering a most comparable replacement dwelling for the owner.

10.04.30.01 Multiple Households of Replacement Property

Displacees may choose to rent or purchase a replacement property with another party who is not part of the relocation. Relocation eligibility must be based on the displacee's share of the replacement property. If a displacee enters into a rental agreement with another party, Relocation AssistanceRelocation Assistance must determine the percentage of financial responsibility that the displacee has accepted. Generally, each party will be paying one-half of the rent and utilities, so that a one-half share of their replacement dwelling rental rate must be used to determine the "spend-to-get" requirement before paying any portion of the RD.

If the displacee chooses to purchase a replacement property with another person who was not part of the relocation, then the percentage of ownership as indicated in the title documents must be used to determine the "spend-to-get" requirement before paying any portion of the RHP (either PD/MD/IE or a DP).

Example 1: An elderly 90-day owner-occupant chooses to purchase a replacement property with her recently divorced daughter. Title to the replacement property indicates that each has a divided one-half interest. Therefore, the displacee's PD/MD/IE will be based on one-half of the purchase price, mortgage amount, and incidental expenses.

Example 2: Parents pay cash to help their child buy a replacement dwelling. Title to the replacement property indicates that each has an undivided one-half interest. While the parents must be on the title, this will not affect the computation of the PD that may be placed into escrow.

10.04.30.02 Documentation for Multiple Households

If there is more than one family in residence in a dwelling unit, the Acquisition or Relocation Agent should obtain the following additional information:

- Names of heads of household.
- Makeup of each family.
- Relationship among the various heads of household.
- Number of rooms each family privately occupies.
- Move-in date of each family.
- Amount of rent or other consideration each additional family or individual pays to the owner.

This data is used to apportion relocation payments among the families or make more than one relocation payment when the property is vacated, if necessary. This additional data is also on the Certificate of Occupancy (RW 10-25). Any variation between information previously obtained (e.g., from the appraisal report or appraisal section data cards) and that obtained from the initial RAP interview must be explained in the RAP Diary.

10.04.30.03 Proration When One Household Splits into Two or More

Eligible occupants who subsequently separate or divorce and establish separate households, whether by choice or by litigation, qualify for payments as one displaced family.

The payments may be divided between the occupants (husband and wife or other adult household members who are listed on the rental agreement or the title report) in any proportion on which they agree. This requires a written agreement establishing the method of division and the percentage each party may claim. The agreement may not be changed without the written consent of both parties.

EXAMPLE:

Comparable DS&S replacement rent for a 4-bedroom home is $850/month plus $100/month for utilities = $950/month.

Displacement property is 3 bedrooms and rents for $500/month, which includes all utilities, except electricity, which averaged $50 per month, for a total of $550/month.

Household consists of 7 persons: husband and wife on title, husband's father on title, and four children.

RD = $16,800

Husband and wife choose to separate. The husband's father will relocate with him, which requires a one-bedroom replacement property. The wife will relocate with the 4 children, which requires a 3-bedroom replacement property. The husband and wife agree to split the RD and the FMS in half. The husband will be entitled to one-half of the RD if he rents a one-bedroom for at least $425/month. With the added utilities of $50 (one-half of the estimated $100), he will be entitled to $8,400. The wife must spend at least $425/month (plus utilities) on a 3-bedroom DS&S replacement property to be entitled to one-half of the Rent Differential.

Separated or divorced displacees may agree to divide moving costs differently than their RHPs. All RHPs, however, must be based on the same percentage division. For instance, the parties may agree on a 90%-10% division of moving costs and a 50%-50% split of RHP payments. However, they cannot agree that one party may receive 70% of the PD and 10% of the IE.

Payments of moving expense can be based on actual costs or scheduled room-count method, but the two methods cannot be mixed. Payments are not made until all occupants have vacated the property except that partial payment can be made if denial will cause a hardship. The Authority has the option to issue a Notice to Vacate to any remaining occupants.

If the parties cannot reach agreement, entitlement is calculated as if they relocated together. Payment is determined by type of eligibility established by the first party to relocate and file a claim. Although only one party needs to sign the claim forms, checks must be payable to both individuals.

EXAMPLE:

The tenants are eligible for moving expenses and may be eligible for either an RD or DP. If the first party to relocate elects a rental unit and files a claim for payment, the family maximum entitlement is based on this specific type of relocation. No other claim will be honored by the Authority except where the initial claim was less than the maximum entitlement and the parties eventually reach agreement and file amended claims within the normal filing period.

If a divorce or separation occurs and one spouse vacates the property prior to the initiation of negotiations, the spouse who remains in occupancy is eligible for all relocation benefits that may accrue.

see Exhibit 10-EX-25.

10.04.31.00 Seasonal Residents

Persons owning or renting seasonal residences are generally not eligible for any relocation payments other than for moving expenses. A seasonal residence can be distinguished from a domicile in that a domicile is the place of a person's fixed, permanent home and principal establishment and to which place the person, when absent, has full intention of returning. The occupant of a seasonal residence could receive actual moving expenses or a fixed move payment, but is generally not eligible for RHPs.

10.04.32.00 Subsequent Occupants

A subsequent occupant is a residential occupant(s) that moved into the property after initiation of negotiations. Subsequent occupants must be in occupancy on the day the Authority obtains control of the property (close of escrow, effective order of possession, effective right of entry) in order to receive monetary benefits.

Even though these occupants are not eligible for relocation benefits until the Authority has control, Relocation AssistanceRelocation Assistance should provide the potential displacees with a Notice of Eligibility - Subsequent Occupants (10-EX-41) that states they must remain in occupancy until the Authority has control or they will not be entitled to relocation assistance payments. Relocation AssistanceRelocation Assistance must also provide a 90-Day Information Notice but without addresses of comparable properties, since their eligibility for relocation assistance payments has not yet been established. At the first meeting with the potential displacees, Relocation AssistanceRelocation Assistance can obtain preliminary information that will help in determining possible relocation payments. Such information may include legal residency, income, household numbers, and/or functional needs. Relocation AssistanceRelocation Assistance must verify all information on the date the Authority obtains control prior to providing any entitlements.

In addition to the Conditional Entitlement Letter for Subsequent Occupants (10-EX-42), Relocation Assistance must provide the subsequent occupants with a 30-Day Notice to Vacate with addresses of comparable replacement property.

10.04.33.00 Personal Property Only [49 CFR 24.301(e)]

49 CFR 24.301(e) allows for the reimbursement of eligible expenses for a person who is required to move personal property from real property, but is not required to move from a dwelling. Eligible expenses include those described under Transportation, Packing, Disconnecting, Storage, and Insurance (including replacement value). Residents may also be reimbursed in accordance with the provisions outlined under Low Value/High Bulk (10.05.05.14) if the occupants were not required to move from the site. Relocation Agents will provide displacees with the Notice of Eligibility for Personal Property Only (10-EX-46).

RESIDENTIAL DEFINITIONS

Dwelling [49 CFR 24.2(a)(10)]: The place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

Mortgage [49 CFR 24.2(a)(18)]: Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which real property is located, together with the credit instruments, if any, secured thereby.

Owner of a Dwelling [49 CFR 24.2(a)(20)]: A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

(1) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in Subparagraphs (p)(1) or (2) of this section; or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

Person [49 CFR 24.2(a)(21)]: Any individual, family, partnership, corporation, or association.

Tenant [49 CFR 24.2(a)(26)]: A person who has the temporary use and occupancy of real property owned by another.

Life Estate: A person who holds a life estate has the right to occupy a property for life. Many times, a life estate is retained by a person who has been granted such right by a grantor or who conveys the remainder interest to another person. The computed RHP may depend upon distribution of the acquisition payment in accordance with state law, but should be sufficient to enable the displaced person to relocate as an owner with an interest at least equivalent to the interest held prior to the acquisition of the property. The payment computation will be based on the total amount of the acquisition payment for a dwelling comparable to the acquired dwelling.

10.05.00.00 - MOVING AND RELATED EXPENSES - NONRESIDENTIAL (Business, Farms, and Nonprofit Organizations)

10.05.01.00 Relocation Benefits

Any business, farm operation, or nonprofit organization (nonresidential) which qualifies as a displacee [49 CFR 24.2(a)(9)] is entitled to relocation benefits if the acquisition of the property in whole or part causes a need to relocate the operation and/or personalty to another location. Relocation can be to the remaining portion of the property if a partial acquisition has occurred. (see 10.05.13.01: Reestablishment payments for moves to the remainder.)

Relocation benefits are limited to advisory assistance and payments for actual moving and related expenses as the Authority determines to be reasonable and necessary. The majority of this section describes the specific moving entitlements.

The Uniform Act does not require that nonresidential displacees be made whole and thus they receive fewer benefits under the Uniform Act than residential displacees. Payments are limited to just moving and related expenses, with no provision to assist in acquiring a replacement property (similar to the residential RHP). However, nonresidential displacees may qualify for a Reestablishment Payment to mitigate some of the expenses associated with establishing their operation at the new site (10.05.13.00).

10.05.01.01 Persons Not Lawfully Present in the United States - Federal Funded

Moving expenses for an unincorporated business, farm, or nonprofit organization will be paid if an owner, manager, or operating officer certifies the other owners, signs the claim forms, and provides the necessary documentation for himself/herself. The sole owner of a business, farm, or nonprofit organization who cannot or will not certify as to their U.S. residency status is not entitled to any federally funded relocation benefits, including advisory assistance.

Any partnership that includes persons who cannot or will not certify as to their U.S. residency status is not entitled to any federally funded relocation benefits, including advisory assistance. However they may be eligible for State funded benefits under State statutes. The remaining partners are entitled to moving expenses, but the payments must be prorated based on the number of U.S. versus non-U.S. residents. Example: A partnership of five (5) persons, two (2) of whom can certify as to their U.S. residency status, will receive 2/5ths of the actual, reasonable, and necessary expenses. This proration must be applied to all moving expenses, including reestablishment, search expenses, and the in-lieu payment.

Federally funded moving expenses for an incorporated business will be paid if the corporation certifies that it is authorized to conduct business within the U.S.

10.05.02.00 Relocation Planning

49 CFR 24.205(c)(2)(i)(A-F) requires each business be interviewed by Relocation Assistance prior to the ION. After the Senior Right-of-Way Agent receives the Parcel Occupancy Data Sheet and assigns the file, Relocation Assistance will schedule an interview with each business that has received a Notice of Intent to Appraise (or similar document). Relocation AssistanceRelocation Assistance will also interview each business lessee identified on the Parcel Occupancy Data Sheet. To increase the effectiveness of the interview, Relocation Assistance may accompany the appraiser during the initial and/or subsequent inspections. Relocation Agents may use the “Nonresidential Interview Checklist” (10-EX-35) issued January 13, 2005 as the basis for the interview. The purpose of each interview is to:

1. Determine the relocation needs and preferences of each business entity to be displaced such as:
   - Replacement site requirements.
   - Current lease terms and other contractual obligations. Note: This information may have already been obtained by the appraiser, so Relocation Assistance should check with the appraiser first before asking for additional copies from the lessee. However, Relocation AssistanceRelocation Assistance can certainly obtain clarification or additional information, if needed, and share the same with the appraiser.
   - Financial capacity of the business to accomplish the move. This will help identify any advance relocation payments required for the move. Note: The Authority must approve advance moving payments.
   - Professional services required to assist in planning the move, assist in the actual move, and reinstall machinery and/or other personal property; however, the Authority must approve the use of this service in advance.
2. Explain the relocation assistance program, ensuring the occupant understands that they must still be in occupancy at the ION in order to receive any benefits.
3. Identify and resolve personalty and realty issues, working closely with the appraiser to ensure that the FMV includes the contributory value of all fixtures, and that there is a separate M&E appraisal as appropriate.
4. Estimate the time required for the business to vacate so that the displacee's operation has limited downtime, and the move is phased in segments to reduce loss of income.
5. Estimate the anticipated difficulty in locating a replacement property.
6. Inform the displacee reimbursement of any moving expenditures are based upon eligible expenses which are determined to be actual, reasonable, and necessary. Further, reimbursement of expenditures are based upon the concept of "spend –to-get".

SUGGESTED INFORMATION TO BE OBTAINED DURING A BUSINESS INTERVIEW:

1. What is the type and general characteristics of the business displacee?
    - Manufacturing: What type of product? What is the source of materials?
    - Wholesale: What is the product mix? What are the transportation requirements?
    - Retail: What is the type of business? Does it have a specialty clientele?
    - Service Business: What is the service? Who are the clientele? What is the competition?
    - Ownership/Structure - Sole proprietorship, family business, partnership, corporation or institution?
2. General Information:
    - Employment: How many employees?
    - Number of years in operation?
    - How long at current location?
    - Other locations?
    - Amount of payroll?
    - Amount of gross sales?
3. Issues related to the replacement site:
    - Facility: Parking, zoning, building type, special building requirements, taxes, utility requirements.
    - Preferences of owner: Location, price, terms, future expansion capability.
    - Other considerations: Street accessibility for walk-in trade or delivery, rail access, access to specialized utilities (high consumption, large disposal requirements), landscaping, structural capacity, traffic requirements.
4. Other issues to be discussed during the interview process:
    - Do you anticipate losses created by interruption of the business? If so, how can we mitigate?
    - Can the move be phased to minimize hardships and reduce downtime?
    - Do you anticipate costs to adapt a new location to your current requirements?
    - What other increased costs are anticipated, such as taxes, insurance, utilities, transportation, etc.?
    - What are the anticipated problems with zoning and licensing at a replacement location?
    - Please list your tenant-owned improvements.

10.05.03.00 First RAP Call

A nonresidential displacee, owner, or lessee is entitled to the same information in the same time frame as the residential displacee. An explanation of benefits to an owner must be made at the First Written Offer, and within 14 days to a tenant/lessee. In addition to the Occupancy Certification (RW 10-25), Relocation AssistanceRelocation Assistance must obtain a Certification of U.S. Residency(RW 10-44).

During the first call, Relocation AssistanceRelocation Assistance must look at all personal property on the displacement parcel and request a certified inventory of these items from the displacee. The Agent should note in the diary the general nature of the operation and the type of personalty. The Agent should review

the appraisal and the Right-of-Way Contract to determine which items are being treated as realty and which items are personalty.

10.05.04.00 Advisory Assistance

49 CFR 24.205(c)(2) requires that a minimum level of advisory assistance (AA) be provided to a nonresidential displacee from the time the appraiser inspects the displacement property until the displacee is completely relocated and reimbursed all eligible expenses. AA includes the following:

1. Determine Need: Relocation AssistanceRelocation Assistance should obtain enough information about the nonresidential displacee's operation to determine the type of relocation assistance that it will need to resume operations at the new site, such as zoning requirements, licensing requirements, environmental restrictions, type of site improvements needed, and the appropriate time frame and timing to relocate. An on-site inspection and an interview with the nonresidential displacee are the best way to obtain the information on the requirements it will have to relocate to the replacement site.
2. Provide current and continuing information: Relocation AssistanceRelocation Assistance should provide the nonresidential displacee with possible addresses of replacement sites that will accommodate their operation based on their needs as determined in item a. Relocation AssistanceRelocation Assistance should obtain feedback from the displacee for each replacement site offered to ensure that the information provided meets the needs of the displacee. In addition, the information should be updated and revised based on changes in the market and need expressed by the displacee's feedback. Referral to a real estate broker does not satisfy the requirement that Relocation AssistanceRelocation Assistance continuously work with the displacee to provide information on replacement sites. Relocation AssistanceRelocation Assistance has an obligation to keep in close contact with the displacee during the entire relocation process even if the nonresidential displacee does not immediately accept the offer of assistance at the First RAP Call.
3. Minimize hardship: Relocation AssistanceRelocation Assistance has a responsibility to work closely with the nonresidential displacee to minimize the hardships of relocating to a replacement site. The nonresidential displacee who relocates may experience a decrease in operations due to downtime or limited hours during its search for a replacement site, or during the actual move and reestablishment at the replacement site. This downtime may also impact employees' hours and service level to customers. Relocation AssistanceRelocation Assistance can mitigate some of the hardships by obtaining accurate information on the moving options, requesting bids from qualified moving companies and specialized contractors, being on site when moving companies are preparing estimates, and monitoring the move at the displacement and replacement sites. Relocation AssistanceRelocation Assistance is obligated to provide ongoing advice relative to planning the move, explaining various methods to accomplish more specific objectives and help with resolving encountered problems.
4. Research and supply compatible aid programs that could be of benefit: Relocation AssistanceRelocation Assistance should maintain a current list of services that are available to nonresidential displacees such as Small Business Administration (SBA), Service Corps of Retired Executives (SCORE), California Minority and Women Business Enterprise (M/WBE), Department of Housing and Urban Development (HUD), Farmers Home Administration (FHA), local Chamber of Commerce, local development commissions and property management firms, as well as lists of specialized moving companies and professional moving consultants that can be of use to the displacee. Relocation AssistanceRelocation Assistance should explore all possible sources of relocation planning, counseling, and financing that may be utilized by the displacee. Local officials should also be encouraged to provide incentives for the displacee to relocate within the community, if only to avoid adverse economic impacts due to a loss of jobs and a corresponding increase in

unemployment. Local agencies can provide incentives such as being flexible with zoning and building requirements, offering tax abatements or special financing, or waiving Conditional Use Permit fees.

The ability to assist a nonresidential displacee depends on Relocation AssistanceRelocation Assistance's knowledge of the business, how it functions and what it requires to be successful. As such, Relocation Agents should devote a considerable amount of time to meeting with the nonresidential displacee and obtaining a thorough knowledge of the operation.

The Relocation Assistance Brochure is a good tool for guiding discussion during the First RAP Call and subsequent meetings. In addition, the Notice of Eligibility provides written reinforcement of the explanation of benefits and level of advisory assistance. Relocation AssistanceRelocation Assistance must specifically point out to the nonresidential displacee the mandatory notification of the displacee's obligation to provide an inventory and permit monitoring of the move as noted in 49 CFR 24.301(i).

10.05.05.00 Moving Expenses - Eligible

The following sections outline various eligible moving expenses as provided for by 49 CFR 24.301 and 49 CFR 24.303.

10.05.05.01 Transportation of Personal Property

Eligible displacees are entitled to the cost to transport personal property and other items of personalty not acquired (e.g., trade fixtures, inventory) to the replacement property, not to exceed 50 miles from the displacement property. The Authority may extend the 50-mile limit if no other replacement property was available or suitable for the displaced business, farm, or nonprofit organization.

Transportation includes packing, unpacking, crating, and uncrating, including any special packaging or equipment that must be used to protect sensitive or high valued items (e.g., computers, rare or exotic inventory, and photosensitive equipment).

The displacee executes the agreement with the moving company, vendor or specialist, and may assign reimbursement for the preapproved amount directly to the moving company, vendor or specialist. The Authority does not enter into the agreement between the two parties.

10.05.05.02 Disconnecting/Dismantling

Displacees may also be entitled to the cost to move all non-acquired personalty which also includes disconnecting, dismantling, removing, reassembling, and reinstalling personal property. This includes movable machinery, equipment, substitute personal property (not loss of tangible personal property), and connections to utilities available within the building.

10.05.05.03 Utility and Service Lines

Another possible moving expense is the cost of connection to available nearby utilities from the right-of-way to improvements at the replacement site. Utilities may include the following internal service lines: water, gas, electrical, compressed air, vacuum, vent, sewer, and oil. They may be located overhead, underground, or on the surface.

The cost of installing the typical service connections is not an allowable expense such as: utility distribution centers (water meters, gas meters, and main electrical service panels), perimeter and overhead

electrical outlets for lighting and power, normal gas or water lines. From a RAP viewpoint, these in-place service connections are real property improvements and the values associated with them become part of the real estate. Again, these costs become part of the real estate and are not allowable moving expenses. They may be eligible, however, as a reestablishment expense up to $25,000.

An eligible business or farm is entitled to reimbursement of costs for reinstalling movable machinery and equipment (M&E) and other personal property, including substitute personal property described in 49 CFR 24.301(g)(16). This includes connection to utilities available nearby and modifications necessary to adapt the utilities at the replacement site to the personal property.

From a relocation standpoint, the Authority can pay the cost to connect or hook up any item of M&E or other personal property from the piece of equipment to the nearest available utility connection, but only to the extent these services were required at the displacement property. This connection might be an outlet located nearby or a subpanel located some distance away that is necessary for a particular piece of equipment necessary to the business. The Authority can only pay to connect M&E and other personal property (or substitute personal property as noted above) the Authority is paying to relocate. All such costs must be actual and reasonable. Items acquired by the Authority and subsequently repurchased by the displaced business and realty items retained by the owner as specified in the Right-of-Way Contract are not eligible relocation expenses. The Authority will also not pay to connect any newly added items of M&E, other personal property, or for any betterments.

The cost to adapt or convert relocated M&E to a different type of power supply may also be an allowable moving expense. Examples of alternative power supplies include conversion from direct current to alternating current, from three (3)-phase to single-phase, from 440 volts to 220 volts, or from one heat source to another (e.g., from bottled or natural gas to electricity). Examples of ways to adapt either the M&E or the power supply include new motors, transformers, rectifiers, and similar equipment necessary to accomplish the required conversion. Except in unusual circumstances, actual payment shall be limited to the least expensive alternative; that is, the cost to adapt the M&E to available utilities or to provide compatible utilities to the existing M&E.

10.05.05.04 Telephone Equipment

Businesses may be reimbursed for the following telephone service fees/costs if incurred in the relocation process:

- Reconnection of Existing System
- Purchase of New System (if old system was pulse type and relocation site only accepts Touch-Tone phones)
- Long Distance Service Transfer Fees
- Computer and Data Dedicated Lines

If a business is able to relocate its existing system to its new location but chooses to purchase/lease a more elaborate system, a credit for phone relocation costs is provided toward the new system.

If a new system is the only alternative for the business, Relocation AssistanceRelocation Assistance should obtain two bids to document the reasonableness of the charges. In all cases, the file shall include a description of the existing phone system including:

- Number of phones, regular dial, multi-line, push button, PB + Hold, PBX.

- Special features such as hold, call forward, and conference calls.
- Names of local and long distance companies and representatives, if assigned.

Telecommunications (data) and tele-video installations require special handling and should be separately inventoried and documented.

10.05.05.05 Modifications to Personal Property

49 CFR 24.301(g)(3) allows reimbursement for actual, reasonable and necessary expenses to modify personal property to comply with federal, state, or local law, code or ordinance. Modifications necessary to adapt personal property to the replacement structure, the replacement site, or the utilities at the replacement site are also authorized. Additionally, connection to available nearby utilities from the right-of-way line to the improvements at the replacement site may be allowed, if the Authority determines they are actual, reasonable and necessary (49 CFR 24.303).

Displacees may be reimbursed for the cost of adapting personal property to the replacement structure, the replacement site, or the utilities at the replacement site. To be reimbursable, costs for personal property modifications must be necessary, unavoidable, and reasonable.

The modifications authorized by this section must be clearly and directly associated with the reinstallation of the personal property, and cannot be for general repairs or upgrading of equipment because of the personal choice of the displacee.

Costs for repairs, modifications, or improvements to the replacement real property due to the requirements of laws, codes, or ordinances can only be paid as a Reestablishment Expense.

Authorized modifications include circumstances when personal property and equipment were "grandfathered" in the displacement structure, but changes or upgrading of the personalty is required by the Americans with Disabilities Act (ADA) and/or the Occupational Safety and Health Administration (OSHA).

The modifications must be clearly and directly associated with the reinstallation of the personal property and cannot be for general repairs or upgrading of equipment because of the personal choice of the business owner.

10.05.05.06 Physical Changes at New Location

Displacee may be reimbursed the cost of making physical changes in or to a building to which a business concern relocates.

Provisions and Limitations: Displacee may be eligible for reimbursement of costs to make physical changes at a new location as a moving expense under the following provisions and limitations:

- The physical changes must be necessary to permit the reinstallation of machinery or equipment or substitute machinery or equipment necessary for continued operation of the business.
- The cost of foundations and concrete pads or other similar construction required for reinstallation of relocated or substitute machinery or equipment may be eligible provided construction is necessary for proper operation of the equipment and compensation for a similar installation was not made as part of the price paid to acquire the former property.

- Changes in or to a building or structure may not increase the value of the building or structure for general purpose uses, may not increase the structural or mechanical capacity of the building or its components beyond the requirements of specific types of equipment moved from the old location or replaced with a substitute. No relocation payment for structural change shall be made for any items that were paid for on the acquired property.

Items acquired by the Authority but repurchased by displacee and realty items contractually retained are not eligible for payment.

Claiming Costs for Physical Changes: To qualify for reimbursement, the displaced business must submit the following documentation before the move:

- A detailed description or drawing of the old and new installation.
- A copy of all instructions given to the contractors.
- A statement explaining why the physical change is necessary and applicable codes and ordinances, if any.

Relocation AssistanceRelocation Assistance will:

- Review the documentation and determine whether the physical changes meet the requirements set forth above and whether the costs are reasonable.
- Ensure the Authority has not previously paid for the items in the acquisition.

FHWA has provided specific guidance on two specific areas related to changes at the new location.

1. The cost of pits, pads, and foundation**s can be reimbursed as an eligible moving cost if they are necessary for the reinstallation of equipment or machinery** or the installation of substitute items that are necessary for the business operation, unless the value of the pits, pads, and foundations was clearly included in the just compensation paid for the real property. Normally, pits, pads, and foundations only add value to a property for particular business operation and would not generally enhance real property. They should not be included in the valuation of the real property unless the highest and best use of the property being acquired is for the business operation for which it is being used, and the fair market value is determined on this basis.
2. Underground tanks are generally considered realty and purchased as part of the real estate. However, if under State law, the tanks are considered to be personal property, site preparation costs necessary for the installation of the tanks could be considered an eligible moving expense. The site preparation would have to be necessary for reinstallation of the tanks (or substitute tanks), and the installed tanks would have to be required for the operation of the particular business being created.

10.05.05.07 Storage of Personal Property

A nonresidential displacee MAY be entitled to storage of the non-acquired personalty based on Relocation AssistanceRelocation Assistances recommendation that is absolutely necessary in order to vacate the displacee for the project. Specific Authority approval is required

49 CFR 24 specifically excludes personal property on real property already owned or leased by the displaced person, so a displacee cannot be reimbursed the cost to store personal property that was moved from the displacement property to another property already owned or leased by the displacee.

Storage of personalty is not an automatic benefit and should only be authorized when it is in the best interest of the public and the project. Relocation AssistanceRelocation Assistance must recommend that storage of personal property is a reasonable and necessary moving expense for the displacee. The determination should be based on the needs of the project, the nature of the displacee's operation, the plans for permanent relocation, the amount of time available for the relocation process, and whether storage would facilitate relocation. It is the Authority's responsibility to set the terms for storage, including prohibiting the storage site's use as a temporary business operating site and the length of time.

Examples of justifiable storage are:

- Displacee has diligently looked for replacement property, but has not been able to locate something because of the unique nature of their operation or organization.
- Construction of the replacement property has been delayed by some unforeseen circumstance, again not the result of the displacee's actions.
- The project's time schedule supports relocating the displacee's personalty immediately, AND the displacee's operation or organization will not be adversely impacted by the storage of their personalty.

The displacee's storage must be preapproved by the Authority based on the maximum period of time the displacee will need before permanent occupancy of the replacement property can take place, up to 12 months. Displacees are not automatically entitled to a full 12 months of storage.

Authority may authorize a flat storage rate for the displacee's storage based on a market analysis of storage rates for comparable units. The displacee can be reimbursed at the end of the agreed-upon time period after submitting a claim, including invoices and paid receipts. An optional method of payment is for the displacee to execute an Assignment of Funds wherein the Authority may advance the first and last month's storage rent to the Storage Facility, and make periodic payments (e.g., quarterly) for the agreed-upon time period.

All arrangements for storage should be documented in writing between the Authority/Consultant and the displacee, and if applicable, the storage facility.

Displacees are also entitled to the actual, reasonable, and necessary costs to move their personalty into and out of storage, up to 50 miles for each move (including necessary unloading and stacking). The Authority is only responsible to move the same amount (or less) of inventory out of storage to the replacement site. The displacee must be advised to control their inventory (volume, weight) during the period of storage, or be responsible for the cost to move the additional items.

In unusual circumstances (e.g., displacee's inventory consists of 20 tractor trailers), the market rate analysis for a storage site may consider vacant lots, empty warehouses, or other secure sites.

Extensions beyond 12 months should be rare and only when the displacee's circumstances are so unusual that an additional month or two of storage is warranted.

10.05.05.08 Move and Storage Insurance

Displacees are entitled to insurance for the replacement value of the personalty in connection with the move and during storage.

In most situations, the displacee should elect to have the property insured based on its value rather than its weight. The moving company will provide an estimate of the replacement value, which should be confirmed with the displacee before electing that coverage. Special coverage may need to be obtained by the Authority or the moving company for sensitive or high valued items of personalty (e.g., moving an antique company's Ming vases).

Direct payments to the displacee as a "self-move" (10.05.09.00) should be based on the lowest of three bids, including an appropriate amount for insurance. Relocation AssistanceRelocation Assistance should evaluate the potential risk to the personal property and select the appropriate coverage. A lower cost insurance with a higher deductible would be an appropriate choice when there is a low risk of property loss. Example: The personal property is being moved in seven separate moving vans. The likelihood that all seven moving vans would have 100% of the personal property damaged is highly unlikely. In most cases, the displacee will arrange for any additional coverage through their own insurance company. The Authority is not responsible for the highest price coverage, just the most reasonable. However, if there is damage to the personal property and the insurance requires a deductible, the Authority must reimburse the displacee for the deductible.

10.05.05.09 Lost, Stolen, or Damaged Property

The displacee is entitled to the replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

If the insurance coverage includes a deductible payment, the Authority will be responsible for reimbursing the displacee for that amount after the claim for damages has been paid.

10.05.05.10 Licenses, Permits, Fees and Certifications

The displacee is entitled to the cost of any license, permit, or certification required for the particular business or organization to operate at the replacement location that is not transferable to the replacement property. These fees can be a one-time cost, or a periodic fee. Service charges or nonrefundable fees required by law, licenses, or permits needed to operate at the new location are eligible costs. Examples: day care license, alcohol and beverage control permit, resale license, sanitary inspection certification.

There are no limitations on the costs, which can be reimbursed for licenses, permits, or certifications required of the displacee at the replacement site. The costs participated in should be for those "actual, reasonable, and necessary" items charged by the licensing agency. However, the payment is based on the remaining useful life of the existing license, permit, or certification.

Example 1: A business is displaced from Local Agency "A" and moves to Local Agency "B." Local Agency "A" had no permit requirement at the displacement location. At the replacement location, Local Agency "B" requires a permit costing $1,000. The Authority would reimburse the entire $1,000.

Example 2: A business is displaced from Local Agency "A" and moves to Local Agency "B." Local Agency "A" required the displacee to have a business license costing $750 each year. Local Agency "B" charges a slightly higher fee ($1,000) for their annual business license, but also requires a solid waste permit that costs $1,200 each year. If the nonresidential displacee moved on July 1, 2011, reimbursement would be based on one-half of the $1,000 to be paid for 2011 to Local Agency "B," plus the entire cost of the new solid waste permit that was not required at the displacement site.

Other eligible expenses are those costs previously paid as part of the Reestablishment Payment that related to the replacement site such as general occupancy licenses, occupancy permits, building permits, or one-time assessments (e.g., Conditional Use Permits) that any business would have to pay for occupancy of a property.

Impact fees or one-time assessments for anticipated heavy utility usage as determined by the Authority is now an eligible moving expense rather than a reestablishment expense (49 CFR 24.303).

10.05.05.11 Professional Services [49 CFR 24.301(g)(12)]

The Authority must preapprove the use of professional consultants, and require the displacee to obtain bids and Scope of Work to plan and/or move the personalty to the replacement property. The Authority shall review the bids and authorize the displacee to hire the consultant with the lowest bid. As part of Advisory Assistance, Relocation AssistanceRelocation Assistance should conduct periodic reviews of the consultant's work to ensure the displacee is receiving adequate service. The use of a professional consultant does not absolve Relocation AssistanceRelocation Assistance from the need to monitor the move.

Professional services should be arranged for specialty or complex moves (e.g., sand and gravel plant, koi fish farm that are not normally performed by a typical moving company). The consultant should prepare specifications (10-EX-36) that are detailed instructions as to how the move is to be performed in order to minimize the hardships on the displacee, and to be present during each phase of the move

Professional consultants must submit a detailed scope of work which documents a breakdown of estimated labor hours, materials, and equipment by task for Authority approval prior to the start of the move. Any changes in detail or costs shall be approved by the Authority prior to incurring the costs. Failure to do so may limit actual reimbuseable costs to the original estimated amounts.

The Authority does not enter into the agreement between the two parties.The displacee enters into an agreement with the professional consultant, and may assign reimbursement for the preapproved amount directly to the professional consultant. Further, the Authority is responsible only for reimbursing the displacee for costs that are both eligible and adequately documnented in accordance with the "Uniform Act."

Reasonable and necessary professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including, but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site) are eligible for reimbursement as moving expenses. Professional services also include attorneys' fees for representation before zoning authorities. However, if any of the services identified under "professional services" are performed by a regular employee of the displacee (such as staff engineers) or professional contractors ordinarily used by the business for its everyday operations (such as legal counsel on retainer), these services (including the cost of the report or document) are considered ordinary costs of doing business, and are not eligible for reimbursement.

The Authority reserves the right to decline approval of any move planner based on unacceptable past performance properly documented by the Authority.

Listed below is a summary of Professional Move Planner Service:

Nonresidential displacees may be eligible for reimbursement to hire professional consultants to:

- Plan the move of the personal property (e.g., schematics, time frame)
- Move the personal property (e.g., organize and in phases), and
- Install the relocated personal property at the replacement location.

Prior to the move, the Right-of-Way Agent shall meet with the displaced business, farm or non-profit organization and the proposed move planner to discuss the following:

- Scope of work to be performed
- Estimated hours to be incurred by the professional consultant
- Agreed upon hourly rate
- Certified inventory of personal property versus real property

Desirable Qualifications of the Professional Move Planner

- Experience providing moving services to at least two like-type enterprise under guidelines of the Uniform Relocation Assistance and Real Property Acquistion Policies Act of 1970. References required.
- If services to be provided are highly technical, the provider will be limited to the consultant who has thorough knowledge of the tasks performed. References required.

These services must be directly related to moving personal property. Conceptual building or site layouts intended for construction/reconstruction at the replacement site are not considered eligible expenses under 24.303(b).

10.05.05.12 Relettering and Reprinting

Displacee's existing inventory of stationery may become obsolete as a result of the move (e.g., new address, new phone number). Re-lettering signs and replacing stationery on hand at the time of displacement are eligible expenses. Other personalty items that may require changing the printed address or phone number are company vehicles, business cards, yellow page advertisement, and t-shirts or pens that are given to the public. Relocation AssistanceRelocation Assistance must determine if there is still some use to the items before authorizing reimbursement for relettering. It is important to note that the Authority never confiscates obsolete items.

The displacee may be reimbursed the actual and reasonable cost to conform existing stationery by inking out and stamping in a new address, or the displacee may be entitled to the amount paid (less salvage value where appropriate) for printing a reasonable supply of printed matter to replace those made obsolete by the move. Relocation AssistanceRelocation Assistance and displacee should review the inventory on hand (estimating the amount that will be remaining on the date of the move) and reach an agreement on what stock must be modified, what must be replaced, and what can still be used at the new location (e.g., standard invoices, internal memos). The displacee should be advised that such an agreement should be reached prior to making any commitments with a printer for new stock.

10.05.05.13 Searching for a Replacement Location [49 CFR 24.301(g)(17)]

A displaced business, farm operation, or nonprofit organization is entitled to reimbursement for actual expenses, not to exceed the regulatory limit of $2,500, as the Authority determines to be reasonable, which are incurred in searching for a replacement location including transportation, meals and lodging, time spent searching, and searching fees paid to a real estate professional. Other eligible expenses include the actual time and effort required to obtain permits and to attend zoning hearings, but not the assessed fees for the actual permits (see 10.05.05.10). The time spent to actually negotiate the purchase of a replacement business site is also reimbursable, based on a reasonable salary or earnings rate. However, the rate should be based on a preapproved hourly rate that is reasonable and necessary.

The expenses incurred by the displacee and eligible for reimbursement must be:

- Incurred after the ION (FWO or NIA).
- For property that is suitable for the impacted business, not residential properties.
- Itemized on a statement attached to the claim form and incorporated by reference. The statement must list the dates of search chronologically, time spent, location of search, and reason for choosing or not choosing a location. (see 10-EX-02, Business Search Expense Summary.)
- Reimbursed at the current maximum State rates for mileage and per diem. Receipts are only required for lodging.

Time spent by the displacee and employees to locate a suitable replacement site can be reimbursed at the average hourly rate per a statement by the displacee. Broker and agent fees to locate a replacement site must be supported by paid receipts and copies of service agreements, and must be exclusive of any fees or commissions related to the purchase of such site. Commissions may not be reimbursable as part of the Related Nonresidential Eligible Expenses (10.05.11.00).

Reimbursement for mileage can only be for properties within the 50-mile radius, unless the Authority determines that there are no suitable replacement properties within the 50-mile area. In such a case, search expenses and the actual move may be beyond 50 miles.

Displacees should document their time and expenses related to searching for a replacement site, and attach it to their claim.

Note: Search costs are not reimbursable to a business that elects to receive an in-lieu payment.

10.05.05.14 Low Value/High Bulk [49 CFR 24.301(g)(18)]

When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value as determined by the Authority, the allowable moving cost payment shall not exceed the lesser of:

1. The amount which would be received if the property were sold at the site, or
2. The replacement cost of a comparable quantity delivered to the new business location.

Examples of personalty include stockpiled sand, gravel, minerals, metals, scrap, building supplies, automobiles and automotive parts, and other similar items held in bulk.

The business owner should be permitted to make the decision on whether the material is to be moved to the new business location or discarded in some other fashion (donate, on-site sale, disposal); however, the amount of the reimbursement will be limited to the lesser of the two amounts.

Note - This provision also applies to the relocation of "personal property only" for residential and nonresidential displacees.

Example of a Low Value/High Bulk Payment:

Atkins Hardware has a 500-gallon kerosene tank with a remaining content of 100 gallons. Each gallon of the kerosene sells retail at the time of displacement for $2.00. The cost to provide a truck, pump the tank contents, filter it for water and foreign debris, deliver it to the new location is estimated at $400.00, which is greater than the material's value (100 gallons x $2.00/gallon = $200.00). Delivering new kerosene to the new store location would cost about $1.45 per gallon for a 500-gallon delivery, and about $1.75 per gallon for a 100-gallon delivery. Comparing the remaining 100 gallons of kerosene were sold at the old site ($200.00) to the cost of 100 gallons delivered to the new site ($175.00), the Agent can pay the displacee $175.00, but only after the tanks have been removed from the displaced site.

10.05.05.15 Other Moving Expenses

49 CFR 24 allows the Authority to reimburse eligible nonresidential displacees for other moving related expenses that are not listed as ineligible under 49 CFR 24.301(h). Authority must preapprove any additional expenses based on a written recommendation from the Consultant.

10.05.06.00 Certified Inventory

The nonresidential displacee must provide Relocation AssistanceRelocation Assistance with a certified inventory of the personal property eligible for relocation. The inventory should be prepared by the displacee and verified by Relocation AssistanceRelocation Assistance, who may choose to accompany the displacee during the preparation of the list. A complex operation (e.g., warehouse or auto parts distributor) may require the use of a professional consultant to prepare the inventory. Relocation AssistanceRelocation Assistance should arrange for this service to be performed and pay for the service using a claim form and Assignment of Funds.

The certified inventory must not contain any property classified as realty (and acquired), property on consignment, or real property items that were relocated in lieu of purchase (as reflected in the signed Right-of-Way Contract). The owner's certification shall contain a statement as follows:

> *I, (name of owner), certify that the above listed items represent a true and complete inventory of my personal property located at (address) as of (date).*

Relocation AssistanceRelocation Assistance should ensure that the owner understands this certification ensures that all the items are personal property, that the displacee has full ownership of the items, none of the items were acquired as part of the realty (e.g., fixtures and equipment), nor were any of the items reacquired by the owner at salvage value.

If personalty located on the displacement property is determined to be consignment goods, the owners of the consignment goods are considered displacees and thus eligible for relocation payments.

The certified inventory should be sufficiently detailed to allow ready identification of all items to be relocated. If an inventory is difficult to describe because of magnitude or complexity, consideration should be given to describing by gross weight, volume, or other reasonable measure, including photographs and videos where appropriate.

In addition, the certified inventory should not include any items that will not be moved and subject to reimbursement under "Adjustments to Move" (10.05.11.00) so that Relocation AssistanceRelocation Assistance can obtain an accurate cost to move.

Review 10-EX-32 for "Certified Inventory - Nonresidential."

10.05.06.01 Fluctuating Inventory

Inventories are rarely fixed and Relocation AssistanceRelocation Assistance should be aware of the nonresidential displacee's business activity in order to obtain accurate inventories for the bidding and moving processes. There are businesses whose inventory will change seasonally, or even daily. Subsequent to the actual move of a nonresidential displacee, Relocation Assistance must review the inventory to establish what had to be moved. Substantial changes from the original or pre-move inventory should be addressed or reflect in an adjusted cost for the move. The inventory stage of the moving process is critical. Early and continuous involvement by Relocation AssistanceRelocation Assistance is essential.

Relocation AssistanceRelocation Assistance should also be aware of any inventory that belongs to someone other than the nonresidential displacee, such as items on hand for sale under consignment, i.e., convenience gas station, craft or hobby shop, secondhand store.

Due to the length of time between the first written offer and the actual relocation, Relocation AssistanceRelocation Assistance must obtain three complete inventories from the nonresidential displacee:

1. Within 30 days of the First RAP Call - in order to obtain accurate bids and provide the nonresidential displacee with a determination of the cost so that good business decisions can be made regarding when and how to move the personal property.
2. Within 30 days of the anticipated move - in order to ensure the lowest qualified bid is sufficient and not excessive to pay the cost to move the personal property that is expected to be on hand on the date of the move.
3. The day of the move - as part of Relocation AssistanceRelocation Assistance's responsibility to monitor the moving operation at the displacement and replacement sites.

The Authority can waive the requirement to obtain three separate inventories for noncomplex operations with small inventories when the cost to obtain the inventories may exceed the minor variations in the moving cost.

10.05.06.02 Notification and Inspection [49 CFR 24.301(h)(12)(i)]

A nonresidential displacee must comply with certain requirements in order to receive reimbursement for all moving and related costs. Relocation AssistanceRelocation Assistance should ensure the displacee is aware of the restrictions and consequences by reviewing the Notice of Eligibility (10-EX-43), especially the conditions that state the displacee must:

1. Inform Relocation AssistanceRelocation Assistance with a minimum of 15 days' advance written notice of the approximate date of the start of the move or disposition of the personal property. Notification of the actual move date must be received at least three (3) working days in advance.
2. Permit Relocation AssistanceRelocation Assistance to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move. This includes photographs and videos as appropriate.
3. Provide Relocation AssistanceRelocation Assistance with a certified inventory of the items to be moved prior to obtaining cost estimates from moving companies, and again at least 15 days in advance of the estimated move date.

Relocation AssistanceRelocation Assistance may deny payment if displacee fails to comply with any of the above, noting in the diary and the file that the displacee was advised of the notification and monitoring requirements. However, if the displacee can produce verifiable records, bills, and receipts, documenting actual expenses incurred, and can identify the property moved, it may be difficult to support the denial based on the sole fact that the displacee did not notify Relocation AssistanceRelocation Assistance of the actual move date.

10.05.06.03 Monitoring

The Uniform Act requires that all moving expenses be actual, reasonable, and necessary. To assure compliance with these requirements, Relocation AssistanceRelocation Assistance **must** provide surveillance of a move commensurate with its costs. The goal of monitoring is to protect the Authority's interest while assisting the nonresidential displacee.

Relocation AssistanceRelocation Assistance **shall** monitor complicated or costly moves to assure that all moving expenses are actual and reasonable and to verify that the items of personal property listed on the owner's certified inventory are moved from the displacement property to the replacement location. If the monitoring activities will involve a significant expenditure of time, Relocation AssistanceRelocation Assistance should consider using a resident engineer or private moving consultant.

see 10-EX-37 for additional guidelines on monitoring.

10.05.07.00 Move by Commercial Carrier

Payment is based on actual reasonable cost of a move performed by a commercial mover or contractor. The following procedure shall be followed:

- Either the owner or Relocation AssistanceRelocation Assistance will secure at least two firm bids (10.05.07.01) based on the certified inventory (10.05.06.00) from qualified carriers and submit them to the Authority for approval prior to the move. Relocation AssistanceRelocation Assistance should accompany the owner and the moving companies during the estimating process. The moving companies should be advised that the Authority will pay for the move. Bids must contain the statement noted in Section 10.04.02.09, Actual Reasonable Cost of Move by For-Hire Carriers.
- After reviewing and approving the bids, Relocation AssistanceRelocation Assistance authorizes the displacee to employ the lowest responsible bidder to perform the move. The displacee may elect to use another mover, but the Authority will limit reimbursement to the amount of the lowest bid, OR the amount of the displacee's mover, whichever is less.

- At its discretion, Relocation AssistanceRelocation Assistance may secure bids either as a service to the owner or where it questions the reasonableness of the bids submitted or qualifications of the bidder. A moving consultant may be used to evaluate bids for extremely complex commercial/industrial moves when the Relocation Assistance lacks the expertise to determine reasonableness of the bids.
- The owner shall submit Claim Form RW 10-30 and paid, receipted, and itemized bills to Relocation AssistanceRelocation Assistance after moving from the premises. A responsible employee of the moving company must sign the bills. Written prearrangements or assignments for the Authority to pay the mover directly may be used.
- Relocation AssistanceRelocation Assistance shall review and approve the bills and submit the authorized amount to the Authority for payment.

Displacee may authorize Relocation AssistanceRelocation Assistance to solicit competitive bids and enter into a contract on their behalf with the lowest responsible bidder to have the move performed. Payment is in accordance with current competitive bid procedures.

10.05.07.01 Obtaining Bids

A bid is an offer to perform a specific task at a specific price. It is a lump sum fixed amount to do an identified task. The bid should be detailed enough to determine if the bid amount is reasonable, i.e. cost of labor, materials, and any rental equipment used. The Authority does not solicit estimates to determine the cost to move personal property because they are generally a value or opinion of the cost without actually calculating costs based on weight or size. Relocation AssistanceRelocation Assistance should not accept open-ended bids such as time (hourly rate) and materials (price per item).

For a bid to be accurate, the terms of the move and the inventory must be clearly established. Special conditions related to the move, such as time of day, access to and through the building, dismantling and reassembly of complicated items, must be known by all the moving companies who have been tasked to prepare the bid.

Typically, Relocation AssistanceRelocation Assistance and the nonresidential displacee work together to select appropriate moving companies and specialists who will provide three bids to relocate the personal property. Each moving company is provided the certified inventory, moving specifications (see 10-EX-36) and afforded an opportunity to inspect the displacement and replacement sites. The moving companies submit the bids to Relocation AssistanceRelocation Assistance who will provide copies to the nonresidential displacee.

Relocation AssistanceRelocation Assistance determines the most qualified bid based on the cost and the accuracy of the bid. The nonresidential displacee can select any bidder, but the Authority's obligation to participate in the costs will be limited to the selected bid.

Moving companies and contractors can also be reimbursed a reasonable fee for preparing the moving or cost estimates.

10.05.07.02 Bid Adjustments

Complex moves are likely to require an adjustment to the work schedule or scope. These adjustments may require a change in the amount that the moving company should be paid; however, Relocation AssistanceRelocation Assistance must ensure that the adjustments are appropriate before recommending to pay the moving company more than the bid.

Adjustments that are appropriate are those related to a change in the inventory that requires more or less time by the moving company. Adjustments that may be appropriate are those caused by bizarre circumstances that occur during the move such as a dramatic change in weather that requires more protection of the personal property such as tarps or covered vehicles, or a power outage that shuts down the elevator that is being used to move the personal property.

Adjustments that are not appropriate are those increased costs due to time and materials that should have been considered in the initial bid. Some examples are: narrow steps to depart the building that slow down the move, no loading docks which require renting forklifts or using more laborers. Also, normal business risks are those unforeseen circumstances that are not the fault of the mover, but do not justify an increase in cost to the agency such as a flat tire on the way to a move which causes an hour delay and forces the move into overtime. Anyone in business must accept a certain degree of risk and the business profit is the reward for dealing with these risks.

Sometimes, the delay is due to the nonresidential displacee's intentional or unintentional actions such as not providing immediate access to the personal property, or delaying the dismantling of a piece of equipment that is scheduled for move. Relocation AssistanceRelocation Assistance should discuss these issues with the Authority before agreeing to pay the moving company more money because of the nonresidential displacee's actions. The moving company and the nonresidential displacee should have a written contract that protects both parties should one of them fail to perform. The Authority does not enter into the agreements with the moving company and the nonresidential displacee, and should not pay additional costs due to the failure of either party to perform.

Relocation AssistanceRelocation Assistance should work closely with the moving companies that are providing bids to include the appropriate contingencies in the bids.

Examples of appropriate and unwarranted adjustments:

1. The snowstorm hits at noon with heavy icing of the roads. To be on the safe side, the mover recalls the truck to the warehouse. Another half-day is added to the move.
   - Adjustment is warranted if the snowstorm is unusual (Sacramento in May); it is unwarranted if snow is a contingency that should have been considered when providing the bid.
2. Summer heat slows the work effort, and the packing and loading takes three hours longer than planned.
   - Adjustment is unwarranted, as this contingency should have been planned for.
3. The moving personnel forget the dollies and this causes a three-hour delay.
   - Adjustment is not warranted.
4. The nonresidential displacee shows the moving personnel a storage area omitted in the inventory.
   - Adjustment is warranted.
5. The moving firm is extremely busy and must send a less experienced work crew, so the move takes 25% longer.

- Adjustment is not warranted as this is based on the moving company's business decision.

6. Chairs in the reception area are bolted to the floor, and the mover was not aware of this and sent no tools for removal.
   - Adjustment is warranted if it was not obvious the chairs were bolted during the bidding process, or that the chairs were to be dismantled before the movers came.
7. On the scheduled day of the move, heavy rain floods the loading dock areas. The carrying distance to the truck causes an increase in total loading time.
   - Adjustment is warranted.
8. The electrician informs you that he is not sure about the reinstallation of certain items of machinery. He suggests a manufacturer's technician to assist him. You point out that with this added cost, he will not be the low bid. He reminds you that he is in the middle of the move. Any delay in the move will be disastrous.
   - Adjustment is warranted.

10.05.08.00 Self-Moves [49 CFR 24.301(d)(2)]

A Self-Move payment is based on the lower of two bids or estimates prepared by a commercial mover or qualified Relocation Agent. Low cost or uncomplicated moves may be based on a single bid or estimate, or

If the nonresidential displacee elects to take full responsibility for the move of the operation, the Authority may pay the displacee directly for the moving expenses, based on the lower of two acceptable bids or estimates.

The nonresidential displacee must advise Relocation AssistanceRelocation Assistance of their desire to complete all or part of the move themselves at least 30 days before the anticipated date to vacate the property. The displacee must still provide a certified inventory, with a copy attached to the Self-Move Agreement.

The displacee will be paid once all personal property identified has been relocated to the replacement site. Advance payments are discouraged. In addition, all moving expense records are subject to review and audit by a representative of the Authority.

The displacee may opt to complete only a part of the move (e.g., moving the office and office equipment) and request the Authority pay the actual costs to move the remaining property (e.g., inventory in the warehouse, including reassembly of the shelves/racks).

A Self-Move by the displacee does not negate the Authority's responsibility to pay other related expenses, e.g., search costs, reestablishment, or professional services.

The nonresidential displacee should be advised that a Self-Move will be based on the lowest qualified bid adjusted for profit and overhead. As outlined in 49 CFR 24, Non-Regulatory Supplement 49 CFR 24D, the bid, which includes profit, overhead, or other additional costs that the nonresidential displacee would not actually incur, should be adjusted to reflect the actual expenses that the nonresidential displacee will incur.

10.05.08.01 Self-Move Based on the Lower of Two Bids

The displacee who elects to take full responsibility for the move may receive a payment for the moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by Relocation AssistanceRelocation Assistance, or prepared by a qualified Agent. It may be necessary to obtain several types of bids to cover all aspects of the move (e.g., disassembly/reassembly of the specialized equipment, separate move for computer equipment). The amount of the Self-Move is generally based on the lower of two bids from qualified moving companies for each aspect of the move; however, uncomplicated or low cost moves can be based on one bid or estimate. The bids should reflect only the items on the certified inventory that the displacee has identified as personalty subject to the self-move. The total of the lowest of all the bids is to be included in a Self-Move Agreement (10-EX-38).

The agreed-upon amount to be paid for a self-move should never include specialized moving costs that are performed by others; e.g., telephone, fire, and burglar alarm reinstallations. Costs for these specialized operations must be separately itemized and documented for reimbursement following completion of the work. (This does not apply to hardwired fire and burglar alarms since these are normally considered realty.)

The bidders should be advised to provide moving estimates exclusive of their charges for profit and overhead, and include the following statement:

> *"This estimate was prepared for the State of California Relocation Assistance Program as a basis for determining the maximum reimbursement the displacee may receive to perform a "Self-Move."*

The lowest bid is automatically used as the basis for the Self-Move Agreement.

The hourly rate for equipment rental can be based on the actual cost of the equipment rental, but not exceed the cost a commercial mover would charge.

Moving companies and consultants can be reimbursed a reasonable fee for preparing the moving estimates.

A residential displacee cannot be paid for a Self-Move based on the lower of two bids or estimates.

10.05.09.00 Adjustments to the Move

There may be items of personalty that the displacee will not or cannot use at the replacement site. The displacee is entitled to the cost to move all personalty; but if the displacee decides not to move some of the personalty to the new location, there are two optional payments: Payment for Loss of Tangible Personal Property (if the item will not be replaced) OR Substitute Personal Property (if the item will be replaced). (see Table 10.05-A.)

The displacee must identify the items not to be moved on the certified inventory.

This section should not be followed if the nonresidential displacee abandons personal property at the displacement property. (see Section 10.05.25.00.)

10.05.09.01 Loss of Tangible Personal Property [49 CFR 24.301(g)(14)]

Displaced businesses, farms, and nonprofit organizations may be eligible for a payment for the actual direct loss of tangible personal property, which is incurred as a result of the move or discontinuance of the operation. The payment will be based on the lesser of:

1. The fair market value of the item as installed and set up (e.g., wired, bolted, permitted) for continued use at the displacement site, less the proceeds from its sale; or
2. The estimated cost of moving and reconnecting the item "as is," including cost to install and obtain permits, based on the lowest acceptable bid or estimate obtained by Relocation AssistanceRelocation Assistance.

For the displacee to be eligible for this payment, the displacee must:

- Prepare a certified inventory identifying items that will not be moved, and whether it will be replaced at the new site.
- Identify the property NOT to be moved prior to the moving companies preparing their estimates to move all the items to the replacement property.
- Enter into a written agreement (10-EX-12) with the Authority electing this method of payment and agreeing that the described personal property is not to be moved.
- Make a reasonable effort to sell the described personal property based on discussions with Relocation Agent on any restrictions or limitations that must be followed.
- At the time of the move to the replacement property, dispose of the items listed in the inventory in a safe and legal manner (e.g., donation, refuse, sale, and gift). The Authority is not responsible for removing these items from the displacement site.
- Submit a claim for reimbursement based on the lesser of the cost to move item "as is" or its fair market value "as is," along with all supporting documentation. Displacee may also submit a claim for reimbursement for costs related to the sale, or attempted sale, of the item, along with all supporting documentation. Note: Said claims cannot be paid until all other personal property has been removed from the displacement site.

To determine the cost to move the item, the moving companies should be advised in advance by Relocation AssistanceRelocation Assistance that they will need to prepare TWO estimates—one for all the personal property, and then one for all the personal property EXCEPT the item or items that will not be moved. The difference between the two estimates is the cost to move the item. It is possible that the cost to move a small item, e.g., a desk or a couple of chairs, will be minimal or zero. (see Table 10.05-B.)

When calculating the approximate cost to move the item, Relocation AssistanceRelocation Assistance should ensure that the amount:

- Does not include an allowance for storage.
- Does include all other related moving costs such as packing, unpacking, dismantling, and reassembly, including utilities and modifications to the personalty.
- Is based on a maximum of 50 miles. Note: If the business or farm operation is discontinued, the moving cost will be based on the maximum of 50 miles.
- That the value of the goods held for resale is based on the cost to the business, and not the sales or listed price.

The owner of the property is entitled to payment for reasonable costs incurred in attempting to sell an item that is not being relocated (limited per 10.05.11.03). Payment may be made only after the owner has made a bona fide effort to sell the item, though the Authority can waive the requirement to sell. The sales price, if any, and the actual, reasonable costs of advertising and conducting the sale shall be supported by copies of the bill of sale or similar documents and any advertisements, offers to sell, auction records, and other items supporting the bona fide nature of the sale.

If the piece of equipment is operational at the acquired site, the estimated cost to reconnect the equipment shall be based on the cost to install the equipment as it currently exists, and shall not include the cost of code requirement betterments or upgrades that may apply at the replacement site. The allowable in-place value estimates (49 CFR 24.301(g)(14)(i) and the moving cost estimate (49 CFR 24.301(g)(14)(ii)) must reflect only the "as is" condition and installation of the item at the displacement site. The in-place value estimate may not include costs that reflect code or other requirements that were not in effect at the displacement site; or include installation costs of machinery or equipment that is not operable or not installed at the displacement site.

Table 10.05-A
Differences between Loss of Tangible Personal Property AND Substitute Personal Property

Business is discontinued or the item will not be moved and is not replaced in the relocated business = LOSS OF TANGIBLE rules.	Payment is the lesser of: • Fair market value of the item for continued use at the displacement site minus the proceeds from its sale. • Estimated cost of moving the item, not to exceed 50 miles, with no allowance for storage. If the business is discontinued, the estimated cost is based on a moving distance of 50 miles.
Business is relocated and an item of personal property used as part of the business is not moved, but is promptly replaced with a substitute item at the replacement site = SUBSTITUTE rules.	Payment is the lesser of: • Cost of substitute item, including installation costs at replacement site, minus any proceeds from sale or trade-in of replaced item. • Estimated cost of moving and reinstalling the item, not to exceed 50 miles, with no allowance for storage.

Table 10.05-B

EXAMPLE OF LOSS OF TANGIBLE PERSONAL PROPERTY

An eligible business, "J&J Temporary Services," determines that the document shredder will not be moved to the replacement site because of its condition and the displacee will not replace it at the new location.	
Fair Market Value In Place of the Document Shredder based on its use at the current location	$1,500
Proceeds: Price received from selling the Document Shredder	-$ 500
Net Value	$1,000
OR	
Estimated cost to move based on the following information:	$ 150
The lowest move estimate for all the personal property - $5,000, compared to the same bidder's estimate to move all the personal property minus the document shredder - $4,900. The difference is only $100 because moving the shredder did not take a lot of extra time, effort or equipment on the mover's part, so the difference is minimal. Add the estimated cost for disassembly/reassembly based on an estimate from a document shredder service company - $50 to reset the machine at new location.	
Based on the "lesser of," the amount of the "Loss of Tangible Personal Property" =	$ 150
In addition, the displacee is entitled to the reimbursement for all reasonable costs incurred in selling the document shredder (e.g., a couple of flyers at used office equipment stores and an ad in the local paper for $50) based on supporting documentation.	

The trade-in value of old equipment may be used instead of the net proceeds of the sale. Amounts received in trade, net proceeds of the sale, and estimated cost of moving must be documented.

The displacee is not entitled to a payment for Loss of Tangible Personal Property for:

- M&E that is classified as realty but is retained by displacee, nor
- Cost of moving structures, improvements, or other real property of which the displacee reserves ownership.

10.05.09.02 Purchase of Substitute Personal Property [49 CFR 301(g)(16)]

If an item of personal property, which is used as part of the business, farm, or nonprofit organization, is not moved, but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displacee is entitled to payment of the lesser of:

1. The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; OR

2. The estimated cost of moving and reinstalling the replaced item, based on the lowest acceptable bid or estimate obtained by Relocation AssistanceRelocation Assistance for eligible moving and related expenses, including dismantling and reassembly, and code requirements, but with no allowance for storage.

Estimating the cost to move the item is calculated in the same manner as an item identified under the "Loss of Tangible Personal Property." see Table 10.05-C.

Table 10.05-C

EXAMPLE OF SUBSTITUTE PROPERTY

An eligible business, "A&A Construction Company," determines the copy machine will not be moved to the new location because it is now obsolete, but it will be replaced.	
Cost of a substitute Copying Machine including installation costs at the replacement site	$3,000
Trade-in Allowance	- $2,500
Net Value	$ 500
OR	
Estimated cost to move, including any disassembly/reassembly, including code requirements	$ 550
Based on the "lesser of," the amount of the "Substitute Personal Property" =	$ **500**
In addition, if the displacee had attempted to sell the copier before trading it in, there could be an additional reimbursement for all preapproved costs incurred in the attempt to sell it (e.g., $25 for advertising it at the "Used Office Equipment Are Us" store).	

WORKING WITH TANGIBLE PROPERTY LOSS and SUBSTITUTE PROPERTY:

The Maxtop Company has a large drill press that is personal property that is worth about $2,500 installed and about $1,500 if sold at an auction. A new drill press installed would cost the displacee $4,000, and the vendor would give the displacee a $1,200 credit to trade in the old drill press.

1. The large drill press is operational at the displacement site, and the displacee chooses to move the drill press. Cost to move is based on the cost to haul ($200), cost to take down including water and electrical disconnects ($180), set up with all utilities and floor mounting ($250), and the cost of a required enhanced personal safety barrier at the new location ($400). Total payment = $1,030.
2. The large drill press will not be needed at the replacement site and the displacee wants a "loss of tangible personal property payment." Displacee can sell it for $400. The payment is based on the lesser of: 1) The in-place value less sale ($2,500 - $400 = $2,100), or 2) the moving cost without the cost to modify the replacement property ($1,030 - $400 = $630). Total payment = $630.
3. The displacee has another drill press in storage that is not currently functional and does not want to move it. The payment is based on the lesser of: 1) the in-place value as is ($1,500), or 2) the moving cost without reconnect since it is in storage and not connected to utilities ($200). Total payment = $200.
4. The displacee needs to have a drill press at the replacement site but wants to update his operation and requests a payment based on "substitute property." The payment is based on lesser of: 1) cost of a new drill press including installation minus trade-in value ($4,000 - $1,200 = $2,800), or 2) the cost to move including installation ($1,030). Total payment = $1,030.

10.05.09.03 Cost to Sell Personalty [49 CFR 24.301(g)(15)]

Reimbursement for costs associated with the sale, or attempted sale, of personalty not to be moved is an additional payment and not included in the "lesser of" calculation. However, reimbursement is limited to those costs that are "necessary." Relocation AssistanceRelocation Assistance and the displacee should discuss limitations to the method of sale. The cost for an auctioneer or an advertisement in the Wall Street Journal is not considered a reasonable expense when selling a low valued or easily disposed of item. Relocation AssistanceRelocation Assistance should ensure that the displacee understands that reimbursement is limited to the Authority's determination of reasonableness.

10.05.09.04 Value In Place

The term "value in place as is for continued use" means the depreciated value of the item as it is installed at the displacement site as of the date of the acquisition. Generally, an item will be valued based on the current cost at the time as installed at the displacement site, and then depreciated to reflect the current condition and estimated remaining useful life. Standard professional personal property appraisal methods are acceptable. The in-place value "as is" condition may not include costs that reflect code or other requirements that were not actually in effect at the displacement site; or include installation costs for machinery or equipment that is not operated or not installed at the displacement site.

The estimated moving cost for an item is also to be limited to the "as is" condition of the item at the displacement site. Therefore, estimated reconnection costs may NOT include costs to meet code or other requirements that would be necessary to relocate the item to a replacement site. Since the item is claimed as a loss and is not to be relocated, allowable reconnect costs may only reflect an estimate of the cost that would be incurred to install the item as it currently exists at the displacement site. Also, the moving cost estimate may not include reconnect costs for an item that is not operable or installed at the displacement site.

10.05.10.00 Related Nonresidential Eligible Expenses [49 CFR 24.303]

The following expenses shall be eligible if the Authority determines that they are actual, reasonable and necessary:

1. Connection to available nearby utilities from the right-of-way to improvements at the replacement site (see 10.05.05.03).
2. Professional Services (see 10.05.05.11).
3. Impact fees or one-time assessment for anticipated heavy utility usage as determined by the Authority (see 10.05.05.03).

10.05.11.00 Personal Property Only [49 CFR 24.301(e)]

49 CFR 24.301(e) allows for the reimbursement of eligible expenses for a person who is required to move personal property from real property, but is not required to move from the site. Eligible expenses include those described under Transportation, Packing, Disconnecting, Storage, and Insurance (including replacement value), and Low Value/High Bulk (10.05.14.04). Relocation Agents will provide displacees with the Notice of Eligibility for Personal Property Only (10-EX-46).

Personal property moves do not trigger eligibility for reestablishment payments, nor are they eligible for actual moving expense payments under 49 CFR 24.301(g)(8) through (g)(17):

1. Disconnecting and reassembly of mobile homes. (10.07.02.00)
2. Refundable mobile home park fees. (10.07.02.00)
3. Licenses, permits, fees required at the replacement site. (10.05.04.10)
4. Professional services to plan the move. (10.05.04.11)
5. Relettering of signs and replacement of stationery. (10.05.04.12)
6. Loss of Tangible Personal Property/Substitute Property. (10.05.11.00)
7. Searching expenses. (10.05.04.13)

10.05.12.00 Items Not Eligible for Move

Items identified as realty (including trade fixtures) in the appraisal, even if retained by the owner at salvage value, are not eligible for moving. Machinery and equipment identified in the M&E appraisal is usually acquired by the Authority and is also not eligible for moving expense.

However, items not acquired through the appraisal process are eligible for moving expenses.

Refundable security and utility deposits are ineligible for reimbursement [24.301(h)(12)] because of their refundable nature.

Refer to 7.08.06.08.

10.05.12.01 Ineligible Moving and Related Expenses [49 CFR 24.301(h)]

A nonresidential displacee is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this rule does not preclude the compensation under "Owner Retention of Dwellings."
(b) Interest on a loan to cover moving expenses.
(c) Loss of goodwill, loss of profits, or loss of trained employees.
(d) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in 10.05.21.00 (10).
(e) Personal injury.
(f) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Authority.
(g) Expenses for searching for a replacement dwelling.
(h) Physical changes to the real property at the replacement location of a business or farm operation except as provided in 10.05.05.06.
(i) Costs for storage of personal property on real property owned or leased by the displacee.
(j) Home business that is not the primary site for the business (e.g., realtor or CPA who works at home but the company has a primary location, someone who makes craft items and sells them at other locations or on consignment, or telephone or Internet services and sales).

NOTE: If a business is legitimately operated out of a residence that will be relocated, then the relocation benefits should be adjusted to ensure there is no duplication of payment.

10.05.13.00 Reestablishment Expenses [49 CFR 24.304]

In addition to the payments available under this section for moving expenses, a small business (see definitions), farm, or nonprofit organization is entitled to receive a payment, not to exceed $25,000, for expenses actually incurred in relocating and reestablishing such small business, farm, or nonprofit organization at a replacement site.

The nonresidential displacee must completely vacate the displacement property and be operating the new operation at the replacement property before this payment can be made. The $25,000 cannot be advanced to the nonresidential displacee, even if the only qualifying payment is the increased costs of operation during the first two years (item 6 below).

There is no requirement that the displaced nonresidential displacee remain in the same or similar type of business when they reestablish.

The test for reestablishment expenses is not a comparative standard. Therefore, it does not match the amenities or characteristics of the replacement site against the displacement site. Instead, the test is one of necessity, i.e., is the expense necessary to reestablish the displaced business.

Reestablishment expenses must be actual, reasonable, and necessary. Eligible expenses include, but are not limited to, the following:

1. Repairs or improvements to the replacement real property as required by Federal, State, or local law, code, or ordinance.
2. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business. (Review ineligible items under 10.05.13.02 and 10.05.14.00.)
3. Construction and installation costs for exterior signing to advertise the business. (see 10.05.12.04.)
4. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting. Can include some costs that were ineligible under items (1) and (2) above. Improvements made for aesthetic purposes are not eligible for reimbursement under any provision.
5. Advertisement of replacement location (10.05.14.03).
6. Estimated increased costs of operation during the first two years at the replacement site for such items as:
   - Lease or rental charges,
   - Personal or real property taxes, and
   - Insurance premiums.

   In order to meet the 18-month deadline to file a claim, displacees should be advised to submit their claim for these expenses prior to the 24-month period based on projected costs. The nonresidential displacee must provide copies of documents (e.g., lease agreement, tax bill, insurance statement, utility costs) and proof of payment before Relocation AssistanceRelocation Assistance can determine if any or all of the Reestablishment payment can be made based on this eligible item.
7. Other items that the Authority may consider as necessary expenses related to the reestablishment of the business (e.g., escrow and title fees to acquire the replacement property, SBA loan fee, and ADA compliance).

When discussing the payment of claims under this provision, Relocation AssistanceRelocation Assistance should ensure the claimant fully understands that items claimed must be reasonable and necessary and that substantiating documentation must be attached to the Claim (RW 10-30). Refer to "FHWA Guidance on Reestablishment" for further guidance (10-EX-30).

Relocation AssistanceRelocation Assistance must provide the Acquisition Agent with a completed RW 10-38 whenever a Reestablishment Payment has been made.

Reimbursement of claims under this provision is not made to business owners or tenants that claim an in-lieu payment.

In determining whether two or more displaced legal entities constitute a single business that is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;
2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
3. The entities are held out to the public, and to those customarily dealing with them, as one business; and
4. The same person, or closely related persons own, control, or manage the affairs of the entities.

Relocation AssistanceRelocation Assistance should consider how the businesses share or separate their operation by looking at the name, purpose, customers, tax records, employees, licenses, permits, phone numbers, and office space.

10.05.13.01 Reestablishment Payments on the Remainder

Reestablishment payments can be paid to a business that must reconfigure or make modifications to the remainder in order to accommodate the displaced portion of the business. Relocation AssistanceRelocation Assistance must make sure the payments are based on the list of eligible reestablishment expenses, and are not a duplication of a portion of the acquisition payment that was based on cost to cure or damages.

10.05.13.02 One-Time Advertisement of Replacement Location (Reestablishment)

The Relocation Agent must recommend the amount that is reasonable and necessary for the business to retain current clients and the Authority must approve the amount before it is incurred.

An example of an approved claim is a one-time newspaper announcement that a hairdresser has moved from one beauty shop to another. Individual mailing of a one-time announcement to the individual customers may also be necessary. Another example is a lawn mower repair shop that does not regularly advertise in newspapers.

Reimbursement for eligible advertising expenses must be included in the total of reestablishment expenditures, limited to $25,000.

An unacceptable claim is one from a business that typically uses newspaper, radio, and television advertising on a regular basis. In these cases, a minor change in the business' regular ads can mention the new address.

10.05.13.03 Exterior Signing

Eligibility for this payment exists whether or not the business had a sign at the displacement property. However, some sign expense is more properly assigned as a moving cost. A sign designated as personal property at the displacement site is eligible to be moved and reinstalled as a moving expense. Signs that can be relettered or otherwise modified due to the move can be claimed as a moving expense. Erection of signs not eligible as a moving expense can generally be claimed as a reestablishment expense.

10.05.14.00 Reestablishment Expenses for Non-Occupant Owners

A small business, farm, or nonprofit organization, including a non-occupant landlord, whose sole activity at the site is providing space at the site to others, is eligible for a Reestablishment Expense Payment up to $25,000. The owner does not have to own or rent personal property that must be moved in connection with the displacement. Typical examples of leased space are:

- Mobile Home Parks
- Business properties (e.g., warehouses, office space) including bare land used for storage of equipment
- Farms and ranches (or any bare land used for agricultural or livestock grazing)
- Coin operated laundries or any other vending operation (newspapers)
- Residential units

A non-occupant owner is not entitled to moving expenses because the requirements are that they have no personal property stored on the site. The sole reason and use for the property is to lease it to someone else. If a person leases a furnished place, they are not eligible for the Non-Occupant Owner payment.

Relocation AssistanceRelocation Assistance should provide the Non-Occupant Owner with a Notice of Eligibility – Nonoccupant Owner Leasing Space to Others (10-EX-50) as soon as its eligibility is determined.

To be eligible for this payment, the displacee must establish that the renting or leasing of space is a bona fide business activity, and not part of a real estate investment or family situation, as supported by the displacee's income tax records (Schedule C).

To ensure the displacee's operation is in fact a business, Relocation AssistanceRelocation Assistance should obtain from displacee records that support the status as a business (e.g., copies of income tax records, business license, lease agreements, or any other reasonable documentation). The income from the property must contribute materially [49 CFR 24.2(a)(7)] to the owner's overall income. The definition of "contributes materially" is: during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the Authority determines to be more equitable, a business or farm operation:

1. Had average annual gross receipts of at least $5,000; or
2. Had average annual net earnings of at least $1,000; or
3. Contributed at least 33 1/3 percent of the owner's/operator's average annual gross income from all sources.

To be eligible to receive the payment, the Non-Occupant Owner must:

- Acquire a replacement property within the 18-month time period.
- Lease the replacement property as evidenced by a copy of the new lease agreement.

Eligible expenses are those listed in Section 10.05.14.00 as Reestablishment.

The Non-Occupant can have more than one Reestablishment Payment if two distinct and separate properties are affected by the same project, as long as they are leased as separate entities (e.g., two buildings on one parcel that is leased to two separate lessees for different uses, and two rental units in a condominium complex that are separate and distinct residential units, leased to two separate families). However, one 32-unit apartment building is limited to one reestablishment payment. To receive more than one Reestablishment Payment, the owner must reestablish each operation.

FHWA has determined that the following situations or expenses are ineligible for a Non-Occupant Owner Reestablishment Payment:

- A lessee who subleases space is not eligible for a Reestablishment Payment.
- A request for reimbursement of expenses incurred by the displacee as a result of the Authority acquiring the displacement property.
- Recurring fees (insurance, taxes, MIP, interest) and nonrecurring closing costs associated with the replacement property.
- Other items, such as incidental expenses necessary to purchase the replacement property, customarily paid by the buyer.

Note: The Non-Occupant Owner cannot receive an In-Lieu Payment (10.05.17.00) regardless of the determination of eligibility for a Reestablishment Payment under this provision.

10.05.15.00 Ineligible Reestablishment Expenses [49 CFR 24.304(b)]

The following is a nonexclusive listing of reestablishment expenditures ineligible for reimbursement:

1. Purchase of capital assets, such as office furniture, filing cabinets, and machinery or trade fixtures.
2. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
3. Interest on money borrowed to make the move or purchase the replacement property.
4. Payment to a part-time business in the home which does not contribute materially (10.05.26.00) to the household income.

Except as specifically stated under 24.303(a)(3) and 24.304(a)(2), physical changes to the real property at the replacement property are not eligible for reimbursement. Relocation AssistanceRelocation Assistance must be extremely careful in reviewing and approving proposed capital improvements to the replacement property that are not specifically listed above (1), (2), and (3). New construction items, such as roofs, bathrooms, storage areas, do not qualify as a reimbursable expense because the cost will be recaptured when the improved property is sold. General construction items, such as repairs to the roof, electrical system, exterior structure, are also not reimbursable unless specifically related to the operation of the machinery and equipment. Improvements to leased properties can lead to a misuse of the Reestablishment payment if the $25,000 is spent on improvements the landlord should make in order to lease the site, or because of agreements the displacee may have for a lower lease rate if improvements are made to the property.

The cost of constructing a new business building on the vacant replacement property is considered a capital expense, and as provided in 49 CFR 24.304(b)(1) is generally ineligible for reimbursement as a reestablishment expense. In those rare cases when a business cannot relocate without construction of a replacement structure, the Authority can request a waiver (49 CFR 24.7) from FRA.

10.05.16.00 Business In-Lieu Payment [49 CFR 24.305]

A business displacee may be eligible to choose a fixed payment "in lieu" of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by 49 CFR 24.303 and 24.304.

The In-Lieu Payment for a business or farm is based on the average annual net earnings, and can range between $1,000 and $40,000.

The displaced business is eligible for the payment if:

1. The business owns or rents personal property, which must be moved in connection with such displacement and for which an expense would be incurred in such move; and the business vacates or relocates from its displacement property.
2. The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Authority, and which are under the same ownership and engaged in the same or similar business activities.
3. The business is not operated at a displacement dwelling solely for the purpose of renting the property (improvements and/or land) to others.
4. The business contributed materially (10.05.27.00) to the income of the displaced person during the two (2) taxable years prior to displacement.

49 CFR 24.305 states the business cannot be relocated without a substantial loss of its existing clientele or net earnings. The Authority will assume that all displacees automatically meet this criterion if the other four criteria are met. (49 CFR 24, Non-Regulatory Supplement 24D #14, August 16, 1999.)

In determining whether two or more displaced legal entities constitute a single business that is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;
2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
3. The entities are held out to the public, and to those customarily dealing with them, as one business; and
4. The same person, or closely related persons own, control, or manage the affairs of the entities.

Relocation AssistanceRelocation Assistance should consider how the businesses share or separate their operation by looking at the name, purpose, customers, tax records, employees, licenses, permits, phone numbers, and office space.

10.05.17.00 Farm Operation - In-Lieu [49 CFR 24.305(c)]

The In-Lieu Payment for a farm operation is not based on the same criteria, calculations, and limitations as a small business except that they must have personal property that must be relocated from the

displacement property to another location (not on the remainder). The other requirements that do not apply are as follows:

1. Farms are not subject to the required loss of substantial patronage (though the Authority assumes this occurs for all other nonresidential displacees).
2. Farms are not subject to the multiple location requirements.
3. Fixed payments to farms are limited to the operations at the displacement property.
4. Farms must contribute materially to the operator's support, thereby eliminating home or hobby operations.

In the case of a partial acquisition of land that was a farm operation before the acquisition, the fixed payment shall be made only if the Authority determines that:

1. The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
2. The partial acquisition caused a substantial change in the nature of the farm operation in that it is no longer the same operation (e.g., there was a dairy operation at the displacement property, and the nonresidential displacee is operating a petting zoo at the replacement site).

10.05.18.00 Nonprofit Organization - In-Lieu [49 CFR 24.305(d)]

The In-Lieu Payment for a nonprofit organization is based on the same criteria, calculations, and limitations as a small business, except that any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two (2) years' annual gross revenues less administrative expenses.

Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales, or other forms of fund collection that enable the nonprofit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising, and other like items as well as fund-raising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expense. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

The organization must have an exempt status with the State or Federal income tax office and must provide proof of its nonprofit status. It can obtain a certificate or other documentation from either the State of California Franchise Tax Board or the Internal Revenue Service.

10.05.19.00 Calculating the In-Lieu Payment [49 CFR 24.305(e)]

The In-Lieu Payment is based on average annual net earnings for the last two years. If an in-lieu payment is made, no payment may be made for search costs, reestablishment expenses, actual moving costs, or actual direct loss of tangible personal property. If a business, farm, or nonprofit organization elects to take and is reimbursed for moving costs and later qualifies for an in-lieu payment, the amount of moving expenses previously paid must be deducted from the in-lieu entitlement.

The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the two (2) taxable years immediately prior to the taxable year in which it was displaced.

If the business or farm was not in operation for the full two (2) taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two (2) taxable years prior to displacement, projected to an annual rate. The displacee shall furnish Relocation AssistanceRelocation Assistance with proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence.

Average Annual Net Earnings - include any compensation the business (sole proprietor or partnership) paid to the owner, spouse, or dependents during the past two-year period. For a corporate owner of a business, earnings shall include any compensation paid to the spouse or dependents of the owner with an interest in the corporation. For the purpose of determining ownership, stocks held by a husband or wife and their dependent children shall be treated as one unit.

Compensation paid to the owner is not limited to wages and may include contributions the business makes to pension or profit sharing plans on the owner's behalf.

For any year that has a negative net income, including qualifying compensation (income) paid to the owners, the entitlement calculation will be based on zero for the year, rather than the negative amount.

10.05.19.01 Using Alternate Tax Years to Calculate an In-Lieu Payment

If the net income of a displaced business is very low in one or both years prior to displacement, the payment can be based on a different time period of two consecutive years when the Authority determines it to be more equitable, but not earlier than two years prior to the ION on the project.

Examples when the tax periods preceding displacement are not representative of the average annual net earnings are:

- During the second year, there was a period of negative income due to unseasonably bad weather or a natural disaster.
- The displacee has only been in business for two years and the first year's income is not indicative of current operations, or the business has only been in operation for a short period of time (e.g., six months). In this case, the existing net earnings income data would be extrapolated and used to project what the net earnings could have been if the business had been in business for a full two years. If the business is seasonal, this fact should be taken into account in the computations.
- Capital improvements or investments were made of such magnitude that it distorts the net earnings.
- The proposed project has caused so many residents to leave the area that the business' net income declines.

10.05.19.02 Documentation from Displacee

The owner must submit a request to have their In-Lieu Payment calculated along with supporting documentation. Relocation AssistanceRelocation Assistance should ensure the displacee understands this payment is "in lieu" of all other moving payments.

Certified copies of Tax Returns for the last two years should include the Schedule C (Profit or Loss from Business or Profession) and either Form 1040 (Individual Tax Return for the owner and each corporate officer), Form 1065 (Partnership Tax Return for each partner) or Form 1120 (Corporate Tax Return), as appropriate.

Business owners seeking use of the alternate tax year provision must provide information to support their contentions. They must provide tax returns for the alternate two-year period, the two tax years immediately preceding the year of displacement, and any intervening years that document the decline in net income.

10.05.19.03 Processing the Request

Relocation AssistanceRelocation Assistance shall process the displacee's request for an In-Lieu Payment as follows:

1. Reviews the displacee's request for validity, and requests additional documentation to determine eligibility.
2. If displacee is deemed ineligible, rejects the request in writing, stating the reason for rejection and advises displacee of their appeal rights.
3. If the request is adequate, calculates the average annual net earnings for the last two taxable years (10.05.18.00). Completes the claim (RW 10-30) entering the amount of the payment.
4. Personally delivers the completed claim to displacee with a letter showing amount to be paid. Advises displacee that payment will be made after the property has been vacated - and only if no other moving expenses are claimed.
5. Verify the property is vacant.
6. After displacee signs the claim, processes it for payment. Returns income tax returns to displacee.

10.05.19.04 Computing Average Annual Net Earnings

Examples of how to calculate the "Average Annual Net Earnings" are calculated as shown:

EXAMPLE A:

2010	$15,000	Schedule C
	$11,000	Individual 1040*
	$26,000	
2009	- $11,000	Schedule C
	$10,000	Individual 1040*
	- $ 1,000	

Adjusted to zero

2008	$15,000	Schedule C
	$ 3,000	Individual 1040*
	$18,000	

*Salary paid to owner, their spouse, and dependent children added here.

Relocation AssistanceRelocation Assistance recommends that the income from 2009 is not indicative of a normal year and uses 2008 as an alternate year.

The average of 2010 ($26,000) and 2008 ($18,000) is $22,000. The maximum allowable payment is $40,000.

EXAMPLE B:

2010	- $15,000	Schedule C
	$16,000	Individual 1040*
	$ 1,000	
2009	- $11,000	Schedule C
	$10,000	Individual 1040*
	- $ 1,000	
2008	- $10,000	Schedule C
	$18,000	Individual 1040*
	$ 8,000	

Relocation AssistanceRelocation Assistance recommends the income from 2010 and 2009 is representative of the business' operation, even though the income the owner received in 2010 is greater than the business' loss. The higher amount in 2008 is a result of the owner taking a greater draw and should not be used as an alternative tax year.

The average of 2010 ($1,000) and 2009 (-$1,000 which is converted to zero) is $500. The maximum allowable payment is $1,000.

- Income from business in question.

10.05.20.00 No Duplication of Payments

Since Appraisals, Acquisition, and Relocation Assistance are equally responsible for assuring that duplication of payments is avoided and that proper charges are made for Federal participation, a great deal of coordination among the functions is necessary. Relocation Assistance should be familiar with the Acquisition and Appraisal Chapters, which describe the duties assigned to the respective branches.

Relocation AssistanceRelocation AssistanceAssistance must provide the Acquisitions with a completed RW 10-38 whenever an In-Lieu Payment has been made.

The subject of no duplicate payments may raise extremely complex issues. All explanations to displacees should be handled with care and caution since the potential for misunderstandings is extremely high.

10.05.21.00 Compensation for Loss of Goodwill

Goodwill is defined as the benefits that accrue to a business because of its location; reputation for dependability, skill or quality; and any other circumstances resulting in probable retention of old or acquisition of new patronage. FRA will not participate in Loss of Goodwill Payments; therefore, such payments are limited to State only funding. Loss of Goodwill is paid as an acquisition expense, but some of the items considered in calculating a loss of goodwill may also be covered as a relocation expense. Therefore, the consultant must identify those cost elements of fixed moving costs (in-lieu payments),

reestablishment expenses, and Loss of Goodwill payments that are paid, or would be paid, for the same purpose.

10.05.21.01 Loss of Goodwill Procedures

A business, farm, or nonprofit organization must be informed that relocation payments are offset against any other similar payment made for Loss of Goodwill.

Relocation AssistanceRelocation Assistance should be aware that:

- A goodwill appraisal might be made prior to Authority's first offer or at some later date.
- Displacee may be eligible for payment of moving and related expenses (10.05.05.00) and reestablishment expenses (10.05.13.00) or a fixed payment in lieu of these two payments (10.05.15.00).
- Moving and related expenses may not be offset against Loss of Goodwill payments.
- Although the relocated parties generally must incur reestablishment costs before they are paid, some known costs, such as increased rent, may be paid prior to actual occurrence.
- If the Loss of Goodwill payment exceeds the in-lieu payment, displacee will only be eligible to receive compensation for Loss of Goodwill plus RAP payments for moving and related expenses.
- If a Loss of Goodwill payment has not been made and the payment to be made is less than the in-lieu payment, displacee has the option of receiving either the in-lieu payment or the Loss of Goodwill plus RAP payments for moving and related expenses and for reestablishment costs not included in the Loss of Goodwill payment.

- FRA may not participate in Loss of Goodwill Payments; therefore, such payments will be limited to State only funding.

Relocation AssistanceRelocation Assistance should carefully analyze proper and reasonable offset of RAP payments against Loss of Goodwill payments when a goodwill appraisal indicates a loss to the displaced business. Relocation AssistanceRelocation Assistance must fully document all offsets in the parcel file.

10.05.22.00 Notices to Acquisition

A business in-lieu payment may be made prior to payment of a claim for loss of business goodwill. Immediately after approving an in-lieu payment, Relocation AssistanceRelocation Assistance notifies Acquisition of the amount of the in-lieu payment, using RW 10-38, "Notice to Acquisition of In-Lieu Payment or Reestablishment Expenses."

A Business Reestablishment (10.05.14.00) may contain items that could be included in the preparation of an appraisal for Loss of Goodwill, thus the possibility of duplication of payment exists when a Loss of Goodwill payment is made. If reestablishment costs are reimbursed prior to the Loss of Goodwill payment, the Relocation Assistance notifies Acquisition that a reestablishment payment has been made, using RW 10-38, "Notice to Acquisition of In-Lieu Payment or Reestablishment Expenses," with RW 10-30 attached. This notice is made immediately after the Authority approves the reestablishment expense for payment.

Close coordination between RAP and Acquisition during all phases of a nonresidential relocation is essential. Relocation AssistanceRelocation Assistance should check with the Acquisition Agent to see if any loss of business goodwill claims have been paid to avoid duplicate payments.

10.05.23.00 Abandoned Personalty

If the nonresidential displacee abandons an item of personal property at the displacement site, the owner is not entitled to moving expenses or losses for the items involved. The displacee is not entitled to reimbursement for moving costs (including adjustments to move under 10.05.11.00) until all personal property has been removed from the displacement site. If property is abandoned, and the displacee will not remove it, then Property Management must be notified of the items and make arrangements for its disposal. The disposal costs cannot be deducted from the displacee's relocation benefits, nor can relocation benefits be denied for eligible expenses just because the displacee did not relocate all the personalty. See Property Management and/or Clearance and Demolition policies and procedures regarding disposal methods and recovering expenses from the owner.

10.05.24.00 Hazardous Material

The following guidelines may be used to relocate hazardous materials that are considered personal property because of their nature and/or containment:

- The costs of analyzing contents of containers prior to removal from the displacement site are reimbursable moving expenses if required by regulation or under the rules of the disposal facility. The analysis should be a reasonable and necessary prerequisite for the move.
- The cost of insuring the shipment is a reimbursable expense.
- Eligible reimbursable moving expenses include the cost of shipping these materials from the displacement site to the replacement site or to the nearest approved disposal site, at displacee's option. The 50-mile limit may be waived, if necessary, under the authority of 49 CFR 24.301(g)(1).
- Fees charged at the disposal site are not federally participating moving expenses. The generator of the hazardous material has a continuing responsibility with respect to future requirements that may arise in conjunction with its storage or treatment. Since this liability was not caused by the Authority's acquisition of real property, costs incurred as a result are not considered reimbursable moving expenses. The payment of fees at the disposal site may be a problem for some displacees, and they may decide to abandon the hazardous material. If this is a possibility, the Relocation Assistance should contact Right-of-Way as soon as possible.

10.05.25.00 Grace Period on Business Property

The Authority can authorize grace periods to former owners or tenants of Authority-acquired business properties in accordance with the following terms and conditions:

- Grace periods can be granted for an individual parcel, a portion of a project, or an entire project with authority's approval, when businesses are undertaken in a market where replacements are difficult to find and orderly relocation creates a need to mitigate business disruption.
- Grace periods are normally a maximum of 60 days and may be shorter if warranted by circumstances.
- Displacees are not required to pay rent during the grace period if they have a commitment to pay rent on a replacement site and they have furnished proof of that obligation to the Authority.

- Relocation AssistanceRelocation Assistance shall verify the need for the grace period. The need is often related to refurbishment, move time, or equipment installation. Or the need could be time oriented; e.g., a business might have a sales season during which relocation is impractical. A grace period that allows the owner to enter into a rental agreement on the replacement site, to be occupied later, may be justified.
- The specific time or dates of the grace period should be described in the Right-of-Way Contract or in Property Management's Rental Agreement.
- A business move grace period cannot be authorized on residential property even if the property is qualified for business in-lieu RAP payments.
- A grace period cannot be authorized on farms. Reduced rent or no rent policies on farmlands, granted or exchanged for other considerations (such as maintenance), are not affected by this business move policy.
- A grace period may be authorized on the business use portion of mixed-use properties. The displacee must pay reasonable rent on the nonbusiness portion.
- A grace period based on partial reductions may be used when appropriate. Partial reductions are applied if the business operator is moving to a place of business where rents are less than the existing State rental rate. (If State rent was $500 and replacement rent is $400, the State can allow a $400 per month grace on the State property.) Partial reductions could also be used if owner's move plan entails a phase-in period where the new and the old places of business are operated concurrently.
- Grace periods may be granted when a business owner acquires a site rather than leases. Time may be needed to close escrow, make modifications to the property, etc.

The Authority may determine that no reduction is practical when both the replacement site and the Authority site are producing significant incomes.

Relocation AssistanceRelocation Assistance has primary responsibility for administration of the grace period. RAP verifies the dual rent condition of the business and solicits proof of and amount of rent on the replacement site.

Relocation AssistanceRelocation Assistance shall advise Property Management by monthly memoranda on the status of the grace period. The Senior Right-of-Way Agent must approve those memos, copies of which are retained in the RAP file. Relocation AssistanceRelocation Assistance shall make every effort to ensure the grace period is not erroneously extended beyond the time limits of this policy. Relocation AssistanceRelocation Assistance shall also communicate with Property Management to the fullest extent about expected grace periods and amounts of rental rates to be covered.

When mixed property grace periods are considered, Relocation AssistanceRelocation Assistance consults with Property Management on proper distribution of total rent. Property Management's determination controls the mixed-use property rent proration.

10.05.26.00 Nonresidential Definitions

NONRESIDENTIAL DEFINITIONS
Salvage Value [49 CFR 24.2(a)(23)]: The probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.
Small Business [49 CFR 24.2(a)(24)]: A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes receiving a reestablishment expense payment.
Nonprofit Organization [49 CFR 24.2(a)(19)]: An organization that is incorporated under the applicable laws of a State as a nonprofit organization, and exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501).
Contributes Materially [49 CFR 24.2(a)(7)]: During the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the Authority determines to be more equitable, a business or farm operation: (1) Had average annual gross receipts of at least $5,000; or (2) Had average annual net earnings of at least $1,000; or (3) Contributed at least 33 1/3 percent of the owner's/operator's average annual gross income from all sources.
Business [49 CFR 24.2(a)(4)]: Any lawful activity, except a farm operation, that is conducted primarily: (1) For the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or (2) For the sale of services to the public; or (3) As an outdoor advertising display, when the display must be moved as a result of the project; or (4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.
Farm Operation [49 CFR 24.2(a)(12)]: Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

10.06.00.00 - REPLACEMENT HOUSING VALUATIONS

10.06.01.00 General [49 CFR 24.204(a)]

No residential displacee shall be required to move unless at least one DS&S, preferably three, comparable replacement dwelling has been made available.

49 CFR 24.204(b) guarantees that "No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible."

A comparable replacement dwelling will be considered to "have been made available" if the displacee has:

1. been informed, in writing, of its location (address), and the monetary entitlements available to help with the purchase or rental of the property.
2. sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
3. been assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

The Authority obligation to provide replacement housing is met when comparable housing is made available to the displacee. Relocation AssistanceRelocation Assistance can then proceed to issue Notices to Vacate.

The displacee is advised of the address of the comparable replacement properties via the Conditional Entitlement Letter (10-EX-45 for 90-day owners and 10-EX-40 for 90-day occupants), the 90-Day Information Notice, the 30-Day Notice, and the 90-Day Notice.

Any available comparable used to determine a price/rental differential must be available at the listed price during the period displacee is actively seeking replacement housing. This period of active search ends when the earlier of the following dates occurs:

- Displacee enters into a contract to purchase (acceptance of Deposit Receipt), build, or rent a replacement property.
- Displacee vacates displacement property.

10.06.02.00 Criteria for Selecting Comparable Replacement Properties

The Agent assigned to complete a Replacement Housing Valuation (RHV) must have a thorough knowledge of the requirements for selecting a comparable replacement property. The RHV Agent should ensure that the most comparable of the three properties is Decent, Safe, and Sanitary (DS&S), comparable, and functionally equivalent.

10.06.03.00 Comparable Replacement Dwelling [49 CFR 24.2(a)(6)]

The term comparable replacement dwelling means the probable replacement residence is:

1. Decent, safe, and sanitary (10.06.05.00);
2. Functionally equivalent to the displacement dwelling (10.06.04.00);
3. Adequate in size to accommodate the occupants (see Room Division Guidelines);
4. In an area not subject to unreasonable adverse environmental conditions;

5. In a location generally not less desirable than the location of the displacee's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the place of employment;
6. On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses (10.06.15.00);
7. Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance (10.04.17.00);
8. Within the financial means of the displaced person.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or less living space than the displacement dwelling. Such may be the case when a DS&S replacement dwelling, which by definition is adequate to accommodate the displacee, is functionally similar to a larger but run-down, substandard displacement dwelling. If the owner rents or leases a room(s) in the displacement dwelling to another party, there should be no reduction of rooms when considering a most comparable replacement dwelling for the owner.

10.06.04.00 Functionally Equivalent

49 CFR 24.2(a)(6)(ii) requires that a comparable replacement dwelling be "functionally equivalent" to the displacement dwelling. The dwelling should perform the same function and provide the same utility as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling, but they may never be inferior.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a DS&S replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally equivalent" to a larger, but very run-down substandard displacement dwelling.

Comparability and functionally equivalent do not mean that all aspects of the replacement dwelling be replaced, e.g., a rental unit that will accept 14 cats or a single-family residence designed for entertaining. However, if the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (*e.g.*, the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

10.06.05.00 Decent, Safe, and Sanitary Dwelling [49 CFR 24.2(a)(8)]

The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. Displacees shall not be relocated to inadequate, substandard housing as a consequence of public acquisition.

The most restrictive standard (local code or above) applies. Agencies which may have applicable housing and occupancy codes include city/county planning departments, city/county departments in charge of building permits or inspections, or city/county housing authorities. Absent any local requirements, the dwelling shall:

1. Be structurally sound, weather tight, and in good repair.
2. Contain a safe electrical wiring system adequate for lighting and other devices.
3. Contain a heating system capable of sustaining a healthful temperature (approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.
4. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. (see Room Division Guidelines.)
    a. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. Though there is no requirement as to the number of people that can share a bathroom, the RHV Agent should reconsider using a residence with only one bathroom for an eight-member household.
    b. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator. Exceptions to the stove such as substituting a microwave and hot plate in a specific situation such as a motel or small studio apartment may be considered for approval by the Authority.
5. Contain unobstructed egress to safe, open space at ground level unless local fire and building codes require additional methods of ingress/egress such as access to a common corridor.
6. For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person (see 10.06.06.00).

Replacement housing must be permanent. Relocations shall not be made into dwellings that are presently or soon-to-be owned by the Authority or another public agency and are to be removed for a public project.

Many local housing and occupancy codes require the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, in protecting the public health and safety. Where such standards exist, they must be honored. Even where local law does not mandate adherence to such standards, FHWA strongly recommends that these issues be considered as a matter of public policy. This Authority will arrange for the inspection of lead-based paint for all previously occupied replacement dwellings as appropriate.

The following guidelines are used to judge if the replacement dwelling contains an adequate number of rooms for DS&S purposes.

IMPORTANT: The number of bedrooms required for a family is normally based on family size at the time of initiation of negotiations. An increase in family size after that date may require a replacement dwelling with additional bedrooms in order to meet DS&S standards at time of actual displacement. The need for a larger dwelling should only be considered when the family results from natural or adoptive children increase

(not considering future births or adoptions) or other new family members in a clear dependency relationship, such as elderly or invalid parents who must live with the displaced family.

When the size of the family falls below the count made at initiation of negotiations, a smaller dwelling may still meet DS&S standards. However, the Authority cannot require a displacee to relocate to a dwelling smaller than the one occupied at initiation of negotiations, nor can it consider smaller dwellings as comparable replacements for computing the amounts of differential payments.

If the inspection reveals a possible concern with mold, lead paint, hot water heater strapping, or other local code requirement, the agent should indicate on the report form (RW 10-40) that additional inspections by qualified persons are recommended.

10.06.05.01 Waiver of Decent, Safe, and Sanitary Standards

The DS&S standard may be waived where unusual conditions exist, and at the request of the displacee. Such waivers are, processed through the Authority Contract Manager.

Whenever waivers are requested (e.g., insufficient bedroom facilities at present, but displacee plans to construct additional living area), complete documentation is required and is retained in the RAP file. This includes having the displacees sign affidavits acknowledging the waiver request and setting forth remedial plans to assure ultimate compliance of occupancy in DS&S housing.

If a waiver is granted for the displacees to have fewer bedrooms than is required by this section, then the RHV must be revised to consider comparable replacement properties that have fewer bedrooms.

Example: Displacees must have four (4) bedrooms in the replacement property to meet DS&S requirements because there are seven (7) occupants. However, the displacees have requested a waiver of DS&S standards to relocate into a three (3)-bedroom property. If this waiver is granted, the RHV must be revised to consider three (3)-bedroom properties.

Before displacees request waivers for the number of bedrooms, they must be advised that their RHP may be reduced.

ROOM DIVISION GUIDELINES

- A maximum of two persons may occupy a zero-bedroom unit such as a studio apartment.
- For units larger than zero-bedroom units, two persons per bedroom shall be used as a guideline in determining the number of bedrooms required for replacement housing. More than two persons may occupy a bedroom provided the room is adequate in size to accommodate normal bedroom furnishings for the room occupants (e.g., three toddlers in a larger bedroom, an infant in the bedroom with the parents).

  One person may qualify for a separate bedroom if that person is disabled or incapacitated, and requires additional space for medical equipment or maneuverability.
- If applicable housing and occupancy codes for the area of the comparable replacement require a greater number of bedrooms for the household than indicated by the above guidelines, the greater number of bedrooms according to code should be used in the replacement housing valuation. (E.g., children that are wards of the court, or some other jurisdiction, may be required to have a separate bedroom from adults or other children of a different gender.)
- Dwellings with less square footage and/or a fewer number of rooms than the displacement dwelling should not be used as comparables. However, if a displacee is relocating to subsidized housing, occupancy standards of the housing authority issuing the subsidy shall be used to determine the number of rooms required.

49 CFR 24.2(a)(6)(ix) states that Section 8 provisions on the number of bedrooms required for the size and composition of the displacement household prevail when determining a comparable replacement property, even if the number of bedrooms is less than the displacement property. (Authority approval is required to use less than the displacement property bedrooms when determining the replacement housing valuation.) If the displacees choose to move from nonsubsidized housing to subsidized housing, the RHV will be based on the occupancy requirements for subsidized housing.

49 CFR 24.2(a)(8)(iv) states that the number of bedrooms for a replacement property may be established by a federal, state or local jurisdiction that has the authority over the displaced residential occupants (requiring children of a certain age be separated from another because of age or gender). Authority approval is required to use more than the "2 persons per bedroom provision."

Note - at the time of this revision, Federal Housing Authority (FHA), Housing and Urban Development (HUD), and Fair Employment and Housing Agency (FEHA), all stated in their guidelines that separation by age and gender was discriminatory, and agencies could not mandate households separate their members by age and/or gender.

10.06.06.00 Barrier Free Housing [49 CFR 24.2(a)(8)(vii)]

Regulations provide sufficient flexibility when computing replacement housing payments when accommodations need to be provided for a displaced person with disabilities. (see 10.06.05.00 – item 6.)

The Authority's procedures ensure that needs of a displaced person with disabilities are addressed in the RHV.

Relocation AssistanceRelocation Assistance may base the RHV on (1) a dwelling designed for physically disabled persons, or (2) the additional estimated costs to make needed modifications. Whichever method is used, the displacee must be presented with a home that is suitable to their disability needs, and that the PD is based on a comparable replacement property that is barrier free. Method (2) ensures there are limits in the amount of funds the Authority will provide in order to acquire and rehabilitate a property to accommodate the displacee's physical limitations.

Customized features contained in the subject, or required in the replacement (e.g., ramp, widened doorways, bathtub railings, and lowered counters), may be replaced in the replacement property as add-ons.

Arrangements for modifications to the replacement dwelling purchased by the displaced person must be made by the displacee. The Authority shall reimburse the displacee for the actual reasonable costs paid for those modifications up to the spend-to-get limit.

Rental replacement housing could be provided in the same manner, with the consent of the landlord, or the Rent Differential could be increased to appropriately compensate the landlord for any necessary modifications or accommodations necessary for the replacement property to be considered DS&S. Note: Construction of handicapped access is not a moving cost.

If a financial hardship would be created for the displaced person, the Authority may provide an advance replacement housing payment for the needed modifications.

49 CFR 24 requires the replacement property accommodate the displacee's needs in terms of unit size, location, access to services and amenities, reasonable ingress and egress, or use of the unit. 49 CFR 24.2(a)(8)(vii) also addresses the needs of persons with a physical impairment that substantially limits one or more of the major life activities of such individuals. The needs of nonphysical disabilities are not addressed since replacement property attributes cannot be identified.

Reasonable accommodation should include the following at a minimum: Doors of adequate width, ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights. Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access, and other items that may be necessary, such as physical modification to a unit, based on a displaced person's physical needs.

10.06.07.00 Cost of Comparable Replacement Dwelling [49 CFR 24.402(a)]

The upper limit of a replacement housing payment (Price Differential or Rent Differential) shall be based on the cost of a comparable replacement dwelling, considering the following:

1. If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling.
2. If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (e.g., the site does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purpose of computing the payment.
3. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Authority may offer to purchase the entire property. If the owner refuses to sell the remainder to the Authority, the fair

market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

4. To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

10.06.08.00 Determining the Cost of Comparable Replacements

Requires knowledge of:

- Characteristics of the displacement dwelling so it can be compared with replacement dwellings for sale or rent in the market.
- Number of eligible occupants occupying the displacement dwelling.
- Multiple occupancy rule (separating into separate households). (10.04.17.00.)
- Definition of comparable replacement dwelling (10.06.03.00) and DS&S dwelling (10.06.05.00).
- Policy on mixed-use properties (10.04.28.00).
- Definition of "major exterior attribute" (10.06.16.00) and how this affects the determination of the cost of comparable replacement dwelling.
- Policies concerning adjustments to comparable replacement dwelling rental or purchase costs (10.06.09.00).

10.06.09.00 Other Considerations

RAP valuations are always based on the original or primary status of displacees as found (e.g., owner). Calculations of alternate benefits normally are not made unless the following conditions are met:

- Displacee requests a change of status from owner to tenant.
- Dwellings are available in the alternate status.
- Such dwellings can be provided at no greater cost to the Authority (i.e., more economically) than maintaining the original or primary status.

Alternative RAP valuations must be accompanied by a concurrent primary valuation to support the "no greater cost" of the alternate.

(see 10-EX-29 - FHWA Guidance on RHVs.)

10.06.10.00 Partial Acquisitions

The requirements for computing a replacement housing payment of a partial acquisition with a remaining uneconomic remnant differ from a partial acquisition with a remaining buildable lot.

If the remaining property is an uneconomic remnant (7.03.04.01 and 7.03.04.02), Federal and State Law requires the Authority to make an offer to acquire it. The value of the remnant cannot be used in the RHP computation unless the owner elects to sell it to the Authority.

EXAMPLE: Uneconomic Remnant	
Owner Wishes to Sell:	
Cost of Comparable	$80,000
Less: Acquisition Cost of Displacement Property	- $50,000
Less: Value of Uneconomic Remnant	- $10,000
Equals: Price Differential	= $20,000
Owner Does Not Wish to Sell	
Cost of Comparable	$80,000
Less: Acquisition Cost of Displacement Property	- $50,000
Equals: Price Differential	= $30,000

Note: The Authority can condemn excess property if the appraisal supports the premise that the remainder is uneconomic in the market.

If the remaining property is considered a buildable lot, 49 CFR 24.403(a)(3) allows the Authority the flexibility in determining whether to buy it or not. If the Authority offers to acquire it, its value may be included in the RHV computation, regardless of the owner's acceptance or rejection. However, if the Authority does not offer to acquire it, the value of the remainder may not be used in the RHV computation. (see Section 07.03.04.04.)

10.06.11.00 Last Resort Housing

The initial or updated RHV often provides the first indication, in terms of money, that a displacee falls under last resort housing procedures.

If the amount of the entire PD or RD exceeds LRH limits, FHWA/FRA allows alternate methods in the selection of comparable replacement properties if they are more cost-effective. Example: Instead of using a higher priced six-bedroom dwelling, it may be more cost-effective to consider a five-bedroom property and add the cost to construct a sixth bedroom. This would also apply to rehabilitating a non-DS&S dwelling that is available on the market, rather than selecting a superior property as to size, cost, and condition.

10.06.12.00 Replacement Housing Valuation Report (RHV)

A Replacement Housing Valuation (RHV) Report is prepared for each residential household that will be displaced by the project. The request is generated by the Request for an RHV prepared by the agent who conducted the First RAP Call and submitted directly to their supervisor. The report should not be initiated until Relocation AssistanceRelocation Assistance verifies the number of occupants that are eligible for relocation benefits based on tenure and U.S. residency. In some cases, the RHV for an RD is not requested until the displacees have advised Relocation AssistanceRelocation Assistance that they are ready to search for a replacement property. Care should be taken to ensure the average monthly rent is based on the last three months, even if the displacees are now tenants of the Authority's property.

The RHV Agent and Relocation Agent should agree on a time frame for the delivery of the report based on the displacee's needs and the project schedule.

The report shall contain:

- Certification of person preparing report and recommendation of Authority approval by the Supervising Right-of-Way Agent.
- A description page for the displacement dwelling, including photographs and an analysis of adjustments to the acquisition price.
- A description page for each comparable replacement dwelling, including photographs.
- A map showing location of displacement dwelling and comparable replacement dwellings.

The RHV Agent should obtain a copy of the Fair Market Value (FMV) appraisal to obtain data on the displacement property, but care should be taken when counting the number of rooms in the property.

10.06.12.01 Date of Valuation

An eligible displacee has one year to purchase or rent and occupy a DS&S replacement property (10.08.01.01). The date displacee purchases, contracts to build, or rents and occupies permanent DS&S replacement property, establishes the final date of value for the RHP.

If a 90-day owner-occupant vacates the displacement property within the one-year time period (10.08.02.00) but does not purchase and occupy or otherwise contract for permanent DS&S accommodations, displacee is entitled to an updated replacement valuation any time during the one-year period (10.08.02.00) but only if the displacee cannot purchase or rent a comparable DS&S property for the value of the RHV. When updating the RHV after displacement, do not consider any changes to income or number of occupants that might have occurred since the one-year time began.

90-day occupants and non-tenured occupants have one year from vacating the displacement property to have the RHV updated.

10.06.12.02 Report Revisions

The RHV does not need to be revised unless the displacee and/or Relocation AssistanceRelocation Assistance determine that the comparable replacement properties are no longer indicative of market value, or are not available to the displacee who is actively looking for a replacement site.

Relocation AssistanceRelocation Assistance must note in the file when the RHV is determined to be valid or when a revision is warranted.

Typical examples of when an RHV may need to be revised:

- Acquisition appraisal is revised.
- Number of occupants or eligibility of displacee(s) changes (prior to the start of the one-year time period).
- Initial determination was based on erroneous information.
- Prior to service of a RAP Notice.
- A change in market conditions warrants a revision.
- Displacee has filed a relocation appeal objecting to the amount of the RHP.

All rental offers are conditional upon displacee's action, usually within 90 days. Upon expiration of this period, the displacee must be given an updated determination if they are actively seeking replacement housing.

10.06.12.03 Preparation of the Replacement Housing Valuation

Replacement Housing Valuations (RHVs) must be prepared by someone other than the FMV appraiser, and usually someone other than the Acquisition or Relocation Agent involved in the parcel, unless the RHV will be less than $10,000.

Preparation of the RHV

Initial - within 30 days of:

- The FWO for 90-Day Owner-Occupants.
- The First RAP Call for 90-Day Occupants, unless required documentation to establish base monthly rent (income, utility costs, or rental rates) or number of occupants (occupancy certifications and U.S. residency) has not been received.

Revisions (prepare new report) and updates (ensure comps are still appropriate) are required when:

- 90-Day Occupant (tenant or owner) advise Relocation AssistanceRelocation Assistance that they are actively seeking a replacement property, and they have not vacated from the displacement property.
- The real estate market has changed significantly indicating that replacement properties will cost more or less than previously calculated, and the displacee has not vacated.
- Displacee files an appeal on the RHP.
- Prior to issuing a Notice.
- Annually from the FWO if the displacees have not vacated.
- The displacee has vacated, but cannot purchase or rent a replacement property within the one-year time period because of values.
- 90-Day Occupants have been Authority's tenants for over three months and have not actively sought a replacement property.

Revisions or updates based solely on changes to income, occupancy, or a recent rental increase are **not** appropriate.

Decreases in the RHP (PD or RD) are not appropriate unless Relocation AssistanceRelocation Assistance can document and the Authority approves that the displacee has made little or no effort to acquire a replacement property after a reasonable period of time.

Table 10.06-A

10.06.12.04 Supervision and Recommendation for Approval of the Replacement Housing Valuation - Dual Roles

The Senior Right-of-Way Agent may:

- Review and recommend approval of the FMV appraisal and RHV on the same dwelling if that supervisor does not also have overall RAP responsibility for Relocation AssistanceRelocation Assistance
- Review and recommend approval of the RHV and be responsible for the RAP function if that supervisor does not have responsibility for the preparation of the FMV appraisal.

10.06.12.05 Approval of the Replacement Housing Valuation - Authority

All Replacement Housing Valuations shall be approved by the Authority The Authority Agent approving the RHV may need to conduct a field review of the displacement property and all the comparable properties included in the valuation prior to approving the report.

The Agent who prepares the RHV (RHV Agent), the supervisor/manager who recommends approval and the Authority approver of the RHV shall sign RW 10-42.

10.06.12.06 Completing the Report

An RHV report is completed on RW 10-42 which includes the certification by the preparer and the approver. The displacement property information is found on page 2 and the comparable replacement property information is on the remaining pages.

An original photograph of the displacement property and each probable comparable replacement property must be attached to the report, along with a map depicting the location of the properties.

Selection of the most comparable property must be in compliance with this section and 49 CFR 24.204.

10.06.13.00 Valuation Method

The RHV Agent determines the probable purchase or rental amount of a comparable replacement property by analyzing at least three comparables that are available for sale or rent. Less than three comparables may be used only when three are not available, in which case an explanation is given on the valuation sheet.

The selected comparables must be those most nearly comparable to and at least equal to or better than the displacement property. Particular attention to living area and functional equivalency is necessary for all comparable dwellings selected (10.06.04.00).

The replacement value shall be the probable sales price or rental rate of an available property most comparable to the displacement property. The reasons for choosing the most comparable property are shown on the valuation sheet. Reasonable cost should be a consideration in implementing any alternatives.

Where there are no directly comparable units available, Relocation AssistanceRelocation Assistance shall consider the following in selecting a replacement property:

- Rehabilitation of or additions to an existing replacement dwelling.
- Relocation and rehabilitation, if necessary, of an existing dwelling.

- Use of the next highest value residential unit available.
- Use of similar properties in a higher value neighborhood.

10.06.14.00 Selection of Comparables

The RHV Agent should personally inspect the displacement dwelling unit, both inside and out, to assure the proposed replacement properties are comparable and meet the standard of equal to or better. In addition to a brief description of condition, quality, and effective age of the unit, the Improvement Remarks Section of RW 10-42 should contain brief descriptive terms necessary for the RHV Manager to understand special or unusual features found in the displacement dwelling unit. A remark may also be appropriate where the displacement dwelling unit has a special feature (e.g., large kitchen, hardwood floors, built-in furniture, or luxury decoration). Conversely, a remark should be made where the subject lacks usual items (e.g., an unfinished room, unusually poor condition, or dirt floors).

An analysis of the displacement neighborhood is needed if the proposed comparable properties are not within the same neighborhood. Public and private facilities that are significant amenities to the displacement neighborhood should be identified and considered in selecting the comparable replacement neighborhood. Particular attention should also be paid to displacee's place of employment or other location upon which displacee may depend.

The RHV Agent cannot adjust the asking price of a comparable replacement property when computing the replacement housing payment. This procedure was deleted from the Final Rule issued January 4, 2005, so there is no longer any authority or basis for agencies to make adjustments which would reduce the amount of the homeowner's replacement housing payment.

The comparable unit chosen for the calculation of the RHP should be physically inspected inside and outside. Proposed Comparable Replacement Dwelling data shall be entered on RW 10-42 in sufficient detail to allow any reviewer to readily compare all descriptions of the comparable replacement dwelling to those of the displacement dwelling. All features lacking in the comparable dwelling as compared to the displacement dwelling and all features found to be in addition to those in the displacement dwelling shall be described. Additional data sheets may be used. The comparable replacement dwelling should usually be chosen from an area of equal or higher value, although a dwelling that is somewhat smaller (50-75 sq. ft. [15-23 sq. m]) but is modern and functionally equivalent may be chosen to replace an old, dilapidated dwelling (10.01.09.03).

To the extent possible, an investigation should be made of the special features of the displacement dwelling, the surrounding neighborhood, and the overall environment.

NOTE: The Authority is responsible to provide reasonable comparable replacement dwellings to the residential displacee. The Authority is not obligated to replace multi-use amenities that the displacement property might contain, such as in the case of residential properties that have rental units attached or built on the property (e.g., an apartment over the garage).

As part of the Relocation Assistance and as a service to the displacee, Relocation AssistanceRelocation Assistance should identify other similar use properties that are available to the displacee. However, from a valuation and replacement standpoint, the pertinent comparables should only reflect a reasonable replacement of displacee's basic dwelling unit. Availability of similar mixed-use or multi-use properties does not constitute an offer of available replacement property under the requirements of the Uniform Act. The displacee's residential portion must be carved out.

There are three types of adjustments that could be made to the displacement property: Major Exterior Attributes (10.06.15.00), Carve-out for Mixed or Multiple Uses (10.06.16.00), and Carve-out for a Dwelling Site (Oversized Lot) (10.06.17.00).

An adjustment to the replacement property may include construction costs to correct minor DS&S deficiencies (including handicapped facilities).

The RHV Agent should exercise good judgment when selecting comparable properties and remember to be prudent and economical when attempting to replace all aspects of the displacement property's amenities. 49 CFR 24 states that a comparable property is in a neighborhood "not less desirable," not necessarily the same neighborhood.

10.06.15.00 Major Exterior Attributes [49 CFR 24.403(a)(2)]

When the site of the comparable replacement dwelling lacks a "major exterior attribute" of the displacement dwelling site, the contributory value of such attribute should be subtracted from the acquisition cost of the displacement dwelling for purpose of computing the maximum replacement housing payment. Such an action is known as a carve-out.

There are three key issues in this statement. First, the carve-out is initially based on the comparable replacement, e.g., the first priority is to locate an available replacement dwelling comparable to the displacement dwelling, then look at the differences that could necessitate a carve-out.

The second issue is that for an item to be eligible to be a "carve-out," it must be exterior to the residential dwelling. Items that are part of the dwelling but may be difficult to replace are not items that are eligible for a carve-out.

The final issue is that when subtracting from the acquisition cost for a carve-out item, the monetary figure to be used is the contributory value of the items. The item that is carved out should be of some significant value to warrant a carve-out. Not every exterior item needs to be carved out.

10.06.15.01 Carve-out for Major Exterior Attributes

The comparable replacement dwelling used in computing the RHP must be comparable to the displacement dwelling unit. When the comparable used in computing the PD is similar except it lacks a major exterior attribute (such as a swimming pool or outbuilding) that contributes materially to the value of the displacement unit, the contributory value of the major attribute is subtracted from the total acquisition price of the displacement dwelling to arrive at the value of a comparable dwelling and home site. The RHP is the difference between the adjusted value of the displacement dwelling (displacement value) and home site and the price of a comparable dwelling (replacement value) and home site.

Items of realty identified in the appraisal report contributing less than $500 to the value of the entire property shall not be carved out from the displacement property value.

10.06.16.00 Computing a Replacement Housing Payment When a Higher and Better Use is Indicated

In computing a replacement housing payment for an owner-occupant whose residential property is appraised at a higher and better use (land as if vacant), use the acquisition cost for the land area that represents a typical lot size plus the contributory value of the owner-occupied dwelling as shown in the FMV appraisal. (49 CFR 24 Non Regulatory Supplement.)

10.06.16.01 Carve-Out for Mixed-Use and Multiple Use Properties

Special procedures are required when the displacement property is not a typical residential unit. A special valuation approach is used to isolate the residential value in a property that possesses more than just a single residential use.

If the displacement dwelling is part of a property that contains another dwelling unit and/or space used for nonresidential purposes, there must be an allocation of the acquisition price of the displacement property to the isolated residential use. This is known as a carve-out. The residential land area is determined by inspection. For example, on a farm, include the footprint of the house and any outside areas dedicated to the residential use.

The way in which the land value is allocated will depend on whether the displacement dwelling is situated on land with a residential highest and best use, or on land with a nonresidential highest and best use. The entitlement or RHP is based on the amount actually paid for the residential portion.

If the Highest and Best Use is residential, determine the land area occupied by the residential use. Then apply the residential land value (site value) from the FMV appraisal to the land area occupied by the residential use. Last, add the contributory value of the residential improvements from the FMV appraisal.

If the Highest and Best Use is nonresidential, determine the land area occupied by the residential use. Apply the nonresidential land value from the FMV appraisal (the amount actually paid) to the land area occupied by the residential use. Where the dwelling is located above or below the other use (vertical configuration), the land value must be prorated between the uses. see 10-EX-19, Example #3. Add the contributory value of the residential improvements from the FMV.

10.06.17.00 Carve-Out for Dwelling Site (Oversized Lot) [49 CFR 24.2(a)(11)]

The term “dwelling site” means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area. This definition ensures that the computation of replacement housing payments are accurate and realistic a) when the dwelling is located on a larger than normal site, b) when mixed use properties are acquired, c) when more than one dwelling is located on the acquired property, or d) when the replacement dwelling is retained by the owner and moved to another site.

If the displacement dwelling is located on a site that is significantly larger than typical for the displacement area, a deduction from the acquisition price of the surplus land’s contributory value may be required. The RHV Agent should use the information in the appraisal report to obtain the contributory value of the area surplus to the typical lot size, if available. If the information is not contained in the FMV report, the RHV Agent must conduct the necessary research.

Residential land is commonly sold on a site value basis, wherein minor differences in overall area do not have an effect on the total value of the site. In these cases, the surplus land may have little or no contributory value. When choosing the comparable replacement properties, the RHV Agent may use lot sizes that are reasonably similar but slightly smaller than the displacement property lot size if the residential utility and values in the market are also similar.

The adjustment shall be made to reflect the cost of the displacement dwelling on a typical residential site (site value) based on the properties available in the replacement area. The RHV Agent should use the information in the appraisal report to obtain the contributory value of the property in excess of the displacement’s typical lot size.

When selecting a comparable replacement property, the RHV Agent should use property sites that are equal to or slightly larger than the displacement property's lot size (including the carved-out portion for "typical" lots). In rare cases, the agent may use lot sizes that are reasonably similar but slightly smaller than the displacement property lot size if the residential utility and values in the market are also similar.

10.06.18.00 Carve-Out for Replacement Property

The amount of the RHV cannot be paid to the displacee until they meet all the criteria identified in 10.08.00.00. In situations where the displacee purchases or rents a replacement residence for an amount that exceeds the RHV, the maximum RHP can be paid.

If the displacee's actual replacement property contains another dwelling unit and/or space used for nonresidential purposes (mixed use/multiple use), or the property is significantly larger than the comparable replacement dwelling site per the Replacement Housing Valuation (oversized lot), an adjustment to the purchase price of the actual replacement property must be made to isolate the cost of the residential portion of the actual replacement property (dwelling and land) to ensure the displacee has met the "spend-to-get" requirements for a DS&S dwelling. The same methods and cautions used for adjusting the displacement property and comparables apply to the replacement property.

10.06.19.00 Special Valuation - New Construction

In last resort situations, the cost of new construction must be analyzed when the probable selling prices of comparable replacement dwellings approach the cost of constructing new replacement housing. If more economic, this method should be used for preparing the RHV. The value should be based on a sufficiently detailed analysis to support the conclusion, and the basis should be indicated. The amount should enable the owner to construct the replacement housing.

The RHV Agent should secure cost figures from the best sources available and thoroughly review them to ensure applicability and validity. Although the use of specific plans and specifications is preferred, cost figures from internal sources in the Authority or supported estimates from contractors may be used if necessary. The quality and scope of the cost figures must assure that the replacement dwelling can be built at the figure determined.

New replacement housing should be interpreted broadly to include the normal costs associated with construction of a new home. Inclusion of the cost of site acquisition and contract administration is proper. Normal and adequate landscaping and miscellaneous yard improvements (including residential fencing, driveways, and walks) should be considered in the cost estimates.

The cost to construct becomes the RAP entitlement to be offered if it is in fact the most practical and economic. The basis for determining costs is explained when Relocation Assistance makes the offer to the owner.

Relocation Assistance must fully explain the following options to the owner:

- Owner makes arrangements for construction.
- Owner purchases a replacement dwelling.
- If time permits, owner waits for listings to become available.
- Authority may adjust the offer based on higher listing levels if justified by the circumstances.

The owner should be made aware that the RHV may be adjusted in the future based upon availability of comparable property appearing in the market. If comparables do appear in the market at a lower price than the RHV based on the cost of new construction, the RHP should be withdrawn upon expiration and a new offer made, unless displacee has relied on that information and made binding commitments.

10.06.20.00 Special Valuations Required

Relocation Assistance may encounter relocation situations that require special valuation. The examples in Exhibit 10-EX-19 illustrate the application of special valuation procedures for the most commonly encountered situations.

10.06.21.00 Rent Differential (RD) Calculations

When preparing the RHV for an RD, the RHV Agent must compare the average base monthly rent for the last three months, including utility costs.

Utility costs are those expenses for heat, lights, water, sewer, and garbage. The source for these expenses can vary between urban and rural sites (e.g., propane gas, septic system, and private garbage pickup). As utility costs vary depending upon the season, the displacee must provide the average monthly utility costs based on the last year, not the last three months.

The monthly rent for the comparable replacement properties needs to be adjusted to include average estimated utility cost based on the neighborhood and size of the dwelling, which may be obtained from the utility companies.

The RHV Agent should take special care in calculating utility costs especially when comparing a rural displacement property to comparable properties in an urban area with different types of utility service. Additionally, the average utility costs at the comparable replacement property must consider increased size and rooms as mandated by DS&S standards (e.g., comparing a two-bedroom residence with septic and propane, to a three-bedroom residence with sewer and all electric appliances).

Rent Differentials may be based on other factors than the average monthly rent at the displacement property. Depending on the situation, the RD could be based on economic rent, plus average utilities or it could be based on 30% of the displacees income, without adding average utility costs. The RHV Agent should not take these factors into consideration when selecting the most comparable property.

10.06.22.00 Mobile Home Replacement Housing Valuation Issues

Replacement Housing Valuation requirements for mobile homes, manufactured homes, and recreational vehicles are generally the same as for conventional dwellings, but there are differences in the way the comparable data is gathered and used. In addition, since mobile homes are sometimes bought or rented separately from the replacement site, which may be owned or rented, two computations are needed: one for the mobile home and one for the site.

Appendix A, 49 CFR 24.2(a)(17) provides examples on the types of mobile homes and manufactured housing that can be found acceptable as comparable replacement dwellings for persons displaced from mobile homes. A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if the following criteria are met:

- The recreational vehicle is purchased and occupied as the ‘primary’ place of residence.

- It is located on a purchased or leased site and connected to or has available all necessary utilities to function as a housing unit on the date the Authority conducts the DS&S inspection.
- The dwelling, as sited, meets all local, state and federal requirements for a DS&S dwelling.
- Note: Some local jurisdictions will not permit the consideration of these vehicles as DS&S dwellings. In those cases, the RV will not qualify as replacement dwelling.

10.06.22.01 Mobile Home Probable Selling Price

The comparables must conform to the definition of a comparable replacement dwelling.

There are several places to find market prices of mobile homes:

- Mobile home dealers.
- Local multiple listing services.
- Units for sale by individuals.
- Mobile home parks.

Where available, retail prices from the manufacturer of the displacement mobile home unit may help, taking into consideration any changes in materials and quality.

New mobile homes must often be used as comparable replacement dwellings because the number of comparable used units on the market is inadequate. The use of new mobile home units as comparables may create inequities if some displacees receive payments based on new units and others receive payments based on used units. Consequently, the selection of new or used units as comparables should be carefully made and consistently applied.

Mobile home accessories, such as awnings, skirting, and storage sheds, shall be added to the most probable selling or rental price when:

- The acquired mobile home has the accessory, or
- The accessories are required to get an adequate replacement site.

If these accessories are included in the analysis of the replacement, Relocation Assistance should itemize them on the RAP valuation form to avoid duplicate payments. The final valuation must include all delivery and installation costs necessary for occupancy and exclude incidental costs (e.g., sales or use tax, transfer fee, and permit fee).

10.06.22.02 Replacement Site (Mobile Home)

When the most comparable mobile home used to calculate the PD is located on a rented site, the rent charged at that specific site must be used in determining the RD.

If a new mobile home not yet located on a site is used to compute the PD, then the current rental rate for mobile home sites should be obtained by surveying parks with comparable vacant sites.

10.06.22.03 Rental Sites (Mobile Home)

The current rental value for mobile home sites may be obtained by surveying parks with comparable available vacancies.

10.06.22.04 Purchase Sites (Mobile Home)

The purchase of a mobile home site usually involves isolated single mobile home relocations. Relocation Assistance must find comparable replacement sites in the local real estate market, paying particular attention to local zoning regulations to ensure that a mobile home is permitted. If the site is unimproved, the estimated costs to build a mobile home pad and bring in utilities is added to the replacement value of the site.

10.06.22.05 Purchase/Rental of Mobile Home and Site

In cases where the replacement mobile home and site are purchased or rented together, Relocation Assistance must seek packaged comparables in the market. If none are available, comparables will have to consist of the replacement mobile home and replacement site done separately.

10.07.00.00 - MOBILE HOMES

10.07.01.00 Applicability [49 CFR 24.501]

This section describes the requirements for relocation payments to a person displaced from a mobile home and/or mobile home site who meets basic eligibility requirements. Except as modified by this section, such a displaced person is entitled to a moving expense payment of their personalty in accordance with 10.04.02.00. Replacement housing payments should be paid in accordance with the same requirements as persons displaced from conventional dwellings.

10.07.02.00 Moving and Related Expenses [49 CFR 24.301(c)]

The owner of a mobile home that is not acquired by the Authority is eligible for the actual, reasonable, and necessary expenses to relocate that mobile home to another site.

The owner of the mobile home who occupies the unit is also eligible for an RHP described further in this section. However, if the mobile home is not acquired, but the homeowner-occupant obtains an RHP under one of the circumstances described in 10.07.03.00, the owner is not eligible for payment for moving the mobile home. The owner-occupant may also be eligible for a payment for moving personal property from the mobile home.

The following rules apply to payments for actual moving expenses under 49 CFR 24.301:

1. A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings which were not acquired, anchoring of the unit, and utility "hookup" charges.

2. If a mobile home requires repairs and/or modifications so it can be moved and/or made decent, safe, and sanitary, and the Authority determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

3. A nonrefundable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Authority determines that payment of the fee is necessary to effect relocation.

Exhibit 10-EX-21 shows moving cost methods that displacees may select. The two basic cases are shown in the following table:

Criteria	Method
Mobile home is purchased and is not relocated.	Displacees may be paid to move their contents based on actual cost or Moving Expense Schedule A or B (10.04.02.03).
Mobile home is not purchased by the Authority, but is relocated.	Payment for the move may be based on actual cost or self-move. If the mobile home and household goods are moved to separate locations, actual cost method must be used for both the mobile home and household goods. Occupants of mobile homes may be paid for moving their personal property in the mobile home by any of the three methods described in 10.04.02.02. A payment for moving the mobile home itself is made on an actual cost basis.

10.07.02.01 Actual Cost of Mobile Home Moves

Displacee shall obtain two bids and submit them to the Authority for approval prior to the move. If necessary, Relocation Assistance may **assist** displacee in obtaining the required bids. Upon approval of the bids, Relocation Assistance will inform displacee to proceed with the lowest bidder. Prior to recommending Authority approval, Relocation Assistance must carefully review the bids with special attention to:

- Disconnecting and reconnecting utilities and appliances.
- Providing an additional axle and/or brakes, if necessary, to comply with State requirements.
- Alternative of shipping the unit on a lowboy trailer.
- Need to rent wheels and/or tires.
- Temporarily protecting separated doublewide units.
- Resealing the roof, especially for older units.
- Dealing with floor material when units are split.
- Replacing items such as awnings, skirting, and steps to bring them up to code.
- Setting up on replacement pad, which includes leveling and fitting skirting to the new contour.

10.07.02.02 Moving Expenses for Personalty

The occupant of a mobile home unit is entitled to moving expenses for their personal property contained in and around the mobile home unit. Moving expenses can be paid for either with an actual move (by a for-hire carrier), or a Fixed Moving Schedule payment.

If the mobile home unit is moved to a replacement site, some of the personal property may be moved as part of the unit. Relocation Assistance should ensure that items moved with the mobile home unit are not included in the calculation of a Fixed Moving Schedule.

The non-occupant owner of a mobile home unit may also be entitled to moving expenses for personal property. These items might include the appliances in the mobile home or yard fixtures that were not

acquired. The basis for the payment can be an actual move, a self-move, or a Fixed Moving Schedule. Again, Relocation Assistance should ensure that items moved with the mobile home unit (e.g., appliances) are not included in the calculation of a Fixed Moving Schedule.

10.07.02.03 Additional Actual Costs

Allowances for food and lodging required during move and setup time for mobile home relocation are paid in accordance with the appropriate procedures in 10.04.02.01. Relocation Assistance shall predetermine the number of rooms and meals and incidental allowances based on size and composition of the displaced family.

When a mobile home is moved to an individual site, Relocation Assistance must predetermine that the mobile home meets code requirements for placement on the site.

Payment for acceptable miscellaneous mobile home moving costs (such as painting or waxing, skirting, awnings, landscaping, and minor work to hide protuberances) is made only to achieve the move where alternatives are:

- To buy the unit and pay a PD that exceeds the total move cost.
- To indefinitely postpone the move.

These items must be required in available comparable parks. A statement of landscaping requirements should be obtained in advance of the move.

The standard 50-mile limit applies to mobile home moves.

10.07.03.00 Replacement Housing Payment for 90-Day Mobile Home Owner-Occupants [49 CFR 24.502]

A displaced owner-occupant of a mobile home is entitled to an RHP if the person both owned and occupied the mobile home on the displacement site for at least 90 days prior to the FWO, and all the other basic eligibility requirements are met.

To be eligible for benefits, the Authority must either:

(a) Acquire the mobile home and the mobile home site, or
(b) Determine that the mobile home that is not to be acquired cannot be moved because:
    - It is not and cannot economically be made decent, safe, and sanitary; or
    - The unit would incur substantial damage or unreasonable cost; or
    - There is no available comparable replacement site (and is not capable of being moved); or
    - It does not meet mobile home park entrance requirements.

A 90-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a PD based on a comparable mobile home available for purchase, plus an RD based on a comparable mobile home site available for rent. The 90-day owner-occupant who rents the mobile home site may be eligible for a DP in lieu of the RD if a replacement site is purchased. All basic eligibility requirements must be met.

10.07.03.01 Price Differential (PD)

A PD is paid when the Authority purchases the mobile home.

Relocation Assistance must make a market value appraisal of the mobile home as soon as it qualifies for purchase. The PD is the difference between the amount paid for the unit and the probable cost of the most comparable replacement dwelling, which could be another mobile home setup or a conventional residential property.

Payment may be released when transfer of title is complete. As with other replacement housing entitlements, " spend-to-get applies. " The cost of awnings, carports, skirting, landscaping, and installation may be added, but incidental expenses should not be included in the PD calculation.

Site purchase differentials apply when the Authority acquires a mobile home site from the owner-occupant and displacee purchases and occupies a replacement property.

10.07.03.02 Purchase of Replacement

If a replacement unit is purchased from a dealer, displacee must open an escrow account with an authorized escrow agent. Escrow instructions must prohibit the release of funds prior to satisfactory installation of the mobile home and passage of title. Between private parties, the transaction may be handled by escrow or the funds held in the Authority until completion of the transaction. For assignments and verification of occupancy, Exhibits 10-EX-23 and 10-EX-24 may be used. Either way the transaction is handled, other RAP payments due the claimants may be deposited into escrow to reduce the need for purchase financing.

10.07.03.03 Suitable Replacement Sites

The requirements for comparable replacement dwellings apply to the selection of replacement sites. Displacee should be given as many choices of suitable replacement sites as are available at the time of relocation.

Where many units must be relocated and only a small number of sites can be found, it is not required that all vacancies are filled before authorizing purchase. Generally, the vacancy rate should be less than ten percent of need before authority to purchase and pay an RHP is granted.

The reason for purchasing mobile homes even though there are some vacancies available is so displacees will not have to draw straws to decide who must move into the few available vacant spaces and who can wait for the RHPs offered to those who cannot find a space.

10.07.03.04 Incidental Expenses

There are some variations in the eligible items discussed in 10.04.13.00. The major ones are:

- Sales tax or use tax payments - reimbursement is based on the calculated replacement cost or the actual taxes paid, whichever is less. The sales taxes paid on necessary added improvements are also eligible.
- DMV title transfer fees.
- Permit fees - such as charges for building and transportation permits, if not part of the moving expenses.

10.07.03.05 Mortgage Differential Payment

Mobile home loans typically have shorter terms and higher interest rates. Interest rates may be obtained from local institutions that provide mobile home financing. The 90 day displacee must have a loan on the displacement property (conventional dwelling, mobile home unit, mobile home site) for 180 days or longer to qualify for an MD payment.

The following instructions cover the two basic relocation situations:

- Conventional Dwelling to Mobile Home - The maximum rate to be applied is the current prevailing loan rate in effect for conventional dwellings when displacee obtains the financing commitment.
- Mobile Home to Mobile Home or Conventional Dwelling - The maximum rate to be applied is the current prevailing interest rate applicable to the type of replacement dwelling displacee purchases and occupies.

10.07.03.06 Converting PD to RD for 90-Day Mobile Home Owner-Occupant

A 90-day mobile homeowner-occupant may elect to rent, instead of purchase, a DS&S replacement dwelling. If so, the 90-day owner-occupant should be advised that they can receive an RD in lieu of the entire RHP (PD, MD, and/or IE) for purchasing a replacement dwelling. Inform the displacee a new RHV will be prepared and Conditional Entitlement Letter provided. The new Conditional Entitlement Letter - 90-day Occupant will be accompanied by a cover letter stating that the new comparable rental address and computation are being provided per their request.

The 90-day owner-occupant need not be entitled to a PD as such to qualify for an RD. The maximum RD is calculated in the same manner as with 90-day occupants, except that the space rent at the displacement property is based on economic rent, and the RD cannot exceed the calculated Price Differential.

Any advance monies from an RHP (e.g., credit report and appraisal fees paid into escrow for a potential purchase) that have already been paid should be deducted from the RD to avoid duplicate payments.

The 90-day/30-day Notices required under 49 CFR 24.203(c) that are sent to a 90-day owner-occupant who chooses to rent will provide the addresses of comparable replacement properties that are available for rent, not sale.

EXAMPLE - 90-day Mobile Homeowner-occupant who rents:	
Comparable Replacement Mobile Home lists for:	$66,000
Fair Market Value of Displacement Mobile Home:	$55,700
Maximum Price Differential for Mobile Home:	$10,300
Comparable Space Rent for Replacement site:	$ 700/month
Actual Space Rent at Displacement site:	$ 300/month
Maximum Space Rent Differential	
$700 - $300 = $400 x 42 = $16,800:	$16,800
Maximum Replacement Housing Payment:	$27,100
Price Differential for Mobile Home = $10,300	
Space Rent Differential = $16,800	
New Replacement Housing Valuation for RD	
Actual Fair Market Rental of Replacement Dwelling	$ 800/month
Economic Rent at Displacement (Mobile Home + Space)	$ 650/month
Maximum Rental Differential	
$800 - $650 = $150 x 42 =	$ 6,300

Owners can receive a $6,300 Rent Differential since it is less than the maximum Replacement Housing Payment ($27,100). They also have one year from the date they occupied the replacement property rental to convert back to an owner and receive the balance of the RHP ($27,100 - $6,300 = $20,800), plus any entitlement they may qualify for as a Mortgage Differential and Incidental Expense. However, they would not be entitled to an additional moving payment for the second move.

10.07.04.00 Replacement Housing Payment for 90-Day Mobile Home Occupants [49 CFR 24.503]

A displaced 90-day occupant of a mobile home is eligible for an RHP if the person:

(a) Rented and occupied the mobile home on the displaced mobile home site for at least 90 days prior to the ION.

And:

(b) Meets all the other basic eligibility requirements.

10.07.04.01 Rent Differential (RD)

Rent Differential payments for the mobile home tenant may be combined with other benefits to which displacees are entitled (10-EX-21). The Authority only has to acquire the site from the tenant in order for the tenant to be eligible for an RD payment.

There may be circumstances when the displacee owns the mobile home and rents the site or vice versa. The displacee's tenure as a tenant or an owner is determined by their status in the mobile home unit, not the mobile home site.

Example: Owns the mobile home, rents the site. Treat them as an owner (all other eligibility requirements must be met).

Example: Rents the mobile home, owns the site. Treat them as a tenant (all other eligibility requirements must be met).

10.07.04.02 Down Payment (DP)

An eligible 90-day occupant may convert the RD to a DP of at least $7,200. The full amount of the DP must be applied to the purchase price of the replacement dwelling (e.g., mobile home, mobile home site, conventional dwelling) and related incidental expenses.

Down Payments are done in the same manner as conventional dwellings (see Section 10.04.25.00 for details) except:

- Escrow requirements are the same as mobile home PD.
- The RD can be based on just the mobile home, the mobile home site, or both.
- The Authority needs to acquire only the site to qualify displacee for payment.
- 90-day mobile home owner-occupants who formerly rented their site can qualify for a DP on a replacement site up to the amount of the RD.

see Exhibit 10-EX-22, Guidance on Converting a Rent Differential (RD) to a Down Payment (DP) for a Mobile Home, for sample computations.

10.07.05.00 Replacement Housing Payment Based on Dwelling and Site

Both the mobile home and mobile home site must be considered when computing an RHP. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the RHP shall consist of a payment for a dwelling and a payment for a site. However, the total RHP shall not exceed the maximum payment (either $31,000 or $7,200) permitted under the section that governs the computation of the dwelling before last resort housing payment provisions must be applied.

10.07.05.01 Cost of Comparable Replacement Dwelling

If a comparable replacement mobile home and/or mobile home site is not available, the RHP shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

A mobile home site in a rural area should never be compared to a mobile home site in a mobile home park. If the mobile home unit will be moved, then the RHP for the mobile home site should be based on a comparable replacement site as to size and amenities. If necessary, the cost of site preparations necessary to accommodate a mobile home (e.g., pad, utilities, ground preparation) should be included in the calculation of the RHP.

If Relocation Assistance determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, Relocation Assistance may recommend for Authority approval that, for purposes of computing the PD, the cost of a comparable replacement dwelling is the sum of:

- The value of the mobile home; and
- The cost of any necessary repairs or modifications; and
- The estimated cost of moving the mobile home to a replacement site.

10.07.06.00 Initiation of Negotiations

If the mobile home is not actually acquired, but the occupant is considered displaced under this part, "initiation of negotiations" is the date the offer is made to acquire the land, or, if the land is not acquired, the written notification that he or she is a "displaced person."

10.07.07.00 Person Moves Mobile Home

If the owner is reimbursed for the cost of moving the mobile home under this part, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

10.07.08.00 Partial Acquisition of Mobile Home Park

The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Authority determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance.

10.07.09.00 Part Ownership of a Mobile Home

The occupant of a mobile home who owns a partial interest in the unit should be treated as an owner of the mobile home unit. The Authority is not required to provide persons owning only a fractional interest in the displacement dwelling with a greater level of assistance to purchase a replacement dwelling than would normally be required if the person was the sole owner of the property.

The partial interest owner may be entitled to receive an RHP based on the difference between the asking price of a comparable mobile home site and the total acquisition price of the displacement site - not their fractional interest or share. If no mobile home sites are available for purchase within the displacee's financial means, then the fractional interest owner may be entitled to an RD.

10.07.10.00 Mobile Home DS&S Inspections

Decent, safe, and sanitary requirements are generally the same as those for conventional dwellings, except a mobile home must have an HCD approval decal. The mobile home must be placed in a fixed location on real property in accordance with local laws and ordinances.

A Relocation Agent should inspect a mobile home prior to purchase since it may lack qualifying DS&S features.

10.07.11.00 Rental of Vacant Spaces

Situations may arise in the acquisition of mobile home parks where displacees, by reason of occupancy at the time of the offer, relocated before the Authority acquired the park. The owner of the mobile home park re-rented the vacant spaces to Non-Tenured occupants. When the Authority attemps to vacate the mobile home park, ineligible displacees may be unable to relocate their mobile homes since:

- The mobile homes were not acceptable in other mobile home parks in the area because they were of substandard size or condition, or
- No replacement housing of any type was available in the replacement area.

The lack of sufficient spaces to relocate eligible tenants may also caused problems. This may result in project delays and the implementation of LRH payments, at a substantial cost to the Authority, to relocate these persons.

Two potential solutions to these problems are available:

- Rental of spaces in the park to be acquired to prevent Non-Tenured occupants from moving into the right-of-way.
- Rental of spaces in probable replacement mobile home parks to secure future spaces for eligible displacees who could not otherwise relocate.

The Acquisition function may rent vacant mobile home spaces in replacement parks, as noted above, using an appropriate agreement with the owner. This procedure is implemented only if absolutely necessary since its effect on the replacement housing market could be significant and politically sensitive. It should be the last possible use of normal relocation benefits short of proceeding with LRH.

Rental of spaces in other mobile home parks must be discussed and justified in the RID. All other means of providing solutions to relocation problems must be explored before rental of spaces can be recommended. The RID must discuss type and location of replacement parks and their ability to accommodate displacees.

10.07.12.00 Mobile Home as Replacement for Conventional Dwelling

A mobile home may be used as a replacement for a conventional dwelling provided it satisfies DS&S requirements. Eligibility and benefits under the various occupancy and replacement combinations are covered in 10-EX-21.

Most owner-occupants, whether long-term or short-term, who move from conventional housing to mobile homes will not qualify for RHPs (PD or RD).

Because mobile homes are generally less expensive than conventional dwellings, they will not meet the "spend-to-get" requirement. This is particularly true where an owner-occupant moves from conventional dwelling and purchases a mobile home and rents the site, or vice versa. The result is that displacee simply purchases a replacement dwelling for less than the price paid for the acquired property or rents a displacement dwelling for less than the economic rent of the acquired dwelling.

Where Relocation Assistance knows that owner-occupants of conventional dwellings are considering mobile homes as replacement housing, the Relocation Assistance must notify the owner-occupants in writing that they may not qualify for any replacement housing payment. Relocation Assistance should carefully consider each case on its own merits because the value of the acquired property may be low enough, or the cost of the mobile home high enough, that the owner-occupant could qualify for payment. Claims not meeting "spend-to-get" requirements shall be denied.

10.08.00.00 - RELOCATION PAYMENTS

10.08.01.00 Eligibility for Payment

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or for owners, the date of final payment.

10.08.02.00 Payment of Benefits

To be entitled to their full moving expense payment, the displacees (residential, business, etc.) must completely vacate the displacement property and submit a completed claim form as required in this section.

To be entitled to their full replacement housing payments, the residential displacees must rent or purchase and occupy a DS&S replacement dwelling within one year or the later of the following dates:

- For tenants, the date of displacement.
- For non-tenured owners, the date of displacement or the date of final payment, whichever is later.
- For 90-day owners, the date of final payment, or the date the address of a comparable replacement property is provided, whichever is later.

The Authority may approve time extensions for residential owners and tenant-occupants for good cause.

When displacee enters into a legally binding contract to construct or rehabilitate a replacement dwelling and cannot occupy within the required time limit for reasons beyond their control, date of contract shall be the date of occupancy provided displacee entered into the contract before expiration of the normal one-year period. Payment shall be deferred until actual occupancy. No progress payments may be made during construction or rehabilitation unless the Authority determines an exceptional condition exists.

The claim may also be completed when displacee relocates before the Authority acquires the displacement property and an offer has been made for such acquisition (except for non-tenured occupants). However, safeguards must be in place to ensure the displacee will return any price RHP overpayments as a result of an increase in the acquisition price paid for the displacement property.

10.08.03.00 Time Period to File a Claim [49 CFR 24.207(d)]

All claims for a relocation payment shall be submitted to the Authority within 18 months after:

- For tenants, the date of displacement;
- For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

Relocation Assistance shall return claims received after cutoff dates to displacee explaining why the claim cannot be paid and advising displacee of the right to appeal. Any late payment resulting from the appeals process must be scheduled separately. see Section 10.01.11.15 Tickler File on requirements to track displacee deadlines and sending them a Reminder Letter.

This time period shall be waived by the Authority for good cause.

see 10-EX-28 for the timelines for residential occupants to occupy and file claims.

10.08.04.00 Documentation of Claims [49 CFR 24.207(a)]

Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills or statements for work performed, paid invoices, copies of cancelled checks, or other evidence of such expenses. Prior to reimbursement of expenditures Relocation Assistance must determine the expenditures to be eligible, actual, reasonable, and necessary. A displaced person must be provided reasonable assistance necessary to complete and submit any required claim for payment.

Relocation Assistance must verify qualifying activities, such as moving and occupying replacement housing, by personal inspection with documentation in the diary. In some cases, Relocation Assistance may confirm payment of bills by telephoning the Financial Office of the moving company or other vendor and annotating the diary.

10.08.05.00 U.S. Residency Certification

A U.S. Residency Certification (RW 10-44) must be in the RAP file before any claims are approved.

10.08.06.00 Expeditious Payments [49 CFR 24.207(b)]

Relocation Assistance shall review all claims submitted in an expeditious manner, providing the claimant with a status of the claim (approved, pending, additional information required) within 15 days of receipt. The Claims Package shall be submitted to the Authority within 3 days following receipt of sufficient documentation to support the claim.

Relocation Assistance should assist the displacee in completing all claim forms. The first claim form is normally the claim for moving expenses, although some displacees require an advance of their RHPs to secure the rental unit or open an escrow for purchase. see Section 10.08.07.00 for advance payment procedures.

Claims for relocation benefits can be processed as soon as the displacee meets the conditions for their entitlement (10.08.02.00).

The claim may also be completed when displacee relocates before the Authority acquires the displacement property and an offer has been made for such acquisition.

10.08.07.00 Advance Payments [49 CFR 24.207(c)]

If the displacee demonstrates the need for an advance RHP in order to avoid or reduce a hardship, the Authority may issue an advance of the RHP and assign it an escrow account or a landlord.

Advance payments for replacement housing can only come out of pending RHPs, not moving expenses.

In rare circumstances, an advance of moving expenses can be made directly to a vendor to secure moving equipment (e.g., moving truck, boxes, dolly). The advance should not exceed 50% of the total estimated moving expense. The RAP Manager must approve and Relocation Assistance must document in the RAP file that the advance of moving is necessary to avoid creating a financial hardship for the displacee.

Relocation Agent must assure the Authority that the advance payment is appropriate and meets the objective the payment is intended to accomplish. Determination of acquisition price may be delayed if the

Authority obtains an OP or RE. Advance RHPs may be made only under the condition the owner-occupants sign an agreement (RW 10-27) that is made a part of claim for payment and states:

- Displacee understands the amount of the advance payment is not necessarily the same as what displacee may be entitled to when acquisition price of dwelling is determined.
- Displacee will refund to the Authority the amount of the payment that is greater than displacee would otherwise be paid after acquisition price is determined.

When replacement housing is built or rehabilitated, payments are made only when the unit is completed, DS&S, and occupied by the displacee. The Authority may make partial payments on an exception basis when such action is deemed necessary for reasonable relocation activity. In doing so, the Authority must take reasonable safeguards to avoid erroneous payments.

- Advanced Differential Payment - determined in the same way as other purchase differentials, except the maximum offer shall be used in place of the amount the Authority paid for the acquired dwelling.

- Interest Differential Payment - computed in the normal manner, except it is based on the number of remaining months after the effective date of an OP.

- Incidental Expense Payment - calculated as described in Section 10.09.08.00.

Restitution may be paid in cash, credited against purchase price in a negotiated settlement, or made as stipulated in a judgment.

If displacee qualifies for a larger housing payment than the amount advanced, the additional amount is paid after Final Order of Condemnation is recorded.

A claim for advance payments is one that is approved by the Authority prior to the displacee meeting the entitlement conditions (10.08.02.00). The Authority can approve advance payments only if funds are required and displacee has:

- Opened escrow for replacement property or entered into a rental agreement for replacement property.
- The replacement property has passed the DS&S inspection.
- Assigned the funds to the escrow company or landlord (10-EX-09).
- Signed a statement agreeing to occupy the replacement dwelling within 30 days of close of escrow, or date certain for rental properties.
- Signed the Agreement for a PD Advance (90-day Owner-Occupant) (RW 10-27).

Advance payments are allowed under certain conditions but the Authority should take reasonable safeguards to ensure that the displacee will still be able to complete the relocation with the balance remaining of the move/RHP, and that the Authority will be able to retrieve advance monies if there is a change in the displacee's planned relocation (e.g., refund from escrow accounts, advances to landlords, deposits for moving equipment). The Authority should not advance any relocation funds for work that is not associated with the rental or purchase of replacement property, or with the movement of personalty.

One of the obvious risks with any advance money is that negotiations for the replacement property will fall through. Monies advanced to bring a property into compliance with DS&S standards or to acquire a site for construction of a replacement property is a huge risk and should only be considered in extraordinary circumstances.

It is strongly recommended that in the situation above, advance monies for a RHP should only occur if the site is already acquired, the approved construction loan is in place, and the loan and advance payment would be sufficient to complete construction to satisfy DS&S criteria.

10.08.07.01 Assignment of Funds

Displacee may assign part or all of claim to another as long as it is related to the relocation or replacement property. Assignment of Funds are usually an advance of relocation funds for renting or purchasing replacement property. Sometimes a displacee will request an assignment of funds to pay a vendor directly for work already performed, such as:

- Pay moving company expenses.
- Repay loans for securing the replacement property.
- Pay any direct relocation expense, including rehabilitating replacement unit.

Relocation payments are not assignable for obligations, such as general debts and rent owed to former landlord.

All parties (displacee as Assignor, person/company receiving the funds as Assignee) must sign the Assignment of Funds form before the payment can be processed.

When an Assignment is used, claim schedules and checks are made payable to the designated person or company (Assignee) for account of the displacee. The Assignee's mailing address must be shown. Relocation Assistance should ensure that the amount of the assignment is credited against the displacee's total replacement RHP, and indicate the balance remaining for possible future payments.

10.08.08.00 Assignment of Advanced Funds into Escrow

Replacement Housing Payments can be placed in trust or into an escrow (through a bank or escrow office) at displacee's option. Escrow accounts are usually opened for the purchase of a replacement property but an escrow account can be established for the lease or rental of a replacement property. Escrows for a lease or rental may be necessary to distribute periodic RD payments over $10,000, or as a condition by the landlord in order to qualify the displacee for the rental unit (10.04.23.01).

The following procedures must be completed prior to processing an assignment of advance funds into escrow:

1. Perform DS&S inspection of replacement property.
2. Have the displacee and escrow officer sign the Assignment of Funds.
3. Displacee must sign a statement agreeing to occupy the replacement property (RW 10-45).
4. Escrow officer must read and acknowledge the letter of instruction regarding the use of the funds. (Use 10-EX-09 and 10-EX-11 as sample letters.)

10.08.09.00 Check Delivery

The Financial Office shall ensure that payments are mailed directly to the payee designated on the Payee Data Sheet unless otherwise authorized. An example of a situation for Relocation Assistance to arrange for delivery of the payment via mail or personal service are:

- Funds deposited into an escrow account and Relocation Agent and/or Manager needs to review instructions with escrow officer prior to releasing the check.

Personal delivery should be on an exception-only basis. No one directly involved in relocation of a displacee may personally deliver payment.

PROCESS FOR STANDARD CLAIM FORM	
Step	**Process**
Perform DS&S inspection	No later than 5 days after learning that replacement property has been selected.
Complete claim form	• Verify names of displacees that should appear on claim form against Occupancy Certification Form (RW 10-25). Use full names. • No one may sign a claim for displacee(s), except where otherwise determined by law. • Only one eligible displacee must sign to make claim valid, except all eligible displacees must sign claim when warrant will be made payable to only designated displacees. In this case, payment box should reflect only those paid, together with designation "sole claimant(s). • If benefits are split, make a note in margin that another claim exists or is pending.
Prepare claim package	• Attach all documentation provided by displacee needed to support the claim. • Review the claim (RW 10-26) for propriety of payments (e.g., eligibility, amount of payment, and timeliness of fulfilling all qualifying conditions). • Approve payment on face of original claim form. • Securely staple all documentation relative to one claim form into a claim package with claim form on top. If applicable, include the completed Assignment of Funds (10-EX-09 or 10-EX-10). • Prepare the Payee Data Record. • Payee Data Record STD. 204 must be completed and attached to each claim form for any payee other than the displacee (i.e., moving companies and escrow companies). Note: If claims have been paid to this company before, it is not necessary that they complete a new Payee Data Record.
Approval	• Obtain appropriate approval of claim from RAP Manager. • Process approved claim for payment through the Authority Claims Payment group. P&M will review coding for accuracy, ensure STD. 204 is attached, and all necessary signatures have been obtained.
Submit for Payment	• Relocation Agent forwards the payment package (RW 10-05) to Right-of-Way Accounting to process payments. Should be submitted within 3 working days of Relocation Agent receiving a fully executed and documented claim form. • Authority Financial Office will strive to issue/mail check within 5 days of receiving payment package.

10.08.10.00 Deductions From Payments [49 CFR 24.403(a)(6)]

The Authority must deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Relocation payments are separate from other obligations, and, even if the displacee is a tenant of the Authority, deductions from the RHP to satisfy delinquent rent or any other debt besides advanced relocation payments is not permitted.

10.08.10.01 Deducting Delinquent Rent [Hold for Future Use]

10.08.11.00 Notice of Denial [49 CFR 24.207(e)]

If the Authority disapproves all or part of a claim submitted by the displacee, or refuses to consider the claim on its merits because of untimely filing or other grounds, Relocation Assistance must notify the displacee in writing within 30 days of receipt of the claim that is being denied. Relocation Assistance must also notify displacee of their right to appeal the Authority's denial.

10.08.12.00 Receipt of Cash From Displacees

The Authority's general policy is that Relocation Agents are not to receive cash from displacees. If it is absolutely necessary to receive cash, the Agent must immediately notify their manager. A written acknowledgment must be given to displacee and must contain the date, amount, purpose, and signatures of both displacee and Agent. In addition, the discussion between Relocation Agent and their manager must be noted in the RAP diary and signed by both parties.

10.08.13.00 Collection of Overpayments

If a RAP overpayment is discovered, a written request to Financial Office to establish an accounts receivable bill must be made. Financial Office should be advised of the:

- Name and address of person to be billed.
- Amount of the overpayment that needs to be reimbursed.
- Project identification [Segment-Co-Parcel number].
- Explanation of the miscalculation that resulted in the overpayment (e.g., incorrect data used in calculating the mortgage differential). Note: The explanation will probably be provided to the displacee so special care should be used in providing a clear explanation.

Financial Office then sets up a proper account and bills the displacee. However, Relocation Assistance should notify the displacee in advance that a bill for an overpayment is forthcoming to eliminate any misunderstandings.

If the overpayment is not collected and further efforts are expected to be fruitless, the account balance is discharged in accordance with provisions in the Property Management Chapter.

10.08.14.00 Over Encumbrances

If the RD is paid in installments, the total entitlement is fully committed when the first installment is paid.

Relocation Assistance should track the installments to ensure that any portion of the RD that is not fully expended can be unobligated. Such cases may occur when the displacees:

- Die prior to the end of the 42-month subsidy period.
- Elect to use only a portion of the remaining entitlement for a down payment on a replacement dwelling.
- Fail to submit a claim for the balance of the RD even after repeated attempts by Relocation Assistance to locate or encourage the displacee.

Disobligating should be documented in the Authority parcel RAP file.

10.08.15.00 Payments Not Considered Income [49 CFR 24.209]

Relocation payments cannot be:

- Considered as income for Federal or State income tax purposes.
- Considered as income or resources to any recipient of public assistance (Government Code Sections 7269 and 7269.1) or social security benefits.
- Attached through a court action or by a public agency. (Section 690.8a of the Code of Civil Procedure, Sections 17300, 17401, and 17409 of the Welfare and Institutions Code.) Note: In bankruptcy situations, the Authority must advise Trustees of any possible relocation payments.

10.08.16.00 Duplication of Payments [49 CFR 24.3]

No person can receive any payment under the Uniform Act if that person receives another payment under Federal, State, or local law that is determined to have the same purpose and effect as the relocation payment. The Authority is not required to conduct an exhaustive search for such payments, only avoid creating a duplication based on the Authority's knowledge at the time a payment is computed.

The claim forms include a certification that the displacee will not accept reimbursement or compensation from any other public agency for any expense reimbursed by the Authority.

Where their employer has advised displacee that their place of employment is being changed, the displacee may be entitled to certain moving and relocation payments from the employer. If the employer is another public agency, the displaced person/employee may not claim duplicate relocation payments from the Authority and the employer.

When the potential for duplication relocation payments exists, such as in hardship acquisitions or a payment for goodwill, Relocation Assistance will obtain whatever information is needed (e.g., verification from employer goodwill appraisal) to ensure there is no duplication of payment.

10.09.00.00 – APPEALS

10.09.01.00 General

The Authority shall promptly review relocation assistance appeals in accordance with the requirements of this section as mandated by 49 CFR 24.10(a).

10.09.01.01 Right to Appeal

The right to appeal shall be described in all RAP written documents that are distributed at public hearings or to individual displacees. The right to appeal shall also be mentioned whenever verbal presentations on relocation assistance are made at public hearings.

On relocation calls, Relocation Assistance shall explain how to make an appeal and give the following information to displacee:

- Displacee has the right to appear personally at all hearings.
- Right to appeal relates only to RAP and not to the market value of the property or to the terms of the Right-of-Way Contract.
- An appeal decision will be issued in writing within 60 days of reviewing all material necessary to render an opinion.
- Relocation Assistance Appeal Form will be provided to displacee upon request (RW 10-06).
- Displacee has the right to pursue legal action after completing the appeal process.

The appeal form (RW 10-06) shall be made available to the displacee via Relocation Assistance, in the RAP package, or from the Authority's Right-of-Way intranet site.

10.09.02.00 Appealable Actions [49 CFR 24.10(b)]

Any aggrieved person may file a written appeal with the Authority in any case in which the person believes that the Authority has failed to properly consider the person's application for relocation assistance. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a relocation payment required under the Uniform Act.

Additionally, persons determined to be ineligible for relocation benefits because of their U.S. residency status (10.01.10.00), or because the relocation is temporary (10.10.05.00), may file an appeal.

10.09.03.00 Time Limit [49 CFR 24.10(c)]

The displacees must file an appeal within six months of the last day of the deadline for submitting a claim for moving or replacement housing payment (10.08.03.00). When the displacee vacates the acquired property, Relocation Assistance should provide a letter to the displacee advising of the time periods to occupy replacement property, file claims for reimbursement, and to file an appeal.

If the person was not required to relocate, or was determined not be eligible for relocation benefits, the appeal must be filed within six months of the initial determination of eligibility.

The Authority can extend the time period for anyone to appeal if there is a good cause.

10.09.04.00 Filing of Appeal

A person who is dissatisfied with any aspect of their relocation assistance may request a Relocation Appeal in writing or by form (RW 10-06). The form (RW 10-06) will be sent to the Authority Relocation Appeals Board Secretary (Appeal Secretary) who will log it in and provide a copy to the Director of Real Property.

If the appeal is submitted directly to the Director of Real Property, he/she will forward it to the Authority Relocation Appeals Board Secretary (Appeal Secretary). If the matter is related to any of the items listed under 10.09.07.00, the matter must be resolved by the Authority Relocation Appeals Board (Board). All other matters may first be reviewed by the Authority Review Panel (Panel).

The Appeal Secretary shall review all requests for an appeal and ensure that the person's issue is related to relocation assistance, eligibility, or entitlement. If the appeal is related to some other aspect of the right-of-way process (appraised value, acquisition process, or renting from property management), the Appeal Secretary will refer the matter to the appropriate Relocation Agent and advise the appellant in writing that the matter is not a RAP appeal but that their concerns will be handled by other Right-of-Way managers.

If the matter is clearly related to relocation, the Appeal Secretary will coordinate the formation of the Authority RAP Review Panel. The Appeal Secretary must immediately send the person (appellant) a letter advising them of the appeal process and time frame (see Table 10.09-A).

10.09.05.00 Authority RAP Review Panel

The Appeal Secretary will notify the Director that an appeal has been received and that a internal review will be immediately conducted by a panel consisting of at least, Supervising Right-of-Way Agent, an Authority Relocation expert, assigned Senior Right-of-Way Agent, and Relocation Assistance assigned to the RAP file.

The panel will review the issues presented in the Request, and either concur or not concur with the appellant's issues. If the panel concurs with the appellant's request, the Director must notify the appellant in writing of the Authority's decision and action which will be taken to remedy the matter. A copy of this letter must be sent to the Appeal Secretary.

If the Panel does not concur with all issues presented in the Request, then the matter is referred to the Authority Relocation Appeals Board for a hearing. The appellant must be notified by the Appeal Secretary in writing, of the following:

- The Panel's decision, citing applicable rules and regulations.
- The appeal is being referred to the "Authority Relocation Appeals Board," and a hearing will be scheduled by Authority.
- The right to representation, right to review the file, and right to submit other documentation to be included in the appeals package, or presented at the hearing.

The Relocation Manger must submit the complete Appeals Package (see Table 10.09-B) to the Appeal Secretary within 15 days of their decision.

10.09.06.00 Right to Representation and Review of Files [49 CFR 24.10(d) (e)]

A displacee has the right to be represented by legal counsel or another representative in connection with the relocation appeal, but solely at their own expense. The appellant also has the right to present oral and written evidence to the Authority Relocation Appeals Board.

If the appellant is to be represented by legal counsel, either a court reporter or a recording of hearing is recommended. A copy of the court reporter transcript or copy of the hearing recording will be made available to the appellant for their records.

The Authority must allow the displacee the opportunity to inspect and copy all materials pertinent to the appeal, except materials which have been classified as confidential or subject to the Privacy Act. The Authority shall classify the following materials as confidential and shall not allow the appellant to inspect or copy them.

- RAP file diaries.
- Correspondence to and from the Legal Office.
- Additional materials that the Legal Office determines to be confidential and unavailable to the appellant, on a case-by-case basis.

The Senior Right-of-Way Agents can impose reasonable conditions on the person's right to inspect (such as time, place, and time period). Prior to the displacee's inspection of the file, the Legal Office must first review the entire RAP file and the appeals package to determine which material is confidential and which is not.

The Authority may charge reasonable fees for any copied material in accordance with Authority policy.

10.09.07.00 Authority Relocation Appeals Board

The Authority Relocation Appeals Board will hear all relocation matters referred by the RAP ReviewPanel, and all appeals on matters related to the following:

- Constructive occupancy (10.01.03.06).
- Consequential displacement (10.01.03.07).
- Loss of eligibility due to sale of excess or rescinded route property or due to suspended routes (10.10.02.00).
- Promissory Estoppel (10.01.04.00).
- Claim for Re-establishment Payment when displacee has also received a payment for Loss of Goodwill.

10.09.08.00 RAP Appeals Package

The Relocation Manger must submit the RAP Appeals Package to the Appeal Secretary before an appeal hearing can be scheduled. The package must be page-numbered and exhibits labeled before it can be copied. The Appeal Secretary or his/designee may discuss certain documents with the Legal Office before requesting copies. After copies are made, the Appeal Secretary will send the Right-of-Way Consultant enough copies for Relocation Assistance and their supervisor. the Appellant, the Appellant's attorney, and other parties as appropriate. The Appeal Secretary will then advise the Appellant, in writing, that the hearing has been scheduled, and include a copy of the RAP Package.

Table 10.09-A

RELOCATION APPEAL PROCESS		
Step	**Responsible Unit**	**Process**
1	Appeal Secretary	Immediately reviews the "Request for a Relocation Appeal" within 5 days of receipt, and decides to: 1) refer to another function, 2) hold an internal hearing, or 3) refer immediately to Authority Relocation Appeals Board. Advises Appellant determination within 5 days of receipt of appeal request. Copy of appeal request and letter to appellant is sent to Deputy Director of Real Property
2a	Director of Real Property	If Panel concurs with the appellant, advises both Appeal Secretary and the appellant of the findings within 10 days of initial receipt.
2b	Relocation Assistance	If Panel does not concur, forwards a complete Appeals Package to the Board for a hearing. Must be received by Appeal Secretary within 15 days of Panel's decision.
3	Appeal Secretary	Reviews the Appeals Package, and immediately determines if the matter should be resolved by a full Board or just a Hearing Officer.
3a		Hearing should be scheduled within 45 days of appellant's Request.
3b	Appeals Board	Conducts the hearing and provides a written decision within 60 days of final submission of all evidence and testimony.

10.09.09.00 Authority Level Hearing

"The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed." [49 CFR 24.10(h)]

The Authority designates a Relocation Appeals Board and/or Hearing Officer to investigate appeals and make written recommendations to the Director of Real Property or designee.

Upon receipt of the Appeals Package from the Relocation Manager, the Appeal Secretary will meet with the Hearing Officer (an attorney from the Authority's Legal Office staff or a designee) to determine if the appeal is complex or non-complex. The most complex appeals will be resolved by a full Board; all others will be resolved by a single Hearing Officer.

A hearing will be scheduled by the Secretary or his/ her designee at a time and location that is convenient for the Board, Relocation Assistance and the appellant, including appellant's attorney and/or witnesses.

10.09.09.01 Scope of Review [49 CFR 24.10(f)]

In deciding an appeal, the Board must consider all pertinent justification and other material submitted by the Appellant and the Authority RAP Review Panel, and all other available information that is needed to ensure a fair and full review of the appeal [49 CFR 24.10(f)].

The Relocation Manager and Relocation Agent will be present at the hearing to explain relocation procedures and replacement valuation processes. Since the Appeals Hearing Officer or Board will consider such factors as work consistency and quality at the hearing, the presence of relocation assistance and/or housing valuation personnel to provide knowledgeable and professional testimony will expedite the process.

If the hearing results in the need for additional valuation analysis or other relocation assistance appeal investigations, the parties must respond with due diligence to the Board's request.

10.09.09.02 Determination and Notification After Appeal [49 CFR 24.10(g)]

The decision of the Director of Real Property, or designee, and the Hearing Officer's or Board's recommendation are provided to the appellant. If the full relief requested by appellant has not been granted, the appellant is advised of their right to seek judicial review. Statements in the letter from the Director, or designee, to appellant such as "a representative of the Authority will assist you in preparing and filing your claim" shall be construed by the Right-of-Way Consultant as an instruction.

10.09.10.00 Appellant's Travel Expenses

Payment of appellant's travel expenses is in accordance with rules applicable to State employees and the following:

- No expenses are paid if travel distance is 50 miles or less from appellant's current residence to the hearing site (by the most direct route, not airline).
- No expenses are paid to anyone other than the appellant(s) - no lawyers, friends, witnesses, or family.
- Payment is limited to those persons who have the right to relocation benefits or have appealed to be declared eligible for benefits.
- Per diem expenses of eligible appellants are paid on the basis of current Cal HR rules and regulations.
- A single appellant receives the same per diem expenses as a State employee on an incurred basis.
- For husband and wife appellants, the second person's per diem expenses are limited to the standard reimbursement rate for meals.
- For roommates, business partners, etc., each appellant is entitled to claim full per diem rates with appropriate documentation of separate accommodations.
- Mileage expenses are paid on the basis of the cost of normal round-trip airfare or established Cal HR rate per mile for use of appellant's private car, whichever is less.

Only expenses incurred to appear before a formal Appeals Board or Hearing Officer are eligible for payment. Informal meetings and such do not qualify an appellant for payment of any expenses.

10.09.11.00 Resubmission of Appeals

If appellant has not performed those acts necessary to establish eligibility pursuant to prescribed procedures and the appeal has been heard and denied, no additional appeals are permitted until appellant has established such eligibility. After appellant has established eligibility, appellant shall be allowed one additional appeal.

10.09.12.00 Payment of Approved Claims

Copies of the decision and recommendation shall be attached to any claim for payment submitted pursuant to an appeal decision.

Table 10.09-B

APPEAL PACKAGE	
Category	**Specifics**
Memo from Relocation Mangert to Appeals Board Secretary	– Background of events leading up to the appeal. – Authority's Internal Review Panel – Decision detailing the disposition of the appeal with the reasons for its position.
Appellant's Request for a Relocation Appeal - form or letter	– Include copies of any supporting documents submitted by Appellant.
Basic Identifying Data	– County, Route, Parcel Number(s), Expenditure Authorization, Appraisal Report Number. – Name of property owner if other than appellant and street address of property acquired.
Replacement Property Data	– Street address and photographs. – DS&S Inspection Report (if applicable).
Basic Acquisition Data (up to date of appeal)	– Date of First Written Offer, Date Right-of-Way Contract signed on behalf of State, Closing Date of Acquisition Escrow. – Effective Date of Right of Entry or Order for Possession. – Final Order of Condemnation.
Dates affecting eligibility not provided elsewhere	– Acquisition/occupancy of acquired property by appellant. – Date appellant vacated property. – Date appellant purchased/occupied replacement property. – Trust deeds. – Trust deed notes, if increased interest payments are involved.
Data pertinent to payment calculation if the payment is in dispute and copies of Replacement Housing Valuation Reports	– Cost of replacement property. – Price paid or offered on purchase of property. – Replacement rental rates. – Actual rental rates. – Economic rental rates. – Interest rates. – Remaining trust deed balance. – New trust deed amount. – Certified copy of buyer's closing statement.
Copies of Appraisal Form RW 07-09	– Include related pages describing the subject property.
Status of any other relocation payments to appellant	– Information such as dates and amounts claimed but not paid or not yet claimed.
Information on any other potential claimant residing in the unit	
Correspondence	– Copies of letters or other correspondence pertinent to the issue(s) being appealed.
Diary notes	– Typed excerpts from acquisition or relocation diaries pertinent to the issue(s) being appealed marked confidential.

Basis for revised payment if the amount of replacement housing or rental payment is the issue and there is a significant change in the amount of such payment	– Tabulate comparable properties used in the determination by address and show most probable sales price or rental rate. Indicate if comparables are comparable or superior to subject as to location, size, quality, and condition. Provide a narrative review discussing comparability of replacement properties and covering elements of a comparable replacement dwelling.
Reference to Chapter Section(s) or 49 CFR 24 Sections that apply to Appellant's issues	

10.10.00.00 - OTHER RELOCATION ISSUES - Last Resort Housing - Construction, Excess and Rescinded Routes, Rehab and Demolition, Temporary Relocation

10.10.01.00 Last Resort Housing Determination [49 CFR 24.404(a)]

If the project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants ($31,000 and $7,200 respectively) and payments exceeding the limits are not cost-effective for the Authority nor the appropriate solution for the displacee, the Authority can consider alternate measures under Last Resort Housing, as justified:

1. On a case-by-case basis, for good cause, which means appropriate consideration has been given to:
   i. The availability of comparable housing in the program or project area; and
   ii. The resources available to provide comparable replacement housing; and
   iii. The individual circumstances of the displaced person; or
2. By a determination that:
   i. There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole; and
   ii. A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and
   iii. The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project or program costs. (Will project delay justify waiting for less expensive replacement housing to become available?)

10.10.01.01 Methods of Providing Comparable Replacement Housing [49 CFR 24.404(c)]

Methods of providing comparable replacement housing under LRH include the construction of new replacement dwellings and rehabilitating existing replacement dwellings. RARF 2001-04 describes how to implement LRH in those rare cases when the Authority has obtained approval to use other methods to provide comparable replacement housing.

10.10.02.00 Excess, Design Change, and Relocation Procedures

Relocation legislation and procedures were written to cover the typical acquisition process where property is acquired and cleared for an impending construction project. It was not foreseen that property previously acquired for construction would be returned to private ownership with improvements and occupants intact. As a result, policies and procedures developed for typical construction projects must be modified for disposal of excess parcels acquired as such or created by design change. Exceptions to usual rules are necessary to deal equitably with the displacement situation.

10.10.02.01 Land Acquired as Excess

Owner-occupants and inherited tenants of improvements located on land acquired as excess (uneconomic remnants or economic remainders) are not automatically eligible for relocation benefits. The occupants must be displaced by a project as determined by the Authority. Displacement can be as a result of a consequential displacement determination, a future rail project, requirement for a mitigation parcel, or a rehabilitation/demolition project.

Occupants on the excess should enter into a Rental Agreement through Property Management and may be allowed to remain on the property until sold as excess, subject to their occupancy.

The exact relocation circumstances of each excess parcel must be determined before the initiation of negotiations. Inappropriate service of notices and delivery of RAP packages may create relocation assistance obligations for which the Authority would not otherwise be responsible.

Tenants or owners that are in occupancy prior to the Authority's control of the property will be eligible for relocation benefits if the Authority requires them to move at any time until title from the Authority is transferred to another. Determination of benefits will be based on their occupancy status (tenant or owner) at the time the Authority obtained control of the property, but their benefits will be based on their needs (income, occupants, rental rate) at the time of determination.

An owner who sells the economic remainder to the Authority at their request and is later displaced due to project requirements, is entitled to benefits as this is not considered a voluntary transaction under 49 CFR 24.101(a).

10.10.02.02 Design Change - Excess Land [Hold for Future Use]

Government Code Section 54235, et seq., provides specific requirements for disposal of surplus residential properties on or after January 1, 1980.

10.10.03.00 Rehabilitation or Demolition Relocation Procedures

All occupants displaced from dwelling units because of rehabilitation or demolition may be eligible for some relocation benefits (see Table 10.10-A). The extent of available benefits depends upon the income levels of the occupants and whether the displacement is temporary or permanent. The Authority's obligation under the law is to ensure displaced occupants are provided either temporary or permanent replacement housing that is affordable and adequate for their housing needs.

Displacement costs necessary for temporary moves during rehabilitation of a structure may be paid to occupants of any structure regardless of the status of the project.

10.10.03.01 Entitlements

Tenants temporarily displaced from properties under the guidelines above are entitled to:

- A written 90-day Notice, except in emergency situations where the notice period is not possible. Notices will include an outline of the benefits available.
- Relocation advisory services.
- The right to reoccupy the vacated unit after rehabilitation.
- An adequate temporary replacement dwelling.
- Actual and reasonable moving expenses, both to the temporary replacement dwelling and back to the rehabilitated dwelling.
- Appropriate rent differential payments, if eligible.

Tenants who are persons or families of low or moderate income are eligible for rent differential payment if:

- Their rental rate is increased by the Authority to an amount exceeding 30% of their gross monthly income within one year of completion of rehabilitation of their dwelling, provided the average annual income falls within the guidelines of the HUD Low Income Chart (10-EX-44), or,
- They move to a permanent replacement dwelling as a result of a rehabilitation program affecting their dwelling.

Rental Differentials, not to exceed $7,200, shall be based on the difference in cost between an available adequate replacement dwelling (including utilities) and existing rent (including utilities) in the rehabilitated or demolished dwelling or affordable rent (30% of gross monthly income), whichever is higher.

10.10.03.02 Types of Displacement

Tenant displacements may be permanent or temporary to other Government or privately owned housing or to a motel unit for a few days while their unit is made habitable. Although RAP eligible tenants have the right to return to their former dwelling, they should be encouraged to make their move a permanent one to avoid a double moving expense payment.

10.10.03.03 Charging Procedures

Relocation forms used for processing claims and payments will be clearly identified as “Rehabilitation RAP.”

Expenditures under this procedure are normally not eligible for Federal participation.

PAYMENT FOR DISPLACEMENTS DUE TO REHAB OR DEMO		
Type of Displacement	**Payment Eligibility**	**Methods of Payment**
1. Short-term Displacement of Occupants Only (No Furniture Moving)	Occasionally, because of the interruption of services or other inconveniences resulting from rehabilitation, it is expedient to provide tenants with temporary housing in overnight-type accommodations. Payment of reasonable, additional expenses to occupants may be made provided the expenses are necessary and are documented with paid receipts.	• Rental offsets. • Bank draft purchase vouchers through Authority Financial Office. • Normal RAP claim procedures for actual, reasonable moving expenses.
2. Temporary Move to Other Department Housing	The rental rate of the temporary unit is market rate or amount of pre-rehabilitation rent of the unit being rehabilitated, whichever is less. Tenants are eligible for actual moving expenses both ways, including any necessary furniture storage and travel expenses. The normal RAP room count schedule may be used. If temporarily displaced tenants return to the rehabilitated unit, their new rental rate shall not reflect the increase in market value attributable to rehabilitation for a period of one year following date they occupy the unit. Adjustments may be made to the rental rate in effect prior to rehabilitation in accordance with the Rental Rate Policy.	See #1 above. The Fixed Moving Schedule, excluding a dislocation allowance, may also be used.
3. Temporary Move to Private Housing	Tenants are eligible for actual, reasonable moving expenses both ways, including necessary furniture storage and travel expenses. RDs are paid (up to 90 days) directly to the landlord when the monthly rent exceeds pre-rehabilitation rent. If temporarily displaced tenants return to the rehabilitated unit, their new rental rate shall not reflect the increase in market value attributable to rehabilitation for a period of one year following date they reoccupy the unit. Adjustments may be made to the rental rate in effect prior to rehabilitation in accordance with the Rental Rate Policy.	See #1 above.
4. Permanent Displacement	Tenants are eligible for actual, reasonable moving expenses.	• Rental offsets. • Bank draft purchase

to Other Department Housing	The rental rate for the Authority's replacement unit shall be the lower of: • Market rate and average monthly utility costs. • Rental rate of the unit tenant was displaced from. The replacement rental rate shall remain in effect for one year, except that normal rent increases by application of the Rental Rate Policy may be made.	vouchers through the Financial Office. • Normal RAP claim procedures for actual cost or room count method, including dislocation allowance.
5. Permanent Displacement to Private Housing	All tenants are eligible for actual, reasonable moving expenses. RDs, not to exceed $7,200, are paid to low and moderate income tenants whose rent, at time of displacement, is increased to more than 30% of their income. The Authority is not responsible for additional differential payments in those cases where displacees' rent is increased following occupancy of the replacement property. The calculation is based on available adequate replacement dwellings (30% of gross income).	Moving costs may be paid by the methods shown in #1 above. RDs, not to exceed $7,200, are paid for a maximum of 42 months and are handled by RAP personnel through normal RAP claim procedures.

Table 10.10-A

10.10.04.00 Suspended Segments

Occasionally, it is necessary to suspend acquisition and relocation activities on proposed segments of the project due to budgetary constraints. When funding is withdrawn on a segment, it is often necessary to immediately and formally withdraw any outstanding offers to purchase the properties. Relocation activities may also be affected.

When project activities resume, the person occupying the parcel when the "new" initiation of negotiations occurs becomes the eligible party for relocation benefits.

10.10.05.00 Temporary Relocations

49 CFR 24.2(a)(9)(ii)(D) defines a person not required to relocate permanently as a "person not displaced," and thus not eligible to receive relocation benefits under the Uniform Act. There are circumstances where the acquisition of real property (including access rights and temporary construction easements) takes place without the intent or necessity that an occupant of the property relocate permanently, but must do so temporarily during construction.

Example: The project will restrict access to adjacent residential homes for a three-month period during construction. These persons, though not considered displaced under the Uniform Act, must be treated fairly and equitably, and will receive the following:

- Storage of personal property that they do not want to leave in the residence or business during their absence.
- Moving expenses to relocate personal property they will need at the temporary location.
- Increased housing costs for a DS&S temporary location.

Note: Acceptable temporary locations may be an unfurnished studio or even a hotel room.

The Authority/Consultant and the displacee should agree on what personal property should be stored, relocated, or left at the site.

They are not entitled to:

- Replacement Housing Payments (e.g., PD, MD, IE, or RD).
- Comparable replacement properties, including an increased room count because of the number of occupants (e.g., from a 3-bedroom to a 5-bedroom because there are 10 occupants).
- Nonresidential moving expenses (beyond minimal movement of personalty to the temporary location), e.g., Reestablishment or In-Lieu Payments.

Any person who has been temporarily relocated for a period beyond one year is considered permanently displaced and entitled to permanent relocation benefits.

10.10.05.01 Temporary Residential Lodging due to Nighttime Construction Work

Because of the nature of some construction projects, construction activities may be carried out 24 hours a day. Unusually high nighttime noise or dust levels may affect residents in close proximity to the construction work. When this situation occurs, it may be in the best interest of the Authority to arrange for temporary lodging of residential occupants.

All costs are handled as “construction costs” to be managed and funded by the Construction Contractor.

Relocation Assistance will assist in making arrangements for temporary lodging due to nighttime construction work. Relocation Assistance shall charge time to relocation task, while expenses will be the responsibility of the construction contractor.

CALIFORNIA High-Speed Rail Authority

CHAPTER 11

PROPERTY MANAGEMENT
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11.01.00.00 - GENERAL

11.01.01.00 Responsibility

The California High-Speed Rail Authority (Authority) Right-of-Way Property Management Unit manages all property held for the high-speed rail project well as excess properties. For project and excess properties, this includes maintaining an inventory of state owned properties, inspecting properties for loss prevention, marketing rentable properties, establishing tenancies, collecting rents, arranging property maintenance, developing reports as required, and terminating tenancies.

11.01.02.00 Delegations

Property Management Unit approvals are subject to the delegation matrix referenced in Chapter 2, Organization and Policy. Approval of any work to be performed by the may be conveyed in writing or electronically. The Property Manager shall maintain a copy of the approval in the rental file(s) to which it applies.

11.01.03.00 [Hold for Future Use]

11.01.04.00 No Re-Rent Residential

As a general rule, no vacated residential units shall be rented on projects with current environmental clearances. Vacated improvements on the project should be cleared immediately. In addition, the Director of Real Property should consider establishing a residential re-rent policy on this project if a shortage of replacement housing exists, or may develop, or for other reasons. The recommendation should contain complete justification, with advantages and drawbacks, and detailed analysis on social and economic consequences. The analysis must recognize that improvements cannot be removed prior to environmental clearance of the project and must consider the effect of boarded vacant improvements upon the neighborhood.

Approval for establishing a re-rent policy is as follows:

- Environmentally Cleared Parcels-No approval is necessary. If the project has programmed funds for Right-of-Way activities, an exception to establishing a re-rent policy requires a rental/clearance plan approved by the Director of Real Property or authorized delegate.
- No Re-Rent Recommended in the Right-of-Way Stage RAP Study - Approval of the Right-of-Way Stage RAP Study constitutes approval to institute the policy, although separate written approval from the Director of Real Property is required.
- No Re-Rent Recommendation Submitted Separately from Right-of-Way Stage RAP Study - Written approval from the Director of Real Property is required.

11.01.04.01 No Re-Rent Nonresidential

The Authority Right-of-Way Property Manager may also implement a no re-rent policy for nonresidential property when conditions warrant. The justification and approval required are the same as outlined above.

11.01.05.00 Property Held for Future Purposes

Where improved property is acquired far in advance of scheduled construction and the Director of Real Property has approved an exception to the no re-rent policy, the policy of the Authority is:

- Keep the property occupied.
- Maximize rental revenue.
- Minimize adverse effects of right-of-way clearance on the community.
- Be a good neighbor.
- Demolish the improvements if necessary.

11.01.06.00 Disbursement of Rental Income to Counties [Hold for Future Use]

11.01.07.00 Rental of State-Owned Properties to State Employees

State employees, including employees of the Authority, are eligible to rent state-owned properties provided their jobs do not involve managing the property, estimating or setting the rental rate, or performing other property management activities.

11.01.08.00 Use of Bilingual Agents

Every effort should be made to use bilingual Property Management Unit Agents when working in areas where tenants are non-English speaking.

11.01.09.00 Federal Participation in Revenue and Expenses

Subject to PUC section 185044, the Authority may lease to public agencies or private entities or individuals for any term not to exceed 99 years the use of areas above or below operating rights-of-way and portions of property not currently being used as operating rights-of-way, subject to any reservations, restrictions, and conditions that it deems necessary to ensure adequate protection of the safety and adequacy of high-speed rail facilities and of abutting or adjacent land uses. Prior to entering into any lease, the authority shall determine that the proposed use is not in conflict with the zoning regulations of the local government concerned. The leases shall be made in accordance with procedures to be prescribed by the authority, except that, in the cases of leases with private entities or individuals, the leases shall be made only after competitive bidding. Since rental and lease revenues are deposited into the State Treasury per PUC Section 185045, the Authority is not required to track and report the expenditures from these revenues. Revenues should be coded as ineligible for federal reimbursement. Property management costs are ineligible for federal participation until final project voucher.

11.01.10.00 Other Applicable Federal Regulations [Hold for Future Use]

11.01.11.00 Title VI, Civil Rights Act

Title VI of the 1964 Civil Rights Act forbids discrimination against any person in the United States because of race, color, or national origin by any agency receiving federal funds.

11.01.12.00 Real Property Branch's Records System

Right-of-Way policy mandates use of the Real Property Branch's records system. (Currently it is geoAMPS.)

11.01.13.00 Filming on State-Owned Property

Government Code section 14998-14998.13 is known as the Motion Picture, Television, and Commercial Industries Act of 1984.

Government Code section 14999.50 – 14999.55 is known as the State Theatrical Arts Resources (STAR) Partnership.

Government Code section 15363.60-15363.65 is known as the Film California First Program.

These various Government Codes established the regulations and guidelines in association with filming on state-owned property such as: The Director of the Film Office shall be the permitting authority for the use of state-owned property and state employee services for the purpose of making commercial motion pictures; allows production companies and other film industry companies to lease property owned by the State of California at no charge or below market rates; allows state agencies to be reimbursed for the film costs incurred including state employee costs, maintenance costs, electrical costs, etc., and directs state agencies to identify surplus properties that may be available for use.

The Authority will charge production companies for employee time including overtime charges and any miscellaneous costs. Production companies shall be responsible for any related costs, such as maintenance or electrical costs that the state incurs because of filming at the property. Whenever a production company contacts Property Management Unit, the Commission or the local Film Liaisons in California, Statewide (FLICS) person must be contacted to coordinate any activities. The Commission is responsible for issuing permits, collecting fees, and making sure insurance coverage is obtained.

Property Management Unit's initial responsibility is to show the property to interested production company representatives. If the production company decides to use the property, the Property Manager involved will ensure Exhibit 11-EX-49, Authority's STAR Program Agreement (Agreement), will be prepared. This will serve as the rental/lease agreement between the Authority and a production company. Upon execution by both parties, the Agreement will be sent to the Commission for inclusion in their permit.

Once a production company has been approved to film on state-owned property, it is the responsibility, with the assistance of the Commission if needed, of Property Management Unit to have a Property Manager on site for monitoring purposes. The Property Manager will be there to answer questions and make sure the production company is adhering to the requirements of the Agreement.

When properties identified as historic are to be used for filming, contact the Director of Real Property for additional requirements prior to making any commitments or the signing of any agreements.

11.02.00.00 - CLOSURE PROCEDURE

11.02.01.00 General

Upon execution of a Right-of-Way Contract or recordation of a Final Order of Condemnation [FOC], the Acquisition Agent will cause an email notification of possession to be generated through the Real Property Branch's record system, geoAMPS. The Property Management Unit will assign the parcel to the Property Management Unit Agent responsible for the territory. The Property Manager shall review and be familiar with the documents and the appraisal involved.

In the majority of cases where property is acquired under Right-of-Way Contract, there will be a period of time, usually three to six weeks, between receipt of these documents and close of escrow or recordation. Whenever possible, the Property Manager should contact the occupants prior to close of escrow to discuss the terms of rental occupancy. The Property Manager should read the Right-of-Way Contract carefully to determine any special conditions imposed that might affect, for example, the rental rate, term of occupancy, rental commencement date, or special disposition of acquired property.

Where property is acquired through an FOC, the Property Manager shall take immediate action to contact the occupants since rental commences on the day following recordation of the FOC.

11.02.02.00 Determination of Rentable Properties

Properties shall be considered rentable if re-rental is appropriate and there is a high probability that a tenant can be found. Pertinent factors to consider in determining rentability include topography, zoning, accessibility, lead time, availability of utilities, size and location of parcel, and condition and nature of improvements.

11.02.03.00 Contact with Grantor and/or Tenant

The Property Manager shall accomplish the following upon initial contact with the grantor or tenant:

- Determine existing rental rate, if any.
- Determine current rental period (e.g., rent paid monthly and due dates).
- Determine if rent is prepaid, up to and including what date.
- Determine who is responsible for payment of various utilities (water, gas, electricity, sewer, and garbage).
- Complete the Rental Application.
- Advise tenant of policies regarding security deposit, or transfer of deposit from grantor at time of close of escrow, and payment of first and last month of lease, if applicable.
- Advise tenant of period property will be available for rental or lease, and determine if tenant intends to stay.
- Inform tenant that all monthly rents are due on the first of the month, and advise tenant that prompt payment of rent is mandatory in all cases.
- Advise tenant about Possessory Interest Tax (see Section 11.07.16.00).

11.02.04.00 Inspection of Property and Determination of Rental Rates

The Property Manager shall thoroughly inspect all property, including improvements, prior to acquisition or as soon as possible after acquisition. This inspection enables the Property Manager to become familiar with the property for purposes of reviewing the rental rate set by the appraisal and to note and abate any hazardous conditions that may exist.

11.02.05.00 Procedures Upon Acquisition

The tenancy start date must be entered in the geoAMPS system as soon as the Property Manager is notified that acquisition is complete.

11.02.06.00 Establishing New Accounts

Written agreements covering rental and lease of all state property are required. The standard forms listed below shall be used but may be modified, with approval of the Director of Real Property to comply with actual conditions or when special situations arise.

TYPES OF AGREEMENTS	
Form No.	**Type**
11-EX-A	Residential Rental Agreement
11-EX-B	Commercial Lease Agreement (Commercial, Industrial)
11-EX-C	Agricultural Lease Agreement
11-EX-D	Advertising Structure Agreement

If applicable, the Property Manager shall contact the Relocation Agent to determine the RAP eligibility of each tenant occupying the property. The Property Manager shall then make any changes needed in the agreement to protect the tenant's RAP eligibility. The Property Manager is responsible for seeing that agreements are processed promptly. The Property Manager shall have the tenant sign a minimum of two copies of the agreement and submit the agreement to the Senior Right-of-Way Agent for review and the Supervising Right-of-Agent shall execute on the State's behalf. Each prospective tenant must complete a Residential Rental Application, RW 11-05. The Property Manager is responsible for collecting the initial rent and security deposits.

11.02.07.00 Rental Filing System

A uniform rental filing system is necessary for accurate and proper control of rented properties. Each rental account file shall be kept by account number. If files become too large for one folder, additional ones shall be started. To provide a complete parcel rental history for each rental unit, all folders for one parcel shall be kept in one place; for example, in an accordion-type folder with the parcel number on it. The rental file shall be in chronological order and shall contain the items shown below.

Rental File Contents:

- Right-of-Way Contract
- MOS
- Rental Application

- Credit Report (if applicable)
- Rental Rate Documentation
- Rental Agreement (executed copy)
- Invoices or paid bills for repairs
- Property Management Unit Rental Account Diary, RW 11-07, or alternative form (use is not mandatory, but is strongly recommended)
- Vacancy Report (if applicable)
- FOC (if applicable)

When property is vacated and then re-rented, the previous tenant's file shall be kept intact in the rental folder, current tenant data at the front. It is suggested that tabs be inserted in the file to indicate where the new tenancy data starts. Alternatively, the previous tenant's file may be kept separately in order by account number. The AQC, Right-of-Way Contract, and copy of the move-out inspection form (Exhibit 11-EX-56, Residential Property Occupancy and Vacancy Inspections) should be transferred to that new rental file with any other information that provides file continuity.

Each rental unit in a multiple unit parcel shall have its own rental unit number and may be filed in its own folder as long as all unit files are kept together under the parcel number.

11.02.08.00 New Property - Grantor Retains Improvements

Occasionally, the Authority enters into a Right-of-Way Contract that permits the owner to retain improvements if they are relocated by a certain date. If improvements are occupied at close of escrow, an appropriate ground rental shall be charged until the improvements have been removed, unless the Right-of-Way Contract provides for rent-free occupancy of the land. The Acquisition Agent should discuss unique situations or uncertainties with the Property Manager or authorized representative before making a commitment. (see also Section 11.04.06.00.)

11.02.09.00 Rental Period - Hardship Acquisition

On hardship acquisitions, grantors are required to vacate the property within 120 days from the date of close of escrow, provided replacement housing is available. The rental agreement is limited to a term of not more than 120 days, except in extreme cases where hardship would be compounded by requiring relocation within the 120-day period.

11.03.00.00 - PROPERTY INVENTORY

11.03.01.00 General

Each Property Manager shall keep its inventory of rentable and non-rentable properties in geoAMPS up to date and accurate. Permanent easements, temporary construction easements, utility easements, employee housing, and other similar real property interests acquired or owned by the Authority are not to be entered into the electronic property management system.

11.03.02.00 Inventory Demolition Record

The Acquisition Agent prepares the Inventory Demolition Record (IDR), RW 12-01, and assigns a Register Number when the AQC is prepared. (see Chapter 8, Acquisition for additional information.)

11.03.03.00 Improvement Disposal Authorization

The Improvement Disposal Authorization (IDA), RW 12-02, is a formal request to the Director of Real Property for permission to dispose of state-owned improvements or personal property. Approval of the IDA is authority to proceed with disposition of the improvements as specified. No property shall be disposed of in a manner at variance with the approved IDA without prior approval of the Director of Real Property or authorized delegate.

11.03.04.00 Improvements and Personal Property

For purposes of this inventory procedure, “improvements and personal property” means those structures, improvements, or personal property (such as furniture) whose disposal requires an IDA, RW 12-02. Miscellaneous items purchased as part of the real estate, such as TV antennas, air coolers, carpets, gasoline pumps, compressors, and drapes, are listed on the IDA. This applies whether the items are to be marketed, demolished, or transferred to another department or agency. Improvements such as landscaping and driveways that normally are destroyed in right-of-way cleanup contracts or by the Design-Build contractor as part of clearing and grubbing need not be listed.

Items of personal property purchased, such as furnishings, must also be shown. A Bill of Sale may be given an item number and copy attached to the IDR.

Whenever salvaged property is removed from state-owned parcels, it shall be placed in a secured area. The Property Manager will keep the required inventory forms in a file to account for each item. The Property Manager shall be responsible for the secured area and the keys thereto.

11.03.05.00 Numbering of IDAs and IDRs

IDAs and IDRs carry the Parcel Number, Improvement Register Number, and Federal-Aid Project Number. Authority filing is by Parcel Number.

11.03.06.00 Active Inventory of Improvements File

The Property Manager shall maintain a file of active IDRs. A copy of the IDA for a parcel is placed in the file when the IDR file is set up. When all improvements have been disposed of in accordance with the IDA and the "Demolition Record" section (back) of the IDR has been completed, these two documents are transferred to the parcel file.

When multiple IDAs are required to dispose of improvement items carried under one Register Number, the disposal information should be transcribed from the multiple reports to the original form. The original is filed in the permanent Authority records.

A copy of the IDR shall be retained until it is necessary to process the improvements for clearance and an Improvement Demolition Report file is set up.

When it has been certified that all improvements have been disposed of in accordance with the Improvement Demolition Report or Reports, and the "Demolition Record" section (back) of the Inventory Demolition Record is completed, the Improvement Demolition Report shall be transferred to a closed file. The original in the active file may be destroyed.

11.03.07.00 Closed Inventory of Improvements File

The closed inventory record form shall be part of the Authority's permanent records. As long as any items originally set up remain un-cleared, however, the record must remain in the active file.

11.03.08.00 Water Stock

If appurtenant stock is acquired, it shall be held until the need for a water supply ceases. If it is not necessary to retain appurtenant water stock, the Authority shall submit the stock to the company secretary for cancellation.

In those cases involving excess land, the Property Manager must arrange for reissuance of the stock to the purchaser at the time of sale.

If non-appurtenant water stock is purchased, it shall be held until the need for a water supply ceases. It shall then be submitted to the water company for cancellation with immediate reimbursement to the State by the water company or reimbursement upon resale of the stock, at the water company's option.

If it is not necessary to purchase water stock, the Property Manager shall acquire the land without paying any consideration for the water stock.

Property Manager shall maintain an inventory and disposal record of water stock. The Property Manager shall inventory each acquired share or fractional share of water stock and keep a complete record of all water stock acquired.

After stock certificates are reissued in the State's name, the Authority shall forward them to the Financial Office for filing.

The State is subject to assessments whenever it holds such shares of mutual water company stock. Prior approval from the Director of Real Property, or authorized delegate is required before any assessment can be paid.

Mutual water company stock that is acquired in connection with acquisition of land for other than right-of-way purposes shall be processed as set forth in this section.

11.03.09.00 Lost or Stolen Property

The Property Manager reports all cases of lost or stolen properties as follows:

- Salvage or Contributory Value Less Than $100 - no action necessary.
- Salvage or Contributory Value More Than $100, less than $1,000 - send notice to the Senior Right-of-Way Agent with a courtesy copy to the Supervising Right-of-Way Agent (see Exhibit 12-EX-01). Notification of local law enforcement is at the Authority's discretion.
- Salvage or Contributory Value More Than $1,000 - send notice to the Senior Right-of-Way Agent with a courtesy copy to the Supervising-Right-of-Way Agent and report to local law enforcement agency.

Notification to the Authority Senior Right-of-Way Agent should be sent no later than the first work day following discovery of the incident.

The IDR should be properly annotated concerning lost, stolen, or destroyed property.

11.04.00.00 - RENTAL RATES

11.04.01.00 General

Subject to PUC Section 185044, the Authority may lease to public agencies or private entities or individuals for any term not to exceed 99 years the use of areas above or below operating rights-of-way and portions of property not currently being used as operating rights-of-way, subject to any reservations, restrictions, and conditions that it deems necessary to ensure adequate protection of the safety and adequacy of high-speed rail facilities and of abutting or adjacent land uses. Prior to entering into any lease, the Authority shall determine that the proposed use is not in conflict with the zoning regulations of the local government concerned. The leases shall be made in accordance with procedures to be prescribed by the Authority, except that, in the cases of leases with private entities or individuals, the leases shall be made only after competitive bidding. The Authority is in the process of identifying its procedures relating to the competitive bidding. At a minimum, the competitive bidding must make the bidding application for the rental property available on a public website of either the Property Manager or the Authority.

Exceptions are made for:

1. Tenants whose rental rates are established by Right-of-Way Contract.
2. Local rent control (see Section 11.04.05.00).
3. Social, environmental, or economic purposes or nonproprietary government use with FRA's prior written approval.
4. Existing provisions of the acquisition contract or condemnation action which set forth the provisions for the escalation of the rental amount.

The Authority shall set up all state-owned properties that are suitable for renting and are proposed for occupancy as rental accounts and shall charge rent as follows:

- **Property Improved with an Owner-Occupied Residential Unit -** Grantor's rental shall commence on the 16th day after the close of escrow or the day after the Order of Possession becomes effective.
- **Property Occupied by a Business -** A rental grace period (maximum of 60 days) may be granted to the tenant (former owner, inherited tenant) if circumstances warrant. The grace period may commence on the day after the close of escrow, or the day after the Order of Possession becomes effective, or at some other time during the lease term, depending on whether or not the business has a commitment to pay rent on a replacement site. (see Relocation Assistance Chapter, Section 10.05.24.00, for further details)
- **All Other Classes of Property, Including Property Partially Tenant-Occupied -** Rentals shall commence on the day following close of escrow or the day after the Order of Possession becomes effective.
- **Exceptional Cases -** Adherence to rental rates established by executed Right-of-Way Contracts is required. Lease purchase sale of excess land to a tenant-buyer will provide for a lease at above market rate. (see Excess Land Chapter, Section 16.05.14.00, for further details)

These provisions do not preclude longer free occupancy periods where necessary or desirable with the Director of Real Property, or designee's approval. The terms of either the Right-of-Way Contract or the transmittal memorandum must indicate, however, that the state is receiving a consideration for the

extended rent-free occupancy. The initial rental rate for all improved properties and rented unimproved properties is in the appraisal report.

- **Tenant-Occupied Properties -**The actual existing rental rate and the estimated fair market rental rate are shown.
- **Owner-Occupied Properties -** Only the fair market rental rate is shown. The rentals of similar properties shall be the basis for estimating the fair market rental rate.

11.04.01.01 Rental Rate Increase Policy

- Authority's policy is to review rental rates annually and make the appropriate adjustments keeping in mind that a 60-day notice is required prior to raising rents. This applies to residential and nonresidential properties.
- Included within the 60-Day Notice for rent increases will be a statement that the tenant has the opportunity to request a "valuation summary." The summary will be of sufficient detail to provide the tenant with adequate information to review and understand the basis for the rent increase. The tenant's request must be in writing.
- The Authority's rental rate policy shall be as follows:
- If current rent is 25% or less below fair market rent, there will be annual 10% rent increases until actual rent equals market rent.
- If current rent is more than 25% below fair market rent, there will be 10% rent increases every six months until actual rent is 25% or less below fair market rent and then there will be annual 10% rent increases until actual rent equals fair market rent.

11.04.02.00 Rent Determinations

- Property Manager is responsible for establishing fair market rent determinations on residential properties. Property Manager should consult the appraisal. For information and responsibilities for rent determinations on nonresidential properties. (see Section 11.05.01.00 for guidance)
- A fair market rent determination is an estimate of the amount of rent, which a parcel would command in the open market, if offered under the terms and conditions typical of the market for similar properties.
- The rent determination shall be based on current rents being paid in the area for comparable property. An analysis of the comparable rental and other market data such as size, location, condition of property (exterior and interior), etc., will be completed. The subject properties and comparable data shall be viewed in the field and the comparable property will be inspected if available. Exhibit 11-EX-46, Documentation of Residential Fair Market Rental Rate, will be used for all rent determinations. The rent determination includes a signed statement that the agent has personally viewed and inspected the parcel.
- The rent determination shall also be signed by the Property Manager and placed in the rental file.
- At minimum, a 48-hour notice will be given to the tenants prior to inspecting the property for rent determinations.

11.04.02.01 Changing the Rental Rate Shown in the Appraisal

- Although the Property Manager will normally use the rental rate shown in the appraisal, it has the right to revise the rate if justified by more recent market data. If a change in the rental rate for residential properties is proposed, the Agent shall complete Exhibit 11-EX-46, Documentation of

Residential Fair Market Rental Rate, and submit to the Supervising Right-of-Way Agent for approval. For nonresidential properties, the agent will complete Exhibit 11-EX-53, Nominal Value Nonresidential Rental Appraisal, and submit to the Supervising Right-of-Way Agent for approval. All documentation shall be filed in the rental folder. (see Section 11.05.04.00 for additional information in regard to nonresidential properties.

11.04.03.00 Lease Term

- At its discretion, the Authority may set the length of lease terms up to five years, provided rate adjustments are incorporated and 90-day (or less) cancellation clauses are included. Suggested guidelines are as follows:
- **The Property Is in an Active Market, Subject to Recent or Anticipated Property Value Increases -** Consideration should be given to keeping the term short (e.g., one year). The advantage is that the rent can be reappraised and adjusted with market changes; the disadvantage is that a yearly reappraisal and renewal are required.
- **Properties Are of Relatively Low Value (e.g., Agricultural and Nominal Leases) and the Market Is Stable -** Consideration should be given to a longer-term lease (e.g., 3-5 years). This reduces the need for annual reappraisal and lease renewal where little or no rental change is likely. In such a case, a rental adjustment lease clause may be omitted.
- **Other Leases (e.g., Commercial and Industrial) in a Stable Market -** Consideration should be given to a longer-term lease (e.g., 3-5 years). To keep up with the rental market, the lease should contain a provision for annual rental escalation. Examples include level or graduated rental step raises (based on projected market trends) and raises tied to a Consumer Price Index. (see page 9 of Exhibit 11-EX-B, Lease Agreement, for standard rent escalation clauses.).
- Use of a flat rate must be justified and documented in the file or preapproved in writing by the Director of Real Property or authorized delegate.
- Where possible, all leases should be written with a short termination time (e.g., 90 days or less) to provide maximum flexibility. Leases with terminations longer than 90 days should be written on an exception basis only and must not conflict with project certification schedules. Similarly, multiyear leases must be written to avoid such conflict.

11.04.04.00 Escalation Clauses

- The Property Manager shall annually review each lease agreement containing a rental escalation clause. The Agent shall adjust the lease rate according to the terms of the agreement and notify the lessee. The rental file and geoAMPS shall be appropriately documented. The Property Manager shall be responsible for reviewing the rental files and the geoAMPS to ensure compliance.

11.04.05.00 Local Rent Control

- Occasionally, the rental rate policy that calls for rental increases under certain situations may be in conflict with local rental control. If the existing rental rate is substantially below the market rate and the proposed rate of increase exceeds the limits provided in a local rent control ordinance, the Property Manager should contact the local agency:
- To explain the need for bringing rents to market rate.
- To explain that once rents are at market rate, the limitations prescribed in the rent control ordinance will be observed.

- To attempt to get the local agency's concurrence.
- If the local agency does not concur, the Property Manager shall comply with the local ordinance.

11.04.06.00 Owners Retain Improvements

- If the Right-of-Way Contract requires the owner to remove retained improvements within a short time period (e.g., 90 days), a rental rate providing a current market return on the acquired property is charged. The rental rate shall not include a return on retained improvements. If the acquired land is of such size and irregular shape (e.g., narrow strips) that the market rental rate cannot be readily determined, the monthly rental rate may be set at one percent (1%) of the payment for the acquired property.
- After the close of escrow, if any structural improvement retained by the grantor remains on the acquired property past the term agreed to, the Property Manager shall charge fair market rent for the use of the property purchased from the grantor. The Property Manager should also check the Right-of-Way Contract for clauses pertaining to provisions agreed upon if such issue occurred. (For example, the right of the Authority to sell or demolish the improvements remaining on State property).

11.05.00.00 - NONRESIDENTIAL RENTALS

11.05.01.00 Fair Market Rent Determinations

Appraisals shall independently establish, review, and approve fair market rent for nonresidential properties with the following exceptions:

- Nominal value rentals up to $200 per month or $2,400 per year
- Oil and gas rights set by contract or other binding document
- Field offices and other properties being used by the Authority
- Signboard sites
- Porter Bill park leases
- Residential master tenancy leases
- Bid leases
- Bike paths leased to public agencies
- Interim rent changes (see Section 11.05.04.00 below)

Property Manager shall determine the actual rental rates and shall fully justify and document any adjustments from fair market.

11.05.01.01 Appraisal's Requirements

The Property Manager shall prepare, review, and approve fair market rent determinations for all nonresidential properties except those noted above.

The service is provided upon written request from the Property Manager. These requests should be scheduled so as to give the Property Manager as much lead time as possible, and will include the following information:

- A map of the property.
- Parcel number, county, route, post mile/kilometer post and property address.
- Improvements that belong to the tenant and should be excluded from consideration.
- Special items on the property, such as machinery or equipment. An inventory should be available if needed.
- Whether construction of improvements on the property will be permitted.
- Term of the proposed lease and estimated length of time property will be available for rent. Rent determinations will be updated upon written request from the Property Management Unit.

11.05.02.00 Nominal Value Nonresidential Rentals

Many properties cannot be rented for more than nominal rent because of use, size, irregular shape and/or location. Nominal rent for this purpose is defined as $2,400 per year ($200 per month) or less.

Appraisal Agents or Property Managers may be used for rent determinations on nominal value nonresidential rentals.

In these cases, Exhibit 11-EX-53, Nominal Value Nonresidential Rental Appraisal, is required. It should identify and describe the parcel, and summarize the data and analysis that lead to the Appraisal Agent's

conclusion of fair market rent. The nominal rental conclusion should be stated as a specific rental amount. A map of the appraised property is required (8½″ x 11″ print is sufficient); photographs are recommended.

The rent determination should include a signed statement that the appraiser or property management agent has personally viewed and inspected the parcel. The determination should also be signed by the Supervising Right-of-Way Agent.

All nominal rents shall be supported using comparable rentals in the area or other available market data, such as the opinions of realtors or other experts. Consideration shall be given to:

- Length of time the property will be available.
- Market demand.
- Any savings in maintenance costs to the state.

Many parcels of vacant land require annual expenditures by the state for weed abatement and trash removal, and these expenditures can be passed on to lessees with nominal rent leases. All land management activities that involve disturbing the ground must be performed to ensure that there are no impacts to archaeological resources.

11.05.03.00 Rental Grace Period on Business Properties

Information related to the rental grace period on business properties is covered in further detail in the Relocation Assistance Chapter, Section 10.05.24.00, for information on rental grace periods.

11.05.04.00 Rental Rate Increases Prior to Appraisal

When the Appraisal Agent is unable to furnish the fair market rent for nonresidential properties on a timely basis, and where the existing rental rates are thought to be substantially below market, Property Manager may establish interim rental rates based on the best available data. The interim rental rate must be documented in the property file.

When a rental rate is established without an appraisal determination, the Property Manager shall inform the lessee that the rental rate is temporary, pending an appraisal determination. A clause similar to the following should be included in the rental agreement or lease:

Lessee agrees that the rental rate of $_____ per month/year set forth above is an interim rate for a period of at least six (6) months. The lessor will obtain an appraisal of the fair market rent for the leased property. Lessee agrees that lessor may adjust the rental rate based on the market rent appraisal by giving lessee sixty (60) days' prior notice.

11.05.05.00 Rental Rate Review

The Senior Right-of-Way Agent shall review the rental rate on all nonresidential accounts annually and shall maintain an up-to-date sampling of fair market rental rates for similar properties in the vicinity of the state-owned properties. The exceptions are those rental rates that are determined by set increases such as CPI Index and those that are established in the rental agreement or lease for multiple years.

11.05.06.00 Rental Rate Increase Policy

see Right-of-Way Manual Section 11.04.01.01.

11.06.00.00 - RESIDENTIAL RENTALS

11.06.01.00 General

The Acquisition Agent should fully inform tenants of:

- The Authority's rental rate policy.
- Their responsibility to maintain the property.
- Title VI policies.

11.06.02.00 Annual Rental Rate Reviews

The Property Managers shall annually review the rental rate on all residential accounts and those accounts where the rental rate is not set by agreement or lease and shall maintain an up-to-date sampling of fair market rental rates for similar properties in the vicinity of the State-owned properties.

A request for fair market rent determinations should be submitted to the Property Manager completing Exhibit 11-EX-45, Request for Rent Determination. Keep in mind the time frame should allow adequate time for Appraisals to complete the determinations and still allow for Property Manager to issue a written 60-day notice of rental rate increase to the tenant.

When the Property Manager is unable to furnish the fair market rent determinations for residential properties on a timely basis, the Property Manager may establish the rental rates. Exhibit 11-EX-46, Documentation of Residential Fair Market Rental Rate, or similar form will be completed and filed in such a manner and office location that it will be available to the Property Management Unit and other personnel for possible reference. A copy will be kept in the rental file. The Supervising Right-of-Way Agent or designee must approve Exhibit 11-EX-46, or similar form.

11.06.02.01 Rental Rate Increases

see Right-of-Way Manual Section 11.04.01.01.

11.06.03.00 RAP Eligibility

The Relocation Assistance Unit determines the eligibility of existing tenants for relocation assistance and payments and provides this information to the Property Manager. Property Management Unit should coordinate with the Relocation Assistance Unit when RAP-eligible tenants vacate State-owned property.

11.06.04.00 Appeals (RAP-Eligible Tenants Only)

RAP-eligible tenants have the right to appeal the Authority's "Property Management Unit Practices," including rental rate increases. All appeals must be in writing and must be filed within 15 days from the date of the notice of rental increase. Tenants shall have the right of personal appearance.

The Property Manager shall inform RAP-eligible tenants of their right of appeal and sufficiently explain the appeal procedure so the tenants understand:

- Grounds for appeal.
- How to make the appeal in a timely manner.
- Appeal must be in writing.
- Their right to a personal appearance.

11.06.04.01 Grounds for Appeal and Approval Authority

RAP-eligible tenants may appeal rental rate increases when:

- They believe rental rates have been improperly established.
- They believe the Authority's maintenance of the property is inadequate.
- They believe a rental rate increase will cause an extreme financial hardship.

A basic role of the Authority in reviewing appeals is to determine that rental rates have been properly established and tenants have been thoroughly advised of the rental rate policy requiring fair market rent.

Extreme financial hardship appeals may be based on tenants' inability to pay increased rent because of unusual or excessive expenses. Other consumer or voluntary expenses of the appellant will not constitute grounds for reducing the new rental rate.

11.06.04.02 Appeals Hearing

All appeals will be to the Director of Real Property who may appoint a single Hearing Officer or form an Appeals Board to hear appeals and make recommendations for the Director of Real Property to consider in making a decision.

If an Appeals Board is appointed, it shall consist of at least three members who will meet to hear appeals in a timely manner. Board members must be thoroughly familiar with the Authority's rental rate policy and rental management procedures.

Appeals will be heard within 20 days after the appeal has been received. Bilingual services will be provided if necessary. Any person may be allowed to assist the appellant in making a presentation. This rental appeal procedure is an Authority administrative policy, however, and is not a legal hearing subject to legal procedures or arguments.

Prior to considering any appeal, the Director of Real Property, Hearing Officer, or Board shall be briefed on reasons for the appellant's rent increase, including pertinent comparable rentals.

All data furnished by the appellant shall be carefully reviewed to determine if the rental rate has been properly established. The appellant may be asked to provide additional information and to confirm data presented in the appeal.

Upon completion of the appeal hearing, the Hearing Officer or Board shall recommend to the Director of Real Property that the appeal be wholly granted, granted in part, or denied. The recommendation shall be by the Hearing Officer or by a majority vote of Board members, shall be in writing, and shall contain the basis for the recommendation.

The Director of Real Property shall make the final decision. The Director of Real Property's decision will be conveyed to the appellant in writing within ten working days after the hearing. Notification of the decision will include the reasons supporting the decision.

Appeals will be processed promptly in accordance with the preceding time frames. The scheduled rental rate increase will be deferred until the tenant has received notification of the results of the appeal. If the appeal is denied, the tenant is responsible for the rental increase from the effective date of the initial notice.

11.06.04.03 Extreme Financial Hardship

The intent of the financial hardship procedure is to provide tenant(s) a relief mechanism for a temporary period in recognition of extreme financial hardship circumstances resulting from a rental rate increase. It is not the Authority's intent to assume continuing involvement in, or responsibility for, tenant financial affairs or to otherwise compromise the rental program on a long-term basis.

When the appeals process documents such an extreme financial hardship, the Director of Real Property's decision may provide for temporarily suspending the rental rate increase. This will enable the tenant to either resolve the hardship circumstance and thereafter continue in tenancy at the new rate, or to secure alternate housing and relocate from the Authority's property. The recommended suspension should rarely exceed six months in duration. The policy should be thoroughly discussed with and understood by the tenant when the appeals process is initiated.

In considering appeals for exceptions, the Director of Real Property will consider all factors leading to the appeal to determine:

- If a true extreme financial hardship caused by the rental rate increase exists.
- If the extreme financial hardship is of a temporary or permanent nature.
- If relocation of the tenant to accommodations within their economic means is feasible.

The appellant shall be notified of the decision as outlined in the appeals procedure.

In all cases where an exception is granted, the Financial Office must be notified in time to make the new rental rate effective at the end of the exception period.

11.06.05.00 Inherited Tenants

An inherited tenant is one who was in occupancy at the time of the state's acquisition. Rent charged to inherited tenants whose rent at close of escrow is below fair market will be increased to fair market 60 days after close of escrow. Leases subject to an inherited tenant are not subject to the competitive bidding provisions of PUC Section 185044, until such lease is terminated.

11.06.06.00 Pet Policy

Authority's policy is to discourage the occupancy of pets in Authority-owned property. In the event a Property Manager allows tenants to have pets, the following procedures must be followed:

- A pet application(s) (Exhibit 11-EX-51) for each pet must be completed by the tenant(s) and approved by the Authority. The pet application(s) with approvals will be kept in the rental file.
- A Pet Addendum(s) (Exhibit 11-EX-52) for each pet must be executed by the tenant(s) and the Authority. The Pet Addendum becomes a rider for the rental agreement or lease and shall be attached to such and kept in the rental file.
- A pet deposit will be collected from the tenant(s). The amount of the deposit should be equal to the risk associated with the pet but in no circumstances less than $200. The deposit is refundable depending on the findings discovered during the move-out inspection

It is the responsibility of the tenant(s) to adhere to all requirements of the Pet Addendum including, but not limited to, keeping the property (inside and outside) free from pet waste, not allowing the pet(s) to become a nuisance to neighbors, and preventing the pet(s) from damaging the Authority-owned property. (Damage could be digging of holes in the yard, staining of carpet, chewing of fences, etc.)

If at any time during the tenancy, the Property Manager discovers damage (in any form) caused by a pet(s), the damage will be repaired immediately at the sole expense of the tenant(s). If the pet deposit and/or security deposit is insufficient to cover the repair costs, the tenant(s) will be charged the difference. All payments must be made immediately or face immediate termination. If the pet deposit and/or security deposit is utilized during the term of the tenancy to remedy any situation, a new pet deposit and/or security deposit will be assessed to the tenant(s). If this situation occurs, a larger pet deposit may be warranted.

When completing a property inspection and pet(s) are present, the agent must include any pet information on the Residential Property Inspection, Exhibit 11-EX-54.

All the above apply to inherited and existing tenants with pet(s).

Note: The guidelines for collecting and keeping track of a pet deposit are as follows:

- The pet deposit will become part of the security deposit.
- For existing tenants, an adjustment will need to be completed and sent to the Financial Office increasing the amount of the security deposit.
- For new or inherited tenants, the amount of the security deposit will be the sum of the security deposit and the pet deposit. The security deposit should not be reduced to accommodate the need for a pet deposit. These are two separate deposits, each with their own merit.
- A note should be made in geoAMPS that a pet deposit has been collected with the amount indicated in the diary.
- Refunding pet deposits is the same as with security deposits. (see Section 11.07.12.03.) A pet deposit may be utilized only for damage caused by a pet, not delinquent rent or damage not caused by a pet.

11.07.00.00 - RENTAL PROCEDURES

11.07.01.00 General

- The following sections specify procedures for renting vacated property that are in addition to those set forth in Subchapter 11.02.00.00, Closure Procedure.

11.07.02.00 Marketing Plan

- Each Property Manager should maintain a Marketing Plan that should be updated annually in July. The Plan should list by project the number and types of properties estimated to become available for rent/lease in the coming fiscal year. The Plan should also indicate the manner in which the properties will be marketed along with estimated costs.

11.07.03.00 Finder's Fees/Rental Incentives

- Finder's fees and rental incentives may be used when necessary to reduce the vacancy rate. A finder's fee is a rent credit given to an existing tenant as compensation for referring a prospective tenant to the State. A rental incentive is a rent credit given to a new tenant as an enticement to rent our property. A rental incentive should be used only as a last resort and may be spread over several months when used in a month-to-month rental agreement.
- The Security Deposit Refund Package is used to notify the Financial Office of any rent credit. The package is to include:

  Security Deposit Refund Memorandum

  Non-Residential or Residential Property Inspection

  Lease Agreement

  Payee Data Record

  Grant Deed

  Close of Escrow Summary Statement

11.07.04.00 Advertising

Whenever the Property Manager uses newspaper advertisements, it shall comply with Public Contract Code section 10115.13 relating to the use of certain advertising business enterprises. The Property Manager shall contact the Authority's Strategic Communications Office prior to advertising and request a list of any certified media firms for the area. The findings and subsequent actions shall be documented.

- **Improved Properties -** The Property Manager should use newspaper advertisements for residences and other improved properties when necessary to attract tenants. Posting of improved properties with advertising signs may be desirable in some cases and is at the Property Manager's discretion. Posting is not desirable where, for example, it would invite vandalism.
- **Vacant Land -** Rentable vacant land shall be posted with advertising signs indicating the property is for rent. Exceptions are allowed only when posting would be unreasonable, uneconomical, invite dumping or vandalism, or conflict with local sign ordinances. In some cases, newspaper advertisements may be desirable for vacant land of high value.

11.07.05.00 Showing Property

- Under no circumstances are prospective tenants to be given keys that enable them to inspect State property on their own. If several parcels are available and a prospective tenant is interested in seeing a number of them, the Property Manager should ask the person to view the properties and improvements from the exterior. Thereafter, the prospective tenant may set up an appointment with the Property Manager to inspect those of primary interest.

11.07.06.00 Rental Application and Credit Report

Before making a commitment to rent, the Property Manager shall have the prospective tenant complete Form RW 11-05, Residential Rental Application, or RW 11-06, Nonresidential Rental Application, and verify the information.

- **Credit Reporting Agency Used -** A satisfactory credit report must be received. The applicant(s) shall pay the actual costs of the credit report(s).
- **Credit Reporting Agency Not Used -** Property Manager or authorized representative must make a diligent effort to verify the information on the Rental Application before committing to rent to the applicant.

11.07.07.00 Guidelines for Selection of New Tenants

Property Management Unit is responsible for renting to qualified applicants only. The Property Manager shall review all applications and select the most qualified applicant based on available data. The decision shall be based on ability to pay rent and ability and willingness to maintain the property and improvements.

As a guideline in determining the applicant's ability to pay rent, the applicant's gross household income should equal or exceed four times the rental rate. The Property Management Unit may make exceptions to this guideline at its discretion, but the Property Manager must document all exceptions and retain the documentation in the rental file. Examples of exceptions include good employment history, prior record of consistently paying rents, good credit report, etc. All these factors will determine an applicant's eligibility to rent from the Authority.

Federal and state laws prohibit discrimination in housing accommodations against tenants because of race, gender, creed, color, religion, national or ethnic origin, age, marital status, or disability.

11.07.08.00 Use of Co-Signers

Co-Signers should not be used to qualify an applicant with insufficient income or credit.

11.07.09.00 Declined Applicants

If an applicant is denied housing, the applicant will receive the denial in writing and the reasons for denial stated.

If the Property Manager's decision to deny tenancy to an applicant is based wholly or in part on information contained in a credit report, California Civil Code section 1785.20 requires the following:

(a) If any person takes any adverse action with respect to any applicant, and the adverse action is based, in whole or in part, on any information contained in a consumer credit report, that person shall do all of the following:

1. Provide written notice of the adverse action to the applicant.
2. Provide the applicant with the name, address, and telephone number of the consumer credit reporting agency which furnished the report to Property Management Unit.
3. Provide a statement that the Authority's denial was based in whole or in part upon information contained in a consumer credit report.
4. Provide the applicant with a written notice of the following rights of the applicant:
   A. The right of the applicant to obtain within 60 days a free copy of the applicant's consumer credit report from the consumer credit reporting agency identified pursuant to paragraph (2) and from any other consumer credit reporting agency which complies and maintains files on consumers on a nationwide basis.
   B. The right of the applicant under California Civil Code section 1785.16 to dispute the accuracy or completeness of any information in a consumer credit report furnished by the consumer credit reporting agency.

   (see Exhibit 11-EX-04, Written Notice of Denial.)

11.07.10.00 Executing the Rental Agreement

All occupants 18 years of age or older must sign the rental agreement. (An exception could be students still living at home or living at home during the summer.) Under no circumstances are new tenants to take occupancy prior to signing the rental agreement and paying all monies due, such as security deposits and prorated rents.

The Director of Real Property may execute all residential and nonresidential rental agreements on the State's behalf.

11.07.11.00 Title VI Policy Directive

The Property Manager will inform the State's tenants about the Authority's Title VI Policy Directive POLI-SB-03 to conform to Title VI of the Civil Rights Act 1964 and related statutes.

11.07.12.00 Lead-Based Paint and/or Hazards

Title 42 United States Code section 4852d requires disclosure of information concerning lead upon transfer of residential property.

Section 4852d requires that the seller or lessor do the following:

1. Provide the purchaser or lessee with a lead hazard information pamphlet, as prescribed by the Administrator of the Environmental Protection Agency under Section 406 of the Toxic Substances Control Act [15 USC § 2686];
2. Disclose to the purchaser or lessee the presence of any known lead-based paint, or any known lead-based hazards, in such housing and provide to the purchaser or lessee any lead hazard evaluation report available to the seller or lessor; and

3. Permit the purchaser or lessee a 10-day period (unless the parties mutually agreed upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

The Authority must also do the following:

- Include certain warning language in the rental agreement or lease.
- Have a complete and fully executed Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazard form, Exhibit 11-EX-48, on file.
- Retain signed acknowledgements for three years, as proof of compliance. (Authority will keep signed acknowledgements in the rental file for as long as we keep the file.)

11.07.13.00 Initial Rent Collection

When a new tenancy is created, one month's rent or the prorated amount due for the balance of the month shall be collected prior to the tenant's occupancy. Prorated amounts are based on a 30-day month. (see Exhibit 11-EX-05, Rent Proration Examples.)

11.07.14.00 Security Deposits

A security deposit shall be collected from new tenants, except for state's grantor, before tenancy commences. The security deposit is not a means of establishing a tenant's qualifications, but may be used to remedy any damages or defaults in rent payment.

Generally, tenants shall make a security deposit as follows:

- Improved Unfurnished Property - not to exceed an amount equal to two months' rent.
- Improved Furnished Property - not to exceed an amount equal to three months' rent.

11.07.14.01 Waivers/Reductions

In certain instances, the Property Manager may waive the requirement for collection of a security deposit or reduce the amount. Where the requirement is waived, the account file shall be fully documented. Acceptable conditions for a waiver or reduction are:

- In neighborhoods where improvements are in a state of decline and demand for rental units is relatively low, and where extensive efforts to rent have shown that the improvements are not sufficiently desirable to attract a renter who can make a security deposit.
- From a tenant inherited from State's grantor where a security deposit had not formerly been established and where the tenant is acceptable in all respects.
- From governmental agencies.
- For unimproved properties.

11.07.14.02 Refund

In all cases, the Property Manager shall furnish the tenant, by personal delivery or by first class mail, postage prepaid, a copy of an itemized statement indicating the basis for, and the amount of, any security deposit received and the disposition of the security deposit and shall return any remaining portion of the security deposit to the tenant(s) (see California Civil Code§ 1950.5). The Property Manager must deliver any refund and the itemized statement within three weeks of the vacancy date.

In order to meet the three-week deadline, the Property Manager must submit the information to the Financial Office within five working days from the date of vacancy. It is the responsibility of the Property Manager to ensure the tenant(s) receives the itemized statement within the three weeks, preferably prior to the tenant(s) receiving a refund from the Financial Office.

If the property is sold, the Authority, at its discretion, may return the security deposit to the tenant, less any lawful deductions, or transfer the deposit to the new owner. If transferred to the new owner, the Property Manager must notify the tenant in writing either by personal delivery or by certified mail. The tenant must be given an accounting of any deductions made and the new owner's name, address, and telephone number. If notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of such notice.

11.07.15.00 Utilities

Utilities generally include gas, water, sewer, telephone, electricity, and garbage service. Multiply these types of services by the number of utility companies involved and the number of Property Manager maintains, and it is apparent that initiating, monitoring, and terminating utility services can be a considerable undertaking. The Property Managers, therefore, must adhere to the following guidelines, as well as develop additional procedures that address problems and meet their specific needs.

11.07.15.01 Responsibility for Utility Costs

Tenants shall be solely responsible for all utilities including deposits. On an exception basis, there may be instances when it would be appropriate for the State to pay for electricity and gas, such as in a multiple residential unit where there is only one meter for supplying electrical or gas service for the property. If, however, individual meters are available, tenants should pay for their own utilities.

In those localities where the suppliers of water and sewer require the bill to go directly to the property owner, the Property Manager shall have those bills sent directly to the Authority. The Authority shall monitor those utility costs and charge the tenant the appropriate amount. This will require a clause in the rental or lease agreement which states the tenant is responsible for the actual cost of those utilities and the Authority will notify the tenant of such costs on a regular basis.

Rental agreements must be specific about:

- Which utilities are assumed by the State and, therefore, are the State's responsibility.
- Which utilities are the tenant's responsibility and are to be paid directly to the utility company by the tenant.
- Which utilities are the tenant's responsibility but are collected from the tenant by the State and conveyed to the utility company.

It is imperative upon the Property Manager to ensure adequate utility costs are being collected from the tenant. The agent may contact utility companies, housing agencies, or other data sources for estimated utility expenses for a particular area. Utility companies usually have information on average costs for their area based on number of rooms, number of occupants, etc. All utility justifications must be documented in the rental file.

Utility charges will be reviewed at least annually, earlier if needed, and adjustments made in accordance with the Utility Clause in the rental or lease agreement.

11.07.15.02 Notifying Utility Companies at Date of Recordation

Property Managers should take special care transferring utility charges when an acquired parcel is recorded in the State's name. Problems encountered will vary from one area to another. Specific requirements, therefore, are brief and set forth general guidelines that shall be used to attain a reasonable degree of uniformity.

Prior to acquisition or as soon thereafter as possible, the Property Manager shall observe the utility requirements of the property and note the types of service in the rental file. The determination about which utilities the State will pay shall be based on information the Property Manager gathers while inspecting the property. If the State is responsible for payment of utilities, the Property Manager shall notify the appropriate companies in writing, specifying the date the deed was recorded in the State's name and the date the State will assume responsibility for the utility charges.

11.07.15.03 Payment of Utility Bills by the State

Whenever utility service is initiated in the State's name, or is transferred back into the State's name (e.g., when a tenant vacates rental property), the Property Manager shall request that the utility company send the initial bill directly to Property Manager's office. The Property Manager shall review the bill for accuracy and shall write the HST Parcel Number on the bill. For residential rental property, the Property Manager shall also check to make sure the State is being charged a residential rate and not a commercial rate. The Property Manager shall forward the bill to the Financial Office.

On a quarterly basis, Financial Office will send a Utility Report to the Property Manager for invoicing or refunding the tenant of Common Area Maintenance charges.

11.07.15.04 Utility Deposits by Tenant

If a tenant is to assume responsibility for utility service, the Property Manager shall advise the tenant that:

- The utility company may require a deposit.
- If any problems occur as a result of the deposit, the problems are solely between the tenant and the utility company, as the state will not become involved.

11.07.16.00 Possessory Interest Tax [Hold for Future Use]

11.07.17.00 Residential Property Occupancy and Vacancy Inspections

When a new tenant moves into a residential property, or when a newly acquired property has an inherited tenant, the tenant shall accompany the Property Manager on an inspection of the unit. Page 1 of Exhibit 11-EX-56, Residential Property Occupancy and Vacancy Inspections, shall be completed. All blanks must be filled in, noting "OK" or any deficiencies. The form is to be signed by the tenant and the Property Manager and a copy shall be given to the tenant.

Page 2 of 11-EX-56 shall be completed when the tenant moves out. If possible, the tenant should accompany the Property Manager during the inspection and sign the move-out form, which is the basis for deposit refunds or withholdings.

11.07.18.00 Uses of Rental Agreement

Exhibit 11-EX-A, Residential Rental Agreement, is to be used for month-to-month tenancies only for the following types of rentals:

- Single-family residential property.
- Multiple-family residential property.
- Occasionally, instead of a lease where commercial or industrial month-to-month tenancies are involved.
- Vacant land only when necessary to execute a lease or rental agreement. This applies to vacant land, other than agricultural, or land with improvements retained by the grantor. Exhibit 11-EX-A, Residential Rental Agreement, may be modified to comply with actual conditions or when special situations arise upon approval of the Director of Real Property.

11.07.19.00 Courtesy Notice of Termination

The Authority's policy is to provide all tenants who are not eligible for relocation benefits an informal courtesy letter of the state's intention to terminate their tenancies at least 90 days before the required termination date. This requirement does not alter the state's authority to terminate on a 30-day or 60-day notice as provided in the standard rental agreement when such notice is absolutely necessary.

11.07.20.00 Rental Refunds

The Property Manager shall return any unearned rents to tenants who give proper notice and vacate the property in good condition. The rents owed for a partial month shall be prorated on a 30-day month basis in accordance with Exhibit 11-EX-05, Rent Proration Examples. Prorated rent cannot exceed the monthly rent. Tenant is responsible for rent covering the period of time up to, and including, the date of vacation. If property is vacated on the last day of the month, tenant is responsible for the entire month, and rent is not prorated regardless of the number of days in the month.

- Tenant Has Paid Rent in Advance and Vacates the Premises on Their Own Volition Before the Rental Term Expires - The Authority will make a refund for the difference between the amount paid in advance and the amount owed for the partial month, provided there is no delinquent rent, and the tenant has provided proper notice and is leaving the premises in good condition.
- Tenant Has Paid Rent in Advance and Vacates the Premises at the Authority's Request Before the Rental Term Expires - A refund will be made for the difference between the amount paid in advance and the amount owed for the partial month.
- Tenant Has Not Paid Rent in Advance and Vacates the Premises Before the Rental Term Expires - The tenant will be responsible for the period of time up to, and including, the date that vacation of the premises was discovered or enforced. Every effort must be made to collect the amount due.

All requests to the Financial Office or adjustments to the account will be made utilizing the geoAMPS and via Security Deposit Refund Memorandum package.

The Property Manager may waive the requirement that a tenant provide a termination notice when vacating property under a rental agreement.

11.07.20.01 Leases

Refunds will be made of rent collected for the period subsequent to the termination date of the lease. The termination date is determined pursuant to the notification of termination by the state or lessee as required by the lease.

11.07.21.00 Notices

The Authority may use the following notices:

- 3-Day Notice to Pay or Quit, Form RW 11-11
- 3-Day Notice to Correct Breach of Covenant or Quit (Curable), Form RW 11-12
- 3-Day Notice to Quit for Breach of Covenant (Incurable), Form RW 11-13
- Notice of Termination of Tenancy and Notice to Quit, Form 11-EX-44

Form11-EX-44, Notice of Termination of Tenancy and Notice to Quit, can be utilized as a 30-Day Notice or a 60-Day Notice. California Civil Code section 1946.1(b) requires owners of **residential dwellings** giving notice to give notice at least 60 days prior to the proposed date of termination.

Section 1946.1(c) allows an owner of a residential dwelling to give notice at least 30 days prior to the proposed date of termination if the tenant has resided in the dwelling for less than one year.

Section 1946.1(d) allows for the owner of a residential dwelling to give notice at least 30 days prior to the proposed date of termination if all of the following are true:

1. The dwelling or unit is alienable separate from the title to any other dwelling unit.
2. The owner has contracted to sell the dwelling or unit to a bona fide purchaser for value, and has established as escrow with a licensed escrow agent, as defined in the Financial Code sections 17004 and 17200, or a licensed real estate broker, as defined in the Business and Professions Code section 10131.
3. The purchaser is a natural person or persons.
4. The notice is given no more than 120 days after the escrow has been established.
5. Notice was not previously given to the tenant pursuant to this section.
6. The purchaser in good faith intends to reside in the property for at last one full year after the termination of the tenancy.

All nonresidential tenancies should receive a 30-day notice prior to termination.

11.07.22.00 Cancellation - Failure to Pay Rent

RW 11-11, 3-Day Notice to Pay Rent or Quit, shall be used to cancel a rental agreement or lease where the tenant is delinquent in rental payments. Notice shall be served upon the tenant as specified in Section 11.08.04.00.

If the tenant is eligible for relocation benefits, Property Manager must notify the Relocation Assistance of the delinquency.

During the three-day period after service of the 3-day notice, the State must accept full payment of rent due when offered by the tenant. Acceptance of full rent due nullifies the 3-day notice. After the end of the

three-day period, the state may refuse payment and continue with the eviction process. If payment is accepted after the three-day period, however, the notice is nullified. Entering the date of service of 3-day notice in the 3-Day Notice field of the geoAMPS system and an electronic Memorandum will notify the Financial Office not to accept rent payments after the three-day period.

11.07.23.00 Cancellation - Notice to Vacate For Reasons Other Than Failure to Pay Rent

Where the tenant is not delinquent in their rent and the state wishes to terminate a rental agreement or lease that contains a 30-day or 60-day termination clause, 11-EX-44, Notice of Termination of Tenancy and Notice to Quit, shall be used.

The notice shall be served in the manner described in Section 11.08.04.00. Refund policy is described above. The notice may be modified to provide for various lease termination requirements such as a longer time frame.

11.07.24.00 Cancellation - Breach of Covenant

When it is necessary to cancel a lease or rental agreement where the tenant has breached a covenant of the agreement with the State, RW 11-12, 3-Day Notice to Correct Breach of Covenant or Quit (Curable Breach), or RW 11-13, 3-Day Notice to Quit for Breach of Covenant (Incurable Breach), may be used.

Notice shall be served upon the tenant as specified in Section 11.08.04.00.

If the tenant is eligible for relocation benefits, Project Manager must notify the Relocation Assistance Unit of the breach.

Curable breaches include anything that can be cured or corrected by payment of money (e.g., late fees, deposits, insurance, and bonds) and may also include, for example, unapproved pets, excessive garbage or debris, and unauthorized use.

Incurable breaches cannot be cured once committed and include, for example, nuisance, committing waste and subleasing or assignment without prior State approval.

11.07.25.00 Authority Use of State-Owned Property

Properties managed by Property Manager may be used temporarily by the Authority if such use is within local government requirements. Although no rent will be charged, the user will be responsible for all maintenance costs, remodeling costs, and any costs necessary to return the property to its original condition.

11.07.26.00 Termination Requirements

California Civil Code section 1950.5 requires the following process for residential tenancy:

- Within a reasonable time after either party gave notice of termination, the landlord shall notify the tenant **in writing** of the tenant's option to request an initial inspection and to be present at that inspection. (Exhibit 11-EX-06, Landlord's Notice of Termination, when the Authority gives notice; and Exhibit 11-EX-06B, Notice of Right to Inspection, when the tenant gives notice.)
- At a reasonable time, but not earlier than two weeks before the termination or the end of the rental agreement or lease, the landlord shall, upon the request of the tenant, make an initial inspection of the premises prior to any final inspection the landlord makes after the tenant has

vacated the premises. (Exhibit 11-EX-06D, Initial Vacancy Inspection and Statement of Proposed Security Deductions.) This will allow the tenant an opportunity to remedy identified deficiencies in order to avoid deductions from the security deposit. The tenant's request does not have to be in writing; thus, it is mandatory to make a diary entry in reference to the tenant's desires.

- If the tenant requests an inspection, the parties shall attempt to schedule the inspection at a mutually acceptable date and time. The landlord shall give at least 48 hours' prior **written** notice of the date and time of the inspection. (Exhibit 11-EX-06C, Waiver of 48-Hour Notice of Initial Inspection.) This applies even if both parties have agreed to an acceptable date and time. The 48-hour prior written notice can be waived if both parties sign a written waiver.
- The landlord shall proceed with the inspection whether the tenant is present or not, unless the tenant previously withdrew his or her request for the inspection.
- Based on the findings of the inspection, the landlord shall give the tenant an itemized statement specifying repairs or cleaning that are proposed to be the basis of any deductions from the security deposit. (Exhibit 11-EX-06D, Initial Vacancy Inspection and Statement of Proposed Security Deductions.) This statement shall be given to the tenant, if the tenant is present for the inspection, or shall be left inside the premises if the tenant is not present for the inspection. (This statement is not to be confused with nor does it replace the requirement to furnish the tenant within three weeks an itemized statement indicating the basis for, and the amount of, any security deposit withheld.)
- The landlord may use the security deposit to remedy any situation that occurs after the initial inspection or was not identified during the initial inspection due to the presence of the tenant's possessions.
- If a tenant chooses not to request an initial inspection, the duties of the landlord are discharged. It is mandatory to make a diary entry indicating the tenant has not opted for an inspection.

11.08.00.00 - DELINQUENT ACCOUNTS

11.08.01.00 General

All rents shall be collected in accordance with the terms and conditions of the lease or rental agreement. Our standard monthly rental agreement provides that rent is due in advance on the 1st of the month. Rent not received by the 1st of the month is delinquent.

The agreement further provides that a late charge will be charged if the rent is not received by the 10th of the month. A postmark prior to the 10th of the month does not constitute receipt by the 10th of the month.

11.08.02.00 Suggested Methods of Collection

The Property Manager should notify the tenant personally by telephone or letter that rent is delinquent and must be paid. In many cases, the tenant will pay the rent after this contact and will be prompt in paying thereafter. If the tenant is delinquent again the following month, however, the Property Manager shall send a strongly worded letter. If the Property Manager elects to enter into a payment plan agreement, the agreement shall be in writing and approved by the Director of Real Property. If the tenant fails to make a payment plan payment, a 30-day or 60-day notice will be served immediately. No further payment plans or compromises will be offered. Payment plans are not to be used as a regular way of doing business, but for those exceptional cases where payment plans are warranted.

If a tenant has been delinquent for three consecutive months, terminating the tenancy may be in order even though the rent is eventually paid each month. If the situation warrants, vacancy may be requested prior to this time. The Supervising Right-of-Way Agent shall make this decision.

11.08.03.00 3-Day Notice to Pay Rent or Quit

If rent is not paid immediately after the contacts and letter, the Property Manager shall serve a 3-day notice demanding that the tenant pay the total rent delinquency within three days or vacate the property. The 3-day notice should cover the current month's rent, plus any previous period of delinquency that may still be unpaid. The Property Manager shall immediately start eviction proceedings upon expiration of the three days (see Form RW 11-11, 3-Day Notice to Pay Rent or Quit). The Property Manager shall send copies of eviction notices and other related documents to the Financial Office to stop acceptance of payment. Partial or total acceptance of payment will forfeit the legal effect of the 3-day notice.

If a tenant is chronically delinquent but not currently delinquent, a 30-day or 60-day notice terminating the tenancy may be in order (see11-EX-44, Notice of Termination of Tenancy and Notice to Quit). If a 30-day or 60-day notice is served after a 3-day notice has been served, the legal effect of the 3-day notice is lost.

A 3-Day Notice to Pay or Quit and a Notice of Termination of Tenancy and Notice to Quit may be served concurrently. This process may be used when you want to collect some money from the tenant but still wish to proceed with an eviction. Even though money is accepted, thus forfeiting the legal effect of the 3-Day Notice to Pay or Quit, it does not cancel the Notice of Termination of Tenancy and Notice to Quit.

see Section 11.07.21.00, Notices, for additional information and requirements regarding serving notices to vacate or to terminate the tenancy.

11.08.04.00 Method of Service of Notices

The landlord's right to serve a 3-day notice to pay rent or quit is provided for in Code of Civil Procedures (CCP) section 1161. The 3-day notice is served to the delinquent tenant for the total amount of unpaid rent as of the day of service.

Service of a 3-day notice or a 30/60-day notice is governed by CCP section 1162 and shall be made as follows:

- By delivering a copy to the tenant personally.
- If he or she is absent from his or her place of residence, and from his or her usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his or her place of residence.
- If such place of residence and business cannot be ascertained, or a person of suitable age or discretion cannot be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner.

The effective start date of the 3-day notice is one day following the postmark date.

Service of a notice on a corporation differs slightly in that the notice must be served on a corporate officer or an authorized agent of the corporation who will accept on behalf of the corporation.

For practical purposes, "a person of suitable age and discretion" should be over 18 years of age.

Ordinary mail may be used when mailing copies of notices. To substantiate service, the server shall execute a proof of service by posting and shall place a copy in the rental file. As an alternative, the tenant's copy may be sent certified mail, in which case the Property Manager does not need to sign a proof of service. The certified mail receipt shall be placed in the rental file.

The Property Manager shall make a diligent effort to effect personal service since that is the most effective and uncomplicated method of service.

NOTE: If the tenant is eligible for relocation benefits, Property Manager must coordinate service with the Relocation Assistance to ensure the tenant is advised of their continuing rights in regard to relocation assistance. see Chapter 10, Relocation Assistance.

The Property Manager shall send copies of a 3-day notice, eviction notice, or any other related documents to the Financial Office to stop acceptance of payment. Partial or total acceptance of payment will forfeit the legal effect of the notice.

11.08.05.00 Legal Remedies for Collection and Procedures

Various legal procedures are available to Property Management Unit for specific purposes. Property Managers should bear in mind, however, that they are not attorneys and shall obtain all legal advice and interpretations from the Legal Office.

The State shall resort to legal proceedings to effect rent collection and/or eviction of delinquent tenants because of nonperformance of contractual obligations, usually nonpayment of rent. In addition, unlawful

detainers are sometimes necessary for property clearance to meet certification dates. General procedures are outlined in Exhibit 11-EX-07, Authority Right-of-Way Procedure: Vacating Premises - Unlawful Detainer Action. Since procedures may vary from one judicial district to the next, it is incumbent upon Property Management Unit to discover the general requirements for areas of responsibility.

11.08.06.00 Dishonored Checks

If a tenant/lessee has a dishonored check returned to the Authority for any reason, payment is considered not received. There will be a $25 fee automatically charged to the account for the first dishonored check and a $35 fee charged for the second dishonored check in a 12-month period. If tenant/lessee fails to submit an acceptable replacement payment by the 10th of the month, the account will be considered delinquent and a late fee will be assessed.

If tenant/lessee has two dishonored checks within any 12-month period, the Authority will no longer accept personal checks on that tenancy.

11.08.07.00 Late Charges

A late charge shall be assessed if the full amount of rent is not received on or before the 10th of each month. The late charge covers damages resulting from breach of the lease or rental agreement. The amount is determined by using 6% of the monthly rent as a guideline and shall not exceed 10%. The amount is entered in the late payment clause in the rental/lease agreement. Late charges may be waived for government agencies.

NOTE: The 6% figure is based on the figure relating to mortgages or deeds of trust in the California Civil Code and is generally used by the property management industry. The 10% figure is related to the maximum rate of interest in California chargeable by most persons (voluntary usury).

11.08.08.00 Vacated Delinquencies

When a delinquent tenant vacates and does not leave a forwarding address, the Property Manager has 15 calendar days to conduct an investigation to locate the former tenant before further collection efforts proceed. Property Manager does not, however, have to wait until the end of the 15 days to submit the account to the Financial Office.

The following are sources of information that may lead to the former tenant's whereabouts:

- Certified mail with return receipt requested sent to the tenant's last address.
- Utility companies that show transfer of service.
- Banks, places of employment, or other references that may be listed on the tenant's rental application.
- Labor union affiliations, depending upon the tenant's profession.
- Department of Motor Vehicles, using driver's license number, California ID number, or car license number from the application.

As soon as a delinquent tenant vacates, the Property Manager should process the vacated tenancy through the geoAMPS. Within 15 days, the Property Manager should refer the account to the Financial Office for write-off or for referral to the collection agency for further collection efforts.

11.08.08.01 Amounts $250 or Less

If the delinquent amount is $250 or less, the Property Manager forwards completed Form RW 11-25, Authorization to Write Off or Adjust Accounts Receivable Bill, to the Financial Office and requests write-off of the account through the geoAMPS. The write-off request should include a brief justification (e.g., collection efforts are not cost effective based on Board of Control guidelines).

The Financial Office will immediately write off the account. If the delinquent amount is over $100 and the delinquent tenant's Social Security Number is known, the Financial Office will submit the account to the Franchise Tax Board (FTB) for two successive years only. However, the Intercept Program is for intercepting refunds of Personal Income Tax accounts only and cannot be used for corporations or partnerships.

If all or a portion of the delinquent amount is collected, either through the FTB Intercept Program or from the vacated tenant, the Financial Office will reestablish the receivable account.

If tenant/lessee has two dishonored checks within any 12-month period, the Authority will no longer accept personal checks on that tenancy.

11.08.08.02 Amounts Greater Than $250

If the delinquent amount is greater than $250, the Property Manager prepares an Exhibit 11-EX-39, Collection Agency Transmittal, and forwards it to the Financial Office with the required documentation listed below. The vacancy date and amount due will be of critical importance if the collection agency pursues legal action against the debtor, and the Authority is responsible for ensuring the accuracy of this information. In addition, the Property Manager must enter the date the collection package is forwarded to the Financial Office on the geoAMPS.

- Copy of first and last pages of rental agreement
- Copy of rental application
- New address documentation
- Copy of note about efforts to collect
- Copy of judgment
- Copy of voided check
- Copy of driver's license or California identification card

The Financial Office will verify the amount owed and forward the collection package to the collection agency under contract to the Authority.

Once an account is referred to the collection agency, the Financial Office takes on all responsibility for the account and makes all further contact with the collection agency. Any calls or letters from the delinquent tenant should be referred to the collection agency for response. **Under no circumstances should the Property Manager enter into a repayment plan with the delinquent tenant.**

In accordance with terms of the contract, the collection agency will submit a monthly report to the Financial Office showing the status of all accounts referred to them for collection. The Financial Office will forward a copy of the report to the Property Manager.

Under terms agreed to among the collection agency, the Financial Office and Property Management Unit, the Financial Office will write off accounts that are deemed to be uncollectable. If all or a portion of the delinquent amount is subsequently collected, the Financial Office will reestablish the receivable account.

11.09.00.00 - RENTAL INTERNAL CONTROLS

11.09.01.00 Policy

To protect the integrity of the Authority's rental assets and to protect employees handling those assets from accusations of fraud, the following control activities shall be performed for each acquired property. These activities shall be fully documented in the rental file to facilitate audit and management review.

- Information on newly acquired property shall be entered in geoAMPS as soon as the information is available.
- Improved non-rentable properties shall be inspected at least once a month.
- The rental file shall contain justification for classifying any property as non-rentable.
- Unimproved non-rentable and occupied rentable properties shall be inspected at least once a year.
- Vacated rentable properties shall be inspected within 15 days of any vacancy and at least once a month thereafter. Vacated rentable properties are those having more than a remote chance of being rented for a reasonable time prior to construction.
- Rentable occupied properties shall be subject to a confirming process of tenant interviews and tenant letters.

The sections below contain descriptions of major steps in the internal control process. The Property Manager shall perform many of the specified control activities (such as inspections and reviews).

11.09.02.00 Newly Acquired Property Closure Procedure [Hold for Future Use]

11.09.02.01 Office Review

Upon execution of a Right-of-Way Contract or recordation of an FOC, the Acquisition Agent shall send an MOS, RW 08-12, to Property Management Unit with a copy of the Right-of-Way Contract or FOC as appropriate. The parcel should be assigned to the Property Manager responsible for the territory. The Property Manager shall review and be familiar with the documents and the appraisal involved.

11.09.02.02 Field Review

In the majority of cases where property is acquired under Right-of-Way Contract, there will be a period of time, usually 3 to 6 weeks, between receipt of these documents and close of escrow or recordation. Whenever possible, the Property Manager should contact the occupants prior to close of escrow to discuss the terms of rental occupancy. The Property Manager should read the Right-of-Way Contract carefully to determine any special conditions imposed that might affect, for example, the rental rate, term of occupancy, rental commencement date, or special disposition of acquired property. The Property Manager should notify the occupants of obligations to comply with all federal, state and local laws and ordinances, including those for storm water, and of the availability of storm water education and outreach guidance materials.

Where property is acquired through an FOC, the Property Manager shall take immediate action to contact the occupants since rental commences on the day following recordation of the FOC.

11.09.03.00 Vacated Rentable Property

Property Management Unit shall inspect all vacated rentable properties within 15 days after vacancies occur or are discovered and not less than once a month thereafter. The inspections shall be documented on the vacancy report in the rental file. At least annually, one of the inspections shall be done concurrently with a maintenance inspection and documented as required under Section 11.10.06.00.

11.09.03.01 Agent Activities

When a tenant vacates, the Property Manager shall thoroughly inspect and secure the property as soon thereafter as possible. Prior arrangements shall be made to obtain the keys from the vacating tenant. Upon receipt of the keys, the Property Manager shall accomplish the following:

- Inspect the property and, when necessary, prepare a request to have trash removed, improvements boarded up, hazardous conditions abated, or necessary maintenance performed.
- Perform an inventory of all items purchased by the state and place appropriate documentation in the rental file.
- Determine whether the property should be boarded up to provide protection against vandalism and theft.
- Report any lost or stolen property in accordance with procedures in Section 11.03.09.00.
- Prepare the necessary accounting documents to close the tenant's file.

11.09.03.02 Property Manager Activities

The Property Manager shall complete the first verification of vacancy status within 15 days after vacancy occurs and shall discuss each vacated rentable property not less than once a month with the Property Manager. Monthly field reviews shall be made to assure that the properties are still vacant. Every effort should be made to rent those properties. Documentation of office and field reviews shall be kept in Authority files for audit.

11.09.04.00 Occupied Rentable Property

Field inspections of occupied properties shall be made at least annually to ensure the properties are maintained as well as or better than other properties in the neighborhood. California Civil Code (Civil Code) section 1954 allows a landlord to enter the dwelling unit in case of emergency, to make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors or to make an inspection pursuant to California Civil Code section 1950.5(f), when the tenant has abandoned or surrendered the premises, or pursuant to court order. Except in cases of emergency or when the tenant has abandoned or surrendered the premises, entry may not be made during other than normal business hours unless the tenant consents to an entry during other than normal business hours at the time of entry. The landlord shall give the tenant "reasonable" notice in writing of his or her intent to enter and enter only during normal business hours. The notice shall include the date, approximate time, and purpose of the entry. The notice may be personally delivered to the tenant, left with someone of a suitable age and discretion at the premises, or, left on, near, or under the usual entry door of the premises in a manner in which a reasonable person would discover the notice. Twenty-four (24) hours shall be presumed to be reasonable notice in absence of evidence to the contrary. The notice may be mailed to the tenant. Mailing of the notice at least six days prior to an intended entry is presumed reasonable notice in the absence of evidence to the contrary. see Civil Code section 1954 for further requirements.

In addition, Property Management Unit manages its properties consistent with cities/counties that have municipal separate storm sewer systems (also known as local MS4s) and the objectives of the Authority's Storm Water Management Plan (SWMP). Leased properties are inspected to ensure tenants are maintaining properties in a neat and orderly manner, with no illicit discharges, and with proper storage of materials. Leases with certain types of industrial activity must have coverage under the State Water Resource Control Board's General Industrial Permit, and the tenant is required to provide documentation of such coverage. Observing lease activities during inspection, along with the tenant's Standard Industrial Classification (SIC) Code, will help determine whether such coverage is needed. The storm water inspection should be conducted at the same time as the regular property inspection.

Upon completion of the field inspection, a copy of the completed inspection form will be offered to the tenant/lessee. The inspection forms for residential and nonresidential leases are as follows:

Exhibits 11-EX-54 (Residential Property Inspection) and 11-EX-54SW (Residential Storm Water Inspection), or

- Exhibits 11-EX-55 (Non-Residential Property Inspection) and 11-EX-55SW (Non-Residential Storm Water Inspection).

11.09.04.01 Tenant Verification

Occupied rentable property shall be subject to a confirming process consisting of tenant interviews and letters to tenants to verify occupancy dates, rental rates, and deposits. The Financial Office and Property Management Unit shall conduct this process on a sample basis shortly after tenancy commences.

The Financial Office shall send confirmation letters to newly inherited and re-rental tenants by using the sampling formula below:

- 100% for the first 10 new tenants each month.
- 20% of all new tenants over 10 each month.

The Financial Office will compare responses against rental records to confirm data and shall retain responses for audit purposes. The Financial Office will refer any unreconciled accounts and nonresponses to the Property Manager for personal verification.

The Property Manager will personally verify the data with each tenant when there is an unreconciled item or nonresponse and shall document verification in the rental file.

11.09.04.02 Confirming Process

Occupied rentable property shall be subject to a confirming process consisting of tenant interviews and letters to tenants to verify occupancy dates, rental rate, and deposits. The Financial Office will conduct this process on a sample basis shortly after a tenancy commences or when any changes are made to an existing tenancy.

The Financial Office will compare responses against rental records to confirm data and shall retain responses for audit purposes. The Financial Office will refer any unreconciled accounts and nonresponses to the Property Manager for personal verification.

The Property Manager will personally verify the data with each tenant when there is an un-reconciled item or non-response and shall document verification in the rental file.

11.09.05.00 Non-Rentable Property

All non-rentable properties must be continuously accounted for and periodically inspected in the field to assure continued vacancy. New agents shall be advised of all non-rentable properties within their areas of responsibility.

Property Management Unit shall conduct field inspections of non-rentable properties to determine their condition and reevaluate their status and shall retain documentation of these inspections in the property management files. Unimproved properties shall be inspected at least yearly, and improved properties shall be inspected at least monthly. These inspections may be combined with required maintenance inspections, which shall be documented as required under Section 11.10.06.00.

11.09.06.00 Rental Accounting and Cash Handling [Hold for Future Use]

11.09.06.01 New Accounts

At the time a new tenancy is created, one month's rent or the prorated amount due for the balance of the month shall be collected. A security deposit shall also be collected prior to commencement of tenancy in accordance with Section 11.07.12.00.

11.09.06.02 Rental Payments

As standard procedure, tenants shall submit rental payments directly to the Financial Office. Only in unforeseen and emergency situations (e.g., tenant being served a 3-day notice to pay or quit, or having a medical or financial condition that prevents the tenant from paying the rent according to the terms and conditions of the rental agreement) may the Property Manager accept payment from a tenant in accordance with the following procedures:

- **Check/Money Order** - Endorse and mail (by overnight courier if possible) to the Financial Office at the following address:

  California High Speed Rail Authority
  Financial Office
  770 L Street, Suite 620 MS-3
  Sacramento, CA 95814
- **Cash** - Convert the currency and coins to a money order or cashier's check. Endorse the money order or cashier's check and immediately forward to the Financial Office at the above address.

All checks/money orders received by the offices via incoming mail, dropped off at the counter by customer, or received by a property manager must be endorsed immediately upon receipt. The endorsement is stamped on the back of the check/money order as close to the top as possible, above the endorsement signature line.

If the tenancy account is not set up in geoAMPS, the check, money order, or cash must be deposited by the Financial Office. The tenancy account shall be created as soon as the information is available.

11.09.06.03 Receipts

As a good business practice, Cash Receipts (Form FA 285) shall be issued to record receipt of (1) cash or currency or (2) check or money order in all instances.

Refer to "Cash Handling Policy" memorandum dated August 18, 1995 (Exhibit 11-EX-02) and "Cash Receipt Book Procedures" dated December 1998 (Exhibit 11-EX-02A) for additional information on completing Cash Receipts, Form FA 285.

11.09.07.00 Termination of Rental Accounts

Property Management Unit shall use geoAMPS to terminate accounts, to authorize refunds of rent or security deposits, and to notify the Financial Office of amounts to be charged for damages.

11.09.08.00 Rental Offsets

Rental offsets are allowed for work done by tenants with prior written approval from the Supervising Right-of-Way Agent, depending on the offset amount. Work done under rental offset must be inspected by the Authority to assure it has been completed in a satisfactory manner. see Section 11.10.16.00 for detailed information.

11.09.09.00 Non-Offsetting Maintenance

Property Management Unit must approve receipts and bills for non-offsetting maintenance using a Property Management Unit Claim form, Federal Participation form and the invoice from the contractor. The package is electronically sent to the Property Management Unit email for processing the payment. The claim packages are to be sent to: HSRPropMgt@HSR <PropMgt@hsr.ca.gov>

11.10.00.00 - PROPERTY MAINTENANCE AND REHABILITATION

11.10.01.00 General

All property shall be maintained in a safe and hazard-free condition. Nonresidential property repairs shall be limited to major items such as roofs, structural weaknesses, main sewer lines, electrical deficiencies, and water service pipes to fixtures. Residential rental properties will be maintained in a manner that reflects credit on the State and enhances local community values. Certain repairs must be performed on residential property to derive appropriate rental income, improve community relations, and conform to existing laws and ordinances.

As a general rule, the tenant shall be required to provide normal yard care, unless the cost of yard maintenance is included in the monthly rental rate (watering, mowing, weeding, and trash and junk removal). Tenant's failure to provide such care is a justifiable reason for terminating tenancy.

Under Health and Safety Code sections 17980.6, 17980.7, and 17980.8, the State has a specific legal obligation to keep the premises in a condition fit for human occupancy. If necessary repairs require the tenant to relocate, the State must pay reasonable relocation costs. see Right-of-Way Manual Section 10.10.00.00 and contact Authority Right-of-Way Relocation Assistance for assistance.

Displaced tenants must be given written notice of the first right to reoccupy the property after it is rehabilitated.

The State is also responsible for reasonable and actual costs to the enforcement agency that issued the citation, including the agency's cost to abate the nuisance if the state does not do so in compliance with the citation and applicable code sections.

11.10.01.01 Storm Water Management

Properties shall be managed to prevent the discharge of pollutants into storm water drainage systems. Authority Right-of-Way Property Management Unit will use standardized lease language that addresses storm water pollution prevention by the lessee/tenant in new and renewed leases. The lease language requires the implementation of storm water best management practices (BMPs) that are activity specific and elimination of illicit connections and illegal discharges to the storm drain system. Storm water education and outreach materials that include storm water pollution prevention fact sheets will be provided to the lessee/tenant.

Lessees are required to comply with all federal, state and local storm water laws and ordinances. This would include operators of certain industrial activities to obtain coverage under the General Permit for Storm Water Discharges Associated with Industrial Activity (General Industrial Permit) issued by the State Water Resources Control Board (SWRCB). The Authority Right-of-Way Property Manager will maintain a list of leases with industrial activities that require coverage under the General Industrial Permit. Lessees with coverage under the General Industrial Permit should provide the Authority with a copy of the following: Notice of Intent (or No Exposure Certification) filed with the SWRCB; Receipt Letter with Waste Discharge Identification (WDID) number; SWPPP prepared in compliance with the General Industrial Permit.

The Authority's Statewide Storm Water Permit and Storm Water Management Plan (SWMP) cover right-of-way corridors, facilities and activities within the Authority's municipal separate storm sewer system (Authority's MS4). Property Management Unit leases are on excess lands. Therefore, rather than the Authority's MS4, these properties generally discharge to local agency municipal separate storm sewer

systems (local MS4) and are subject to their storm water requirements. However, Authority Right-of-Way Property Manager manages its properties consistent with local MS4s by inspecting properties to ensure lessees comply with the terms of their lease, maintain the property and use storm water best management practices.

11.10.02.00 Asbestos and Lead Paint

Removal, disposal, or disturbance of asbestos and lead-based paint in conjunction with maintenance of property shall be in compliance with all State and Federal requirements. If the Property Manager suspects the presence of such materials, it shall obtain surveys prior to starting any maintenance that would disturb the materials. Regarding lead-based paint, special attention should be given to residential properties constructed prior to 1978 since lead-based paint was widely used prior to that time. Standard property maintenance contract clauses specify how the contractor should deal with these materials.

11.10.03.00 Maintenance Expenditure Guidelines [Hold for Future Use]

11.10.03.01 Vacant and Non-Rentable Property

All vacant and non-rentable properties shall be maintained in a manner that will reflect credit on the State and preserve local community values. In essence, this means that all State-owned properties shall be maintained as well as or better than other properties in the neighborhood.

All vacant and non-rentable properties shall be kept free of safety or health risks. This may include fencing of the property, boarding up doors and windows, installing outdoor lighting such as sensor lighting, etc. Where appropriate, the hiring of private security services may be warranted.

11.10.03.02 Rented State-Owned Property

Maintenance expenditures by the State shall be governed as follows:

- **Lease Agreement (Commercial or Industrial) (11-EX-B)** - Major repairs only shall be made to the roof, main sewer lines, and water service pipes to fixtures. Tenants shall do all interior work at their own expense. Deviation from this policy will be allowed only when it would be in the State's best interest with the Supervising Right-of-Way Agent's or authorized delegate's approval prior to start of work.
- **Master Tenancy Lease Agreement (11-EX-23)** - For "Master Tenant Controlled Units," the State shall make no improvements or repairs of any nature whatsoever. Deviation from this policy will be allowed only when it would be in the State's best interest with the Supervising Right-of-Way Agent's or authorized delegate's approval prior to start of work.
- **Agricultural Lease Agreement (11-EX-C)** - The State shall make no improvements or repairs of any nature whatsoever. Deviation from this policy will be allowed only when it would be in the State's best interest with the Director of Real Property's or authorized delegate's approval prior to start of work.
- **Advertising Structure Agreement (11-EX-D)** - The State will make no repairs and perform no maintenance whatsoever on the advertising structure.
- **Residential Rental Agreement (11-EX-A)** - Maintenance expenditures will be governed by exercising judgment at the Supervising Right-of-Way Agent level that is commensurate with good business practices and within the limits set forth in this chapter of the Right-of-Way Manual. Some of the more common maintenance and repair services the State should provide

include, but should not be limited to, exterior and interior painting, yard maintenance, and repair or replacement of plumbing, electrical facilities, roofs, windows, heaters, and built-in appliances.

11.10.04.00 Health and Safety Requirements

Exterior Areas

All State property shall be maintained in a clean and orderly condition so as not to detract from the general appearance of the neighborhood. If this condition is not met, the Property Management Unit shall investigate further and implement one or more of the following corrective measures to improve the property's appearance:

- Perform weed abatement.
- Remove dead and diseased trees.
- Remove litter and post proper signs.
- Eliminate or reduce safety hazards; e.g., by filling or capping wells; filling holes, caves, and ponds; and erecting barricades where necessary.
- Remove attractive nuisances such as abandoned cars, refrigerators, and freezers.
- Post proper signs to reduce trespassing such as illegal parking or storage.

If the property is tenant-occupied and its appearance does not meet neighborhood standards, the Property Manager shall immediately notify the tenant verbally and in writing that the unsuitable conditions must be corrected (see Exhibit 11-EX-08, Correction Notice - Unsuitable Conditions).

When it is necessary to clear weeds or diseased trees or to correct an unsafe or unsanitary condition, Property Management Unit may enter into a service contract with a local municipality or private contractor for performance of the necessary work.

Interior Areas

Any property condition that may affect health and safety of occupants should be investigated as soon as possible. If a tenant notifies the Property Manager of an adverse condition affecting health and safety, Property Management Unit will inspect the property no later than the next business day. Certain situations, such as those involving hazardous materials, structural problems, mold, etc., will require hiring a professional with expertise to inspect and report on the nature and extent of the problem, and provide recommendations to remedy the situation.

If a tenant notifies Property Management Unit of a health and safety issue, the Property Manager should send the tenant a letter confirming the outcome of the property management agent's and, if applicable, the professional's inspection and how the problem, if any, will be resolved. If the inspection did not reveal a problem, the Property Manager should still send a written response to the tenant confirming the outcome of the inspection. All such investigations, resolutions, if any, and communications with the tenant must be documented in the property file.

11.10.05.00 Exterior and Interior Appearance of Improved Properties

Agents must thoroughly inspect all vacant or occupied properties to ensure the properties are being maintained properly to preserve the neighborhood's appearance. In particular, Property Managers shall observe conditions outlined in the table entitled "Inspection of Improved Properties." Whenever adverse conditions are found, the Property Manager shall investigate and take appropriate corrective action.

INSPECTION OF IMPROVED PROPERTIES	
Occupancy	**Areas of Concern**
Tenant-Occupied Property Exterior	• Yard areas should be properly watered, mowed, and weeded and should generally reflect a clean and orderly condition. • There should be no broken windowpanes or boarded-up windows. • Painted surfaces shall not be peeling or greatly discolored, and the stucco, wood, or concrete block should not be deteriorating. • The roof should not be segregating, sagging, or leaking. • There should be no structural deficiencies such as broken stairs, ceilings, garage doors, or fences. • Swimming pools should be properly maintained. Window and door screens should look presentable. TV antennas should be erect and securely fastened.
Tenant-Occupied Property Interior	• All interior areas shall be maintained in a clean and orderly fashion so that full compliance with health and safety codes is evident. • There should be no broken electrical or plumbing fixtures or damaged appliances. • Interior areas should not show signs of water damage, water leaks, excessive moisture or mildew or other similar problems. • There should be no indications of rodents, pests or other similar problems. • The walls and ceilings should not be damaged and the paint, wallpaper, or paneling should not be noticeably deteriorating. • Floors, floor coverings, doors, cabinets, custom drapes, venetian blinds, heaters, and air conditioners should not be damaged or allowed to noticeably deteriorate.
Unoccupied Property That Will Be Re-Rented	All the physical conditions outlined above under "Tenant-Occupied Property - Exterior" and "Tenant-Occupied Property - Interior."

Unoccupied Property That Will Not Be Re-Rented	All the physical conditions outlined above under "Tenant-Occupied Property - Exterior" that are pertinent to preserving neighborhood appearance and values. The Property Manager should continue to inspect and supervise maintenance of the property until Property Management Unit assumes responsibility for clearance of improvements. Following clearance, Property Management Unit is still responsible for inspection and maintenance of the unimproved property until it is turned over to the Design Builder or sold as excess. If there is a known vandalism problem in the neighborhood, it may be advisable to board up the improvements if such action does not demote the general neighborhood appearance, does not create unfavorable public opinion, and has proven to deter vandalism.

11.10.06.00 Field Inspections

Since nearly all State-owned property purchased for project use or related purposes is acquired considerably in advance of scheduled clearance requirements, sound management practices dictate that the State perform some replacement, rehabilitation, and maintenance to meet acceptable neighborhood standards. Additionally, the properties are to be managed in a manner that prevents the discharge of pollutants to storm water drainage systems and waterways. Consequently, field inspections by State personnel provide the method to achieve and maintain a desirable community relationship, and identify needs for property maintenance. Inspections also identify lessee activities that have potential to discharge pollutants into storm drainage systems. All Property Managers shall be responsible for periodically inspecting and documenting every rental account under their control.

DOCUMENTING INSPECTIONS		
Type of Property	**Form**	**Explanation**
Residential	11-EX-54, Residential Property Inspection, and 11-EX-54SW, Residential Storm Water Inspection	A checklist for interior and exterior inspections that is used for viewing the property, recording observations about its condition, and documenting any storm water concerns. All blanks are to be filled in and comments are to be made when deficiencies are noted. Tenants' comments and concerns are to be solicited and noted on the back of the form. Date of inspection must be entered into geoAMPS. Copies of the inspection forms are to be signed by Property Manager and maintained in the file. A log shall be kept of the inspections noting all deficiencies and shall be used to document correction of deficiencies of residential properties.
Nonresidential	11-EX-55, Non-Residential Property Inspection and 11-EX-55SW, Non-Residential Storm Water Inspection	Used to document inspections of rental properties on a periodic basis as part of the state's maintenance control program, record pertinent observations about the exterior and interior appearances of the properties, and document any storm water concerns. In addition to observations, the Property Manager shall record the rental account number, address of the property inspected, date of inspection, possible recommended maintenance, and date work completed. Date of inspection must be entered into geoAMPS. These check sheets shall be filed in a master binder, one for the Property Manager, numerically by rental account number. Each master binder shall centrally filed so it will be readily available for the Property Manager or other interested parties to review.
Note: If a tenant notifies Right-of-Way of a health and safety issue, the Property Manager should send the tenant a letter confirming the outcome of the inspection and how the problem, if any, will be resolved. If the inspection did not reveal a problem, the Property Manager should still send a written response to the tenant confirming the outcome of the inspection. All such investigations, resolution, if any, and communications with the tenant must be documented in the property file.		

Required frequency of field inspections is indicated below.

- **Property Manager** - Field inspections of all properties shall be made at least annually to ensure the properties are maintained as well as or better than other properties in the neighborhood.

- **Property Management Unit** - Field inspections or reviews by the Property Manager or authorized representative shall be performed at least annually to ensure the rental properties are maintained as well as or better than other properties in the neighborhood. Additionally, field inspections shall be performed at least annually to ensure rental properties are maintained to prevent storm water pollution. The Property Manager shall document inspections with any necessary comments on the inspection forms.

11.10.07.00 Rodent and Pest Control

Property maintenance inspections shall include a determination on whether rodent and pest control is necessary and shall be documented on:

- 11-EX-54, Residential Property Inspection.
- 11-EX-55, Non-Residential Property Inspection.
- 11-EX-56, Residential Property Occupancy and Vacancy Inspections.

Local health authorities or other qualified persons may make the inspections. Rodent and pest control measures shall be documented in the file.

If it is determined that extermination services are needed, assistance may be obtained from local health authorities or from licensed exterminators.

Contracts for exterminator services are subject to approval by the Director of Real Property to assure that no unauthorized chemicals are used on State property.

The Property Manager will prepare a Property Management Unit Invoice and Federal Participation Form when bills/invoices are received from the contractor and forward to the Financial Office for payment.

11.10.08.00 Smoke Detection Devices

The Property Management Unit is responsible for having approved smoke detectors installed in every occupied residential unit in accordance with Health and Safety Code, Section 13113.7 and Section 13113.8.

11.10.08.01 Installation and Type of Detector

All smoke detectors:

- Will be of the ionization type. According to the Fire Marshal's Office, the photoelectric type requires more maintenance.
- Will be hard-wired (110-120 volts AC)
- Must be of a type approved and listed by the State Fire Marshal. A monthly updated list is available at all State Fire Marshal offices.
- Must be installed in accordance with manufacturer's instructions, State Fire Marshal regulations, and applicable local codes and ordinances.
- Must be installed by a properly licensed person or company. The installer must obtain the required permits and have the work inspected by the proper local authority.
- Will be inspected by the Agent or a qualified contractor at least annually to ensure proper operation. Any needed repairs or maintenance shall be performed by a qualified person.

To ensure access to the rental unit, written notice will be given to the tenant at least 24 hours prior to installation and inspection.

All present rental agreements will contain or be amended to contain the Smoke Detection Clause when installation is completed.

11.10.08.02 Battery-Operated Smoke Devices

A battery-operated smoke detector may be substituted for a hard-wired detector where:

- A rental unit has six months or less left before it is permanently vacated, or
- The rental unit is located in a remote area, especially if the source of electric power is a generator or is subject to frequent outages.

All batteries must be changed annually at the time of the annual field inspection. The Property Manager should note the date the battery was changed on the Residential Property Inspection form, 11-EX-54. The above exceptions must be permitted by code or law and, when possible, the installation must be done by a properly licensed person or company that obtained the required permits and had the work inspected by the proper local authority.

11.10.09.00 Rehabilitation of Residential Property

The Authority's shall upgrade and maintain housing at standards that meet the most recent edition of the Uniform Housing Code of the International Conference of Building Officials. Rehabilitation standards shall include safety and energy saving devices such as smoke detectors, ceiling insulation, and weather stripping. This shall apply to residential rental property.

11.10.09.01 Inspections

The first step in the rehabilitation process is a code inspection to determine whether housing units are in compliance with the Uniform Housing Code. Inspections may be performed by qualified personnel or under contract with local building inspectors. Each inspection will be documented in writing with a clear description of the property's condition and recommendations for work required to bring the property up to code.

Qualified Property Management Unit personnel or local building inspectors should also be used to monitor the contractor's work while it is being done and upon completion.

11.10.09.02 Specifications and Estimates

Qualified Property Management Unit Agents shall prepare a description of work with specifications and cost estimates. Certain restrictions may prohibit a contractor who is hired as a Property Manager from bidding on a subsequent contract that he/she recommended, suggested, required, etc., in the consulting contract. When requesting a consulting service contract, inform the Contracts & Procurement Branch of any follow-up contract that will be based on the recommendations or other end product of the consulting contract. (Note that general information gathering on commonly accepted industry practices is allowed. see Section 11.10.11.00.)

11.10.09.03 Public Works Contracts

Depending on scope of work, a project may require a public works contract for whole roof replacements, initial (first time) painting, replacement of heating/air conditioning systems, parking lot resurfacing, sidewalk repair, etc., are covered by public works contracts. Contact an analyst in the Contracts & Procurement Branch for more information if you are not sure what type of contract would be appropriate for your project. (Also, see Section 11.10.11.00 for a description of service contracts.)

Prior to requesting a public works contract, the Property Manager shall prepare a package for approval by the Property Manager. The package should include the following information:

- Description of work.
- Plans and specifications.
- Written estimate of cost.
- Economic justification. At a minimum, the economic justification should contain estimates of the property's value in its present condition and its value after rehabilitation.
- Reasons why the work is necessary.
- Verification that funds are available.
- Status of the project for which the property was acquired, e.g., being held for construction or being considered for rescission with dates.

11.10.09.04 Public Works Contracts Under State Contract Act

Public Works projects that exceed a certain total cost as determined by the Department of Finance are subject to the State Contract Act (Public Contract Code 10100, *et seq*) and will be handled as major contracts. The Department of Finance adjusts this cost limit every two years. Contact the Contracts & Procurement Branch to find out whether the project will fall under the State Contract Act. Requests for contracts subject to the State Contract Act should be submitted to the Director of Real Property who will determine if they or another office should process the request. The package described in Section 11.10.09.03 and specifically the plans, specifications, and written estimate of cost must be approved by the Director of Real Property prior to requesting a contract that is covered under the State Contract Act.

11.10.09.05 Occupied Housing

Rehabilitation of occupied housing should be done only under the following circumstances:

- For minor interior work.
- With the tenant's prior consent.
- After an asbestos survey indicates there are no health and safety concerns due to the presence of asbestos.
- There are no other health and safety concerns that may arise while the rehabilitation work is being done.

If health and safety factors are involved or if extensive interior rehabilitation is needed, temporary or permanent relocation of tenants to other accommodations, preferably to other State rental property, should be considered. Pursuant to Government Code section 7265.3, a public entity may make payments in the amounts it deems appropriate, and may provide advisory assistance under this chapter, to a person who moves from a dwelling, or who moves or discontinues his business, as a result of impending rehabilitation

or demolition of a residential or commercial structure, or enforcement of building, housing, or health codes by a public entity, or because of systematic enforcement pursuant to Health and Safety Code section 37924.5, or who moves from a dwelling or who moves or discontinues a business as a result of a rehabilitation or demolition program or enforcement of building codes by the public entity, or because of increased rents to result from such rehabilitation or code enforcement. Property Management Unit should contact the Relocation Assistance Unit for assistance.

11.10.10.00 Rehabilitation and Maintenance on Historic Structures

Public Resources Code section 5024 requires all State agencies to inventory all agency-owned structures over 50 years old to identify and protect those that are historic Property Management Unit is responsible to ensure that all structures subject to provisions of Public Resources Code section 5024 are adequately and appropriately maintained.

All maintenance and rehabilitation work on Authority-owned historic structures shall be performed in a manner to protect and preserve the characteristics that qualified the structures for listing. Plans and specifications for maintenance and rehabilitation activities shall be submitted to the Property Management Unit for submission to the appropriate environmental unit for approval.

11.10.11.00 Maintenance Performed by Service Contract

It is important to distinguish between work that can be done under a service contract and work that requires a public works contract (Section 11.10.09.03). It has been determined that minor on-call repair and maintenance services (required on an as-needed basis to provide a practical means of maintaining State-owned rental housing or State facilities in a safe and habitable condition) are not defined as public works, and may be obtained using service contracts. Such services include electrical, plumbing, minor carpentry to replace broken stairs or windows, repainting, heating and air conditioning repairs, roof repair, etc. The specific repairs do not lend themselves to the preparation of plans and specifications, nor is it known at the time the contract is advertised and awarded when the services will be performed. The Contracts & Procurements Branch prepares and processes all service contracts. Except for emergency work, all maintenance contracts are subject to competitive bidding. Since considerable time is required to prepare, advertise and award the contract, the Contracts & Procurements Branch will gather more information on the length of time required to process a service contract.

General information gathering from companies regarding common industry practices, rate structures, general costs, billing methods, etc., in order to create a scope of work is acceptable. It is recommended that if a company representative is contacted for the purpose of learning what the commonly accepted standards or practices in that industry are, the representative is advised that 1) the Authority is soliciting publicly available (i.e., not proprietary) information to prepare a statement of work on a potential contract, and 2) the representative, by providing such information, will not preclude the company from bidding on future contracts. It is also recommended that more than one company be contacted for this information. (Note that certain restrictions may apply if a contractor is hired under a consulting service contract. see Section 11.10.09.02.)

11.10.11.01 Inspections

Type of Inspections:

Small: Property Manager shall inspect all maintenance issues before, during, and after the work has been completed and document all findings in the rental file. Meeting with the contractor prior to the start of any work is highly recommended. This will allow the agent to ask any questions and communicate Authority

policy. Payment to the contractor cannot be made until the work has been inspected and completed satisfactorily.

Medium: Property Management Unit Agent shall inspect all maintenance issues before, during, and after the work has been completed and document all findings in the rental file. Meeting with the contractor prior to the start of any work is highly recommended. This will allow the agent to ask any questions and communicate Authority policy. Payment to the contractor cannot be made until the work has been inspected and completed satisfactorily.

Inspections for work requested and work in progress or completed should be accomplished in accordance with the guidelines in the following table entitled "Inspection Guidelines for Service Contracts." These guidelines are general terms for service contracts. The Property Manager is subject to the terms and conditions of the applicable state contract for property management services.

INSPECTION GUIDELINES FOR SERVICE CONTRACTS

Size of Job	Estimated Cost	Examples	Type of Inspection
Small repairs	Less than $500	- Change a faucet. - Mow a lawn. - Fix a window.	Confirmation with tenant by phone that the job has been completed adequately. Property Managers should order random inspections to assure small repairs are done satisfactorily. However, any repair to remedy a health and safety issue must be inspected by a Property Manager regardless of cost.
Medium repairs	Less than $1,000	- Paint partially. - Install flooring. - Repair cabinet. - Repair roof.	A Property Manager shall inspect the work before and after the job is done.
Large repairs	Over $1,000	- Repaint entire interior or exterior of house. - Install new flooring and carpeting. - Repair roof.	A Property Manager other than the Property Manager assigned shall inspect work before, during, and after the job is done. It may not be possible to detect bad workmanship after the job has been completed when much of the work is no longer visible. Where certain stages of work require inspection before the next stage commences, the contract must state this condition of approval and payment upon full inspection. Payment to the contractor cannot be made until the work has been inspected and completed satisfactorily.

11.10.11.02 Requesting Work

If maintenance work is required, the Property Manager shall enter a full description of the job, on geoAMPS a diary entry and when necessary enter a Work Request with approval.

Upon completion of the work request, the Property Manager shall enter the completion date in geoAMPS.

11.10.11.03 Multi-provider and Single Provider Service Contracts

Contracts can be written for on-call services as needed over the duration of the contract or for a single, specific job. An on-call service contract can have multi-providers (if approved by the Director of Real Property) or a single provider. A contract for a single, specific job will only have a single provider. Right-of-Way contract managers are urged to use single providers rather than multi-providers. If a multi-provider contract is absolutely needed, check with the Director of Real Property to see if multi-providers will be allowed. When a contractor's bill is received on a multi-provider or single provider contract, the Property Manager shall update geoAMPS itemizing the work done and indicating the appropriate charges. Where services are provided on an hourly rate basis, the contractor shall submit a copy of the Contractor's Time Reporting Sheet (RW 11-23) with the employee's information, classification, and hours reported. This form will be attached to the final invoice to process payment.

11.10.11.04 CAL-Card Small Purchase Program [Hold for Future Use]

11.10.11.05 Non-Credit Card Process (Under $5,000) [Hold for Future Use]

11.10.11.06 Submitting for Payment

Government Code section 927 et seq. is known as the Prompt Payment Act (Act). The intent of the Act is to have state agencies pay properly submitted, undisputed invoices within 45 days of receipt, or automatically calculate and pay the appropriate late payment penalties as specified in the Act. To avoid late payment penalties, the state agency has 30 calendar days to submit a correct claim schedule to the Controller, and not more than 15 calendar days for the Controller to issue the warrant. If the state agency does not submit the claim schedule to the Controller within 30 days, the state agency will be responsible for the late payment penalties. If the state agency submits the claim schedule to the Controller within 30 days and the Controller does not issue a warrant within 15 days, the Controller is responsible for the late payment penalties.

11.10.11.07 Summary of Various Contract Processes

A brief summary of the various contract processes discussed above is included in Exhibit 11-EX-10, Summary of Contract Processes.

11.10.12.00 Draft Purchase Order (DPO) [Hold for Future Use]

11.10.13.00 Cash Expenditure Voucher (CEV) [Hold for Future Use]

11.10.14.00 Emergency Repairs

When the Property Manager determines that an emergency condition exists, the pre-inspection may be dispensed with the interest of expediting emergency repairs. The Property Manager shall take whatever steps necessary to have the corrective work performed as soon as possible.

It is the Property Manager's responsibility to determine if the extent of a maintenance deficiency classifies as an emergency situation. This will be accomplished by physically inspecting the property and evaluating the conditions for health and safety concerns. When the agent determines that an emergency condition exists, corrective measures will be scheduled within 24 hours.

If the emergency condition is an immediate threat to the health or safety of any tenant, the Property Manager may move the tenant to alternative housing. Alternate housing includes other Authority owned housing or commercial lodging. If commercial lodging is used, the tenant must submit receipts for reimbursement. The maximum amount of reimbursement to the tenant will be restricted to the State per diem guidelines for lodging. If Authority owned housing is used as a temporary residence for any tenant, under no circumstances will the tenant be allowed to remain in the replacement residence without going through the qualification process.

11.10.15.00 Rental Offsets

Occasionally, rental offsets may be appropriate for certain repairs or maintenance. However, such offsets should only be used as an exception and not routinely. Work done by rental offset should not be in conflict with existing maintenance contracts.

Rental offsets should be limited to minor repairs and maintenance, or emergency repairs for health and safety reasons. Examples of situations where offsets are not appropriate include remodeling a kitchen/bathroom, re-roofing, installing new flooring and carpeting, painting the entire house, and other major repairs or rehabilitation. Also inappropriate for rental offsets would be any work that may involve contact with hazardous materials.

The Authority does not pay the tenant for their labor or for purchase of tools. The tenant will only be reimbursed for materials.

Generally, a tenant cannot hire a contractor to do the work and receive an offset. This violates our contracting policy. However, on occasion, a tenant may need to hire a licensed contractor for emergency repair. Any contractor performing a job in which the total cost of the project, including labor and materials, is $500 or more, must be licensed by the Contractors State License Board in the specialty for which he or she is contracting. Even if work is less than $500, a licensed contractor should be used for any electrical, gas, plumbing, or other work that must be done according to code.

Rental offsets of $1,000 or less may be approved by the Supervising Right-of-Way Agent. Rental offsets more than $1,000 must be approved by the Principal Right-of-Way Agent. The reason for using a rental offset must be documented in the file.

The general procedures below apply when a rental offset is used to provide maintenance for new or existing residential tenants.

When a need for minor maintenance work is indicated, the Property Manager shall inspect the property and complete a cost estimate. The Property Manager will determine the amount of the rental offset based on prevailing prices in the area and local rental management practices. The Property Manager shall prepare the appropriate document as follows:

- **New Tenants** - Insert completed clause into rental agreement and obtain prospective tenant's signature(s).
- **Existing Tenants** - Prepare letter of understanding and obtain tenant's signature(s).

The Property Manager shall submit the signed document, along with the maintenance cost estimate and the reason a rental offset is being used, to the person authorized to approve such expenditures. Before any work commences, the Property Manager shall approve the amount of the allowance. Upon approval, the Property Manager shall file the document in the rental folder, log the proposed work, and inform the tenant to proceed with the work.

When the tenant has completed the work, a Property Management Unit Agent, other than the person authorized to amend the rental agreement, shall inspect the property to verify and document satisfactory completion before the tenant's account is finally credited with the amount of the rental offset. Inspection standards for maintenance work accomplished through the contract process shall also apply to work performed with offsets, except that all offset work must be inspected by the Property Manager no matter how small.

Pertinent and properly receipted itemized statements should be obtained from vendors. The Property Manager shall complete a geoAMPS Adjustment Request Screen, which results in a credit to the tenant's account. Total amount spent on offsets is shown on the Contract Screen for contract number "Offsets."

An offset shall be credited only to a tenant in occupancy of the property on which the maintenance work is performed. In other words, tenant "A" living in property "A" **cannot** receive an offset for work performed on property "B."

11.10.15.01 New Residential Tenants

Where property has become run-down and certain minor repairs are required to secure a new tenant, it may be appropriate to grant a rental offset by inserting a clause in the rental agreement for materials necessary to accomplish specified work.

The clause inserted in the initial rental agreement shall be written as follows:

> *It is understood and agreed that in consideration of a rental offset of an amount not to exceed $_____, Tenant agrees to: (describe work to be completed).*
>
> *Tenant shall secure paid itemized bills covering materials used for the authorized work and forward them to the California High-Speed Authority (Authority) at _____ _____. Credit will only be allowed for the actual amount of the paid bills not to exceed the amount above. Tenant will be paid for materials only and will not be paid for his/her labor or for the purchase of tools. Tenant may not hire a third party contractor to perform the authorized work unless prior written permission from the Authority is obtained.*
>
> *It is further agreed that said work will be completed and paid bills received by the Authority prior to _____, and that the rental credit will only be granted after inspection, by the State, of the completed work.*

11.10.15.02 Existing Residential Tenants

In some instances, sound management practices dictate granting a rental offset to the tenant to achieve a degree of efficiency and economy, as well as to expedite performance of certain emergency repairs and repairs of a minor nature. The tenant and the state shall sign a letter of understanding before the tenant performs any repair work. The letter of understanding should specify that the tenant will be paid for materials only (based on paid itemized bills) and will not be paid for his/her labor or the purchase of tools.

The letter shall also state that the tenant may not hire a third party contractor to perform the authorized work unless prior written permission from the Authority is obtained.

11.11.00.00 - INSURANCE REQUIREMENTS FOR TENANTS

11.11.01.00 Policy

Tenants and lessees shall be required to obtain personal injury liability insurance in most leases and rental agreements where extraordinary liability features are present. Insurance shall be in the amount of $1,000,000 per occurrence for Bodily Injury and Property Damage Liability combined. Personal liability coverage for single-family residential properties with swimming pools may be limited to combined coverage of $500,000. These amounts may be increased for high-risk uses.

11.11.02.00 When Insurance Is Required

Refer to the table entitled "Guidelines for Personal Injury, Liability, and Property Damage Insurance" to determine the need for insurance.

Although not required by the guidelines, insurance should also be required for specific situations with high-risk uses. For example:

- Large agricultural operations involving heavy equipment.
- Multi-residential properties with swimming pools.
- Properties fronting on rivers or lakes.

In such cases, the Authority determines the necessity for insurance. Insurance is generally required when the property is used for purposes that involve employees, visitors, or customers who could be subject to accidents and injuries.

11.11.03.00 Family Day Care Facilities

Use of a State-owned residential unit as a family day care home, as opposed to a school, does not fall under the commercial/business lease category requiring high insurance coverage.

Health and Safety Code section 1597.531, however, does set minimum levels of mandatory liability insurance or bond coverage for family day care homes. In lieu of liability insurance or bond, a day care provider may maintain a file of signed affidavits informing parents the day care home does not carry the liability insurance or bond.

In addition, if the provider does not own the premises, the affidavits shall state that parents have been informed the property owner's liability insurance, if any, may not provide coverage for losses arising out of, or in connection with, the day care operation. In these instances, the Authority should request the tenant to provide copies of the affidavits.

GUIDELINES FOR PERSONAL INJURY, LIABILITY, AND PROPERTY DAMAGE INSURANCE

Type of Use	*Required*	
	Yes	*No*
PUBLIC AGENCIES:		
Self-insured		X*
Not Self-insured	X	
PUBLIC UTILITIES:		
Self-Insured		X*
Not Self-insured	X	
RESIDENTIAL:		
SFR		X
SFR with Pool	X	
Multi-residential		X
Multi-residential with Pool	X	
Master Tenancy Residential Apartments and Mobile Home Park	X	
COMMERCIAL/INDUSTRIAL:		
Large Corporations with Self-insurance (Ralston Purina, etc.)		X*
Parking – Private (For Lessee employees)	X	
Parking – Public	X	
Sales (Retail, Wholesale)	X	
Restaurants, Bars	X	
Offices – All Types	X	
Warehouses/Storage/Inside	X	
Storage-Outside – Equipment, R Vs, Boats, etc.	X	
Service Stations	X	
Manufacturing	X	
Oil and Gas Subsurface Rights		X
Oil Well with Surface Rights	X	

Type of Use	*Required*	
	Yes	*No*
COMMERCIAL/INDUSTRIAL: (Cont.)		
Drainage Ponds	X	
Access Rights for Cafes, etc.		X
Motels – Master Tenancy	X	
Services (Barbershops, Beauty Parlors, Cleaners, etc.)	X	
Repairs – Auto, Appliances, etc.	X	
AGRICULTURAL:		
Grazing – Cows, Horses, Sheep, Llamas, Goats		X
Crops – Row Crops, Orchards, Vineyards, Dry Farming		X
Sales – Fruits, Vegetables, Christmas Trees, etc.	X	
Community Gardens		X
SIGNBOARDS:		
On Premise		X
Off Premise		X
OTHER:		
Recreational (Golf Driving Range, Tennis Clubs, Skateboard Parks, Bike Paths)	X	
Road Approach		X
Landscaping		X
Parks	X	
Park and Ride Lots	X	
Porter Bill Parks	X	
Churches	X	

*with self-insurance clause in lease

11.11.04.00 How the State Is Protected

When the Authority determines that public liability insurance protection is required for the State's benefit, the liability and property damage insurance clause (11-EX-B, Lease Agreement, Clause 23) shall be inserted in the rental agreement or lease making it mandatory for the tenant or lessee to provide the State with the specified amounts of public liability insurance and naming the state as an added insured. When the rental or lease agreement is signed, the Property Manager shall give the tenant RW 11-18, Certificate of Insurance With Endorsement for Lease of State-Owned Property, for documentation of required insurance coverage. The tenant or lessee's insurance carrier shall complete this form and return it to the State as soon as possible. It need not be returned prior to or accompany the signed rental agreement or lease, but the insurance policy **shall be in force before occupancy**.

The Certificate of Insurance form from the tenant or lessee's insurance carrier is kept in the rental file with the rental agreement or lease.

11.11.05.00 Fire Insurance on State-Owned Properties

Although the Authority does not normally secure fire insurance on properties acquired for future high-speed rail use, fire insurance may be appropriate for high value, high-risk properties purchased far in advance of high-speed rail construction. Examples of high-risk properties include bars, motels, hotels, and restaurants. The amount of fire insurance placed on a property should take into account the value of the improvements only and should not be based on the appraised value of the entire property.

In addition, Government Code section 11007.1(b) permits the Authority to authorize insurance against damage or destruction by fire when it has acquired title to the realty and leases the property to the former owner. The section, which is quoted below, requires the former owner to request this coverage, to lease back the property for more than a six-month period, and to pay the premiums.

"The California High-Speed Authority, when it has acquired title to any real property for high-speed rail purposes and leases such property for commercial or business uses to the former owner for a term exceeding six months, may secure insurance against the risk of damage or destruction by fire where the former owner requests this coverage and the premium therefore is included in the rental agreed to be paid."

The loss payee of the fire insurance policy shall be the State of California. The lessee shall be responsible for furnishing the State with a certified copy of each and every policy within not more than ten days after the effective date of the policy. Exhibit 11-EX-12, Liability, Property Damage and Fire Insurance, shows approved clauses requiring the lessee to provide the state with fire insurance on the property.

11.11.06.00 Self-Insurance by Tenant or Lessee

Some large corporations and public entities regularly self-insure. If the lessee decides to provide the required insurance by self-insuring, the Property Manager should request documentation from the lessee showing that the lessee regularly self-insures and has adequate assets. In addition, the clause below must be included in the lease in place of the standard liability insurance clause in 11-EX-B (Liability, Property Damage and Fire Insurance, Clause 23) and 11-EX-C (Agricultural Lease Agreement, Clause 22).

LIABILITY AND PROPERTY DAMAGE INSURANCE:

Lessee will self-insure during the entire term of the within tenancy and will defend, indemnify and hold harmless the Lessor, its officers, agents, and employees from all claims, suits or actions of every name, kind and description, brought forth, or on account of, injuries to or death of any person or damage to property, including any claims, suits or actions for damage to vehicles on the property which is the subject of this lease, occurring in, or about, said property.

With respect to third-party claims against the Lessee, the Lessee waives any and all rights to any type of expressed or implied indemnity against the Lessor, its officers or employees.

It is the intent of the parties that the Lessee will defend, indemnify and hold harmless the Lessor, its officers and employees from any and all claims, suits or actions as set forth above regardless of the existence or degree of fault or negligence on the part of the Lessor, the Lessee, the officers or employees of either of these, other than its officers and employees.

Nothing in this lease is intended to make the public or any member thereof a third-party beneficiary hereunder, nor is any term or condition or other provision of the lease intended to establish a standard of care owed to the public or any member thereof.

11.11.07.00 Certificate of Insurance

The State's Standard Certificate of Insurance, RW 11-18, Certificate of Insurance with Endorsement for Lease of State-Owned Property, may be used in lieu of a certified copy of the original policy; no other form of Certificate of Insurance is acceptable.

11.11.08.00 Fire and Explosion in State-Owned Buildings

Whenever a fire or explosion takes place in a State-owned property, the Authority should call the nearest State Fire Marshal office (see State Telephone Directory). The caller should be prepared to identify location, type of property, and extent of damages, if known. The Fire Marshal will decide whether to make a formal investigation.

Rebuilding or repairing damage caused by the fire may begin without delay whether or not an investigation is made.

11.12.00.00 - LEASING STATE-OWNED PROPERTY

11.12.01.00 General

The following types of properties shall normally be leased:

- Commercial
- Industrial
- Agricultural
- Income residential where the state is seeking a master tenant

11.12.02.00 State Lease Forms

The State's standard lease is Exhibit 11-EX-B, Lease Agreement, which should be used for leasing all commercial and industrial properties. For income residential properties where the State is seeking a master tenant, use Exhibit 11-EX-23, Master Tenancy Lease Agreement. For agricultural property, use Exhibit 11-EX-C, Agricultural Lease Agreement.

11.12.03.00 Lease Rates

With few exceptions, lease rates shall be based on comparable market rates.

11.12.04.00 Lease Preparation

Property Management Unit shall prepare the lease in quadruplicate. Forward or deliver to lessee two originals for signature and one copy for the lessee's file, and retain one copy in the rental file. Lessee will return both originals to the Authority for execution. Once the Authority has executed both originals, one fully executed original will be forwarded or delivered to lessee and one will remain in the rental file.

11.12.05.00 Lease Approval by Lessee

The lease shall be approved by the individual(s) or, if appropriate, the authorized officer(s) of the company or corporation. The lessee's title or capacity to approve the lease shall appear beneath lessee's signature. If the lessee is a corporation that has a seal, the seal may be affixed to the lease near the signature(s) of the corporate officer(s) approving the lease.

11.12.06.00 Lease Approval by State

The Property Manager or authorized delegate is authorized to execute all residential and nonresidential rental agreements and non-airspace leases. Legal Office must approve rental agreements and leases on nonstandard forms prior to execution on the Authority's behalf.

11.12.07.00 Title VI Guidelines

The Property Manager will inform the State's tenants about the Authority's policy and procedures under Title VI of the 1964 Civil Rights Act.

11.12.08.00 Lease Renewals

geoAMPS Leases to Expire, Report, will alert Property Management Unit of leases that are due to expire. Upon receiving the report, the Property Manager shall:

- Review and inspect the property.
- Determine if the current lease rate is still the market rate.
- Check to see if the present tenant is interested in renewing the lease.

If the lessee does not want to renew the lease, the lead time will give the Property Manager an opportunity to re-rent the property with minimal loss of rental income.

If the lessee wants to continue leasing, the lease may be renewed or modified using Exhibit 11-EX-G, Lease Renewal. Confirm that the most current standard language has been incorporated into the lease renewal agreement, including storm water and other provisions. Lessee's signature on the renewal shall be identical to the signature format on the original lease, and the State shall execute in the same manner as a new lease.

11.12.09.00 Assignment of Lease

Circumstances may occur when a lessee wishes to sell their business and the State finds it beneficial to permit assignment of the lease. The State has the option to refuse or accept (but cannot unreasonably withhold approval) the proposed assignee as a responsible party who is able to fulfill the lease obligations for the balance of the lease period. The Property Manager shall require the proposed assignee to complete a rental application and shall investigate thoroughly to determine if the proposed assignee is acceptable.

If the proposed assignee is acceptable, the lessee shall sign the "Assignment of Lease" section of Exhibit 11-EX-H, Assignment of Lease, as assignee. The State shall execute "Consent to Assignment of Lease" section of the form in the same manner as the original lease, and shall process the "Assignment of Lease" in the same manner as the original lease.

11.12.10.00 Public Notice to Bidders

It may be advantageous for the Property Manager to use the public bidding process to accomplish leasing of certain types of property. The suggested format presented in Exhibit 11-EX-14, Notice to Bidders, may be modified to fit any type of property being offered for lease.

11.12.11.00 Construction of Improvements by Lessee

The Property Management Unit may consider leasing future right-of-way for development of improvements where such development will not result in a relocation assistance problem or obligation to the State, but will result in a net profit to the state or other public benefit.

Such leases should include many of the clauses contained in a standard airspace development lease. In particular, clauses for condemnation, insurance requirements, design and location controls, and rental rate adjustments based on the Consumer Price Index should be considered for inclusion in development leases. Such leases shall also include a termination clause, a performance bond and/or other provisions to ensure timely removal of improvements at no expense to the State.

Property Management Unit shall submit all such leases involving construction of aboveground structures to the Director of Real Property or authorized delegate for **prior** approval.

11.12.12.00 Leasing Excess Land

The Property Manager shall obtain approval from the Excess Land before any excess land is committed to a lease. This is important because a lease affecting excess land may or may not be complimentary to the sale of the parcel. When excess land is leased, Property Management Unit should forward a copy of the lease to the Excess Land for its files.

11.12.13.00 Leasing to Highway or Rail Contractor

Where excess vacant or improved parcels are available in the vicinity of the high-speed rail project, the Property Manager may enter into a lease with the highway or rail contractor during the period of the project. The lease should be on standard lease Exhibit 11-EX-B, Lease Agreement, which usually covers uses such as construction yards and haul roads. The lease rate will be the fair market rent as in other state leases. Absolutely no advance commitment shall be made to any bidding highway or rail contractor, as this would tend to give that contractor an advantage over other contractors competing for the project.

To avoid violations of any necessary access control lines and to ensure safe access to and from leased property, the lease must contain provisions specifying exactly where the contractor may gain access to and from the leased property and where the contractor may **NOT** gain access to and from the leased property. Before finalizing the lease, Property Management Unit will obtain the Director of Real Property's approval of the lease.

11.12.14.00 Leasing to a City, County, or Special District Under S&H Code 104.7 [Hold for Future Use]

11.12.15.00 Lease Recordation

Under most circumstances, a lease where the State is lessor shall not be recorded. Recordation would serve to cloud title of the property and could require a quitclaim deed to clear title at a later date.

11.12.16.00 Lease Cancellation

All State leases shall contain provisions that the State shall have the right to cancel the lease upon giving specific notice without other qualifications or reasons.

11.12.16.01 Mutual Consent

Occasions may arise when it is to the mutual benefit of the State and lessee to cancel a lease that is in force. This shall be accomplished by using Exhibit 11-EX-I, Cancellation of Lease. The lease cancellation shall be signed by both parties and shall be processed in the same manner as the lease.

11.12.16.02 Lessee's Failure to Pay Rent

When the lessee is delinquent in rental payments, RW 11-11, 3-day Notice to Pay Rent or Quit, shall be used by the State. Such notice shall be served upon the lessee in the manner specified in Section 11.08.04.00.

Procedures set forth in Chapter 10, Relocation Assistance, apply when canceling tenancy of a lessee who is eligible for relocation payments.

Money that the lessee has on deposit with the State may be retained and applied toward the delinquency that exists. The deposit shall not be credited toward the delinquency, however, until after the lessee has vacated the property, leaving it in a satisfactory condition acceptable to the State.

11.12.16.03 Based on Right of Termination

The standard lease provides for cancellation and termination of the lease by either party. When the lessee is not delinquent in rent and the State wishes to cancel the lease, 11-EX-44, Notice of Termination of Tenancy and Notice to Quit, shall be used.

11.12.17.00 Materials Agreement for Removal of Materials

Occasionally, the State may find it desirable to have materials removed from State property for use as fill on a State high-speed rail project. When materials can be removed without decreasing the property value more than the estimated value of the material to be obtained, the Property Manager may enter into a Materials Agreement with a contractor.

The material removed shall not create a hazard or an eyesore in the area. The finished elevations after removal of material shall blend with the adjoining property. To ensure desirable results are achieved, the Environmental Services Branch must be contacted for advice and recommendation before a Materials Agreement is negotiated.

No Materials Agreement shall be made or proposed with any contractor until after award of the high-speed rail construction contract. An alternative would be to indicate in the contract specifications that a specified amount of material is available at a certain location so all prospective bidders have knowledge of it.

see Exhibits 11-EX-16, Materials Agreement, and 11-EX-17, Materials Agreement, for sample formats of Materials Agreements.

11.12.18.00 Available Office Space [Hold for Future Use]

11.13.00.00 - MASTER TENANCIES

11.13.01.00 General

Property Managers shall manage all rental properties that do not require special consideration. Use of a master tenancy lease is appropriate for managing properties under the conditions listed below:

- Motels, hotels, and rooming houses where a high level of service to tenants is required. 25 California Code of Regulations section 42, states a manager, janitor, housekeeper, or other responsible person shall reside on the premises when there are 12 or more guest rooms.
- Certain residential, commercial, or industrial properties located in areas where management by local residents is the only effective way to obtain cooperation of individual tenants in upkeep of the property.
- Residential apartment properties (containing 16 or more apartments). 25 California Code of Regulations section 42, states a manager, janitor, housekeeper, or other responsible person shall reside on the premises when there are 16 or more apartments.

11.13.02.00 Lease Form

Exhibit 11-EX-23, Master Tenancy Lease Agreement, will be utilized for all master tenancy leases. This is a standard lease and not all clauses will apply to all situations. Formulate a lease that will be in the best interest of the Authority using all of, some of, or any additional clauses. Keep in mind any additions, deletions, revisions, and/or changes should be approved by Legal Office prior to use.

11.13.03.00 The Master Tenant

A master tenant is the State's lessee of income residential, commercial, or industrial property capable of being sublet into two or more rental units. Master tenants are obtained through negotiations or by successful bid on an advertised lease for a particular property. As lessee, the master tenant assumes complete responsibility for management, control, and maintenance of the leased property, subject to all the terms and conditions of the lease.

11.13.04.00 Factors to Consider

The major benefit derived from a master tenancy is that the master tenant theoretically assumes all problems associated with the rental property while providing the State with appropriate rental income from the leased property.

The determination on whether a parcel will be leased to a master tenant should be based on several factors including, but not limited to:

- Difficulty in managing a large furnished apartment, motel, or rooming house where the State does not purchase the furniture and various utilities are supplied to the units from a single meter.
- Long distance between the Authority office and the property.
- Potential loss of income to the State due to high vacancy factors.
- Management problems such as handling of trash service, night-lights, and swimming pools.

11.13.05.00 Approval

The Director of Real Property or authorized delegate is authorized to approve all master tenancy leases.

11.13.06.00 Documentation

The Property Manager preparing the proposed master tenancy agreement shall provide the following documentation to the Director of Real Property or authorized delegate approving the lease:

- Brief description of the property, condition, and number of units.
- Reasons why master tenancy is the best form of property management.
- A statement specifying that an interior and exterior inspection of the property has been performed, what conditions require correction, and who will perform the work.
- A statement that notices signed by individual tenants will be obtained to confirm the non-RAP eligibility of the tenancy and a statement that the building will be posted with such a notice. A system for monthly review of changes in tenancy and receipt of signed non-RAP eligibility statements for all new tenants must be established.
- A statement that Property Management Unit will perform interior and exterior inspections semiannually and that the master tenant will correct conditions of disrepair or the tenancy will be terminated.

Master tenancy agreements may be written for varying lengths of time at the Authority's discretion. The agreements should be written for time periods that are commensurate with Authority environmental clearance schedules, which are generally controlled by certification dates. On occasion, the normal length of a lease (one-year) may be extended to encourage a master tenant to take over certain property. For example, extension is appropriate when the master tenant needs a longer time to recover anticipated costly expenses incurred in rehabilitating property at lease onset.

11.13.07.00 Minimum Acceptable Lease Rate

The Property Manager should establish a minimum acceptable lease rate prior to advertising for bids for a master tenancy or prior to negotiating a master tenancy directly with a grantor. In determining the lease rate, consideration should be given to the following:

- Physical condition of the property.
- Location within the community.
- Type of tenants.
- Present or future market demands within the area for the type of rental.

11.13.08.00 Advertising Availability of Master Tenancy

The Property Management Unit should maintain a list of prospective master tenants, including referrals, interested persons who have made inquiries, and past master tenants who have performed satisfactorily.

The availability of a specific master tenancy agreement should be advertised in metropolitan newspapers as well as local newspapers serving the area where the property is located. The advertisement should announce:

- Availability of the lease.
- Type and number of units.
- Expected length of tenancy.
- Date the property will be available for inspection.

The ad should request interested parties to phone or write Property Management Unit for a brochure or flyer with the particulars as well as bidding requirements and procedures.

11.13.09.00 Bid Proposal Package

Bid proposal packages that are mailed to interested parties shall contain items that are compatible with the proposed lease. See the table entitled "Items Included in Bid Proposal Package" on the following page and Exhibits 11-EX-18 through 11-EX-24 for a complete bid proposal package.

11.13.10.00 Bid Opening and Award

Bid proposals shall be opened and read publicly at the time and date specified in the "Notice to Bidders and Interested Parties."

Although the lease will normally be awarded to the highest responsible bidder, the State reserves the right to refuse any and all bids. The Property Manager shall retain the bids and deposits of the highest responsible bidder and the second highest responsible bidder until the successful high bidder has complied with all the terms contained in the "Terms of Auction" notice. When these terms have been met to the Property Manager's satisfaction, the Property Manager shall return the second highest bidder's deposit and mail a letter reporting the bid results to all unsuccessful bidders (see Exhibit 11-EX-26).

11.13.11.00 Commencement of Standard Lease Procedures

Processing and handling of the master tenancy agreement is identical to the standard leasing procedures for other State-owned property. Refer to Subchapter 11.12.00.00 for details.

11.13.12.00 Posting of Public Notice

After final approval of the lease, the Property Manager shall post a public notice sign on all residential properties under a master tenancy agreement (see Exhibit 11-EX-27). The sign shall be readily visible to prospective tenants and shall advise that all persons commencing tenancy on the premises after the date indicated shall not be eligible for relocation assistance payments as provided in Government Code section 7260 et seq. The date to be inserted on the sign shall be the date the State obtains legal possession of the premises. Posting of this public notice sign is mandatory and is in addition to the requirement that the lessee furnish each new tenant with a written notice with the same information.

ITEMS INCLUDED IN BID PROPOSAL PACKAGE		
Item	**Form / Exhibit**	**Description**
Notice to Bidders and Interested Parties	Exhibit 11-EX-18	This notice sets forth the address of the lessor; indicates date and time sealed bids shall be opened; and makes specific remarks about allowing only one bid from any one person, corporation, or firm.
Terms of Auction	Exhibit 11-EX-19	This details the required amount of money to be submitted with the bid, the manner in which payment is to be made, where payments are to be received, and the amount of security deposit required as a guarantee that the required maintenance shall be performed. It also sets forth the maintenance requirements that shall be met by the successful bidder and the time limit allowed for work to be accomplished.
List of Tenants in Possession	Exhibit 11-EX-20	This sheet lists by address the tenants in possession with their corresponding rental rates and number of bedrooms. It also has information in regard to the utilities for which the Master Tenant is responsible. The list of tenants in possession is actually incorporated into the lease.
Inventory	Exhibit 11-EX-2	This inventory shows by apartment or rental unit certain features or improvements for which the master tenant shall be held accountable. Such items as drapes, garbage disposals, wall-to-wall carpeting and built-in range and oven are included.
Bid Proposal	Exhibit 11-EX-22	The proposal form shall be fully executed by the bidder, who is responsible for completing the following: Address of the property. Monthly lease rate willing to pay. Signature with printed name and date. The "Important Notice" portion sets forth how the bid is to be signed in the event the bidder is a corporation, partnership, or firm. Bidder's telephone number, business address, or home address for refunding money to unsuccessful bidders. The bid proposal shall be accompanied by the first month's rent, as bid and it shall be paid in the manner set forth in the "Terms of Auction." Failure to do so in the manner described is basis for rejection of the bid. To be considered, the bid proposal, in proper order, shall be received by the Authority by the time specified in the "Notice to Bidders."
Rental Application	Form RW 11-05	The completed form shall be submitted at the time the bid proposal is submitted. The form is used by Property Management Unit to determine the bidder's financial responsibility.
Master Tenancy Lease Agreement	Exhibit 11-EX-23	This is a master tenancy agreement that may be modified as needed and approved by the Legal Office.
Bid Proposal Mailing Envelope	Exhibit 11-EX-24	This envelope shall be marked for return to Property Management Unit and identified as a sealed bid for a particular property. The date and time of the bid opening shall also be indicated.

11.14.00.00 - OUTDOOR ADVERTISING SIGNS

11.14.01.00 General

Rental of existing outdoor advertising signs shall be handled like any other new rental account. The Property Manager shall receive the MOS and the Right-of-Way Contract for the sign interest on the acquired parcel.

11.14.02.00 Prohibition Against New Signs

New outdoor advertising signs shall not be permitted on State-owned properties under any circumstances, regardless of whether the properties are considered excess or are being held for future high-speed rail use.

11.14.03.00 Sign Site Rental Procedures and Rates

All sign site rentals shall be prorated as of the day following the date the deed to the State is recorded or the day following the date the State secures legal possession, whichever occurs first. The Right-of-Way Contract shall provide that the sign company prorates rental payments to both the state and to the State's grantor. Should the sign be located partially within the right-of-way and partially on the remainder, the State's rental agreement shall reflect only the amount of money payable to the State.

Billboard site rental rates shall be based on the Billboard Site Rental Schedules (Exhibit 11-EX-28, Billboard Site Rental Schedule) or the existing rental rate, whichever is greater.

11.14.04.00 Billboard Site Rental Schedules

The type of billboard and the number of advertising sign faces in place on a site determine the billboard site rental rates, by multiplying the advertising rate by the appropriate percentage shown on Exhibit 11-EX-28, Billboard Site Rental Schedule. Determination of rental rates shall be documented in the rental account file.

Outdoor advertising companies publish advertising rates for Poster Panels and Urban "Rotates." The rates are normally published for each calendar year, but may be changed more often. Current rates for posters or rotating bulletins may be obtained by asking the sign company for a rate card for the type and location of the sign involved.

Locations in the rate books are general in nature, such as Los Angeles Metro Market, San Francisco, and Oakland/San Jose Metro Market. Examples of published advertising rate formats are shown on Exhibit 11-EX-29, Advertising Rate Card Examples.

Site rental rates are determined by multiplying the advertising rate times the percentage shown on the Billboard Site Rental Schedules (Exhibit 11-EX-28, Billboard Site Rental Schedule) for each advertising sign face on a site as shown in Exhibit 11-EX-29, Advertising Rate Card Examples.

11.14.05.00 Advertising Structure Agreement

The sign owner shall be required to sign Exhibit 11-EX-D, Advertising Structure Agreement, in triplicate. The agreement shall be executed on the state's behalf in accordance with Section 11.12.06.00.

Historically, advertising rates used to determine sign site rental rates have increased in much larger yearly increments than increases indicated by consumer price indexes. The standard lease term for an

Advertising Structure Agreement, therefore, is two years. If a sign company wishes to enter into an agreement for more than two years, a clause should be included in the agreement to increase the rent 10% per year after the first 2 years. This ensures a reasonable increase in the rental rate during the extended term.

New advertising structure agreements shall not extend for more than five-year periods without prior Supervising Right-of-Way Agent or authorized delegate approval.

11.14.06.00 Sign Rent Delinquencies

Delinquencies that occur on sign rentals shall be treated the same as any other type of rental delinquency.

11.15.00.00 - STATE AS LESSEE LEASES

11.15.01.00 General

Property Management Unit may receive requests to rent or lease privately owned properties or facilities for State high-speed rail purposes. Properties or facilities may include, but not be limited to, real property, trailers, or portable buildings.

Should the Property Manager receive a request for office space located in an office building, the request should be returned to the sender with a memorandum stating that Right-of-Way has no legal authority to enter into such leases and the request should be submitted to the Director of Real Property.

11.15.02.00 Procedures Upon Receiving Request

All requests for "State High-Speed Rail purpose" facilities shall be in writing and shall be signed by the Contractor. All requests shall be sent to the Director of Real Property at least 120 days prior to the required occupancy date.

Property Management Unit's first responsibility, upon receipt of a written request for field facilities, is to verify that there are no State-owned properties that can be utilized for said purpose. State-owned property may include vacant land and/or properties with improvements. State-owned property includes all properties owned by the Authority and any other State agency.

The final decision whether or not the requestor occupies State-owned facilities will be made by the Director of Real Property.

If no suitable State-owned property is available, Property Management Unit will canvass privately owned properties and/or facilities for acceptable accommodations. When rental market data on available space in the desired area has been gathered and the requesting office accepts Property Management Unit's recommendation, the Property Manager shall begin the negotiations for lease or rental of the selected property.

11.15.03.00 Procedural Guidelines

The Property Manager shall negotiate with the owners for the lease of field facilities, provided they are for State high-speed rail purposes.

Only field employees, assigned to the project will occupy the space.

When the Property Manager enters into a rental agreement or lease for field facilities, the following guidelines must be adhered to:

- Americans with Disabilities Act
- State Fire Marshal Approval of Plans and Inspections
- Seismic Performance Requirements
- State Administrative Manual Standards for State-Occupied Space
- Facility Plans and/or Drawings
- Energy Conservation
- Hazardous Materials Certification

11.15.03.01 Americans with Disabilities

The Americans with Disabilities Act (ADA) guarantees equal opportunity for individuals with disabilities in public and private sector services and employment. Title II of ADA specifies that a public agency may not, directly or through contractual arrangements, make selections, in determining the location of facilities, that have the effect of excluding or discriminating against persons with disabilities.

Authority policy is that all facilities that are occupied by State employees, whether the facility is owned, rented or leased by the State, shall be in compliance with all ADA requirements. This includes full access for disabled employees, consultants, contractor employees and the public. Field facilities shall be such, as no one will be denied the opportunity to perform work or do business at the facility. **There are no exemptions or exceptions to this policy.**

ADA standards generally include requirements pertaining to functioning of wheelchairs in relation to site grading, parking lots, walks, ramps, entrances width of doors, floors, toilet facilities, signs, and other miscellaneous requirements.

The Authority has adopted the Department of Rehabilitation's *Americans with Disabilities Act Access Guide: Survey Checklist* as the document for determining compliance with ADA. Agents are to utilize this Guide when determining if a facility is in compliance with ADA requirements.

Current regulations are found in the California Administrative Code, Title 24, State Building Standards and the Americans with Disabilities Act.

11.15.03.02 State Fire Marshal Approval of Plans and Inspections

Health and Safety Code section 13108, specifies that the State Fire Marshal (SFM) prepare and adopt building standards relating to fire protection in the design and construction of the means of egress and the adequacy of exits from, and the installation and maintenance of fire alarm and fire extinguishment equipment or systems in, any state institution or other state-owned building or in any state-occupied building and submit those building standards to the State Building Standards Commission for approval.

Right-of-Way's policy is that the SFM is required to review and approve plans, prior to the execution of any lease, when the Authority is locating into an existing building and there **will be tenant improvements** prior to occupation. Property Management Unit is responsible for ensuring that appropriate SFM review of plans and/or inspections are accomplished prior to execution of all leases and that such information is contained in Form RW 11-27, State Fire Marshal Checklist. Form RW 11-28, Plan Approval Request, must accompany all plans to the SFM. see Exhibit 11-EX-31, Memorandum from California State Fire Marshal to the Authority, outlining the requirements for the submittal of plans to the SFM.

If tenant improvements are not necessary, SFM plan review is not required. However, when a plan review is not required, a field inspection will be performed by the SFM to review, among other items, the exiting systems and possible hazardous conditions.

Trailers or portable buildings do not require the submittal of plans or an inspection. The Property Management Unit must determine that applicable exiting requirements are met (for example, no padlocks or hasp-type fasteners are used on exit doors). Storage buildings or covered parking structures do not require a review or inspection by the SFM.

11.15.03.03 Seismic Performance Requirements

Right-of-Way's policy is that all facilities considered for State lease must be evaluated for the ability to meet a reasonable level of seismic performance, prior to the execution of any lease.

In order to determine if a building has met a reasonable level of seismic performance, the Property Manager must complete Form RW 11-29, Seismic Screening Checklist. If the Seismic Screening Checklist results in a score of 20 or above, a Certification of Structural Evaluation, Form RW 11-30, must be completed. An independent licensed structural engineer must complete the Certification. This is the responsibility of the landlord.

11.15.03.04 Standards for State Space

Prior to initiating negotiations for field facilities, Property Management Unit must verify the number of State employees who are going to occupy the facility. Once the number of occupants is verified, the standards for State space set forth in State Administrative Manual (SAM), Section 1321.14 (Exhibit 11-EX-42), must be adhered to.

Examples of space allocations are:	Supervisors	96-125 sq ft
	Engineers	80-100 sq ft
	Clerical	40-75 sq ft

The allowances are maximum guidelines that can be modified as necessary to meet specific job requirements. Detailed documentation is required when allowance modifications are made.

Property Management Unit should always avoid renting more space than is necessary, but it should rent sufficient space to accommodate staff, equipment, laboratory facilities, and meeting/conference rooms.

11.15.03.05 Facility Plans and/or Drawings

Facility site plans are required for all State as Lessee (SAL) leases. See Memorandum from California State Fire Marshal to the Authority, for the specific requirements that will be used as guidelines. The site plans must be attached to the Lease and kept in the file.

11.15.03.06 Energy Conservation

Authority will use as guidelines, Governor's Executive Order D-16-00, Exhibit 11-EX-43, established a state sustainable building goal for all state buildings, including all leased property. The goal is "to site, design, deconstruct, construct, renovate, operate, and maintain State buildings that are models of energy, water, and material efficiency; while providing healthy, productive and comfortable indoor environments and long-term benefits to Californians."

For specific guidelines, recommendations, and information, refer to Web site https://www.calrecycle.ca.gov/GreenBuilding/.

11.15.03.07 Hazardous Materials Certification

Asbestos material in buildings comes in two forms: friable and nonfriable. Friable asbestos is defined as any material containing greater than 1% asbestos by weight that, when dry, can be crushed, pulverized or reduced to powder by hand pressure. This would typically be pipe wrapping, insulation, or fireproofing.

Nonfriable asbestos is generally considered nonhazardous and is typically vinyl asbestos floor tile or asbestos roofing felts and shingles.

Current State policy dictates that all buildings built before calendar year 1980 must be certified in writing to be "Free from hazards from Asbestos Containing Material (ACM)." The certification must be provided by an Industrial Hygienist certified by the American Board of Industrial Hygiene (ABIH) or an Environmental Protection Agency (EPA) Asbestos Hazard Emergency Response Act (AHERA) Certified Inspector. If the building was constructed subsequent to calendar year 1980, a photocopy of the Occupancy Certificate issued by the city or county building division is all that is required. The Occupancy Certificate must be provided prior to the execution of the lease.

When referring to leased space in regard to asbestos, leased space includes common public areas, building maintenance and equipment areas, and plenums in the same heating, ventilating, and air conditioning zone and telephone closets.

Leased space with asbestos present may be considered. The lessor, however, must comply with the requirements stated above. The lease agreement must hold the lessor responsible for control of nonfriable ACM and ACM that has been enclosed or encapsulated, including an appropriate operations and maintenance program.

Also, current State policy dictates that all buildings built before calendar year 1980 must be certified as free of hazard from Lead Containing Materials (LCM). Paint chip samples must be collected by California Department of Health Services (DHS) Lead Certified Project Designer for laboratory analysis to determine lead content. Web sites for your assistance is: https://www.epa.gov/lead/protect-your-family-lead-your-home-1.

These requirements are to be completed by the lessor prior to the lease execution by the State.

11.15.04.00 Lease Form

The renting or leasing of field facilities for the Authority's use shall be accomplished as follows:

- **Permanent Buildings and Trailer Pads** - Exhibit 11-EX-30, State as Lessee Lease Agreement, shall be used. Significant modifications shall be approved by Legal prior to the execution of said lease.
- **Relocatable Buildings or Trailers** - The standard lease or rental agreement used by the relocatable building or trailer company may be used with additional clauses from Exhibit 11-EX-30, State as Lessee Lease Agreement, when appropriate. The lease/rental agreement shall include provisions for initial setup, maintenance during the lease term, and removal at the end of the lease. If utilized, the company's lease should be reviewed by Legal prior to the execution of said lease.

A clear and complete description of the property should be included on the lease form under Description, including physical address, square footage, and type of facility (e.g., light industrial, strip mall, residential, etc.).

11.15.04.01 Lease Execution

The Director of Real Property or authorized delegate is authorized to execute all SAL agreements. There will be two original copies of the lease executed by all parties. The recommendation for approval of the Authority lead of the requesting office shall be shown on the lease.

11.15.04.02 Lease Extension

The Authority may extend the term of existing leases.

11.15.04.03 Triple Net Leases

Triple net leases that require the State to pay for the lessor's future increased expenses for the leased property, such as taxes, insurance, utilities, and debt service, shall be avoided. Prospective lessors should be advised to include such items in their proposed rental rate.

11.15.05.00 Insurance

In obtaining a lease for field facilities, Property Management Unit may be faced with the lessor's demand that the State provide insurance coverage, either by paying a monthly fee to the lessor's insurance carrier or by purchasing its own policy. There are two types of insurance to be considered: (1) fire and hazard, and (2) liability.

The State is self-insured for all liability (including bodily injury and property damage) as well as any tort (such as fire and physical damage caused by one of our employees) affecting private property. The State's ability to insure itself is provided in Government Code, Section 11007-- 11007.8. If the owner would like written confirmation, contact Department of General Services (DGS), Office of Insurance and Risk Management, and request a letter of "Public Liability and Workers Compensation Insurance" on their letterhead.

Although there is no need to furnish insurance policy coverage on SAL leases, there may be instances when an owner will not accept our self-insurance status and will insist on coverage provided by an insurance policy. In those cases, the Authority has the flexibility to obtain such policy coverage if it is the only way to secure the field facility. It may be prudent to renegotiate rental terms if purchase of an insurance policy is required.

DGS can obtain quotes for required fire and hazard coverage and secure a policy if requested. The cost of securing a policy is usually much less than paying the lessor's insurance carrier for the required coverage and may be available through a single policy. Insurance and Risk Management has provided a form, Exhibit 11-EX-32, to assist in obtaining fire and hazard coverage. The form should be completed and sent to DGS for cost quotations and purchase of appropriate policy coverage.

11.15.06.00 Park and Ride Facility Leases [Hold for Future Use]

11.15.07.00 Documentation for File

Right-of-Way Property Management Unit file should contain the following documentation:

- A copy of the written request for field facilities.
- Property Manager's determination on the suitability of the facilities for proposed use.
- For permanent buildings or trailer parks, include comparability of the rental rate to rates for similar facilities in the immediate area. List comparables, briefly discuss the investigation, and compare major characteristics to the subject property.
- For relocatable buildings or trailers, document informal bids and the reasons the successful bidder was chosen. Documentation shall consist of such items as rental rate, company name and

location, and setup, maintenance, and removal costs. The successful bidder should be chosen based on a combination of factors such as low bid, past performance, services provided, and location of the company in relation to the site.

- Parking, services, and utilities available, if any.
- Statement that no suitable State-owned facilities are available.
- The following certification by the Property Manager securing the lease:

  It is hereby certified that this lease is in accordance with Government Code section 11005, and does not constitute hiring of office space in an office building within the meaning of the code.

The procedures in this section also apply to lease amendments and renewals.

11.15.08.00 Employee Time Charging

Time spent by Property Management Unit to provide services to other Authority Offices must ensure the charges are billed correctly.

11.16.00.00 - TRANSFERRING PROPERTIES TO CLEARANCE STATUS

11.16.01.00 Scheduling Rental Termination

After determining a practical and orderly clearance schedule, Authority Right-of-Way Property Management Unit shall coordinate the following activities with the Relocation Assistance Unit:

- Inform the Relocation Assistance Unit in writing within two days of the first knowledge of a RAP eligible vacating State-owned property.
- Provide a courtesy 90-Day Letter for noneligible RAP tenants, in accordance with provisions of Section 11.07.19.00.
- Ensure that all non-eligible RAP tenants occupying premises leased under master tenancy are informed they are not eligible for relocation assistance payments.
- Coordinate sale of excess land or building improvements with the Relocation Assistance to ensure that occupants are provided with required RAP notices and receive any relocation payments due.

Authority Right-of-Way Property Manager shall request the following services from the Relocation Assistance as necessary:

- Service of a Letter of Intent to Vacate on each tenant eligible for relocation assistance payments. Authority Right-of-Way Property Manager will supply the names, addresses, and other information for the affected tenants and type of notice to be served (see Exhibit 11-EX-34, Service of Notice to Vacate (Notice to Relocation Assistance). This notice will be served in accordance with RAP instructions and the status of the tenant's RAP eligibility (see Exhibit 11-EX-35, Letter of Intent to Vacate-90). A copy of the Letter of Intent to Vacate that was served shall be returned to Authority Right-of-Way Property Management Unit to confirm the effective date of the notice.
- Service of a Notice to Vacate on the above eligible tenants. A copy of the notice showing the date service was made shall be returned to Authority Right-of-Way Property Management Unit as verification of service and notification of the effective date of termination (see Exhibit 11-EX-44, Notice of Termination of Tenancy and Notice to Quit).

Depending on Authority policy, either Authority Right-of-Way Property Management Unit or RAP personnel may serve the Letter of Intent to Vacate and the Notice to Vacate when tenants ineligible for relocation assistance payments are involved.

In most cases where State-owned property is voluntarily vacated and the length of time remaining before regular scheduled clearance is too short to provide a reasonable period for re-renting, the parcel shall be immediately transferred to clearance status for disposal.

11.16.02.00 Transferring Properties to Clearance Status

The Authority Right-of-Way Property Management Unit is responsible for thoroughly inspecting and securing the State's property as soon as it becomes vacant and shall make prior arrangements to obtain keys from the vacating tenant. If the vacant property shall not be re-rented, the Property Manager shall follow the procedures below after receiving the keys:

- Inspect the property, noting possible hazards, vandalism, trash, or personal property left on the premises.
- If personal property is found on the property, the Property Management Unit is directed to follow the statutory procedures that are set forth in California Code of Civil Procedure section 1174 and Civil Code sections 1980-1991. Should the Authority Right-of-Way Property Manager need assistance in interpreting these provisions of California law, the Property Manager may consult with the Legal Office for additional advice.
- Inventory all items purchased by the State and document the rental file.
- Determine whether or not the property should be boarded up to protect against vandalism and theft.
- When necessary, submit a work request to have trash removed, improvements boarded up, or hazardous conditions abated.
- Arrange for termination or transfer of utility services into State's name.
- Notify the Financial Office of changes in utility billing as necessary.

11.16.03.00 Property Manager Review

The Property Management Unit shall review all improved rental properties that are transferred to clearance status and shall perform the following functions:

- Verify that entries made in geoAMPS are correct and complete.
- Check the parcel rental folder for accuracy of dates and type of activity from close of escrow to date of transfer to clearance status.
- Verify that improvement inventory documentation has been properly maintained and all State-owned items are accounted for.
- When fully satisfied that the improvements should be transferred to clearance status for disposition, affix initials or signature to the vacancy report to approve the transfer.
- Prepare the utility removal letter for the Authority Right-of-Way Property Manager's signature (see Exhibit 11-EX-36, Utility Removal Letter), ensuring that a copy is sent to the Financial Office. After the utility removal letter has been prepared and mailed, place the parcel rental folder in a "Hold for Clearance" file.
- Route a copy of the vacancy report found in the parcel rental folder to Authority Right-of-Way Property Management Unit providing the Clearance of the property, to serve notice that certain improvements are now available for immediate clearance.

11.16.04.00 Advanced Transfers to Clearance Status

Occasionally, it is necessary to remove improvements prior to normal clearance scheduling because one or more of the following conditions exist:

- Retention of substandard improvements that cannot be economically rehabilitated would constitute a health or safety hazard.
- Improvements have been damaged to the point that it is no longer economically feasible to restore them to rentable standards.
- A local government agency has condemned the improvements.

In most cases, the above criteria are equally applicable to removal of improvements from rescinded routes or excess land.

A financial analysis prepared by a qualified person and approved by the Director of Real Property shall be attached to the improvement disposal report for disposal of any residential improvements. Comments and recommendations must indicate that the project is environmentally cleared or contain a documented statement about the emergency nature of the removal.

11.17.00.00 - HAZARDOUS WASTE AND HAZARDOUS MATERIALS

11.17.01.00 Policy

The Authority's policy is to consider fully all aspects of potential hazardous waste sites ensuring that adequate protection is afforded to employees, workers, and the community prior to, during, and after construction. The Property Manager must be aware of all potential and confirmed sites and any use of hazardous materials on future rights-of-way. The Property Manager must monitor these sites, terminate leases where required, and consider potential clearance of wastes when planning for right-of-way parcel certification dates.

11.17.02.00 Definition

A material is hazardous if it poses a threat to human health or the environment. Hazardous materials may be any of a large group of the products listed below. (A partial list is contained in the Title 22 California Code of Regulations section 66261.126, Appendix X.)

- Flammable
- Reactive (subject to spontaneous explosion or flammability)
- Corrosive
- Toxic
- Radioactive

The term "hazardous waste" applies to the storage, deposit, contamination, etc., of a hazardous material that has escaped or been discarded or abandoned and that may be defined in general terms as being any of the above.

11.17.03.00 General

The Authority strives to identify, investigate, and clean-up sites at the earliest opportunity during the project development process. Occasionally, these activities may not be accomplished prior to Property Management Unit involvement.

Under a *normal* project development sequence, the entire process is completed in accordance with governmental hazardous waste requirements. The Environmental Services Branch is the lead unit for the identification, investigation, and cleanup process. The Property Managers assist by obtaining necessary rights to enter for testing purposes and by negotiating cleanup agreements prior to acquisition.

On projects where the normal sequence cannot be followed, Property Management Unit assists in identifying potential hazardous waste sites and initiates the cleanup process for all **MINOR** hazardous waste problems not requiring a Hazardous Waste Management Plan, such as underground tanks or hazardous material businesses. All investigative work is done under the administrative and technical control of the Environmental Services Branch with concurrence of the Authority's Property Management Unit. If at any time a formal Hazardous Waste Management Plan is required, Environmental Services Branch assumes the lead role.

11.17.04.00 Inventory

Property Management Unit must inventory all properties under its control that have been identified as potential hazardous waste sites, including those with underground tanks. Property Management Unit should maintain a tracking system for all Authority sites. Until the properties are cleared and the projects are certified for construction, Property Management Unit must monitor all acquired properties, specifically any that have a potential for becoming hazardous waste sites.

11.17.05.00 Underground Tanks

The State Underground Storage Tank Law is contained in Health and Safety Code Chapter 6.7, Division 20, and Underground Tank Regulations, California Administrative Code Subchapter 16, Chapter 3, Title 23. These sections include Health and Safety Code sections 25286, 25294, 25295, 25298 and 25299.

All underground tanks must be covered by permits issued by the local regulatory agency, and the owner of the property is responsible for obtaining the permit. Examples of such permits are "permit to store a hazardous material" and "permit to operate a hazardous material storage tank."

Underground tanks on State property should be removed as soon as possible. All inactive tanks shall be removed immediately. Active tanks shall be removed as soon as the property can be vacated. An alternative, in some cases, is to obtain a right to enter and remove the tanks and then consider continuance of the lease.

The Director of Real Property or authorized delegate must approve any exceptions to the above as current regulations for monitoring underground tanks require a substantial expenditure by the Authority to comply with installation and operation of leak detection equipment. Only new tanks or those constructed since January 1984 and that meet all current requirements and regulations will be considered for possible retention or installation. The lessee is responsible for permits and all costs for monitoring the system. If a new tank is allowed, a provision for removal and cleanup by lessee at expiration of lease must be included.

11.17.06.00 Tank Removal Procedures

The Environmental Services Branch will obtain the name of the local agency official responsible for underground tanks. Since the contractor must obtain the required permits for operating or closure of all existing tanks from the local permitting agency, this information must be included in the removal contract. Also, any contract for tank removal **MUST** include provisions for barricades and cleanup.

Prior to any tank removal, Property Management Unit must initiate an agreement with the tenant in occupancy and the owner of the property. These contracts must be approved by the Environmental Services Branch and must contain all the clauses approved by the Authority. Non-leaking tanks may have a minor deposit of product under the tank that can be cleaned up during a tank removal contract. If the leak is major, a Hazardous Waste Management Plan may be required and will be prepared under the direction of Property Management Unit.

11.17.07.00 Potential Surface Contamination

Many properties have the potential for hazardous waste contamination. Examples include service stations and bulk plants, paint companies, machine shops, plating companies, light and heavy industrial manufacturing, dry cleaning establishments, fertilizer companies, junkyards, auto wrecking yards, and muffler shops. Property Management Unit must notify the Environmental Services Branch in writing when a property may contain either hazardous waste or asbestos containing materials (ACM). Property Management Unit should request from the Environmental Services Branch:

- An opinion on whether or not hazardous materials are being used or are present on the site.
- An assessment of the risk involved if hazardous materials are present or are being used by the tenant, given the tenant's activities, equipment, handling and storage methods.
- A recommendation as to what storm water best management practices (BMPs) should be implemented to eliminate potential pollutants in storm water discharges from the property.
- A recommendation regarding what periodic inspections, if any, are necessary to ensure that use of any hazardous material does not result in a future hazardous waste problem.

The Environmental Services Branch will inspect each site and determine that:

- No testing is necessary and will make a statement that no hazardous waste is present; or
- Further investigation is necessary and proceed to hire a consultant to determine if hazardous waste actually exists; or
- There is no hazardous waste present, but hazardous materials are present and being used. The Environmental Services Branch will include recommendation on what future inspections, BMPs, and/or other controls, if any, may be required.

If no hazardous waste or material exists, the Property Management Unit should continue tenancy with amendment of lease to include the hazardous waste clause.

If hazardous waste exists and the lessee's operation is causing the waste, the Property Management Unit should notify the lessee to cease such action and terminate the lease. The Property Management Unit should initiate further steps to determine who is responsible for cleanup and when cleanup will take place. Cooperation with the Environmental Services Branch, Legal Office, and Engineering Services Branch may be required. The Director of Real Property or authorized delegate must approve any new lease or lease renewal for a parcel confirmed to contain a hazardous waste.

If no hazardous waste exists but hazardous materials are being used, the risk of allowing the operation to continue with possible cleanup costs and project delays must be weighed against net rent, community impact, and any positive factors. Justification for continuing the lease or rental must be documented and retained in the file.

Where there is a potential for hazardous waste and parcel certification date is near, Property Management Unit must request the Environmental Services Branch to give a priority review so that any site confirmed to have a hazardous waste will not cause a delay in clearance and subsequent Right-of-Way Certification.

Removal of improvements that contain asbestos (e.g., siding and insulation) should be coordinated with the Environmental Services Branch. see Right-of-Way Manual Section 12.03.07.00 for additional information.

11.17.08.00 Lease Clause for Nonresidential Properties and Information for Tenants

Exhibit 11-EX-B, Lease Agreement, contains a clause covering hazardous materials. This clause shall be included in all existing and future nonresidential leases and rental agreements except signboard sites and oil and gas leases, and where in the Property Manager's judgment hazardous waste problems are extremely unlikely. This exception may include vacant land uses, agricultural uses where chemicals such as fertilizers, herbicides and insecticides are used but not stored or mixed on the property, grazing uses, recreational uses such as parks and ball fields, and some commercial uses. The Property Management Unit should take a conservative approach to these exceptions and should watch for any changes in use that could involve hazardous materials.

The hazardous waste clause should be included in revising all nonresidential leases, without waiting for renewal, for any accounts that are not excluded; i.e., properties where hazardous waste problems are extremely unlikely.

A list of hazardous materials from the California Code of Regulations, Title 22 Section 66261.126, is extensive and useful, but it should not be considered all inclusive. Property Management Unit may obtain a copy of this list and should refer all questions relating to classification of substances to the Environmental Services Branch. Each nonresidential tenant shall be provided with a copy of this list.

Additional information contained in California Health and Safety Code Sections 25286, 25294, 25295, 25298, and 25299 may also be obtained from the Environmental Services Branch. Tenants of properties with underground tanks shall be provided with a copy of these sections.

Use of the hazardous waste clause and the tenant's listing of hazardous materials asked to be permitted should give Property Management Unit notice of potential problems. Before any lease or rental is entered into with a new tenant, however, the Property Manager must inquire into the specific type of use proposed and consider the risk, with advice as needed.

11.18.00.00 - AUTHORITY-OWNED EMPLOYEE HOUSING

11.18.01.00 Definition

California Code of Regulations (CCR), Department of Personnel Administration (DPA) Rule section 599.644 describes State-owned housing as houses, apartments, dormitories, mobile homes, trailers, mobile home pads and trailer spaces. *Employee housing* refers to those facilities that are located at maintenance stations and are owned and maintained by the Authority.

11.18.02.00 Policy

Employee housing is considered at maintenance stations only when necessary for direct support of the station and is limited to crewmembers assigned to the station and their immediate family. The Authority's policy related to the use of Authority-owned properties by employees is under development. The paragraphs referenced in this Chapter 11.18.00.00 are under development.

11.18.03.00 Responsibilities

The Director of Real Property and Property Management Unit share responsibility for employee housing.

11.18.04.00 Rental Rates [Hold for Future Use]

11.18.05.00 Utilities [Hold for Future Use]

11.18.06.00 Employee Housing Rental Agreement [Hold for Future Use]

11.18.07.00 Payment of Rent [Hold for Future Use]

11.18.08.00 Possessory Interest Tax [Hold for Future Use]

11.18.09.00 Maintenance and Repairs [Hold for Future Use]

11.18.10.00 Carpeting for Employee Housing [Hold for Future Use]

11.18.11.00 Surplus Property [Hold for Future Use]

11.18.12.00 Reporting Requirements [Hold for Future Use]

11.18.13.00 Storm Water Requirements [Hold for Future Use]

CALIFORNIA High-Speed Rail Authority

CHAPTER 12

CLEARANCE AND DEMOLITION
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12.01.00.00 - CLEARANCE AND DEMOLITION - GENERAL

12.01.01.00 Purpose

The clearance function is responsible for the orderly clearance of property with minimal detrimental effect on the community. Prior to clearance and/or demolition, all improvements and personal property are be inspected to determine whether the improvements should be sold, demolished, or removed. Major factors governing the sale or demolition decision are:

- Structural condition of the improvements.
- Area in which improvements are located.
- Local ordinances affecting movement and rehabilitation of improvements.

If it is economically justifiable and the project schedule permits sufficient time to move and/or rehabilitate the improvements, the improvements are to be sold. Otherwise, the improvements are removed from the right-of-way and/or excess or remainder property through the demolition process.

12.01.02.00 Approval Authority

Approval is in accordance with the delegations discussed in Chapter 2, Organization and Policy, and shown in the Exhibit section. Any approvals not specifically delegated are retained.

12.01.03.00 Federal Participation in Revenue and Expenses

Federal funds may be used to cover costs for the disposal of improvements and clearance of real property. Accounting must be provided with information to identify and bill Federal participating revenue and expenses accurately. Instructions for completing accounting documents are included on the documents.

12.01.04.00 Other Applicable Federal Regulations [Hold for Future Use]

12.01.05.00 File Content

The Authority maintains a file with the following information for each improved property:

- Inventory - of all improvements acquired as a part of the acquisition of the property. (see 12.01.10.00)
- Accounting - of the disposition of improvements and the recovery payments received.
- Methods - used to clear the property and dispose of improvements through resale, salvage, owner retention, demolition, or other means.

12.01.06.00 Right-of-Way vs. Construction Item

Clearing acquired improvements is considered a right-of-way item when performed separately from the construction contract.

Clearing is a construction item when performed as part of the project construction contract.

12.01.07.00 Improvement Demolition Record

The Acquisition Branch provides all the information required by the Improvement Demolition Record (IDR), Form RW 12-01, as part of the Memorandum of Settlement (MOS) on properties that include the purchase of improvements or personal property. The IDR is prepared and a Register Number is assigned when the MOS is prepared. (See Acquisition Chapter and Property Management Chapter for additional information.)

12.01.08.00 Improvement Disposal Authorization

The Improvement Disposal Authorization (IDA), Form RW 12-02, is a formal request for permission to the Director of Real Property for approval to dispose of State-owned improvements or personal property. Approval of the IDA is authority to proceed with disposition of the improvements as specified. No property shall be disposed of in a manner at variance with the approved IDA without prior approval of the authorized delegate. (see Section 12.04.05.00.)

12.01.09.00 Improvement and Personal Property Definition

For purposes of this inventory procedure, "improvements and personal property" means those structures, improvements, or personal property (such as furniture) whose disposal requires an IDA, Form RW 12-02. Miscellaneous items purchased as part of the real estate, such as air coolers, carpets, gasoline pumps, compressors, weigh scales, and underground tanks, are listed on the IDA. This applies whether the items are to be marketed, demolished, or transferred to another rail authority or agency. Improvements such as landscaping and driveways that normally are destroyed in right-of-way cleanup contracts or by the road contractor as part of clearing and grubbing need not be listed.

12.01.10.00 Improvement and Personal Property Inventory

The Acquisition Branch specifies the reason and proposed manner of disposal on the IDA, Form RW 12-02.

The IDR and Register, Forms RW 12-01 and RW 12-03 respectively, record the disposition of improvements and personal property and provide accountability during State's ownership.

12.01.11.00 Numbering of IDAs and IDRs

IDAs and IDRs carry the Parcel Number, Improvement Register Number, Expenditure Authorization Number, Co. Rte. and KP/PM, and Federal-aid Project Number. Filing is by Parcel Number.

12.01.12.00 Active Inventory of Improvements File

A file of active IDRs should be maintained. A copy of the IDA for a parcel is placed in the file when the IDR file is setup. When all improvements have been disposed of in accordance with the IDA and the "Disposal Record" section (back) of the IDR has been completed, these two documents are transferred to the parcel file.

When multiple IDAs are required to dispose of improvement items carried under one Register Number, the disposal information should be transcribed from the multiple reports to the original form. The original is filed in the permanent records.

12.01.13.00 Lost or Stolen Property

The Acquisition Branch reports all cases of lost or stolen properties as follows:

- Salvage or contributory value less than $100 - no action necessary.
- Salvage or contributory value more than $100, less than $1,000 - send notice to the Authority, and copy retained in Right-of-Way file.
- Salvage or contributory value more than $1,000 - send notice to the Authority, and report to local law enforcement agency.

No adjustments should be made to the Notice of Sale for property that is lost or stolen prior to the date of sale but subsequent to the Notice. The Notice and any contracts should specifically state that the items are "AS IS, WHERE IS" and no warranties are made as to missing items.

12.02.00.00 - TRANSFERRING PROPERTIES FROM RENTAL STATUS TO CLEARANCE STATUS

12.02.01.00 General

All property held for future segments of the high-speed rail system should be managed in in such a manner that the State receives maximum economic return from the Property. The retention of improvements and availability of rentable property are controlled by the date the property is needed. Disruption of a community shall be minimized by scheduling clearance in an orderly manner.

12.02.02.00 Advanced Transfers to Clearance Status

Occasionally it is necessary to remove improvements outside of normal clearance scheduling when the improvements are run-down and/or poise a health and safety risk.

A qualified person prepares a financial analysis and attached to the IDA, for any advanced disposal of improvements. The project must be environmentally cleared or the financial analysis must contain a justification as to the emergency nature of the removal. (See Section 12.04.01.00.)

12.03.00.00 - HAZARDOUS WASTE AND HAZARDOUS MATERIALS

12.03.01.00 Policy

The Authority's policy is to consider fully all aspects of potential hazardous waste sites ensuring that adequate protection is afforded to employees, workers, and the community prior to, during, and after construction. The Property Management Branch must monitor any site acquired by the Authority which is known contain hazardous materials, terminate leases where required, and consider potential clearance of wastes.

12.03.02.00 Definition

A material is hazardous if it poses a threat to human health or the environment. Hazardous materials may be any of a large group of the products listed below. (A partial list is contained in the California Code of Regulations, Title 22, Section 66261.126, Appendix X.)

- Flammable
- Reactive (subject to spontaneous explosion or flammability)
- Corrosive
- Toxic
- Radio-active

The term hazardous waste applies to the storage, deposit, contamination, etc., of a hazardous material that has escaped or been discarded or abandoned and that may be defined in general terms as being any of the above.

12.03.03.00 General

The Authority strives to identify, investigate, and cleanup sites containing hazardous materials at the earliest opportunity during the project development process. Occasionally these activities may not be accomplished prior to property management stage. Under a normal project development sequence, the entire process is completed in accordance with governmental hazardous waste requirements. The Environmental Branch is the lead unit for the identification, investigation, and cleanup process. The Real Property Branch may assist by obtaining necessary rights to enter for testing purposes and/or by negotiating cleanup agreements prior to acquisition.

On projects where the normal sequence cannot be followed, the Real Property Branch assists in identifying potential hazardous waste sites and initiates the cleanup process for all **MINOR** hazardous waste problems not requiring a Hazardous Waste Management Plan, such as underground tanks or hazardous material businesses.

All investigative work is done under the administrative and technical control of the Environmental Group with oversight by the Director of Real Property. If at any time a formal Hazardous Waste Management Plan is required, the Environmental Branch assumes the lead role.

12.03.04.00 Inventory

The Real Property Branch inventories all properties under its control that have been identified as potential hazardous waste sites, including those with underground tanks. The Environmental Branch should maintain a tracking system for all regional sites. Until the properties are cleared and the project are certified for construction, the Real Property Branch must monitor all acquired properties, specifically any that have a potential for becoming hazardous waste sites.

12.03.05.00 Underground Tanks

The State Underground Storage Tank Law is contained in Health and Safety Code section 25280 et seq., and Underground Tank Regulations, Title 23 California Code of Regulations section 2610 et seq. The following discussion pertains to right-of-way clearance and demolition units only.

All underground tanks must be covered by permits issued by the local regulatory agency, and the owner of the property is responsible for obtaining the permits. Examples of such permits are "permit to store a hazardous material" and "permit to operate a hazardous material storage tank."

12.03.06.00 Tank Removal Procedures

Underground tanks on State property should be removed as soon as possible.

The Environmental Branch will obtain the name of the local official responsible for underground tanks. Since the contractor must obtain the required permits for operating or closing all existing tanks from the local permitting agency, this information must be included in the removal contract. Also, any contract for tank removal **MUST** include provisions for barricades and cleanup.

Prior to any tank removal, the Real Property Branch must initiate an agreement with any tenant in occupancy. This agreement(s) must be approved by the Environmental Branch and must contain all the clauses approved by the Authority. Non-leaking tanks may have a minor deposit of product under the tank that can be cleaned up during a tank removal contract. If the leak is major, a Hazardous Waste Management Plan may be required and will be prepared the Environmental Branch.

12.03.07.00 Potential Surface Contamination

Many properties have the potential for hazardous waste contamination. Examples include service stations and bulk plants, paint companies, machine shops, plating companies, light and heavy industrial manufacturing, dry cleaning establishments, fertilizer companies, junkyards, auto wrecking yards, and muffler shops. The Real Property Branch must notify the Environmental Branch in writing when a property containing either hazardous waste or asbestos containing materials is to be cleared and must coordinate clearance with the Environmental Branch. Special clauses are required in the clearance contract and the contractor or subcontractor must have the proper licenses to handle such materials.

12.04.00.00 - CLEARANCE PROCEDURES

12.04.01.00 Initial Clearance Procedures

Prior to environmental clearance, improvements must not be removed except in cases of emergency. An emergency is defined as follows:

"A sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services. Emergency includes such occurrences as fire, flood, earthquakes or other soil or geologic movements, as well as such occurrences as riots, accidents or sabotage."

After environmental clearance, a no re-rent policy is established on vacant units when the project is in the STIP and funds for normal right-of-way activities have been programmed. Vacated improvements on such projects are immediately cleared.

If rehabilitation is not economically feasible, improvements may be removed prior to normal clearance scheduling when one or more of the following conditions exist:

- Retention of the improvements will result in a health and safety hazard.
- Improvements have been vandalized to the point that it is no longer economically feasible to restore them to rentable standards.
- A local governmental agency has condemned the improvements.

When improvements are to be removed for the above reasons, the reasons shall become part of the IDA. For all residential improvements, a qualified financial analysis (disposal vs. rehabilitation), must be prepared and attached to the IDA. The above criteria apply to the removal of improvements from excess land in most cases, except that Director of Real Property and FRA approval must be obtained before such removal. The Environmental Branch may establish a residential no re-rent policy on when it appears a shortage of replacement housing for displaced persons exists (or may develop) or for other reasons, such as an official local agency request, potential vandalism, crime and drug problems, and homeless persons occupying vacant buildings.

Factors the Environmental Branch should analyze in determining clearance schedules are:

- Loss of Revenue - to local governmental agencies.
- Increased Costs - for debris pickup and weed abatement as improvements are removed.
- Attractive Nuisance - increased exposure to personal injury liability as neighborhood children, the homeless and other individuals are attracted to cleared right-of-way.
- Temporary Use Requests - increased requests by local agencies and others to use cleared right-of-way temporarily for gardens, parks, and other quasi-public purposes that might result in complications when the Authority prepares to construct the project.
- Rental Income Balanced Against the Cost of Upkeep of the Rental Units - such items as roof, sewer, plumbing, and heater repairs and management costs such as rent collections and delinquencies are to be considered.

In addition, the Director of Real Property shall direct the Property Management Branch to issue Notices to Relocate to residential tenants in an orderly manner so the private housing market is not overwhelmed

by a large number of households seeking replacement housing at the same time. An orderly relocation of households is imperative to avoid court-mandated replacement or replenishment housing programs.

When a parcel is transferred to clearance status for removal of acquired improvements and/or personal property, the Agent shall immediately schedule and process the items for clearance by preparing an IDA.

12.04.02.00 Historic Structures

All Authority-owned historic structures are subject to the provisions of Public Resources Code 5024. No clearance or transfer of a historic structure shall occur until a formal historic evaluation is completed. The Environmental Branch coordinates all activities involving structures over 50 years of age. Prior to right-of-way clearance, the Agent annotates the file with the appropriate documentation as follows:

- The historic structure was included on historic preservation documentation in compliance with Federal or State regulations and all required mitigation work has been completed.
- The sale or transfer is pursuant to the terms of a historic preservation compliance agreement.
- The historic structure was not previously cleared on a project basis; the views of the State Historic Preservation Officer will be sought prior to clearance.

12.04.03.00 Improvements With Asbestos Containing Construction Materials (ACCM)

All improvements shall be inspected for the presence of ACCM, and a copy of the report placed in the permanent parcel file. All activities must comply with the Environmental Protection Agency regulations and all State and local government laws, rules, statutes, and legislation (see 40 CFR Section 61.145).

If the improvements were not inspected at the appraisal or acquisition stage, the Agent must ensure that a licensed person completes an inspection prior to sale or demolition. Sale for relocation is considered the same as demolition.

The Acquisition Branch ensures that any improvements containing ACCM will have the ACCM handled prior to demolition in accordance with applicable laws, regulations, and ordinances and the recommendations of the asbestos inspector. Removal of ACCM may be by separate contract or through the demolition process outlined below. License requirements of the local air pollution control district must be strictly followed.

12.04.04.00 Rodent Control

To prepare the structure for clearance, the Acquisition Branch must have the structure inspected for rodents and document the inspection. Structures shall not be cleared if doing so will disseminate the rodents into neighboring properties. Extermination must be performed prior to clearance.

12.04.05.00 Preparing the IDA

The Acquisition Branch includes an explanation and reason for sale or demolition in the IDA. Typical examples are:

- To clear for construction (specifying proposed project certification date).
- Not rentable due to poor condition and not warranting repair.
- To prevent theft and acts of vandalism.
- Moving and rehabilitating is not economically feasible.
- Substandard construction.

A qualified financial analysis, must be attached to the IDA for any disposal of improvements, except when the purpose is to clear for construction. Comments and recommendations must indicate the project is environmentally cleared or must justify the emergency nature of the removal.

A recommended minimum acceptable bid is included in IDAs covering disposal of items such as buildings, furniture, and equipment by public sale. The bid is a designated percentage of the estimated market value of the improvements and is set forth in the IDA. Any large difference between the estimated market value and the recommended minimum bid must be explained.

The Acquisition Branch who prepared the IDA and the individual in charge of property management or clearance signs the IDA.

12.04.06.00 Sale of Tools and Machinery [Hold for Future Use]

12.04.07.00 Sale of Personal Property

State-owned personal property may be disposed of separately or in conjunction with other improvements. If a stripping sale of fixtures is held on a major improvement that must be demolished, the Acquisition Branch should take care to assign each fixture, or group of fixtures, an item number on the IDR. A separate list may be prepared, attached, and referenced on Form RW 12-01.

12.04.08.00 Public Notification of Proposed Sale

The Acquisition Branch prepares a Notice of Sale describing the property to be sold and stating the time, place, and manner of sale. Copies are sent to anyone who has expressed an interested in the sale, or similar sales conducted by the Authority, and local real estate dealers, house movers, and wreckers. Copies are also to be posted on the Authority's website and mailed to local agencies with a request that they be posted in places commonly used for posting legal notices. Posting of the Notice on each improvement to be sold should also be considered.

12.04.09.00 Content of the Notice of Sale

The Notice of Sale is prepared as shown on Forms RW 12-04, RW 12-05, and RW 12-06. Proposal Form RW 12-07 is attached to the Notice for sealed bids. The Principal Right-of-Way Agent must approve the Proposal Form prior to distribution to verify it has been coded properly. (see Exhibit 12-EX-02 for coding instructions.)

When a surety bond is necessary to ensure the removal of property, a reasonable amount covering faithful performance may be demanded from the successful bidder with Director of Real Property's approval. The Notice must provide that such bond is required and state the amount thereof.

12.04.10.00 Advertising the Sale

Sales are advertised as appropriate. The amount spent for advertising should reflect sound business judgment and be in relation to the value of the property.

DOCUMENTATION OF TRANSFER			
Funding	**Documents**	**Value**	**Process**
Federal Participation	• A memo to Accounting detailing the transaction. • A Shipping Record (Form ADM-0245) prepared by right-of-way. • A Receiving Record (Form FA1226A) prepared by State Office.	Dollar amount is established by the minimum acceptable bid.	Accounting performs the transaction and returns copies to be placed in the Inventory Disposal File for audit purposes.
State Only Funds	• A memo to Accounting detailing the transaction if a fund transfer is made. • A Shipping Record prepared by Real Property Branch. • A Receiving Record prepared by State Office. • These records need not be coded for Accounting if no fund transfer takes place.	The Authority may charge for transfer of equipment. Consideration can be given to current market value of equipment versus salvage value and to clearance schedule. (For salvage value definition see 7.08.05.00) Whether or not fund transfer occurs, the documents must be in the Inventory Disposal File for audit purposes.	

12.04.11.00 Terms of Sale - Furniture and Bedding

The following conditions are included in the terms of sale when used or secondhand upholstered furniture and bedding are involved:

"The purchaser represents, warrants and certifies that he/she will undertake to procure and affix tags and labels, as required by law, and otherwise comply with the State laws pertaining to sterilization, resale, and reuse of articles of upholstered furniture, bedding and filling material, as defined in the California Business and Professions Code, Division 8, Chapter 3, Articles 1 to 10, inclusive."

Copies of the terms of sale and the name and address of the successful bidder are forwarded to the Bureau of Home Furnishings.

Clearance staff must inspect all properties sold to verify the purchaser has removed the improvements and conformed with all contractual obligations in the Notice of Sale and the executed proposal or bid form. The purchaser must immediately correct any unfulfilled contractual obligations. This will ensure that no difficulties arise in clearing the right-of-way and no dangerous conditions exist that could result in accidents. Special care should be exercised to avoid creating any hazardous conditions to neighborhood children, other individuals, or pets and other animals.

12.04.12.00 Post-Sale Field Inspections [Hold for Future Use]

12.04.13.00 Annual Purge of Mailing Lists [Hold for Future Use]

12.04.14.00 Conduct of Sale [Hold for Future Use]

12.04.14.01 Sale by Sealed Bid

If the noticed sale is by sealed bid, the notice should include any minimum bid requirements, including the minimum bid, if any, per item. Representatives of the Real Property Branch shall open the bids at the designated location at the time prescribed in the Notice in the presence of the bidders. Real Property Branch representative shall tabulate all bids and shall immediately turn over bidder's deposits to accounting representative.

The accounting representative must have accurate information (Parcel No., Expenditure Authorization, Federal Aid Project No., and Object Code) to ensure proper coding of all documents. If the highest bidder on one or more items defaults in a sealed bid sale, the Real Property Branch may sell the item(s) to the second highest bidder(s) for such item(s).

12.04.14.02 Sale by Public Auction

A public auction to dispose of property is conducted on the premises whenever possible. A Real Property Branch representative shall be in charge of the auction.

Items to be sold should be open for general public inspection immediately prior to the auction and where the item to be sold will be sold with a minimum bid required, the amount of the minimum bid should be posted on the item. The person conducting the auction should have enough copies of the Notice of Sale for people attending the auction. The auctioneer reads all the terms and conduct of the sale, including the minimum bid acceptable, if any, for each item to be sold, preceding each sale of such item. Adequate time is allowed for bidding before closing the sale.

A Real Property Branch representative must secure all necessary signatures on Proposal Form RW 12-07. The successful bidder signs the original proposal sheet and fills in their address and telephone number. The representative accepts the deposit in cash, cashier's check, money order, or certified check and delivers a receipt and a duplicate proposal sheet to the buyer. Accounting retains a copy of the proposal sheet to ensure the Authority accounts for the revenue properly. Funds are placed in the special deposit account.

If the highest bidder is not prepared at the auction to furnish the required deposit in the manner prescribed by the Notice, the bidding may immediately be reopened and the property sold to the subsequent highest bidder. Alternatively, the sale may be rescheduled at the discretion of the Real Property Branch representative.

All items sold at public auction must be removed from the property by 5:00 p.m. on the day of the sale unless alternative arrangements are made by the successful bidder with the Real Property Branch representative.

12.04.15.00 Deposits

The following deposits are required for sealed bid or auction sales. The deposits shall be based on the estimate of the market value of the items offered for sale, not on the minimum bid recommended in the IDR.

- Under $1,200.00 Market Value - $300.00 or full amount of the bid if less than $300.00
- Over $1,200.00 Market Value - 25% of stated market value.

12.04.16.00 Deposit Return - Unsuccessful Bidders - Sealed Bid

Immediately after the bid opening accounting returns unsuccessful bidders' deposits by certified mail, return receipt requested. Except, the deposit furnished by the second highest bidder shall not be returned until the highest bidder has paid the total amount due the State. If an unsuccessful bidder is present when the deposits are released, the check may be delivered to the bidder at the time of the sale and a receipt obtained from the bidder upon proof of identity.

12.04.17.00 Bill of Sale

The Bill of Sale must reflect the item number and description shown on the IDR. The Director of Real Property delegate shall execute the Bill of Sale (Form FA 263B) after the purchaser has paid the total amount due. The purchaser SHALL NOT REMOVE ANY SALE ITEMS until the Authority has received full payment.

12.04.18.00 Breach of Contract

The Notice of Sale and Terms of Sale contain provisions whereby the State shall retain all money paid to it up to the time the purchaser breaches the contract to offset actual damages sustained by the State as a direct result of the breach. Ordinarily, actual damages are determined by resale of the property that is subject to default. Sections 12.04.19.00 through .23.00 are based on the premise that, in the absence of proof to the contrary, the original sale price represented market value at the time of the breach of contract. The actual damages sustained are, therefore, the difference between the first and second sale prices, plus expenses.

The procedures detailed below are not applied to those cases where the bidder, after completing payment and furnishing surety bond, does not complete improvement removal in accordance with the agreed-upon obligations stated in Paragraph (1) of Forms RW 12-04, RW 12-05, or RW 12-06 or in the performance of any other agreed-upon obligation. In these cases, the State completes the work and bills the bonding company for the additional cost of completing the bidder's work. No refunds are made to the bidder.

12.04.19.00 Defaults Not Fault of Bidder

If the successful bidder defaults because of State's inability to convey title or any other cause not the fault of the bidder, the bidder's money shall be refunded pursuant to accounting instructions.

12.04.20.00 Refunds

The Real Property Branch notifies the Financial Office by memorandum to prepare refund documents, fully itemizing the transaction per Section 12.04.23.00.

12.04.21.00 Notification to Defaulted Bidder

If there is a breach of contract, the Real Property Branch must immediately notify the defaulted bidder in writing, including the following information:

- Nature of Breach of Contract - e.g., failure to pay the balance due or provide the required bond.
- Determination of Damages - the bidder's money is retained pending determination of actual damages sustained by the State as a result of the breach.
- Refundable Balance -any refundable balance after deduction of actual damages sustained is remitted with an accounting of said money.

No money is to be returned to the defaulted bidder, whether the money is the required deposit only or the entire purchase price, except as provided in Section 12.04.23.00.

12.04.22.00 Re-sales to Determine Damages Sustained

The Real Property Branch schedules a resale of the subject property as promptly as practicable after the breach of contract. Timeliness is necessary to demonstrate good faith and to avoid any undue hardship a delay might cause a bidder whose money cannot yet be released. Actual damages are determined as follows:

ACTUAL DAMAGES	
Condition	Amount
Property sells for less than the original sales price	Difference between the two sales prices, plus all expenses for resale.
Property sells for an amount equal to or more than original sales price plus expenses	Zero.
A building cannot be resold, due to lack of interested bidders or impending project certification date	The demolition cost.
Highest bidder defaults on sale by sealed bid and the Authority sells to the second highest bidder	Difference between the two bids.
Demolition to be done by the Authority's contractor at a later date	An estimate of cost may be used to determine actual damages sustained by the State. If demolition is in the near future, determine and document actual cost.

12.04.23.00 Statement of Damages Sustained

After determining actual damages, the Real Property Branch provides the defaulted bidder with an accounting statement showing:

- Total amount paid to State on purchase of the property.
- Deduction for actual damages, if any.
- Refundable balance, if any.

If the actual damages sustained exceed the money on deposit, The Real Property Branch retains the entire amount and furnishes an accounting statement to the defaulted bidder.

The defaulted bidder is not billed for losses exceeding moneys paid up to the time of breach unless State has performed, or caused to be performed, work under Section 12.04.18.00. Then, all costs are to be recovered.

The accounting office schedules payment to the defaulted bidder when a refund is due.

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CALIFORNIA High-Speed Rail Authority

CHAPTER 13

UTILITY RELOCATIONS
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13.01.00.00 - INTRODUCTION

13.01.01.00 General

This chapter prescribes policies, procedures, standards, and practices for the Authority wide coordination of utility relocations required for construction of transportation projects. The chapter is organized based on the usual sequence of events from project inception (planning) to project completion (construction). Although it is impractical to include all policy interpretations and instructional material, this chapter does contain the information required to do the job.

In general, California High-Speed Rail Authority's (Authority) Utility policies apply to public utilities. "Public utilities" are defined as those utilities either publicly, cooperatively or privately owned that provide a product or service, either directly or indirectly, to the public for a fee.

Separate "Utility Reference File" memorandums supplement this chapter and provide background or guidance on subjects that occur less frequently. (see Section 13.01.01.03.)

13.01.01.01 Right-of-Way Utility Coordinator Responsibilities

The Authority is responsible for relocation or removal of utility facilities that are either in physical conflict or in violation of the Authority's utility accommodation policy for transportation projects. This responsibility shall be delegated to the Director of Real Property, who will authorize the Utility Coordinator(s) to implement the Authority's policies, including the following specific directions:

- Establish files that document actions taken or recommended during the life of a project. (Section 13.01.01.04).
- Prepare route estimates based on possible relocations. Update and revise the estimates, when necessary. These estimates are used for capital and support budgeting needs for current and future fiscal years. (Sections 13.02.04.00, 13.02.04.01, and 13.02.04.02).
- Act as the Authority's primary point of contact with utility owners for identifying and verifying all utility facilities lying within existing and proposed rights-of-way of planned construction projects. (Section 13.03.02.00).
- Coordinate positive location requirements for all High/Low Risk Utility Facilities within the project limits. (Section 13.03.03.00).
- Coordinate "avoidance" of utility facilities and/or transmit identified conflicts to Owners. (Sections 13.03.01.03 and 13.03.04.00 through 13.03.04.04).
- Obtain and analyze data to allocate cost between utility owner and Authority for all required utility adjustment work and to clearly document, support and, in cases where the Authority has cost liability, set forth the basis of this finding in a Report of Investigation. (Section 13.05.00.00).
- Assist in preparing and/or reviewing (1) encroachment exception requests and (2) High/Low Risk Policy exceptions. (Section 13.01.04.00).
- Review utility consultant design agreements when required for utility relocation. (Section 13.03.01.06).
- Prepare and issue Notices to Owner, Utility Agreements, and Encroachment Permits in accordance with delegated authority. (Sections 13.06.00.00 and 13.07.00.00).
- Coordinate preparation of a Right-of-Way Certification for proposed construction projects. (Section 13.08.00.00.)

- Verify utility owner's relocation bills and process for payment when acceptable. (Section 13.10.00.00).
- Coordinate preparation of and review necessary property right conveyances for utility owners. (Section 13.11.00.00).
- Coordinate with the Authority's offices, divisions, and branches and external organizations, both public and private, to ensure the above directions are implemented.

13.01.01.02 Definitions

The following definitions are for purposes of the Utility Relocations Chapter and the Authority's Right-of-Way utility relocations only.

- **FACILITY** - Facility is synonymous with utility facility. A facility is any pole, pole line, pipe, pipeline, conduit, cable, aqueduct, or other structure or appurtenance used for public or privately owned utility services, or used by any mutual organization supplying water or telephone service to its members.
- **OWNER** - Owner is synonymous with Utility Owner. An Owner is any private entity or public body (including city, county, public corporation, or public district) that owns and/or operates a utility facility which directly or indirectly serves the public for a fee.
- **LIABILITY** - A financial obligation or responsibility to pay for relocation of utility facilities affected by the Authority's project.
- **POSITIVE LOCATION** (POS-LOC) - Positively determining the existence, location and identification of a utility facility to within 0.5 feet through the use of vacuum excavation, potholing, probing, electronic detection, or a combination thereof as deemed acceptable by the Design Engineer. Refer to the Policy on High and Low Risk Underground Facilities within Authority Rights-of-Way for specific requirements.

13.01.01.03 Utility Relocations Reference Materials

The Reference File System will be established by the Real Property Branch (RPB) as a tool to supplement the Right-of-Way Manual in order to provide guidance on infrequently occurring situations, more extensive background information, policy interpretations, and instructional material impractical to include within the basic Right-of-Way Manual. The "Utility Reference File" (URF) memorandum will be established as the vehicle to supplement the Utilities Chapter of the Right-of-Way Manual.

The Utility Coordinator is responsible for maintaining a complete set of the "Utility Reference File" memorandums (URFs). To provide a basis for uniform and equitable service to all utility owners (Owners), this file is to be made available to all Utility Coordinators.

13.01.01.04 Utility File and Diary

The diversity and complexity involved in the relocation of utility facilities and their potential safety impacts make it mandatory that files be established and thoroughly documented.

A separate utility file should be established for each involvement on a project. For example, if a project has relocations for PG&E-Gas Transmission, PG&E-Gas Distribution, and PG&E-Electric Distribution, it would equal three (3) involvements.

Each Utility Coordinator should initiate a procedure for a utility file diary. Each file shall contain all of the mandatory components and shall be organized in a uniform fashion. The utility file shall contain the following items, as applicable:

- Diary notes.
- Copies of the supporting liability documentation.
- Report of Investigation.
- A fully executed wet-ink original of the Utility Agreement.
- A copy of the relocation plans.

In every instance, the author shall date and sign (or initial) all diary entries and notations in the file. A sample diary is shown in Exhibit 13-EX-02.

13.01.02.00 Applicable Utility Laws and Policies

The following is a selected list of laws, regulations, and policies that shall be uniformly applied.

13.01.02.01 Delegation of Authority

Utility Coordinators are authorized to approve all Reports of Investigation (Form RW 13-03), including liability determination, for all utility relocations and positive locations, in accordance with the policies set forth in this Right-of-Way Manual, and appropriate memoranda, with the exception of "liability in dispute." (Section 13.04.09.00 et seq.)

As a condition of the delegation to the Utility Coordinator, the Report of Investigation Approval Guide (Form RW 13-16) must be completed by the Utility Coordinator at the time of approval and retained in the utility file.

13.01.02.02 [Hold for Future Use]

13.01.02.03 [Hold for Future Use]

13.01.02.04 Encroachments Within Authority Rights-of-Way

The Authority's policy is to prohibit all at-surface encroachments within the access control lines of Authority rights-of-way. Utility crossings are permitted where supporting structures or manholes are located outside access control lines. Encroachment exceptions are permitted only where space is available, facilities may be safely installed and maintained, and no other reasonable alternative is available. The Authority's Rail Operations and Maintenance Office must approve all exceptions to the policy.

13.01.02.05 Hazardous Waste Impacted by Facility Relocations

Authority ordered utility relocation work to be done within the Authority project limits is a necessary part of the Authority project construction. Any hazardous waste (HW) encountered within the project limits as a result of Authority ordered utility work is handled in the same manner as HW encountered by any other part of the Authority project construction.

HW encountered outside the project limits, such as on the grantor's remaining property, other private property, or on local streets and roads beyond the limits of the Authority project, is not the Authority's

remediation responsibility. Any extraordinary costs associated with remediation or unusual work requirements due to HW encountered outside the Authority right-of-way are considered part of the Owner's necessary relocation effort. The Authority may pay its proportionate share of these costs as part of normal relocation reimbursement in accordance with the usual liability determination process.

See the Authority Master Agreements and Cooperative Agreements for details of handling hazardous materials and their associated costs on Authority projects for those Owners who have signed an Authority Master Agreement.

All exceptions to this policy shall be processed through Director of Real Property for approval.

see Section 13.02.05.03 for Hazardous Waste Exceptions.

13.01.02.06 Work Before Environmental Approval

Pursuant to California Public Resources Code Sections 21102 and 21150, environmental approval shall be received prior to any expenditure of capital funds for detailed design or relocation of utility facilities. This does not preclude an expenditure of funds for the Owner's preliminary engineering or Authority's positive location work in support of the environmental document.

The Authority has established a process to order an Owner to commence design activities prior to the approval of the environmental document but after the selection of the preferred alternative. If, at any time during the project, an environmental re-evaluation is required, no work other than studies or positive location work should proceed outside of the "area of potential effect" (APE) evaluated and approved in the original environmental document until the re-evaluation is completed.

13.01.02.07 Verification of Utility Facilities

Pursuant to Government Code section 4215, governmental agencies shall make every reasonable effort to locate all existing utility facilities within the right-of-way of a proposed construction project and to identify the facilities on construction contract plans. Failure to identify utility facilities on plans may make the Authority liable for damages to the facilities resulting from planned construction.

13.01.02.08 Policy on High and Low Risk Underground Facilities Within Authority Rights-of-Way

The Authority is responsible to provide a safe environment for employees of the Authority and its contractors, as well as the traveling public. An important element of the safe environment is providing a clear and safe right-of-way through the proper placement, protection, relocation, or removal of utility facilities that may pose a safety risk to the Authority worker or user when the utility is excavated, cut, or penetrated. Toward this end, the Authority shall establish and enforce mandatory standards and procedures for the placement and protection of underground utility facilities within Authority rights-of-way and for the safety of Authority workers involved in maintenance or construction operations in proximity to underground utility facilities.

These mandatory standards and procedures are known as the Policy on High and Low Risk Underground Facilities Within Authority Rights-of-Way.

13.01.02.09 Advancing Cost of Relocation to Owner [Hold for Future Use]

13.01.02.10 Advance Deposit for Authority Contract Performed Work

State administrative rules require that an advance deposit must be made to the Authority for the estimated cost of work to be done by the Authority on behalf of another entity (Owner).

13.01.02.11 Inspection of Relocation Work

Authority policy provides that whenever work is underway on any relocation being done to clear the right-of-way for construction, an engineer must be assigned to inspect and accept the work. Without an assigned engineer to inspect the work, the utility relocation should not proceed.

The assigned engineer, shall inspect all utility relocation work. The inspection must be documented in Inspector's diary notes. Copies of these notes should be sent to the Utility Coordinator on a regular basis and placed in the Utility File.

All communications with the Owners, including modification of the scope of work or the need to have utility work performed on premium or overtime shall be the responsibility of the Utility Coordinator and shall be done in writing. All decisions relating to utility relocation work, including additional or supplemental liability determinations, shall be made by the Utility Coordinator. Significant changes to the scope of work shall be covered by an amended Utility Agreement issued by the Utility Coordinator.

13.01.02.12 Application of Master Agreements / Authority Master Agreements to Special Funded Projects

The Authority may enter into Master Agreements or Authority Master Agreements with several Owners for the apportionment of relocation costs on Authority projects. (Section 13.04.03.00. These agreements, authorized by Public Utilities Code (PUC) section 185507, shall be applied in lieu of otherwise applicable PUC sections and shall be applicable to all Authority projects that are part of the California Authority System no matter what the source of project funds or agency responsibility for project design.

13.01.02.13 Utility Facilities Within Authority Rights-of-Way

Authority law allows utility facilities to cross the Authority rights-of-way.

All utility facilities and other encroachments located within Authority rights-of-way must be covered by an Encroachment Permit and placed in accordance with the Authority's standards. All exceptions to applicable requirements as set forth in the Authority's "Encroachment Permits Manual" must have Authority's Rail Operations and Maintenance Office prior approval.

13.01.03.00 Private Utility Facility Relocations

Relocation of all private utility facilities shall be by the usual appraisal/acquisition process rather than by the public utility relocation process.

A private utility facility is one that provides a utility service for the exclusive use of a privately owned business, farm operation, etc., or provides an exclusive service to improvements and occupants of an individually owned property. Examples of this type of utility facility are:

- Facilities located on a military base, school grounds, manufacturing complex, etc., owned and maintained by the property owner for their exclusive use.
- A facility interconnecting individually owned but dispersed operating sites providing an exclusive and private service to the site owners.

Separation of the private utility facility from the public utility facility occurs at the point where the privately owned and maintained facility connects to the public facility.

13.01.03.01 Private Facilities in Authority Rights-of-Way

Private transverse crossings shall not be unreasonably denied as long as they meet the Authority's standards.

Private longitudinal installations within Authority may be allowed only under the following circumstances:

A. The private use is based on a retained property right.
B. Oil company facilities that were placed within the right-of-way of a city or county road under a local agency issued franchise agreement before the road became part of an Authority corridor may remain within the Authority right-of-way for the duration of its useful life or until physically impacted by a Authority improvement project, at which time it shall be relocated outside the Authority right-of-way. If the oil company facility is claimed and proven to be a "common carrier," it should be handled in the same manner as a public utility facility.
C. Cogeneration plants' transporting lines that transport electricity to a public utility may be treated as public utilities and their transporting lines allowed as encroachments within the Authority subject to the usual utility accommodation requirements. The electrical generator portion of the operation, if impacted by the Authority project, should be treated as any other business operation subject to the acquisition process.

13.01.04.00 Encroachment Exceptions

The Authority's Rail Operations and Maintenance Office is responsible for review and approval of specific requests for exceptions to established standards and policies governing encroachments within Authority rights-of-way. Requests for encroachment exceptions must be sent to the Authority's Rail Operations and Maintenance Office A copy of all utility relocation exception requests should be forwarded to the Director of Real Property, or designee, for concurrent review.

13.01.05.00 Right-of-Way Utility Management System (RUMS) [Hold for Future Use]

13.01.05.01 RUMS Lite [Hold for Future Use]

13.01.06.00 Charging Practices

The Authority maintains a comprehensive cost accounting system, major segments of which involve accounting for employee time (support) and expenditure of funds (capital) and reporting production. Ensuring support and capital are correctly charged enables the Authority to report expenditures and maintain financial control on active budgets and serves as the foundation for justifying and developing future budgets.

13.01.06.01 EA Phases [Hold for Future Use]

13.01.06.02 EA Splits, Combines and Revisions [Hold for Future Use]

13.02.00.00 - PLANNING PHASE

13.02.01.00 General

Duties relating to this phase of the project are normally performed prior to Environmental Clearance. Activities generally consist of:

- Corridor/Route Preservation
- Route Estimating
- Right-of-Way Data Sheet Preparation
- Draft Project Report review
- Draft Environmental Document Review

13.02.01.01 Preliminary Engineering in Support of the Environmental Document

Public Resources Code Sections 21102 and 21150 Authority that environmental clearance must be received prior to any expenditure of capital funds for a project. This does not preclude expenditure covering Owner performed work critical for inclusion in the environmental document. This work is sometimes referred to as "preliminary engineering" and includes such items as:

- Facility verification effort, including necessary positive location work.
- Owner effort required to determine and identify new utility facility rights-of-way and resultant environmental impacts.
- Preparation of Plans in Support of the Environmental Document (ED).

13.02.01.02 Future Project Coordination

Owners require lead time to develop budgets and plan work required for ordered relocations. Additional lead time may be required to order long lead time materials, to schedule work during non-peak demand periods when utility facilities may be removed from service, and to comply with PUC General Orders.

It is critical that the Utility Coordinator establish early and continuing coordination with all Owners being affected by proposed projects. Many local agencies hold periodic coordination meetings with Owners within their jurisdictions to discuss planned public works projects in general. Utility Coordinators are encouraged to discuss Authority projects at these meetings or to conduct their own liaison meetings.

13.02.02.00 Work Before Environmental Approval

California Public Resources Code Sections 21102 and 21150 do not preclude an expenditure of funds for the Owner's preliminary engineering or Authority's positive location work in support of the environmental document.

If, at any time during the project, an environmental reevaluation is required, no work other than studies, preliminary engineering or positive location work should proceed outside of the "area of potential effect" (APE) evaluated and approved in the original environmental document until the reevaluation is completed.

13.02.02.01 Corridor/Route Preservation [Hold for Future Use]

13.02.02.02 Preliminary Engineering Prior to Environmental Approval

In certain circumstances and to ensure right-of-way's timely project delivery, it may be necessary to begin design activities prior to Environmental Approval. A process has been established that allows for Preliminary Engineering Design Work before Environmental Document to proceed in a timely manner. The decision to use this process will be made on a project-by-project basis by the Utility Coordinator. This process may work well on some projects and not others. In making the decision on whether to use this process, the Utility Coordinator should consider the following:

- At what point after Project Initiation Document (PID) to initiate this process.
- When to obtain facility mapping and verify existing utilities.
- Determine the route alignment/easement needs for utilities.
- Define the Footprint that is the "Area of Potential Effect" (APE) for the Environmental Document, as it affects utilities.
- The possibility of wasted work.
- The feasibility of the project actually going forward.
- Federal funding will be lost for any physical relocation work prior to Environmental Document.

The following factors should be considered before initiating Preliminary Engineering prior to the Environmental Document:

- Owner's Preliminary Engineering cannot commence until the preferred alternate route has been selected.
- Evaluate the Environmental Document as follows:
  - If Environmental issues arise, such as an Environmental Sensitive Area (ESA), biological, archeological, or water quality sites, what areas are then available for route alignment and future relocation activities?
  - Obtain a time estimate from the Environmental section as to how long it will take to complete the Environmental Document and mitigate any issues.
- Evaluate schedule milestone dates to determine a reasonable starting time for Engineering to begin.
- Determine when to request facility mapping and start the conflict determination stage.
- Determine when to send conflict mapping to the Utility Owner.
- Positive Location (Potholing) is allowed during Preliminary Engineering.

Process for Implementing Owner's Preliminary Engineering prior to approval of the Environmental Document:

- Prepare the Data Sheet to reflect funding for Owner's Preliminary Engineering so the Project Manager can properly fund at this early phase.
- Prepare the liability package once the final alternative has been selected following all liability determinations shown in 13.04.00.00 of this manual.
- Prepare a Report of Investigation and Utility Agreement for encumbrance of funds.
- Use Capital funding.

13.02.03.00 Utilities on Donated or Dedicated Future Right-of-Way

Donated right-of-way is property for which the owner was entitled to receive just compensation, but for personal reasons waived that right and deeded to a public agency without compensation. If the donated right-of-way location is satisfactory to the Authority's needs, the property may be acceptable even though encumbered with utility facilities. This is based on the premise that even if the Authority had purchased the right-of-way, the Authority may have been liable for any necessary adjustment or relocation of the utility facilities occupying private property.

Dedicated right-of-way is property that the owner is obligated to convey to public ownership as a condition prior to the granting of a permit, license, or zoning variance for a planned property development. The Authority must not accept dedicated right-of-way if it is encumbered with existing or planned utility facilities that are in conflict with the Authority's accommodation policy. Since the property owner is obligated to provide the right-of-way without compensation, this obligation extends to conveying it free and clear of all conflicting encumbrances that would otherwise have to be removed through payment of public funds. All conflicting utility encumbrances must be cleared by the property owner prior to conveyance to the public agency or prior to acceptance by the Authority.

13.02.04.00 Utility Estimates

Right-of-Way Estimating usually requests the project utility relocation estimate. These estimates are used for the Project Study Report (PSR). The PSR is an engineering report used to document agreement on scope, schedule, and estimated cost of the project so it can be included in a future STIP or other programming document.

Since accurate estimates are crucial to both scheduling and ultimate delivery of any given project, utility estimates must be as accurate as possible. Significant cost contingencies should be specifically identified in the estimate. For example, a potential conflict with a major facility where the project's impact cannot yet be fully determined.

Estimates should always be based on the most probable "worst case" and "highest cost" assumptions. Policy requires all utility facilities located within project limits in violation of current utility accommodation requirements be adjusted to meet current requirements. If the facility is located in the project limits subject to a previous encroachment exception and the Utility Coordinator feels the facility may safely remain, it must be reevaluated. (see Section 13.01.04.00.) Therefore, for estimating purposes, the Utility Coordinator should assume an exception will not be granted and include estimated costs for a relocation.

The Utility Coordinator should take the following steps in preparing the utility estimate:

- Field review all proposed project route alternatives.
- Identify each Owner and type of utility and prepare a relocation cost estimate for each. The relocation cost estimate may be based on past experiences with relocation costs, unit costs, broad gauge estimates, consultation with utility owners or other method suitable to the facility to be relocated.
- Prepare a total relocation cost estimate for the project, including updating escalation rates when appropriate. Escalation rates can be measured by identifying industry-wide rates in increases in labor, products, and materials. These increases can be estimated by comparing current labor rates, accessing industry Web sites for information, reviewing current utility owner invoices and consulting with the Owners.

- Identify the Owner's requirement to complete an environmental study for the proposed utility work or to order long lead time materials for the project and estimate additional lead time necessary for completion.
- Consult with the Design Engineer to identify possible modification of right-of-way lines or early design changes to avoid potential conflicts, when appropriate.
- Provide workload estimates for all utility related WBS codes. The Utility Coordinator can use past experiences, previous support charges for production of utility documents or workload estimating norms.

Prepare data for the Right-of-Way Data Sheet(s) for the project discussing the items above and submit to Right-of-Way Estimating. Use of Exhibit 13-EX-06 is recommended for preparing estimates for all route reviews.

13.02.04.01 Right-of-Way Data Sheet

The Right-of-Way Data Sheet is used to provide cost data to be included in the PSR. It is critical that the Utility Coordinator review all proposed projects to ensure any and all possible utility relocation costs are included. This data becomes the basis for right-of-way project programming in the Authority Plan, which establishes the project's capital and support budgets. Accurate and up-to-date data on project costs and work units are critical.

13.02.04.02 Project Study Report (PSR) Review

The draft PSR incorporates the Right-of-Way Data Sheet or includes information from it. The draft is circulated through Utility Coordinator for review and concurrence. It is imperative that a thorough review of all aspects of the project-impacted facilities takes place prior to approval of the PSR. The review should ensure that all facilities to remain within the project area either meet the Authority's accommodation policy or that estimated relocation costs are included.

NOTE: Occasionally, if there are no required right-of-way acquisitions, utilities may be overlooked. The Utility Coordinator must proactively identify planned projects to ensure that all draft PSRs are reviewed and Right-of-Way Data Sheets are prepared for all projects.

13.02.05.00 Environmental Document Review

The Utility Coordinator must review the draft environmental document to ensure that utility relocation impacts are addressed. These typically occur, for instance, where an underground facility will be relocated across an environmentally sensitive area, such as a wetland, or where new utility rights-of-way are to be acquired. The Utility Coordinator must ensure the "area of potential effect" identified in the environmental document covers any parcels identified as potential replacement easements for utility relocations.

Potential Hazardous Waste (HW) impacts resulting from the Authority project are usually addressed in the environmental document. If HW is a potential problem on the project, the Utility Coordinator must ensure that the requirements of Section 13.01.02.05 are addressed in the document.

It is also critical to ensure the environmental document does not propose utility-related mitigation commitments that may be in conflict with existing laws or current Authority's policies. Conflicting commitments must have Director of Real Property prior approval. For example, it is incorrect to propose undergrounding for aesthetic purposes or to require underground utility crossings to be placed as part of

the Authority construction to mitigate future needs since these commitments may constitute "a gift of public funds."

If utility facility relocations are addressed in the document, then the following suggested wording should be used, but not placed in the "Mitigation Section:"

> *"All public utility facilities impacted by the proposed transportation project will be relocated and/or accommodated in accordance with Authority law and regulations and the Authority's policies concerning utility encroachments within Authority rights of way."*

13.02.05.01 Special Environmental Reviews for 50KV Electric Facilities

Major electric facilities involving substations and/or power lines operating in excess of 50KV may require special permits and environmental review per PUC General Order 131-D. Potential relocations of this type require early coordination with PUC regulated electric utility owners to determine General Order applicability. If an environmental review is necessary, including the potential utility relocation in the Authority's environmental document may substantially reduce lead time requirements for the utility relocation. Questions concerning applicability of this Order to a particular relocation must be resolved between the Owner and the PUC.

13.02.05.02 Draft Environmental Document to Owners

The Utility Coordinator must alert all Owners impacted by a proposed Authority project when the draft environmental document is circulated for review. This allows Owners to recommend inclusion of utility relocation needs and thus minimize risk for later project delay resulting from unanticipated relocation environmental problems.

13.02.05.03 Hazardous Waste Exceptions

The Authority's hazardous waste policy specifies that remediation of project-related contamination should be completed prior to construction activities. In cases where cleanup prior to construction is not feasible and remediation is proposed during project construction, an exception to this policy must be requested. This policy applies to Authority ordered utility relocation work within Authority Project limits. (see Section 13.01.02.05.)

The Project Manager, working in coordination with the Utility Coordinator, shall prepare an exception request for the Director of Real Property's approval.

Exception requests shall, as a minimum, address the following:

1. A summary of the project and how the project will impact the contamination area;
2. The type and extent of hazardous waste (summary of the hazardous waste investigation), including source and responsible party, if known;
3. The estimated cost to the Authority for remediation, including an assessment of future liability if the Authority assumes responsibility for remediation;
4. Why it is not practical to defer the project or to modify the project to avoid the contaminated property(ies);
5. The type of remediation proposed, including whether the Authority has approval from the appropriate regulatory agencies;
6. Why the property owner or other responsible parties have not assumed responsibility for cleanup;

7. The steps that have been or will be taken to recover cleanup costs and an evaluation from the Legal Division regarding the chance of success; and,
8. The draft special provisions for the remediation items of work.

13.03.00.00 - DESIGN PHASE

13.03.01.00 General

Activities allowed in the preliminary engineering portion of a project include:

- Update data sheet, as necessary, after review of the Project Report.
- Coordinate identification and verification of existing utilities.
- Assist in identification of utility facilities in physical conflict or in violation of the Authority's utility accommodation policy.
- Assist in identification of all high and low risk utility facilities and coordinate the positive location of these facilities as required.
- Prepare the Utility Agreement, and Report of Investigation for Owner-conducted positive location.
- Prepare the Task Order for Authority Contractor-conducted positive location.
- Request and review Owner's relocation plans, claim of liability, and estimate of cost.
- Prepare the Report of Investigation and Utility Agreement for preliminary engineering.

Activities generally performed in the design phase of a project include:

- Coordinate planned placement of utility facilities on structures.
- Identify and submit utility-related "Special Provisions" to Design Engineer.
- Bill the local agency pursuant to a Cooperative Agreement when there is one.
- Coordinate with the Engineering Services Branch to review encroachment exception requests for accommodation policy conflicts.
- Prepare the Report of Investigation and Utility Agreement for relocations.

13.03.01.01 Commencement of Design If Preliminary Engineering Is Used

As a first step, the Utility Coordinator shall arrange a meeting with all impacted Owners, the Design Engineer, and a Structures Representative if a structure (bridge) is involved. The meeting purpose is to:

- Discuss the general project.
- Identify utility impacts.
- Discuss alternative solutions to Authority/utility conflicts.
- Identify need for Owner required utility consultants.
- Identify potentially required new utility right-of-way.
- Determine a schedule for future coordination meetings.

A prime responsibility of the Utility Coordinator is to take a proactive role to ensure that all projects are proceeding in a timely manner and that verifications are requested for all projects.

NOTE: If at any point during the design stage an Environmental Re-evaluation is necessary, no work other than studies, preliminary engineering or positive location work should proceed outside the original environmental "footprint" and/or "area of potential effect" or in the area under reevaluation. Contact Director of Real Property, or designee, for additional guidance.

13.03.01.02 Identification and Protection of Utility Facilities

Government Code Section 4215 states that the public agency shall assume responsibility for protecting utility facilities not identified in the plans and specifications for the project. Every reasonable effort, therefore, should be made to locate all existing facilities and delineate their locations on project plans. The law is not restricted to hidden or underground facilities. All aerial facilities located within the project must also be included if the facility will remain within the project.

Government Code Section 4215 states that the Authority is required to take reasonable and prudent steps to ascertain the exact location of underground facilities. If the contractor has done so but still damages a facility not shown on the plans, the Authority may be responsible for damages to the facility and all resulting protection requirements and/or project delays.

13.03.01.03 Utility Facility Avoidance

The utility facilities should be designed to be cost effective and to miss Authority facilities whenever possible.

13.03.01.04 Design of Utility Facility Relocations

The Owner shall be responsible for designing its own utility facility relocations. The only exception occurs when the Owner has requested the Authority to design the relocation. The design of the relocation require execution of a Utility Agreement and the Utility Coordinator shall remain the primary point of contact for liability and coordination of work activities between Owner and Authority. Liability is determined using the same methodology as if the Owner were conducting the relocation. (see Section 13.04.00.00.)

13.03.01.05 Replacement Right-of-Way for Utility Facilities

Acquisition of a replacement right-of-way for relocated utility facilities may become a major obstacle to timely relocation. Utilities, like Authority projects, are an essential service for users and cannot be severed for lack of an alternate replacement location. Either the Authority or the Owner can acquire the replacement right-of-way. If acquired by the Authority, needs must be identified early for inclusion in the Authority's right-of-way acquisition program.

When the Utility Coordinator determines that Authority acquired replacement right-of-way is needed, the Owner's plans are forwarded for inclusion in the Authority's Rail design. The Design Engineer will prepare plans and forward them for acquisition.

13.03.01.06 Utility Consultant Design Requirements

Normally, the Owner designs their utility relocations. If the Owner is unable to perform their own design or elects to have design work done by a consultant, and the design costs are to be reimbursed by the Authority, the Utility Coordinator must discuss with the Owner the Authority's need to review the Owner's consultant selection process to ensure reasonable consultant costs. This requirement must be discussed with the Owner early in the process to ensure no action is taken prior to our review. In addition, any Third Party Consultant Agreement over $250,000 must be submitted for pre-award evaluation. For a detailed discussion on consultant agreements, see Section 13.14.09.00.

13.03.02.00 Utility Verifications

The Design Engineer is responsible for determining the identification and location of all utility facilities that lie within the right-of-way boundaries of the planned construction project. This is accomplished by: 1) a field review of the project area by the Design Engineer and Utility Coordinator, 2) reviewing as-builts, permit records and geographic information systems, 3) asking the Utility Coordinator to verify facilities from each Owner that may have facilities within the project area, and 4) requesting field surveys to verify utility facilities.

The need for this identification and verification is twofold:

- To identify all potential utility/project conflicts so they may be cleared before project construction commences, either through avoidance or relocation.
- To meet the requirements of California Government Code Section 4215, which states in part that all utility facilities shall be identified on the Authority's project plans and if not so identified, the Authority may be liable for all resulting damages to the facilities. The cost of such damages to the facilities is not Federal-aid reimbursable.

13.03.02.01 Preparation of Verification Maps

The Design Engineer is responsible for ordering preparation of mapping to be used for the delineation and verification of utility facilities within the project limits. Identification is necessary even if proposed construction is entirely within existing rights-of-way. The Design Engineer obtains this utility information from the following sources:

- Authority's as-built construction drawings for prior projects.
- Ground and aerial surveys.
- Encroachment Permit files.
- Field review of the project.

These maps will also show existing and proposed right-of-way lines, as well as existing and proposed access control lines, where applicable. A sufficient number of verification maps, as needed, will be prepared.

13.03.02.02 Utility Verification Request to Owner

The Utility Coordinator must send the verification maps to each Owner with existing or potentially existing facilities within the project area. The request letter should include the elements shown in Exhibit 13-EX-10. The Owner should be encouraged to add to the maps any facilities not already located or depicted on the verification maps and show any abandoned facility. Normally, the Owner is allowed 30 days to respond. The Utility Coordinator is responsible for follow-up to ensure timely completion of verification. (see also CPUC General Order 128, Rule 17.7 for legal requirements for regulated Owners to provide facility location information.)

13.03.02.03 Owner's Verification of Facilities

Once the Owner returns the verification maps, if the Owner's verification indicates facilities within the project limits, the Utility Coordinator must:

- Transmit Owner's verified facility locations to the Design Engineer for review and inclusion on project plans.
- Assist the Design Engineer in identifying utility facilities in conflict with the Authority's accommodation policy.
- Assist the Design Engineer in identifying high and low risk facilities.

If no physical or utility accommodation policy conflicts are identified, the Utility Coordinator notifies the Owner(s) involved in the verification process of the finding(s). The letter advising them must include the elements shown in Exhibit 13-EX-11.

13.03.03.00 Positive Location of Underground Facilities

To accurately determine the type and location of all potentially impacted utility facilities, it is frequently in the Authority's and Owner's mutual interest to provide positive location of underground facilities. The process of obtaining this information may require that an excavation be made to expose the facility and allow the precise location to be surveyed to the Authority's datum. The excavation to expose the facility is frequently referred to as "potholing." Other methods of determining the positive location of an underground facility include probing, electronic detection, etc. Refer to the Authority's Policy on High and Low Risk Underground Facilities Within Authority Rights-of-Way for policy specifics.

The Design Engineer is responsible for determining when positive location is required, usually whenever facilities are known to exist within the project construction area but cannot be precisely located, particularly as to depth. Without precise location information, physical conflicts within the project cannot be determined nor safe construction assured.

The Utility Coordinator shall provide reasonable notice to the Owner regarding positive location of underground utility facilities and is responsible for determining liability for costs in accordance with Positive Location Agreements (Section 13.03.03.01) or usual liability requirements.

If the Owner is conducting the positive location, the Utility Coordinator shall provide the required Encroachment Permit with the Notice or assist Owner in obtaining it.

If the Authority's Positive Location Contractor is conducting the positive location, the Utility Coordinator shall submit a Task Order to the contractor. The Utility Coordinator must still provide notice to the Owner so that they are aware of the work and may have an inspector present during the positive location process.

13.03.03.01 Positive Location Agreements (PLAs) [Hold for Future Use]

13.03.03.02 Positive Location (Pos-Loc) Contracts

The Pos-Loc Contract is an on-call service contract to provide positive location services to the Authority.

13.03.03.03 Positive Location Task Orders

The Task Order must provide for a minimum payment of four "holes" for vacuum excavations. The Design Engineer shall send the appropriate number of maps along with the Task Order.

13.03.03.04 Positive Location Requirements for High Risk Utility Facilities

All underground high risk facilities lying within the construction area of a project shall be positively located in accordance with the Policy on High and Low Risk Underground Utility Facilities Within Authority Rights-of-Way. For a copy of this Authority policy, refer to RW 13-20.

The Project Engineer is responsible to ensure the policy requirements have been met and to provide a certification to that effect as part of the PS&E.

The Design Engineer directs the Utility Coordinator to obtain positive location information for all utility owned high risk facilities that may be in physical conflict with planned construction or that may be exposed to risk of damage during construction. The request must identify the location where the high risk facilities are to be positively located and include three sets of maps for each utility involvement (two sets for the Owner and one set for the Utility Coordinator's files.)

For Owners who have a current PLA on file, the Utility Coordinator prepares a task order for the Authority's Pos-Loc Contractor and a written notification to the Owner.

For Owners who do not have a current PLA on file, the Utility Coordinator arranges a meeting between the Owner and the Design Engineer to go over the plan for determining positive location requirements.

The Design Engineer is also responsible for obtaining the necessary positive location information on Authority owned high risk facilities and for including this information on project plans.

13.03.03.05 Liability for Ordered Positive Locations

If the Owner has a current PLA, the Authority ordered positive location conducted by the Authority's contractor or by the Owner is a100% Authority liability. If the Owner does not have a current PLA, liability is determined using the same rules that are applied to normal relocations. The liability is based on the occupancy rights possessed by the Authority and Owner as to each positive location site. Exhibits 13-EX-12 and 13-EX-13 provide sample letters for requesting liability information and issuance of the Notice.

NOTE: see Section 13.06.03.04 for expedited procedures for issuance of the Notice and Section 13.05.04.02 for lump-sum payments.

13.03.03.06 Prevailing Wage Requirements for Positive Location Contracts

The Authority is responsible to comply with federal and Authority prevailing wage laws when they request, write, award or manage any publicly funded contract.

When a new Positive Location contract is awarded, the Project Director must brief the contractor on all prevailing wage requirements, among other expectations, at a contract "kickoff" or pre-job conference. A record of the conference and an attendance sheet signed by the contractor, Contract Manager, and all attendees are retained with the contract.

California Law requires the Authority to have an orderly system of auditing contractor payrolls. The Positive Location contract requires the contractor submit a certified copy of all payroll records for verification. When progress payments are called for, the Contractor shall submit a certified copy of all payroll records for verification for the work completed to date with each invoice. Delinquent or inadequate certified payrolls or other required documents will result in the withholding of payment until such documents are submitted by the Contractor. If payment is withheld, Invoice Dispute Notification, Form STD. 209, must be filled out in order to suspend the Prompt Payment Act. The Contract Manager will review and maintain the certified copy of the payroll.

The Project Director will conduct interviews with employees of the Pos-Loc Contractor to verify compliance with prevailing wage laws.

13.03.03.07 Contract Manager's Working File

The Contract Manager is required to maintain a "working" contract file for each separate contract. The file should contain all the information or documentation:

- Copy of Service Contract Request Form (ADM 360) with all the supporting documentation.
- Copy of the executed contract.
- Copy of all Certificates of Insurance, if applicable.
- Copies of Payment and Performance Bonds, if applicable.
- Copy of each executed contract amendment, if applicable.
- Log or diary of all contract activity.
- Correspondence to Contractor or other correspondence relating to the contract, including the "kickoff" meeting or prejob conference documentation.
- Copy of each invoice, backup documentation and approval documentation.
- Spreadsheet of contract funds and expenses.
- Spreadsheet indicating DVBE/DBE usage, if applicable.
- Evaluation of the Contractor/Consultant, if applicable.
- Copy of CMIST certification - (see Section 13.03.03.08.)

13.03.03.08 Contract Manager Certification under CMIST (Contract Management Information and Specialized Training) [Hold for Future Use]

13.03.03.09 Utility Coordinator Responsibilities

The Utility Coordinator is responsible to coordinate all positive location requirements specified in the Task Order. Duties performed generally consist of:

- Request/prepare Positive Location Task Orders and NTO based on the maps.
- Follow up to ensure the positive location work will be done by the date specified in the Positive Location Task Order.
- Confirm necessary inspections. • Coordinate with Surveys to obtain required horizontal and vertical location data for utility facilities. See high and low risk positive location requirements. For a copy of this policy, refer to Form RW 13-20.
- Ensure that survey information is transmitted to the Design Engineer for inclusion in the contract plans.

- Assist in identifying longitudinal utility facilities not meeting the utility accommodations and high risk facilities policies.
- Process Pos-Loc Contractor's invoices for payment, subject to the Prompt Payment Act.

13.03.03.10 Design Engineer Responsibilities

The Design Engineer is responsible to:

- Plot survey information on the contract plans.
- Identify "physical" and "policy" conflicts.
- Prepare utility conflict maps and/or a conflict matrix for the Owner to prepare relocation plans.
- Recommend all existing or new utility accommodation policy exceptions.

13.03.04.00 Utility Conflicts Identified

The Design Engineer is responsible to review all existing utility locations for conflicts, determine which facilities need to be relocated, and make a written request to the Utility Coordinator to obtain affected Owner's relocation plans. The Design Engineer will provide the Utility Coordinator with conflict maps (see Section 13.03.04.03) the Utility Coordinator sends to the Owner to accompany a request for relocation plans, the Owner's claim of liability, and estimate of cost. (see Section 13.03.04.04.)

Some conflicts may not be immediately evident on the plans, such as staged construction requirements, detours, pile-driving operations, signal and lighting facilities, longitudinal encroachments, and encasement exception requirements. The Utility Coordinator shall review all plans with the Design Engineer for possible conflicts with all facilities within the project.

If after reviewing all utility information, including positive location data, the Design Engineer determines certain utility owners have no conflict with the Authority's proposed construction project, the Design Engineer notifies the Utility Coordinator who must then notify those Owners of the finding. The letter advising them must include the elements shown in Exhibit 13-EX-11.

If the Design Engineer identifies conflicts with the Authority's proposed construction project, the Utility Coordinator must arrange a meeting with all affected Owners and the Design Engineer. The purpose of the meeting is to discuss the project, identify needed relocations, and work out the most economical and practical solutions consistent with Authority and utility design standards.

If a Local Public Agency (LPA) Cooperative Agreement with cost sharing is involved, the Utility Coordinator must ensure the LPA is billed for their share of the estimated total relocation costs for all Owners in advance of the work being completed and prior to Right-of-Way Certification.

The Utility Coordinator is responsible to ensure that all budgeting information is up to date.

13.03.04.01 Utility Accommodation Policy for Authority and Exceptions to the Policy

The Authority's basic accommodation policy for utilities within the Authority allows subsurface or aerial transverse crossing after approval of an encroachment permit. The policy prohibits at-surface encroachment within the access control lines. Utility facilities within the project limits of planned Authority projects that are in violation of this policy must be relocated to clear the project. The Rail and Operations Delivery Branch must approve exceptions to this clearance requirement prior to Right-of-Way Certification.

Selected projects exempt from a review of utility facilities in violation of this accommodation policy are:

A. Planting or planting restoration projects.
B. Resurfacing, drainage, safety, etc., that do not result in the edge of the traveled way being moved closer to the encroaching utility facility.

Longitudinal installations or crossing support facilities may be allowed to remain within the access-controlled area in extreme cases, after Rail and Operations Delivery Branch approval, with the following restrictions:

A. The facility must be a public utility facility.
B. The facility must not adversely affect Authority safety, maintenance, and operations.
C. Relocation of the facility would be inordinately difficult or unreasonably costly.
D. Access for construction and maintenance of a facility located within the access-controlled area must be from other than the traveled way of the Authority, such as from adjoining frontage roads or nearby streets or trails.
E. Utility service connections to adjacent properties shall not be permitted.
F. All underground high/low risk facilities shall meet the Authority's established policy.

13.03.04.02 Identify CURE/CRZ Conflicts [Hold for Future Use]

13.03.04.03 Conflict Maps/Conflict Matrix

Utility conflict maps are essentially the Authority's preliminary layout sheets for the PS&E. They should show any construction feature that may affect the Owner's facilities including, but not limited to, the following:

- Utility location
- Right-of-Way lines
- Cross Sections
- Profile
- Drainage
- Stage Construction
- Bridge Structure

13.03.04.04 Request for Relocation Plans, Claim of Liability, and Estimate of Cost

Prior to issuing the Utility Agreement, and Encroachment Permit, the Utility Coordinator must obtain the Owner's claim of liability, estimate of cost, and relocation plan. An exception can be made for expedited positive location. (see Section 13.06.03.04.)

The letter to the Owner must include the elements shown in Exhibit 13-EX-09 and normally allows the Owner 60 to 120 days to respond. Since this is a crucial element in the utility relocation process, the Utility Coordinator must actively follow up with the Owner to ensure they maintain a schedule that will allow successful project delivery.

13.03.04.05 Receipt of Relocation Plans, Claim of Liability, and Estimate of Cost

Upon receiving the Owner's relocation plans, the Utility Coordinator routes the plans for review and approval, comparison with other Owners' plans for compatibility, and review for compliance with the Authority's "Policy on High and Low Risk Underground Facilities Within Authority Rights-of-Way".

The Design Engineer should review the Utility Relocation Plans whenever there is a possible relocation of 50KV and higher power lines and/or electrical substations, to ensure inclusion in and/or changes to the Authority's environmental document.

NOTE: If changes to the environmental document are required at this stage, there may be a delay in project delivery as no relocation work can take place in any location not previously included in the "area of potential effect" (APE) described in the approved document unless the area of utility relocation has a blanket ND or CatX by the CPUC.

The Utilities Coordinator has basic responsibility for reviewing all relocation plans to determine that they provide a cost effective functional restoration of the utility facility. Betterments are to be identified on the plans and all other elements of the planned relocation must be supportable as necessary and appropriate. The Utility Coordinator may solicit technical engineering support but cannot shift this responsibility to the Design Engineer. The Coordinator shall make the final call.

Where any portion of the utility work claimed by the Owner is to be at Authority expense, the Utility Coordinator must review the Owner's claim letter that sets forth the basis for the Authority's liability and the estimated cost of relocation. (see Section 13.04.00.00 for liability determinations.) When the claim of liability and estimate of cost are found acceptable, the Utility Coordinator prepares the Report of Investigation (ROI) package for transmittal to the Director of Real Property. The ROI package should consist of the Report of Investigation, the Owner's claim letter, the estimate of cost, a draft Utility Agreement along with any supporting documentation and mapping.

13.03.04.06 Special Provisions [Hold for Future Use]

13.03.05.00 Utilities on Structures

Occasionally, utility facilities that are located on an existing bridge must be relocated to a new structure as a result of a rebuild. Additionally, utilities currently in an underground or aerial position may be relocated into a structure as part of the relocation plan. In these situations, special conditions that require early coordination with Structures must be met so Owner needs can be included in both the plans and project specials. Structures must be advised as early as possible of any Owner's desire to install facilities on a structure.

13.03.05.01 Coordination Requirements

The placement of utility facilities on structures requires special coordination between the Owner, the Authority, and the Authority contractor as to who provides what material, who installs it, Owner's time frame for required installations, who pays for what and when, etc.

A form was produced (Exhibit 13-EX-07) to obtain needed information. The Utility Coordinator is responsible for forwarding the form to the Owner for timely completion and subsequent return to Structures through the Design Engineer. (see Exhibit 13-EX-08 for a sample transmittal letter to the Owner.)

If the preliminary information is acceptable, the Owner will be advised to submit detailed installation plans by the date specified. The Utility Coordinator then requests the Owner's estimate of cost and claim of liability (see Section 13.03.04.04). The Owner should normally be given a minimum of 60 days to prepare plans. (see Exhibit 13-EX-09.)

If the preliminary plans are not acceptable, the Utility Coordinator conveys this decision to the Owner and advises them to redesign or to develop plans not using the structure.

As an alternative procedure, the Utility Coordinator may, by a focus meeting or series of focus meetings, coordinate the relocation with the utility company, and other Design Engineer personnel the Coordinator deems necessary to complete the design.

13.03.05.02 Guidelines for Utilities on Structures

Guidelines have been established that define size limitations and special design requirements for utility installations on bridge structures. These guidelines, shown in the Authority's "Design Criteria." Unusual utilities must be analyzed on a case-by-case basis. The Design Engineer should make preliminary decisions on possible utility placement on the bridge before design of the structure has begun.

13.03.06.00 Utility Acquisitions

Public utility facilities impacted by Authority construction normally have a functional replacement constructed and are seldom acquired. Exceptions are where the facilities are for administrative or other nonutility service uses.

The distinction between a public utility service use versus a non-utility use may be based on whether severance of the particular improvement directly affects utility service to one or more customers. An improvement that is determined to be a nonutility, e.g., corporate office, is appraised and acquired in the usual fashion.

The distinction between a public utility service and similar facilities that may only provide service to the Owner is frequently confusing. (see Section 13.01.01.03.) The latter improvements are appraised and acquired in the usual manner.

An exception to the purchased acquisition of private facilities is permissible for major oil companies where the Owner has agreed to application of standard rules on the functional replacement of facilities.

13.03.06.01 Uniform Acquisition Act Requirements

When the Authority acquires replacement right-of-way, the requirements of the Uniform Relocation Assistance And Real Property Acquisition Policies Act of 1970 (Uniform Act) and the Surface Transportation and Uniform Relocation Assistance Act of 1987 and its amendments to the Uniform Act apply.

When a privately owned utility acquires their own replacement right-of-way, the requirements of the Uniform Act do not apply.

13.03.06.02 Acquisition From the Owner

Properties that lie in the path of transportation projects and are held in fee by Owners must be purchased outright or exchanged. Generally, most fee-owned property is for substations or pumping plants, although

some Owners have fee-owned corridors for transmission purposes. (see Table 13.03-3 entitled "Acquisition from the Owner.")

Table 13.03-3

ACQUISITION FROM THE OWNER (Section 13.03.06.02)	
Type	**Requirement**
Fee-owned	All fee-owned property is acquired by Real Property Branch, Acquisitions (Acquisitions). Terms of the Right-of-Way Contract depend on whether the property in question is vacant or improved, and whether it is a site or a corridor. In all cases, the Utility Coordinator should consult with Acquisitions to reach a full understanding about what the property is and how it may be used, now and in the future. Things to look for include: 1. Vacant Site - The Owner may be holding the site for future use in conjunction with an existing facility, such as a substation expansion. 2. Vacant Corridor - Although treatment is similar to a vacant site, the possibility of easement acquisition on the Owner's behalf or JUA/CCUA should be explored. 3. Utility Facility Improved Site - Replacement of the site is usually necessary. If done, Acquisition may handle via a Right-of-Way Contract. Relocation or rearrangement of utility facilities shall be handled by the Utility Coordinator via Utility Agreement in coordination with Acquisition. 4. Utility Facility Improved Corridor - Same as for an improved site; however, the possibility of replacing fee with easement or JUA/CCUA should be explored. Access to the replacement corridor must be considered. 5. Non-utility Occupied - Acquire via normal appraisal/acquisition procedures.
Easement-owned	1. Utility Occupied - Occupied easements are usually for transmission or distribution of the Owner's product. Where a replacement right-of-way is needed, the Authority or the Owner may acquire an easement. Usually the Owner's existing easement interest is quitclaimed to the Authority in exchange for the new location by executing a JUA/CCUA as a part of the utility relocation. 2. Non-utility Occupied - Acquisition is responsible for clearance of vacant easements.
Franchise/Permit Privileges	Except as noted below, the Authority is not obligated to provide a replacement right-of-way for Privileges utility facilities installed under a franchise or permit. In some cases, the Authority may need to make the method of installation for safety or other good reason a requirement for occupancy under an Encroachment Permit. For instance, the most common requirement is that the facility cannot continue to be installed within the right-of-way as an aerial facility. If the Owner does not meet Authority requirements for relocation within the new right-of-way, the Owner is responsible to provide any needed easement at their own expense. The exception is for facilities located within a Authority right-of-way that will be relocated under PUC section 185500 et. seq. Under section 185500, the Authority is obligated to provide a replacement easement if one is needed. Section 185500 does not apply to Owners with Master Agreements pursuant to PUC section 185507.

13.03.06.03 Acquisition for the Owner (Replacement Right-of-Way)

If the Owner has superior occupancy rights, the Authority can acquire the needed replacement right-of-way. The Owner normally selects the replacement right-of-way location, subject to the normal constraint of providing for necessary functional replacement only. Either the Authority or the Owner may accomplish the acquisition. If the replacement location crosses a parcel where the Authority is to make a Authority acquisition, the preferred acquisition method is to include it in the Authority's acquisition program. The Authority may acquire the replacement right-of-way by one of the following methods (in order of preference):

- Acquired in the name of the Owner, preferably on the Owner's own deed form.
- Acquired in the name of the Authority by deed and subsequently conveyed to the Owner by Director's Deed.
- Use of Authority-owned (or to be acquired) excess land. Care must be exercised in making any commitments regarding acquisition of excess land. Liaison with Excess Land should be maintained so easements are reserved in excess land conveyances.

If the utility facility being displaced is not in a superior right status, the Authority may acquire the replacement utility easement as a convenience to and at the expense of the Owner but cannot condemn for it. Where the facility was in an encroachment permit status only (non-prior rights), replacement utility easements must never be acquired at Authority expense; as this would constitute a gift of public funds.

13.03.06.04 Consent to Condemnation for Exchange Purposes From the Owner

Condemnation may be necessary if the Authority is unable to acquire the replacement right-of-way through normal negotiations. A "Consent of Owner to Condemnation for Exchange Purposes" must be obtained from the Owner pursuant to Code of Civil Procedure Section 1240.320 to support a "Resolution of Necessity" from the PWB.

Individual consent forms need not be secured on each condemnation for the Owners listed below if they have a basic form of consent on file with the Authority.

- Pacific Gas and Electric Company (Exhibit 13-EX-15A) - The Authority can condemn for PG&E without additional authorization, except that easement needs and location must have PG&E's prior acceptance.
- Southern California Edison Company (Exhibit 13-EX-15B) - SCE requires the Company's written approval of both the complaint form and easement location.
- AT&T California (formerly SBC, Pacific Bell Telephone Company and Pacific Telephone and Telegraph Company) (Exhibit 13-EX-15C) - AT&T California requires the Company's written approval of the easement location.
- Southern California Gas Company (Exhibit 13-EX-15D)
- General Telephone Company (Exhibit 13-EX-15E)

For Owners that do not have a consent form on file, the Utility Coordinator shall prepare a consent form using one of the accepted filed forms (13-EX-15A-E) as a guide and forward it to the Owner for execution on an individual parcel basis. Upon return of the executed consent form, it should be filed in the parcel file.

13.03.06.05 Utility Easements on Federal Lands

On Federal Lands, the Authority acquires a Authority Easement, a Right-of-Way Easement, a License or a Permit, not fee title, for the project. Therefore, the Authority does not have the authority to allow a utility company to relocate within Authority right-of-way. The utility company's Real Estate Department will be required to deal directly with the involved Federal agency. Depending on the authority at the time the existing utility easement was issued, the Federal agency may amend or require a new right-of-way. The time frame is typically six months to a year from the date the requested easement package is given to the Federal agency. Utility relocation cannot begin until the issuance by the Federal agency of the new right-of-way to the utility company.

The Utility Coordinator's responsibilities include:

- Contact the Federal Coordinator as soon as possible to establish a plan.
- Provide early identification of required utility easements at field review.
- Coordinate between Federal Lands Specialists, Owner staff, and our environmental department.
- Ensure the potential easement rights are considered during the environmental document stage. If covered in the Authority's environmental document, the Federal agency will require a copy of the final environmental document. (This could save the utility company time in obtaining the new right-of-way.)
- Provide the Owner with necessary mapping and forms.
- Follow the progress of the negotiations between the Owner and the Federal agency to ensure timely delivery.

13.04.00.00 - LIABILITY DETERMINATION PHASE

13.04.01.00 General

Liability determination is the process of analyzing the occupancy rights of the owner of utility facilities being impacted by an Authority project versus the Authority's rights. Prior and/or superior rights in the area of the impacted facility, and the terms of the Master Agreements, form the basis for determining responsibility for payment of relocation costs. The burden of establishing prior and/or superior rights rests with the Owner. If the Authority has cost liability, the Design Engineer is responsible for accumulating the data, providing a complete and accurate Report of Investigation, and confirming and approving the liability. In the case of 100% Owner liability, a Report of Investigation is not required if the Utility Coordinator has a written acknowledgment or diary entry to document the Owner's acceptance for 100% liability. Until liability is approved, the Utility Coordinator is not to provide any determination to the Owner.

Since an incorrect liability determination may be interpreted by Owners as representing a change in current Authority policy, thus adversely impacting Authority wide relationships, the Design Engineer will be required to immediately contact the Owner and correct any errors.

13.04.01.01 Determining Superior Rights

The Owner is responsible to prepare, document and submit a claim for their declared right of occupancy. If the Utility Coordinator's investigation confirms the Owner has rights prior and superior to those of the Authority, and the Design Engineer concurs, the Owner is paid for all or a portion of the actual and necessary costs of the required relocation work.

13.04.01.02 Liability Calculation

Liability determination is generally based on occupancy rights and the terms of the Master Agreement. Liability for the relocation cost is the responsibility of the entity that has the subservient right in the area of the existing impacted facility. However, the factors in Table 13.04-1 entitled "Liability Determination Factors" must be taken into consideration. Also, if an Owner has an executed Authority Master Agreement, all liability determinations on Authority projects are governed by the terms in the contract. (see Section 13.04.03.00, et seq.)

If the entire impacted facility is within an area of a single type of occupancy right, the entry in the subservient position is responsible for 100% of the relocation cost, unless there are different terms in the Master Agreement. If the facility area of occupancy consists of more than one type of occupancy right, e.g., part within a utility easement and part under an Encroachment Permit, then a proration between Owner and Authority of the total cost must be calculated using one of the three methods shown in Table 13.04-2 entitled "Methods of Calculating Proration of Cost."

It is important to remember that only the impacted portion of the existing utility facility that lies within the Authority-owned or controlled project limits is counted or measured, as applicable, for use in the proration formula. However, the total cost to be prorated includes the cost of relocated facilities both within and outside the right-of-way. This total cost must not include any betterment or other non-reimbursable items of cost.

Table 13.04-1

LIABILITY DETERMINATION FACTORS (Section 13.04.01.02)	
Factor	**Discussion**
What is the legal basis, if any, under which the utility facility is occupying the property?	Property rights are the primary determinant of the superior right of occupancy and will be based on one of the following: 1. Fee Ownership 2. Easement (recorded or unrecorded) 3. Implied/Secondary Easement 4. Joint Use and/or Consent To Common Use Agreements 5. Prescriptive Right 6. Lease 7. License 8. Franchise 9. Encroachment Permit 10. Trespass Normally, Items 1 through 5 establish prior rights, and the Authority is probably liable for relocation costs, unless the documents involved contain clauses that reserved to the original grantor the right to order one or more relocations at the grantee's expense. Occupancy under Items 6 through 10 usually requires that relocations be at the Owner's expense. Item 7 is generally like a permit and can be canceled by the fee owner of the property; therefore, the Authority must be the fee owner of the property to exercise any contractual rights that were originally reserved by the grantors. Item 10 is generally treated as an encroachment permit.
Is there an Authority Master Agreement between the Owner and Authority?	The Authority has entered into Authority Master Agreements/Contracts with several Owners. When the terms of an Authority Master Agreement address any specific PUC section or right, the terms of the Agreement/Contract supersede the requirements of the applicable statute.

Table 13.04-2

METHODS OF CALCULATING PRORATION OF COST (Section 13.04.01.02)		
Method	**Usage**	**Explanation**
Pole Count	Pole count is the normal method used for aerial facilities	The calculation is based exclusively on the number of impacted poles located within the project limits where the Owner has the superior right, divided by the total number of impacted poles within the project limits. This calculation produces the Authority's share of the total relocation cost. Equal weight is normally given to each impacted pole within the project limits regardless of ancillary equipment or attachments such as guys, transformers, and switches. The impacted poles must be otherwise similar, as wood pole relocation costs are greatly different than special designed steel poles or other supporting structures. If impacted poles are of a mixed type, separate costing may be necessary for the dissimilar poles. See "Dollar Weighted" method below.
Facility Length	Measurement of the length of the impacted facilities is normally used for Underground facilities, such as gas, sewer, and water, or for cables either directly buried or within conduits and for facilities on the surface, such as ditches or conduits.	The calculation to prorate liability is similar to the pole count method above and is based on the Owner's superior right length of the impacted facility lying within the project limits divided by the total impacted length within the project limits. The measured lengths must be of the same or similar size and type of facility, irrespective of ancillary equipment or features such as valves, manholes, switches, and transformers.
Dollar Weighted	This method is used where mixed facilities are to be pro-rated.	This approach requires considerably more effort and documentation, as it is necessary to establish and support an installed replacement cost new for the existing facilities. The simple cost of the materials is not sufficient to establish this proration. The calculation is based on the installed replacement cost new of the existing facilities located within the project limits where the Owner has the superior right, divided by the total of the installed replacement cost new for all of the impacted existing facilities within the project limits. This calculation produces the Authority's share of the total relocation cost.

13.04.01.03 Report of Investigation (ROI) Plan

The ROI plan is crucial to liability determination. Like an appraisal map, it shows who owns what and shows the before and after location of improvements and property rights. Since relocation liability is generally based on property rights, accurate plotting of the Authority's and Owners' rights-of-way is essential to an accurate liability determination. (see Section 13.05.03.01 for specific ROI plan requirements.)

13.04.02.00 Authority Project [Hold for Future Use]

13.04.02.01 Authority Relocations

Liability for the cost of relocating facilities to provide for Authority construction is primarily based on occupancy rights and/or the terms of the Master Agreement. The Owner is generally obligated to remove, relocate, etc., their facilities at their sole expense unless such facilities are in place pursuant to rights prior and superior to those of the Authority.

13.04.02.02 Authority Relocations

Liability for the cost of relocating facilities to provide for construction of high-speed rail is determined by a combination of occupancy rights, statutes, and applicable Master Agreements.

Extension or reconstruction of city streets, county roads, or Authority highways done in accordance with an Authority Agreement that provides for closure of streets, roads, or freeway for Authority construction is considered part of the Authority project for the purpose of determining liability.

13.04.02.03 Bicycle Path Construction [Hold for Future Use]

13.04.03.00 Master Agreements

The Legislature, enacted PUC section 185507, which authorizes the Authority to enter into contracts with Owners that supersede the provisions of the PUC identified in such contracts and govern exclusively the apportionment of relocation costs.

Section 185507 allows the Authority to apportion liability under these contracts so as to achieve the result that would have been obtained over a period of time in the absence of such contracts. Thus, the determination of the apportionment provisions, as well as other terms, has been based on examination of past experience and evaluation of liability in the future. These contracts, while involving compromise, reflect as nearly as the Authority can predict the overall liability that would exist without them.

Authority Master Agreements govern apportionment of the cost of rearranging facilities in connection with freeway projects in lieu of the provisions of PUC section 185500, et seq. In other words, under Master Agreements, the provisions of the PUC and other laws have no application to the rearrangement of the facilities on Authority projects and are replaced by the terms of the Master Agreements.

13.04.03.01 Interpretation of Master Agreements

Master Agreement liability determinations apply to all Authority projects regardless of who funds the project or does the work; therefore, consistent Authority wide interpretations are mandatory. However, the Master Agreements do not apply to any private-developer-initiated and privately funded project. In

accordance with statutory and judicial law, the developer shall pay for all utility adjustments required to accommodate a private-developer-sponsored project.

Application of Master Agreements to relocations on adjunct, ancillary or non-Authority use parcels/projects must be carefully considered and the Third Party Section should be contacted for discussion. Any question or conflict concerning interpretation of any terms or scope of a Master Agreement may be submitted to the Director of Real Property, or designee.

13.04.03.02 Application of Master Agreements

Master Agreements apply to Authority projects as defined in the Master Agreement on Authority right-of-way that are part of the High Speed Rail Authority system.

The project is not considered an Authority project unless access rights to adjoining property have been previously acquired or are being acquired as part of the immediate project. Master Contracts apply to utility facilities within the Authority rights-of-way and any other frontage or local road being reconstructed as a direct part of the Authority project. Master Agreement terms should not be applied to other ancillary Authority improvement projects, such as park-and-ride lots and acquisition of replacement property sites, unless such sites are acquired as part of an Authority project.

13.04.04.00 Property Rights

The Owner may submit one or more superior right claims for a facility. Each prior right claim the Owner submits must be fully documented and supported. The documentation must be referenced in, and attached to, the Report of Investigation (ROI) (See Section 13.05.00.00.) The types of property rights in the following sections are applicable to Authority. They generally indicate how each superior right should be documented and the extent to which the Utility Coordinator should investigate the validity of the Owner's claim. (see also Table 13.03-3, "Acquisition from the Owner.")

NOTE: When reviewing a superior rights claim, the Utility Coordinator must determine if there is a Master Agreement with the Owner that may modify or supersede normal occupancy rights or statutes and establish the basis of the Owner's claim.

13.04.04.01 Fee Ownership

The Authority is liable for relocation costs any time the facility is on property where the Owner has fee title. The Utility Coordinator shall review title reports and right-of-way maps to verify Ownership.

All fee-owned property must be acquired by the Acquisition Unit. Relocation or rearrangement of utility facilities shall be handled by the Utility Coordinator via Utility Agreement. The Utility Coordinator must ensure the Right-of-Way Contract and/or Utility Agreement covering relocation does not set up a double payment for property rights.

13.04.04.02 Easement

In most cases, when the facility is located within an easement, recorded or unrecorded, the Authority is liable for relocation costs. When the Owner claims a superior right pursuant to a prior easement, the Utility Coordinator must verify the location of the easement, that the easement is valid and that the Owner's rights are prior and superior to the Authority's.

Any Owner's relocation obligation or other limitation clauses within the easement document may be passed to the Authority upon acquisition of the underlying fee and must be investigated to determine if they are in conflict with the Owner's claim. Authority's liability for relocation costs under a valid easement extends to subsequent additions to those facilities originally installed as long as the additions are not inconsistent with the terms of the easement.

13.04.04.03 Implied/Secondary Easement

All city-owned facilities located in city streets and county-owned facilities located in county roads that were installed in the street or road within the city or county jurisdictional limits prior to their becoming a part of the Authority project are considered to be installed in the Owner's implied easement reservation. All facilities so located are relocated at Authority expense.

The Utility Coordinator should check permits, "as-built" drawings, and the Owner's records to confirm the facilities were installed prior to the date the CTC adopted the route.

After the date the CTC adopted the route, the local agency may maintain or even improve their facilities as long as the improved facility remains in substantially the same location. The local agency may not, however, expand upon their existing system by installing new parallel facilities except under the usual encroachment permit requirement. Facilities not under the city's or county's direct ownership and control, such as regional sanitation or fire districts, are not subject to the implied/secondary easement liability rule.

13.04.04.04 Joint Use and Consent to Common Use Agreements

In most cases, the Authority will bear relocation costs for facilities installed within a JUA or CCUA area. The Utility Coordinator must determine that the JUA/CCUA existing facility is, in fact, in the area of the JUA/CCUA by comparing the facility location with the JUA/CCUA description. The document must also be reviewed for any conditions that may change or limit the Owner's rights such as:

- A JUA/CCUA based on prescriptive rights where the existing facility is different than the facility covered in the JUA/CCUA, e.g., rights for a buried 4-inch gas line but the facility to be relocated is a 16-inch gas line.
- A JUA/CCUA has an expiration date for the Owner's rights.

An Owner has the legal right to expand their facilities to the extent allowed by the terms and conditions of an easement deed. This right extends to a JUA and CCUA granted in recognition of existing easement deeds but does not extend to prescriptive right claims. Regardless of Owner's prior rights or existing JUA/CCUA, any expansion of Owner's facilities within the Authority's right-of-way must be in accordance with encroachment permit requirements. (see Section 13.11.00.00 for more information on JUA/CCUAs.)

13.04.04.05 Prescriptive Right

Relocation costs for facilities installed under a right of occupancy established by a prescriptive right may become the Authority's liability if the occupancy condition meets statutory requirements.

The occupancy right must have been:

- established by the open and notorious adverse use of another's property, and
- installed on private property with the knowledge of the property owner but without a right-of-way, permit, lease, or other license, and
- continuously maintained in the same location for the prescriptive period of at least five years.

If underground facilities are involved, the original installation and continuous maintenance of the facility in the prescriptive location must be with the property owner's knowledge. Prescriptive rights cannot be established on publicly owned property. The Owner must submit a claim letter containing the above-mentioned statutory requirements.

The extent of the prescriptive easement is measured by the Owner's use during the preceding five years. Accordingly, the precise extent of the prescriptive easement, e.g., "a single line of poles with one cross-arm and eight telephone wires," should be set out in any instrument in which the Authority recognizes the superiority of such rights over those of the Authority.

The Owner has the burden of proof in establishing a valid claim to a prescriptive right. The factual situation where prescriptive rights are claimed shall be carefully investigated. The possibility of entry and occupancy under lease, permit, license, or other permissive use should be explored. The determination of liability under Prescriptive Right requires the completion of Form RW 13-18.

13.04.04.06 Lease

A lease is similar to an easement; however, it is restricted to a specific time period written into the lease. The Utility Coordinator should investigate the validity of the lease in the same manner as for easements, e.g., the ownership and description. Any Owner's relocation obligations or other limitation clauses contained in the lease may be passed to the Authority upon acquisition of the underlying fee and must be investigated to determine if they conflict with the Owner's claim. If the Owner has a valid lease and there are no provisions for Owners to pay for the relocation, the cost is usually the burden of the Authority.

13.04.04.07 License

A license is permission from a property owner for another person to use land. A license differs from an easement or a lease in that it is only between the two parties and cannot be transferred unless it is specifically written into the license. Normally, when an Owner has a license and the Authority acquires the property on which the facility exists, the license is no longer valid and the Authority can require the Owner to relocate at their own expense.

The Utility Coordinator must read the license to determine if the above requirements, such as successors or assigns, are mentioned in the license.

When evaluating a license, the Utility Coordinator must take into account the level of title the Authority has already acquired because only the fee owner of property can enforce conditions reserved in the license.

NOTE: When the Owner has placed substantial improvements within the license area, a review by Legal is necessary before determining liability.

13.04.04.08 Franchise

Utility facilities that are placed in public rights-of-way pursuant to a franchise privilege from a city or county, or pursuant to Authority Law do not convey any property rights and Owners are to relocate at their own expense whenever requested to do so for a legitimate or proper governmental purpose by Authority or local authorities, unless there are different terms under the Master Agreement. Required relocations for construction of maintenance stations, Authority drainage, truck inspection facilities, accommodation of other relocated utility facilities, functional replacement acquisition sites, etc., are covered under "proper governmental purpose." However, circumstances of each utility relocation, with respect to provisions of the specific franchise involved, must be carefully reviewed.

13.04.04.09 Encroachment Permit

An Encroachment Permit is a form of license that provides permission to the Owner to install a facility but does not convey any property rights. The permit also imposes certain restrictions on the Owner. The permit contains a relocation clause that states the Owner must relocate their facilities upon request at the Owner's own expense.

13.04.04.10 Joint Pole Agreement Cost Liability Determination

The California Public Utilities Commission has authorized the joint sharing of poles by different Owners, through a Joint Pole Agreement (JPA) as a means of providing more cost effective service and to reduce "utility pole blight." The JPA rarely, if ever, will convey property rights to the joint pole user. The Lead Pole Owner's (Owner of the Pole) rights must be reviewed to determine joint pole user's rights. As with any claim of property right, the Owner making such a claim must submit all necessary documents to support that claim.

On joint pole facilities, when multiple Owners are found sharing the pole, each joint pole user must submit all necessary documents to support their claim whether or not the JPA covers such use. The joint pole user may have a valid cost liability claim even though they occupy the pole under a lease, license, or permit with the Lead Pole Owner.

If the Owner has an Authority Master Agreement, liability for the JPA will be determined pursuant to the Authority Master Agreement.

If it is unclear as to liability at this point, the Director of Real Property, or designee, and Legal should be consulted.

13.04.05.00 Streets and Highways Code [Hold for Future Use]

13.04.05.01 Section 673 - Relocation or Removal of Encroachment [Hold for Future Use]

13.04.05.02 Section 680 - Franchises in Authority Right-of-Way; Temporary Relocations [Hold for Future Use]

13.04.05.03 Relocation Outside Authority Right-of-Way

PUC section 185501 applies in situations where the Owner is required to remove and relocate their existing lawfully maintained facility to a location entirely outside the Authority right-of-way. The Authority must pay the reasonable and necessary cost of such removal, relocation, and reinstallation into the new location.

This section does not apply to relocation of the facility from one location within the Authority right-of-way to another location within the Authority right-of-way, nor does it apply to relocations into a service road or other Authority right-of-way because these are considered part of the Authority right-of-way.

Essentially, this section only applies if a utility easement is required to accomplish the relocation of the Owner's facilities entirely outside the Authority's or other public right-of-way.

13.04.05.04 Relocation Within Authority Right-of-Way

PUC section 185502 applies to situations where the Authority requires the Owner to relocate their existing facilities from one location within an Authority right-of-way to another location within the Authority right-of-way. Several different types of facilities are covered as shown in Table 13.04-4 entitled "Relocations Within Authority - Types of Facilities."

Table 13.04-4

NOTE: When reviewing a superior rights claim, the Utility Coordinator must determine if there is a Master Agreement with the Owner that may modify or supersede normal occupancy rights or statutes and establish the basis of the Owner's claim.

RELOCATIONS WITHIN AUTHORITY RIGHT-OF-WAY - TYPES OF FACILITIES (Section 13.04.05.04)	
Type	**Requirements**
Publicly owned utility facilities other than sewers, fire hydrants, and street lights	Whenever relocation of such facilities is required, the Authority shall pay the cost of relocation, provided the facility was lawfully maintained and originally installed in its existing location prior to the property becoming part of high-speed rail.
Privately owned water Facilities	Whenever relocation of such facilities used solely to supply water is required, the facilities Authority shall pay the cost of relocation, provided the water facility was lawfully maintained and originally installed in its existing location prior to the property becoming Authority's.
Privately owned utility facilities other than water	Whenever relocation of such facilities is required, the Authority must pay the cost of relocation provided: 1. The facility was lawfully maintained and originally installed in its existing location prior to the property becoming part of high-speed rail. 2. The facility, as established by the Owner, is not under an express contractual obligation to relocate at the Owner's expense. **NOTE:** The term "express contractual obligation" means a written obligation.
Sewers, fire hydrants, and street lights	Publicly owned sewers, publicly or privately owned fire hydrants, and publicly or and street lights privately owned street lighting structures that are required to relocate shall be relocated at Authority expense, regardless of maintenance or original date of installation.

13.04.05.05 Subsequent Relocation

If the Authority requires an Owner to relocate any of their facilities within the Authority right-of-way more than once within a period of ten years, the Authority shall pay the cost of the second relocation and any subsequent relocation within the ten-year period. The ten-year period is interpreted as the date between completion of the original relocation to the beginning of construction on the subsequent relocation. Each time a new relocation is accomplished, the ten-year period starts anew.

13.04.05.06 Allowable Credit on Relocation

In any case in which the Authority is required under the provisions of the PUC to pay the cost of rearranging, removing or relocating any facility, the Authority shall be entitled to credits as shown in Table 13.04-5 entitled "Allowable Credits."

Table 13.04-5

ALLOWABLE CREDITS (Section 13.04.05.06)	
Type	**Explanation**
Betterment Credit	The Authority should only pay for a functional equivalent replacement of the impacted utility facility. Any increase in the size or capacity of the facility that is for the Owner's benefit is considered the Owner's betterment. The Authority shall receive a credit for the difference between the cost of the functional replacement of the original facility and the cost of the facility as constructed. There are exceptions to the general rule. However, any betterments that result in increased capacity or more desirable placement that the Owner may claim to be at Authority's expense must be carefully reviewed. In the following instances, betterment may, at the Authority's discretion, be accepted as part of the Authority's liability: 1. Required by the Authority project. 2. Replacement devices or materials that are of equivalent standards although not identical. 3. Replacement of devices or materials no longer regularly manufactured with next higher grade or size. 4. Required by Authority or Federal law or regulation. 5. Required by current design practices regularly followed by the Owner in their own work, but only if there is a direct benefit to the Authority project. The Utility Coordinator is responsible to determine the overall scope of the betterment, and Audits is responsible to verify accuracy of the Owner's calculation. Usually, betterment issues must be discussed with Design Engineer, and Director of Real Property before final resolution. Betterment is normally measured by an increase in size or capacity such as a larger pipe, a greater number of telephone circuits, additional conduits, or a higher capacity power line. A betterment credit is not limited to the cost of materials, but must include all increased costs of engineering and installing the betterment facilities. Examples of some extra costs may be additional engineering, special construction methods, and increased overhead.
Salvage Credit	When relocation is required, the Authority shall be given credit for the value of any materials from the old facility that the Owner removes and/or retains from the construction project. Generally, such material is either reconditioned and returned to stock or sold as scrap. Under PUC accounting regulations, Owners shall provide a credit based on the original cost.

	The Authority is entitled to a credit for each item of material returned to stock at its current inventory price less depreciation and less cost of reconditioning. The Authority is also entitled to a credit in the amount of the sales price or, if not sold at the time of billing, the estimated value for materials sold or to be sold as scrap or junk. The Owner must be made aware that the Authority will not participate in the cost of removing a facility where the cost is greater than its salvage value unless it has to be removed for safety or aesthetic reasons. (see Section 13.04.07.09 for additional discussions of removal of hazardous material.)
Accrued Depreciation Credit/Used Life Credit	The Authority shall receive credit for accrued depreciation on the old facilities whenever the relocation of a facility is required. Where there are no replacement facilities, such as for abandoned facilities, credit for depreciation shall not be taken. Accrued depreciation credit is an allowance for the value of expired service life or used life. Expired service life/used life is that portion of a facility's useful life for which the Owner has received a return on their investment or benefit of service. The credit given shall be based on straight line depreciation computed on original installed cost, age of facility and normal expected life as reflected in the Owner's books or calculated by industry standards. For example: Credit = Age of Facility (Original Cost) Normal Expected Life Following are special conditions for handling accrued depreciation credits for publicly owned sewers and private oil company facilities: 1. Publicly owned sewers - The Authority is not entitled to receive a credit for accrued depreciation on relocations of publicly owned sewers. 2. Private oil companies - The Authority is to receive a credit for depreciation on non-common carrier (nonpublic utility) longitudinal facilities owned by oil companies. The Authority has historically calculated accrued depreciation credit on the following basis: • Straight-line depreciation, as with other Owners, except the normal expected life will always be 40 years, as previously agreed to by the Authority and the oil companies. In other words, only for the purpose of calculating accrued depreciation credits, the subject oil facility will always have a normal expected life of 40 years. • Credit is not to exceed 70 percent of the original installation cost. • When no accrued depreciation credit is provided, or the credit supplied is zero, the Owner must supply proof of the remaining service life of the facility and a written certificate from the Owner's comptroller or chief accountant stating that no part of the replacement facility will be capitalized or depreciated. (see Section 13.07.06.02.)

13.04.05.07 Contracts With Utilities; Authority Master Agreements

PUC section 185507 provides that the Authority and any Owner, as defined in PUC section 185500, may enter into a contract providing for pro rata liability for the costs for affected utility facilities.

(see Section 13.04.03.00 and Exhibit 13-EX-18 for further information on Master Agreements.)

13.04.06.00 Water Codes [Hold for Future Use]

13.04.06.01 Section 7034 [Hold for Future Use]

13.04.06.02 Section 7035 [Hold for Future Use]

13.04.07.00 Special Liability Issues

There are numerous types of miscellaneous costs for which the Owner may or may not be reimbursed that do not directly relate to a single authorizing statute. Liability for reimbursement of such costs is determined by previous legal interpretation or judicial ruling of existing utility relocation law and from nonutility related statutes. Unique costs must be cleared with the Director of Real Property, or designee before entering into an agreement requiring Authority reimbursement of such unique costs.

13.04.07.01 Interest During Construction

Authority utility regulations permit Owners to be reimbursed for interest expenses on funds used or borrowed for use during construction as a cost of construction (also known as Allowance on Funds Used During Construction or AFUDC). The California PUC has accepted these regulations as being applicable to Authority-ordered relocation work. Final reimbursement of interest charges is conditioned on Audit approval. In general, interest is allowed only where unreimbursed completed work is substantial, the facility has not yet been put back into service, and the Owner is using monthly or quarterly progress billing to minimize outstanding reimbursable costs. These interest expenses are not Federal-aid reimbursable. (see also Sections 13.07.03.04 IV-3 and 13.14.10.01.)

13.04.07.02 Contributions in Aid of Construction (CIAC)/Income Tax Component of Contributions and Advances (ITCCA)

Utility billings for reimbursement of relocation expenses pursuant to a Utility Agreement are not subject to CIAC/ITCCA and will not be paid.

After enactment of Section 824 of the Federal Tax Reform Act of 1986, the IRS released Bulletin 1987-51 which provides guidance with respect to the treatment of CIAC. The IRS determined the contributions by customers or potential customers are not contributions to capital and are not excluded from gross income and are, thus, taxable. However, the IRS subsequently determined that many types of relocation fees were not affected by this change. Where the utility is being reimbursed for the costs of relocating utility lines to accommodate the construction or expansion of the Authority for the benefit of the public at large and not for the provision of utility services, those reimbursements are not taxable. This does not include private developer initiated privately funded projects.

If the Utility Coordinator receives an estimate or bill including this charge, return it to the Owner and direct them to remove it and resubmit the bill.

13.04.07.03 Clearance of Authority's Adjunct Properties

On occasion, the Authority acquires separate properties for the purpose of fulfilling an Authority construction or operational need, such as park-and-ride lots and mitigation parcels. Relocation of utility facilities on these properties follows the same laws and rules applicable to the Authority project for which these adjunct sites were acquired. This means that a park-and-ride lot in support of a freeway follows laws and rules applicable to Authority. (see Section 13.04.03.02, Application of Master Agreements.)

13.04.07.04 Extraordinary Relocation Costs

The Authority normally pays its pro rata share of all reasonable and necessary utility relocation costs. The Authority generally does not accept total responsibility for a unique item of cost merely on the basis that the Owner would not have incurred the extra cost except for the Authority-ordered relocation. Some of the more frequent examples are discussed below. Other less frequently occurring examples may be found in the Utility Reference File.

- **Clearing and grubbing of new right-of-way** - Where possible, utility relocations are coordinated with the Authority construction project so the utility relocation may take place after the Authority contractor has cleared the new right-of-way. If this delayed relocation is not feasible, the utility work may have to proceed in advance. The Authority is not liable for the additional cost beyond its usual pro rata share.
- **Owner's overtime costs** - If the Authority fails to provide a reasonable time frame for the Owner to complete necessary relocation activities without incurring Authority construction contractor delay costs, the Authority may be liable for the additional expense. The Utility Coordinator may authorize Authority-paid labor overtime upon approval by the Director of Real Property or Authority's Utility Liaison. The authorization should be made a part of the Notice and clearly Authority the necessity for such extraordinary costs. Whether or not the Authority is responsible for a pro rata portion of the relocation costs, the Authority's specific liability for the cost of overtime is limited to the difference between the premium wage and the regular wage. The Utility Coordinator should not request Authority or Director of Real Property approval for payment of labor overtime simply because of the Owner's lack of planning or scheduling. This additional cost is not Federal-aid reimbursable.
- **Wasted work** - Sometimes as a result of a change in design or construction change order, completed relocation work has to be redone. The Authority is liable for all such wasted relocation work regardless of the initial liability proration. (see Section 13.09.04.00.) The cost of such wasted relocation work is not Federal-aid reimbursable.
- **Hazardous waste costs** - Should the Owner incur extra costs due to the removal or disposal of hazardous waste, the Authority, at a minimum, pays its pro rata share of the extra costs. If hazardous waste is encountered within the project limits, the spoils and associated handling costs are dealt with in the same manner and liability as project construction hazardous waste costs. The extra costs incurred for hazardous waste found outside the project right-of-way, such as on local streets beyond project construction, are reimbursed in accordance with the Authority's pro rata liability in the same manner as for any other type of extraordinary construction costs associated with utility relocations. (see Section 13.01.02.05.) (Refer to the Authority Master Agreement for details of handling hazardous materials and their associated costs on Authority projects for those Owners who have a current Authority Master Agreement.) The cost of hazardous waste removal is Federal-aid reimbursable.

13.04.07.05 Delayed or Canceled Projects

Owners are required by law to relocate their facilities in compliance with an issued Notice. If such a required relocation is completed in part or totally at the Owner's expense, and the project is subsequently canceled by official action, the Owner shall be entitled to reimbursement of their wasted work costs. If the project is merely delayed, even for what appears to be an indefinite period of time, reimbursement is not required so long as the project remains on the Authority's program for future construction. Director of Real Property, or designee, prior approval shall be obtained before obligating the Authority to any reimbursement of this type. If the Director of Real Property, or designee, approves the Authority's

reimbursement of these costs, the Utility Coordinator must ensure the costs are not billed to Federal funding agency, as they are not Federal-aid reimbursable.

13.04.07.06 Future Maintenance of Water Conduits

The Authority shall not accept liability to maintain the interior of a water conduit, such as silt removal, on the basis of a claim that the conversion or extension of an existing open ditch to a conduit has increased the Owner's operating costs. Even though the Authority may have placed the conduit and is thus becoming the owner of it, the water provider shall be responsible for all maintenance associated with the product conveyance.

On the basis of a factual, non-speculative showing that there are additional real costs arising out of the Authority-caused relocation, the Authority may be liable for some of the additional new costs. Compensation must be based on the present worth of the future labor and equipment costs that are shown to substantially exceed current maintenance costs for open ditch maintenance. This same premise may be applied to other similar situations that may cause increased costs associated with a major change to an existing facility, such as the addition of a sewer lift pump. Director of Real Property, or designee, prior approval should be obtained before entering into any Utility Agreement obligating the Authority to these types of costs.

13.04.07.07 Loss of Plant, Investment, or Business

The Authority is required by law to physically replace the utility facility in the same functionally equivalent Authority of operation in the after condition as it was before. Relocation costs, therefore, do not include the cost of abandoned property, loss of income resulting from loss of customers, loss of revenue due to temporary shutdowns, or for any other form of consequential damages.

13.04.07.08 Undergrounding

When a project conflict exists and the Authority must relocate an existing aerial utility facility, the Authority cannot pay any portion of the undergrounding costs unless the undergrounding is based on an engineering need for the Authority's project or is the most cost effective. Undergrounding requirements as established by local government for aesthetic purposes are not binding upon the Authority. The Authority is only obligated to pay for replacement of the functional utility that previously existed. If the Authority determines undergrounding is necessary for engineering reasons or is the most cost effective relocation, only then are these costs Federal-aid reimbursable.

13.04.07.09 Abandonment or Removal Costs

Costs for removal or abandonment of existing utility facilities are reimbursable provided the removal or abandonment is necessitated by the Authority project, required for aesthetic or safety reasons, or contains hazardous material that cannot safely remain. In many cases, it may be feasible to abandon the existing utility facilities in place if the existing facilities will not conflict with the proposed Authority project. If removal is required, the Authority will reimburse Owner for normal pro rata costs for removal effort only.

In cases where there is no need to remove the existing utility facilities but the Owner elects to proceed with the removal, the Authority shall not pay any removal costs above the salvage value of recovered materials credited to the project.

NOTE: Due to safety problems that may arise during the vacancy or demolition/removal of an improvement with a gas meter, the Owner is usually instructed to remove the meter when the

improvement is to remain vacant. The removal date must be coordinated with Acquisition Unit. The Authority will reimburse the Owner for removal costs based on liability of the gas distribution line located in the adjoining street.

Meter removal costs are paid without credit for salvage value. Under Federal-aid reimbursement requirements, these costs must be coded as demolition costs for the project. (see Section 13.14.03.02.)

13.04.07.10 Additional Spare Ducts for Underground Conversion of Aerial Telephone Facilities

An understanding with telephone Owners provides that the Authority will reimburse additional duct costs for Authority-ordered conversion of non-fiber-optic aerial facilities to underground. This was based on the premise that typical aerial installation was constructed to provide for a minimum capability to install four cables even if fewer were initially installed. Therefore, whenever nonfiber-optic aerial facilities are ordered to be converted to a like-form underground installation, the following table is used as a basis for allowed Authority reimbursement.

Number of Existing Cables	Replacement Ducts
1	4
2	4
3	4
4	6
5	7
6	8
7	9
8	10

If the existing facilities to be placed underground are fiber-optic, the Authority will only reimburse for duct installations on the basis of the number of ducts needed to replace the existing telephone capability plus one spare duct.
NOTE: FRA may only reimburse on the basis of providing one spare duct regardless of the type of existing facility.

13.04.07.11 Disruption of Service Facilities

Service facilities that are located on the property being served are usually there by permission of the property owner as a requirement for receiving utility service. The Authority in acquiring the property being served may, as the new property owner, revoke the owner's permission for occupancy and thus require the service facilities to be removed or abandoned.

If some portion of the impacted property remains in private ownership with a continuing need for utility service or provides current service to other remaining properties, the Authority is liable for whatever facility adjustments may be necessary. Other than removal of portions of the severed facilities for safety reasons, which is handled by Notice and Agreement, all other utility adjustment costs are treated as cost-to-cure damages in the acquisition of the impacted parcel.

13.04.08.00 Liability Undetermined

The Utility Coordinator shall make every effort to determine liability. However, in situations where the Owner is unable to provide timely documentation that will allow the Authority to verify the information necessary to determine liability in a reasonable time, and when project schedule delays may occur, a

Notice can be issued with liability undetermined. Utility Coordinator approval is required prior to issuing this type of Notice.

Liability undetermined is not to be used simply because the staff work necessary to determine liability for a relocation has not been done. The liability package for liability undetermined should contain everything that is normally provided for a liability approval with the exception of the proration of liability. The liability statement will simply read: "Liability is undetermined." (For Owners with a Authority Master Agreement, see Section 13.04.08.02 for modified liability statement.)

The Owner must agree to accept the Notice with liability undetermined and perform the relocation. The Owner's acceptance should be in writing. If the Owner does not provide a firm (enforceable) commitment, the certification and project could be in jeopardy. A copy of the Owner's letter or other documentation regarding acceptance of liability undetermined should be included in the liability package.

13.04.08.01 Request for Approval of Liability Undetermined

The request for approval of a liability undetermined transaction must be in writing and must contain all of the elements required by Section 13.05.01.00, with complete and detailed supporting documentation. In addition, the Report of Investigation must cite and support the reasons for the request for liability undetermined.

A pre-award evaluation may be necessary before approval can be made where the transaction involves work by Owner's contractor, a substantial dollar amount or an Owner with whom the Authority has not recently done business. Be sure to check the most recent Utilities Reference File (URF) memorandum for current pre-award evaluation criteria, dollar thresholds, and a listing of pre-approved utility companies.

In all instances where a Utility Agreement has been issued under liability undetermined, the Utility Coordinator shall expeditiously settle liability determination with the Owner. The final Report of Investigation package, including the Owner's Claim Letter and the Utility Agreement, should normally be submitted together unless the Utility Coordinator approves an extension.

13.04.08.02 Liability Undetermined - Master Agreement

On Authority projects where there is a Master Agreement between the Owner and the Authority and liability is undetermined, the liability statement on the Utility Agreement should Authority that "Liability is pursuant to the Authority Master Agreement dated _____."

The above liability statement is used in lieu of "Liability is undetermined" as liability for Owners with Master Agreements is always based on one or more sections of the Contract.

13.04.09.00 Liability in Dispute

Unlike right-of-way acquisition, there is no administrative settlement process to resolve disputes in utility relocations because liability issues are largely based on a factual determination of what is required to produce a functional replacement for the impacted facility and who has the superior right.

The preferred method of resolution is to mutually agree on how to handle a particular situation and what the liability should be. As the Owner's areas of operation may encompass other sections of the Program or the situation may reoccur with another Owner, a statewide resolution of the problem is essential. This may require Legal, as well as the Director of Real Property, to work toward its resolution.

Litigation is normally used where a large cost is involved or a significant legal premise is at stake. The decision to proceed to litigation depends heavily on Legal's input as well as Right-of-Way functional needs.

A compromise settlement should only be used for a low-cost situation or a very specialized issue that, in the Director of Real Property's opinion, is not apt to re-occur or set a bad precedent. The Utility Coordinator, with the concurrence of the Director of Real Property, develops a proposed settlement and sends it to Authority for approval. The Director of Real Property will obtain concurrence by Legal, when necessary, and will return the settlement to the Utility Coordinator with a letter of approval or denial.

13.04.09.01 Agreement to Disagree

The resolution of the dispute may be too time consuming to be accomplished and still meet project dates. The Utility Coordinator should attempt an "agree-to-disagree" understanding with Owner. With the Owner's concurrence, the Notice may be issued using "liability in dispute" as the liability statement in the Notice. All Agreements issued in this manner require Director of Real Property approval prior to issuance.

If the Owner does not concur with the issuance of a Notice on this basis, the provision of S&H Code 706 must be enforced. This requires the Authority to advance a deposit to cover the disputed cost of the work, and, when so advanced, the Owner is obligated to complete the utility relocation as ordered. Authority's deposit shall not include the cost of any Owner-initiated betterments. A special agreement is required (see Exhibit 13-EX-17) to cover the advanced funds. Advanced funds require specific handling requirements and special accounting coding. (see Sections 13.01.02.10, 13.07.03.04 (IV-4), and 13.10.03.00.) When funds are advanced, the Utility Coordinator must work proactively to ensure an accurate accounting for work progress and continue to work toward ultimate resolution of the dispute.

13.04.09.02 Liability In Dispute - Master Agreement

On Authority projects where there is a Master Agreement between the Owner and the Authority and liability is in dispute, the liability statement on the Notice to owner should Authority "Liability per Authority Master Agreement, dated _____, is in dispute."

13.04.10.00 Processing Approved Liability Package

Once liability is approved, either by Authority, Director of Real Property, the Utility Coordinator prepares a cover letter to the Owner transmitting the Encroachment Permit and Utility Agreement (if required). (see Exhibit 13-EX-13 for elements of the transmittal letter.)

13.05.00.00 - REPORT OF INVESTIGATION

13.05.01.00 General

The Report of Investigation (Form RW 13-03) documents facts and circumstances that support the liability determination. All information, documentation, and analysis supporting the liability determination for the required relocation must be included in the Report. The Report of Investigation (ROI) must be prepared and approved before the Utility Coordinator obligates the Authority for the cost of relocation. An ROI is not required for a relocation that is 100% Owner liability if the Utility Coordinator has a claim letter from the Owner acknowledging 100% liability. The Report of Investigation package (sometimes referred to as the "Liability Package") includes the following mandatory items. Additional supporting documentation may be included as deemed necessary by the Utility Reviewer to support the determination.

1. Original, signed Report of Investigation (Form RW 13-03).
2. Owner's estimate of cost of work to be done.
3. Color-coded ROI plan showing work to be done, or a copy of the Approved Relocation Plan.
4. Copy of the Owner's claim letter.
5. Copy of the Owner's documents that support their prior and/or superior rights claim.
6. Copy of the proposed Utility Agreement.
7. Proposed special provisions, if applicable.

Instructions for filling out the Report of Investigation are included with Form RW 13-03.

13.05.02.00 Owner's Estimate of Cost

Report

- The estimate details, along with the proposed utility relocation plan, allow a preconstruction determination of reasonableness of the planned functional replacement for the impacted utility facility.
- It provides support for FRA Specific Authorization.
- It provides an amount to be used for encumbering capital dollars for utility work.
- It becomes a contract pay amount for lump-sum agreements.

13.05.02.01 Standard Estimate Format

The standard estimate format (Exhibit 13-EX-21) must contain the following elements:

1. Cost of labor.
2. Cost of materials (include a list of major items).
3. Cost of transportation and equipment.
4. Cost of contracted out work.
5. Cost of overhead (include a list of major components).
6. Cost of new right-of-way (if required).
7. Credits due the Authority shown separately for betterment, depreciation, and salvage.
8. Percentage and dollar amount of the Authority's liability.

Each item above must be shown on the estimate. If an item does not apply, it still must be listed with a zero in the cost column. The same format is used for lump-sum estimates, except all costs must be itemized and detailed by category, e.g., labor by number of hours and dollars, materials by quantity and dollars, etc.

The cost estimate for work to be performed or paid for by the Owner must come from the Owner. If the Owner uses broad-gauge units in their estimates, e.g., a per-pole or per-meter cost factor, the broad-gauge units may be substituted for the cost of labor, material, and transportation and equipment (Items A, B, and C above). The Owner must provide a statement about the methodology used in arriving at the broad-gauge unit cost, e.g., "based on costs incurred." Right-of-way costs, credits, and the Authority's liability must still be listed separately.

If for timing reasons it is not possible to obtain an adequate estimate from the Owner, the Utility Coordinator may prepare an estimate based on the Owner's plan using the Owner's current cost data from similar utility relocation work. Justification for Authority-prepared estimates must be in the file. The Utility Coordinator should ensure an Owner's prepared estimate is received as soon as possible.

13.05.02.02 Pre-award Evaluation

All ROI packages will require compliance with current pre-award evaluation criteria. A pre-award evaluation of the estimate may be needed if:

- Audits has had difficulties with the utility owner's cost accounting system during a previous audit.
- Audits has not audited the utility owner's cost accounting system within the last three years.
- The amount of the estimate exceeds a dollar limit threshold determined by Audits.

Since all of these criteria are subject to change from time to time, be sure to check the most recent Utilities Reference File (URF) memorandum for current pre-award evaluation criteria, dollar thresholds, and a listing of preapproved utility companies.

Whether the estimate requires evaluation by Audits or not, the Utility Coordinator is responsible to carefully review the estimate to ensure it is fully detailed, is reasonable, contains all of the elements required in Section 13.05.02.01 and complies with Authority's policy.

13.05.03.00 Report Of Investigation (ROI) Plan

The ROI plan is crucial not only to liability determination, but also to the engineer's ability to determine that the relocation clears project construction. It shows who owns what and shows the before and after location of improvements and property rights. The plan also provides a visual picture of what the estimate is based on, thus allowing a quick check of the reasonableness of various measurements and quantities listed in the estimate.

13.05.03.01 ROI Plan Requirements

A color-coded or an Approved Relocation Plan shall be included with every liability package. The plan must accurately and clearly plot the following elements:

1. Existing and proposed right-of-way lines.
2. Existing and proposed access control lines (if applicable).
3. Existing and proposed Authority centerline.
4. Existing and proposed utility facility features: location, type, size, and length.
5. Owner's easements or other claimed prior right areas.
6. Proposed property rights the Authority is to supply (if applicable).
7. Authority geometric features, if the relocation is related to them.
8. Legend and title block.

13.05.04.00 Lump-Sum Utility Agreements [Hold for Future Use]

13.05.04.01 Lump-Sum Payments - AT&T

The Authority has an understanding with AT&T when entering into a lump-sum agreement, that AT&T will use the specific billing rates shown in Exhibit 13-EX-22 for construction, engineering, estimating, posting, inspector, cutover, and assignment. If AT&T does not use the rates and forms shown in Exhibit 13-EX-22, the Utility Coordinator shall not accept the estimate as the basis for a lump-sum agreement unless Director of Real Property, or designee, prior approval is obtained.

13.05.04.02 Lump-Sum Payments for Completing Positive Location Work

Where no positive location agreement exists with the Owner, and as an exception to the general requirement that a preconstruction estimate be obtained and approved before authorizing the work, the Authority may enter into a lump-sum agreement with an Owner for doing positive relocation work, without a preliminary detailed cost estimate from the Owner when:

- The preconstruction estimate of cost indicates it will not exceed $25,000 for the Authority's liability as documented. (see Section 13.06.03.04 for additional expediting procedures.)

and

- A specific plan, approved by the Design Engineer, is issued with the Notice showing the location of necessary positive location work.

and

- The project manager performs a review during the positive location operation to document the number of workers and pieces of equipment and the approximate on-the-job time for comparison with the bill when received.

A lump-sum Utility Agreement for positive location work may also be necessary if the Owner has signed a Positive Location Agreement and requests to conduct their own positive location work. If their cost exceeds the per-hole cost of the current Positive Location Contract, the Authority will pay a lump sum per-hole rate at the Contract rate in effect at the time of issuance of the NTO. (see Section 13.03.03.01 for additional information.)

Owner's positive location work costs anticipated to exceed $25,000 for the Authority's liability shall be processed as directed in Section 13.05.04.00.

13.06.00.00 - NOTICE TO OWNER [Hold for Future Use]

13.07.00.00 - UTILITY AGREEMENTS

13.07.01.00 General

Pursuant to State Administrative Manual 8300, et seq., the Authority and the Owner must enter into a Utility Agreement (Form RW 13-05) whenever the Authority is paying or receiving payment for all or a portion of the cost of relocation of a utility facility, regardless of who performs the work. Each Utility Agreement must be submitted with the Report of Investigation package. (see Section 13.05.01.00.)

13.07.02.00 Circumstances Requiring a Utility Agreement

The Utility Coordinator must prepare a Utility Agreement for each facility being relocated or adjusted by the Owner or its contractor with Authority reimbursement of the cost or being relocated or adjusted by the Authority's contractor, regardless of who is responsible for the cost. The Utility Coordinator is responsible for preparing the Utility Agreement.

A single Agreement is used for each Owner's involvement on a single construction project to the extent possible. Separate Agreements may be necessary for individual purposes such as design, advance of funds, or physical relocation(s). Instructions for completing the Utility Agreement are found with Form RW 13-05.

NOTE: For example, if a project has relocations for PG&E-Gas Transmission, PG&E-Gas Distribution, and PG&E-Electric Distribution, it would require three (3) Utility Agreements, equaling three (3) involvements. An involvement also includes a notice for Positive Location (potholing) for each specific utility type.

13.07.03.00 Standard Clauses

The clauses in the Authority approved templates have been standardized and shall be used whenever possible. Use of these standard clauses will reduce errors and omissions as well as save preparation, review, and approval time as the clauses have been reviewed and approved by most major Owners and Authority's Headquarters Legal Division. The following standard clauses are numbered for ease of reference. The Utility Coordinator preparing the Utility Agreement selects the appropriate clause(s) to be used.

Before using any nonstandard clauses, the Utility Coordinator must obtain approval of necessity and language from Director of Real Property, or designee, and Legal.

13.07.04.00 Processing

All Utility Agreements must be submitted for approval, along with the Report of Investigation, either to the Director of Real Property, or designee, or to the authorized representative.

The following are the minimum requirements for processing the Utility Agreement for approval:

- Prepare four originals of the Utility Agreement. All four originals will become fully executed
- "wet-ink" originals.
- Construction funds will be needed for any utility relocation work done by the Authority's contractor. Construction funds are normally not encumbered by right-of-way; therefore, P&M must coordinate with Project Director before encumbrance of funds can be accomplished.
- The funding block on the last page of the Utility Agreement must reflect all project phases funding the specific Utility Agreement.
- The Utility Coordinator will transmit all four original Utility Agreements, along with the Notice and Permit as required, to the Owner for execution. see Exhibit 13-EX-13 for elements of the transmittal letter. The letter should instruct the Owner to make a copy of an executed Utility Agreement for the interim for their files.

NOTE: There is no Authority requirement that the Owner execute the Utility Agreements first. With some Owners, it may be more expedient for the Authority to execute first and then forward to the Owner for execution.

NOTE: One of the restrictions of Legislative Budgeting is the Authority can only pay bills the owner presents within four fiscal years following the fiscal year in which funds were encumbered. If payment is necessary after the five fiscal years, the Utility Agreement may need to be re-encumbered, or an Amended Utility Agreement may be needed.

As soon as the Owner returns the Utility Agreement:

- Check for four "wet-ink" signed originals. Be sure the Owner's signature complies with their bylaws or charter. Check for a copy of their resolution, if one is required. The person or official signing the agreements should have the proper authority delegated to him/her by the Utility Company/Owner to sign the agreements.
- If the Utility Agreements are not dated, date them to match the Owner's transmittal date.
- Obtain Authority execution of the four original Utility Agreements as required. Make one machine copy of the Utility Agreement.
- Distribute the fully executed original Utility Agreements and machine copy as follows:
  - Send ONE original document to the Owner with instructions to replace and destroy the interim copy in their files. The transmittal letter must include the elements shown in Exhibit 13-EX-23.
  - Retain ONE original document in the Utility Coordinator's file. The fully executed, wet-ink original Utility Agreement shall never be removed from the file, unless required in response to a written request from Legal or in compliance with a court order.
  - Send TWO originals to the Director of Real Property.

13.07.04.01 Processing a Utility Agreement where the Authority will be handling all or a portion of the Utility Relocation for the Owner

The primary purpose of a Utility Agreement is to correctly allocate the Liability for the work per relocation plans and estimate the amount of construction funds that the Authority will need to complete the utility relocation when the Authority performs the work. Per Section 13.07.02.00, a Utility Agreement is needed for work completed by the Authority, regardless of the extent of Authority liability.

The Utility Agreement will be prepared with specific attention to the paragraphs that show the work, part or all, the Authority will perform.

If the Liability is 100% Authority

- The Utility Agreement will be sent to the Owner for signature and then signed by authorized Director of Real Property or designee (13.07.04.00) and retained in the Utility File. The Utility Coordinator will show the estimated amount on the "Funding Type" block and No Routing to Accounting is required. The relocation is processed as a bid item in the contract. This agreement is primarily prepared to have the Owner agree to the relocation plans being used, and to specify that the Resident Engineer has the final disposition.

If the Liability is Prorated

- The Authority's estimated portion of the liability will be shown on the "Funding Type" block of the Utility Agreement. A fully executed copy of the Utility Agreement will be forwarded to Accounting (see 13-EX-29) where an invoice will be prepared and sent to the Owner. Accounting will place the Owner's funds in the Construction Contract and the Resident Engineer will handle them in the same manner as other construction funds. The Authority's portion of liability for the relocation is processed as a bid item in the contract. An actual cost Utility Agreement is preferred when the relocation costs are significant. Accounting will reconcile the final cost by creating a refund of excess amounts paid by the Owner or a billing for underestimated amounts.

If the liability is 100% Owner

- A fully executed copy of the Utility Agreement will be forwarded to Accounting (see 13-EX-29) where an invoice will be prepared and sent to the Owner for their portion. The remaining procedure is the same as shown in "Prorated" above.

In all circumstances, the Utility Coordinator should prepare an ROI package (13.05.01.00) and verify that the work is listed as a bid item on the utility portion of the Right-of-Way Certification. A fully executed copy of the Utility Agreement must be sent to the Owner in all circumstances.

13.07.04.02 Processing a Construction Funds and a Capital Right-of-Way Funds as One Utility Agreement

Section 13.07.02.00 indicates that the Utility Coordinator should process a single agreement to the extent possible for each involvement. Although you can process a single utility agreement for Construction Funds and Capital Right-of-Way together on one agreement form, there are situations where this may not be practical. Although this issue does not arise frequently, the Utility Coordinator should evaluate each situation to determine if a single agreement versus two separate agreements for a single involvement is the best choice.

In evaluating each situation, the following are some of the factors to be considered:

- The funding for a Construction and Capital Right-of-Way Utility Agreement is routed to different Departments.
- To prevent confusion by third parties, such as Owners, Accounting, and Resident Engineers as to Right-of-Way's internal funding process.
- Whether there is an increased overall efficiency of a single agreement as opposed to two separate agreements.

If the decision is to issue two separate utility agreements, each agreement should have a different Utility File number.

13.07.05.00 Amendments to Utility Agreements

Whenever portions, but not all, of a Utility Agreement must be changed, the change shall be accomplished through an "Amendment to Utility Agreement" following the format shown in Exhibit 13-EX-24. In most cases, Amended Utility Agreements are processed the same as Utility Agreements. However, Amendments that do not have a change in the dollar amount do not need to go to Accounting.

13.07.05.01 Amendments for Payments in Excess of Original Utility Agreement

Authority Controller procedures do not allow payments in excess of contractual amounts. Amounts in excess of the original Utility Agreement estimate must be covered by an Amended Utility Agreement before payment is requested. In addition, before an Amended Utility Agreement or a bill exceeding the estimated amount in the original Utility Agreement can be processed, the Utility Coordinator must receive **and approve** written documentation of the reasons and identification of the basis for the increase. (see Section 13.07.03.04, Clause IV-3.)

Amended Utility Agreements are not required whenever the total billing is less than the original Utility Agreement amount except as described in Section 13.07.05.02.

NOTE: This section does not apply to lump-sum/flat-sum Utility Agreements.

13.07.05.02 Amendments for Change in Scope of Work

Any significant change to the originally planned and agreed-upon work must be covered by an Amended Utility Agreement before work on the proposed changes commences. (see Sections 13.06.03.05 and 13.14.05.00.)

Preparing an Amended Utility Agreement for a change in scope is necessary to:

- Provide for any needed change in the proration of liability.
- Provide for necessary modification to the previously ordered plan of relocation.

13.07.06.00 Special Utility Agreements

Occasionally, a Special Utility Agreement is needed for a variety of reasons, e.g., liability disputes, engineering or construction reimbursement for a project that has been canceled or delayed, or where a Utility Agreement does not exist. The "WHEREAS AND NOW THEREFORE" type of Utility

Agreement is usually adaptable and is acceptable. A sample Special Utility Agreement is shown in Exhibit 13-EX-25.

13.07.06.01 Utility Agreement to Cover Advance Engineering Effort

Occasionally, an Owner will expend considerable engineering effort on a planned relocation long before the usual Utility Agreement is executed. Upon request, a Special Utility Agreement may be completed and used as a basis for reimbursing the Owner's costs. The usual ROI is required to support the Authority's liability to pay. Upon issuance of the Notice for actual physical relocation, the Special Utility Agreement should be amended to cover the remaining items pertinent to relocation work.

13.07.06.02 Utility Agreements With Oil Companies

The relocation of oil company facilities to accommodate construction has historically been done under the terms of a modified Utility Agreement even though oil companies are privately owned, are not a public utility, and are not under the PUC's purview. Relocation is completed in the normal manner: preliminary letter, Report of Investigation, Utility Agreement and Joint Use Agreement, as required.

Special depreciation clauses are used in utility agreements with oil companies.

- No depreciation is required for a crossing relocation. The Utility Agreement should so Authority.
- The depreciation clause for longitudinal relocations is:

"Authority shall be entitled to a depreciation credit, based on the straight-line method and a total estimated service life of 40 years for the replaced facilities, such credit not to exceed 70% of the original installed cost of such facilities, unless owner shall claim no credit is due because the remaining service life of the replaced facility is as great as the anticipated service life of the replacement facility, and in support of such claim supplies:

(a) proof of the remaining service life of the replaced facility, the sufficiency of which to substantiate such claim shall be determined in the sole discretion of Authority, and

(b) a written certification by owner's controller or chief accounting officer that it is not Owner's normal accounting procedure to capitalize and depreciate portions of its facilities which are relocated, and that no part of the replacement facility will be capitalized and depreciated."

Invoices for Utility Agreements covering longitudinal relocations that do not reflect a credit for depreciation must be accompanied by written certification of the oil company's controller or chief accounting officer and by a statementsigned by an Authority Engineer, that in the opinion of the Engineer:

- The remaining service life of the replaced facility is as great as the anticipated service life of the replacement facility, and
- The evidence submitted by the oil company (which must be described in the statement) fully supports the oil company's claim to that effect.

13.08.00.00 - CERTIFICATION PHASE

13.08.01.00 General

Activities performed in this phase of the project generally consist of:

- Reviewing the PS&E.
- Ensuring the Owner is billed for work the Authority's contractor performs.
- Preparing the Right-of-Way Utilities Certification.

13.08.02.00 PS&E Review

The PS&E is to be completed prior to Right-of-Way Certification. The Utility Coordinator is responsible for reviewing the PS&E to verify:

- Plans show all underground utility facilities remaining within the right-of-way limits of the project in accordance with Government Code Section 4215.
- Special provisions have been included concerning coordination requirements for all utility work that will be done in coordination with the Authority's contractor.
- Construction estimates (Basic Engineering Estimating System - BEES) include utility relocation costs that will be used for billing purposes when the Authority's contractor performs work for the Owner and the Owner is responsible for the expense.

13.08.02.01 Work Performed by Authority

When the Authority performs the work for the Owner and the Owner is liable for all or a portion of the costs, the Utility Coordinator obtains funds from the Owner prior to award of the Authority's construction contract, using the following procedure:

- Obtain an estimate for the work from the PS&E or request an estimate from the Owner after consulting with the Project Director.
- Prepare a Utility Agreement. (Refer to Sections 13.07.04.01 and 13.07.04.02.)

13.08.03.00 Right-of-Way Utilities Certification

The Right-of-Way Utilities Certification is a written statement to P&M summarizing the status of all utility facilities located within the limits of the proposed construction project. The certification identifies all utility facilities found to be within the project area and documents if they are impacted and, if so, whether they have been or will be relocated, removed, or protected as required for the construction, operation, and maintenance of the proposed project. Right-of-Way Utilities shall certify all projects where a PS&E is prepared, or federal funds are involved, prior to the advertising and awarding a construction contract.

Utility work should be accomplished during construction only when it is not feasible or practical to complete the work prior to construction due to economic or special coordination features. Utility work that cannot be completed in advance of construction contract award shall have special provisions in the standard specifications portion of the PS&E identifying the utility work and details of the coordination involved. All facilities not cleared from the project limits before construction commences shall be shown in the project plans to provide the necessary coordination. (Refer to Section 13.09.01.00.)

When the Utility Coordinator satisfies the utility requirements of the Right-of-Way Certification, e.g., "Status of Required Utility Relocations," the project can be certified from a Right-of-Way Utilities standpoint. (Refer to Section 14.03.07.00.)

Where the Authority will do all or a portion of the utility relocation work under the Authority contract on the Owner's behalf, a Utility Agreement shall be executed before the project can be certified. This allows the Authority to do work on the Owner's facilities and ensures Owner acceptance of the proposed plan of relocation. This work will be listed as a "Bid Item" on the Utilities Certification portion of the Right-of-Way Certification.

The Utility Coordinator shall update and recertify any certification of a project over one year old where the project has not been listed for advertising and any certified project where there was a subsequent design change.

Refer to Right-of-Way Manual Chapter 14, Right-of-Way Certification, for further discussion on certifications and Exhibit 13-EX-26 for the suggested format of Right-of-Way Utilities Certification with instructions.

13.08.03.01 Utility Certification for Design/Build Projects

Until project design is completed, it is impossible to determine possible impact on utility facilities. A Utility Certification must be delayed, therefore, until design is completed, but before construction commences. (Refer to Section 14.01.11.00.)

13.09.00.00 - CONSTRUCTION PHASE

13.09.01.00 General

Utility Coordinator activities performed during the construction phase of the project generally consist of:

- Coordinating with Construction and Owner.
- Handling utility relocations discovered during construction.
- Resolving utility relocation work that becomes wasted work.
- Monitoring Construction review and documentation activities for Authority reimbursed utility relocation work.

By the time a project reaches the construction phase, the Utility Coordinator should already have sent copies of approved relocation plans to Construction. Ideally, all utility relocation work will be finished before project construction commences. However, since this is not always possible, coordinated utility work may be necessary. Coordinated work must be addressed in the "Special Provisions/Obstructions" portion of Authority's PS&E. (Refer to Section 13.03.04.06.)

13.09.01.01 Pre-Construction Notification/Meeting

Each Owner of impacted facilities remaining within the project construction limits shall be notified in writing of the bid opening date, the contract award date, and the name and address of the selected Authority contractor. Arrangements should also be made for a joint field meeting of the Owner's representatives, the project Resident Engineer, the utility inspector and the Authority contractor to work out construction schedules.

13.09.01.02 Positive Location Work During Construction

Standard special provisions require the Authority contractor to contact a regional notification center (Government Code Section 4216.2) before conducting any excavation on the project, as well as to exercise due diligence in working in areas of possible underground facilities. If the utility verification and positive location processes were properly completed during design, any additional positive location demands the Authority's contractor places upon the Owner should be at the contractor's sole expense. If additional positive location work was planned by the Utility Coordinator to be done during construction, this work should be included in the original Notice.

13.09.02.00 Inspection of Utility Relocation Work

The Utility Coordinator is responsible for ensuring that relocation and positive location work is inspected as required and that adequate records are maintained for Authority reimbursed work. The assigned engineer is responsible for inspection of such work and maintaining diaries to document such work.

Inspection has three major objectives:

- Ensure Owner's work complies with design, construction, and traffic requirements within, or in the vicinity of, the roadway.
- Ensure proper placement of utilities to clear project construction in accordance with the Encroachment Permit and Utility Agreement.
- Observe and record the labor, equipment, and materials used to accomplish the work, as well as materials removed for salvage when any work is to be performed at Authority expense. By reviewing the inspector's diaries, the Utilities Coordinator can make a reasonable verification of the Owner's bills.

NOTE: Proper construction for utility companies regulated by the California Public Utilities Commission (CPUC) is controlled by PUC issued General Orders. Under no circumstances is the Utility Coordinator, the Project Director, or the Engineering Services Branch to review the engineering adequacy of utility facilities except for those features that may adversely affect Authority integrity or safety.

13.09.03.00 Discovered Work and Emergencies

Discovered work includes additional unanticipated utility facility adjustments that are required as a result of newly identified facilities, incomplete or inaccurate verification of known facilities, or the discovery of previously unidentified project conflicts. Emergencies are usually a result of storm damage.

The Utility Coordinator will notify the Owner, when determined, of the newly discovered conflict or emergency requirement. The Utility Coordinator should provide the location and type of the existing facility and immediately follow up in writing with a suggested plan for conflict resolution.

The Utility Coordinator must expedite liability determination and preparation of a new or revised Utility Agreement along with any new Encroachment Permit required for the new work. If liability cannot be established and the work is to be accomplished with liability undetermined, the requirements of Section 13.04.08.00 et seq., must be followed. In addition, the Utility Coordinator must ensure that any additional or unanticipated utility work takes place within the original environmental "footprint" described in the environmental document. If environmental reevaluation in the new area is necessary, no work other than studies or positive location should proceed.

The Utility Coordinator has authority to approve Notices issued with liability undetermined and can give verbal approval in pressing circumstances. In deciding whether to do so, the Utility Coordinator should evaluate the following:

- Reason for special expedited authorization and consequences of delay.
- Name of the Owner of the facility.
- Verification that the Owner will accept liability undetermined.
- Type of facility.
- Best available cost estimate.
- Identification of who will do the work. If the Owner's contractor is to do the work, indicate how the contractor was selected.

If conditions merit verbal approval, it must then be documented in the Utility File in a memo or a diary entry.

After the Utility Coordinator has provided verbal approval of liability and the Owner has agreed to the scope of and liability for the work, the Utility Coordinator should verbally authorize commencement of relocation work to minimize contractor delays. Formal liability approval should be completed within 30 days following issuance of verbal authorization.

13.09.03.01 Changes to Planned Relocation Work

Changes in the scope of the work will require an amendment to the Utility Agreement.

13.09.04.00 Wasted Work

Wasted work occurs when the Owner has relocated their facilities in accordance with an Authority request and the Authority subsequently determines that all or a portion of the newly relocated facility must be adjusted again to avoid conflict with planned construction. Some Master Agreements address wasted work relocations and payments on Authority projects.

The procedures for handling wasted work are similar to discovered work (refer to Section 13.09.03.00) except that the Authority is liable for the cost of all completed relocation work deemed to be wasted as a result of a change in construction plans. The Resident Engineer must verify the wasted work resulted from plan changes rather than improper contractor work procedures.

13.09.04.01 Payment for Wasted Work

The Owner is responsible to submit a bill identifying the wasted work. The Utility Coordinator is responsible for verifying the Owner's bill. (Refer to Section 13.10.00.00 for processing procedures.) Verifying the cost of wasted work may require the Utility Coordinator to review the bill in greater detail as the wasted work effort must be singled out from costs of other remaining work performed. Authority's costs for wasted work are not Federal-aid reimbursable.

13.09.04.02 Payment for Betterment Portion of Wasted Work

Normally, the Owner is responsible for all betterment costs except where the betterment is caused by or necessitated by the project. However, when Owner initiated betterment is considered "wasted work" due to a post-relocation construction change, the Authority is liable to pay for that portion of completed betterment work rendered wasted by the Authority's action. All reinstallation of the Owner initiated betterment following the change in construction plans shall be at the Owner's expense.

13.10.00.00 - PAYMENT PHASE

13.10.01.00 General

Activities performed during this phase generally consist of:

- Obtaining bills from Owners.
- Checking and verifying bills.
- Processing bills for payment.
- Verifying transactions entered into the Accounting Report.
- Billing or refunding local agencies pursuant to Cooperative Agreements.

13.10.02.00 Processing Bills From Owners

It is essential to the efficient operation of the Authority's transportation program that funds encumbered for Utility Agreements be paid as soon as possible. The Utility Agreement billing clause requires Owners to bill the Authority at least quarterly but not more than monthly, during relocation of their facilities. Immediately after completion of the Owner's work, for which reimbursement is due and a bill has not been received, the Utility Coordinator should make a written request to the Owner requesting submittal of the final bill within 90 days of the date of the letter.

The Utility Coordinator should follow up with a letter to the Owner every 60 days if the bill has not been received. This gives the Authority credibility if, after 360 days from completion of the Owner's work, the Utility Coordinator needs to initiate the audit process. Before initiating the audit, the Utility Coordinator must inform the Owner of the Authority's intention to close the file in 30 days and start the audit process.

13.10.02.01 Prompt Payment of Bills

The Authority's Prompt Payment Act requires that bills be paid within 45 days after the date specified in the contract; and if not specified, the date the invoice is stamped received by the Authority. This includes the time for the invoice to be reviewed against inspector's diaries, preparation of the payment request package, transmittal to Financial Services Branch, submission to State Controller's Office (SCO) and processing of the check. If invoices are not paid within the required time frame, SCO will also pay late payment penalty funds to the Owner, which could be substantial. These penalty funds are not Federally reimbursable.

If, after review of the invoice, the Utility Coordinator has concerns or questions about the validity of any part of the invoice, the Utility Coordinator must send an official invoice dispute form back to the Owner (Form STD. 209). This has the effect of "resetting" the Prompt Payment Act "clock." The Utility Coordinator should monitor payment of received bills to ensure the applicable payment date is met.

13.10.02.02 Review of Owner's Bill

When the bill is received, the Utility Coordinator shall check to see if it is a partial or final bill. Since consistent format will facilitate review, the bill should be in a format similar to that used for the original estimate of cost (Exhibit 13-EX-27). The Utility Coordinator is responsible to check the bill for consistency with the Utility Agreement and the Owner's previously submitted and approved relocation plan and estimate of cost and to ensure credit for previously identified betterments has been received. The bill must be on the Owner's letterhead and signed by the appropriate Owner representative. All bills must be addressed to the Authority, or the Controller will not pay the bill, and must contain the Utility

Agreement number. If the Owner's invoice does not contain the Utility Agreement number, the Coordinator must imprint the Utility Agreement number on the invoice or bill. When the Coordinator completes the Utility Payment Request (Form RW 13-06), the number(s) of the Owner's invoice(s) to be paid must be listed on the form. Coordination between Right-of-Way, Construction, and Accounting is essential to adequately verify the bill.

IRS requires that all payments to vendors be recorded under the recipient's Tax Identification Number (TIN). Accounting maintains a TIN file for all Owners with whom the Authority normally does business. If the TIN is not on file, Accounting will advise the Utility Coordinator. The Utility Coordinator then sends the Owner Form STD. 204, "Payee Data Record," for them to complete and sign, and forwards the completed form to Accounting.

13.10.02.03 Bill Discrepancies

If discrepancies are discovered in the Owner's bill, the Utility Coordinator must return the bill to the Owner within 15 days of receipt with a request for correction. The Utility Coordinator completes Form STD. 209 identifying the type of discrepancy or deficiency in the bill and sends the original bill with the completed form back to the Owner. The Utility Coordinator must keep a copy of the bill and the form in the Utility File for documentation.

If the Owner's response is not acceptable, the Utility Coordinator should forward the bill to Authority designee or Director of Real Property with a request for Audits' assistance. However, it is important for the Utility Coordinator to make every effort to resolve discrepancies before requesting Audits' help.

Some of the more usual discrepancies include:

- Failure to provide credits for betterments, salvage, or depreciation associated with the relocated facilities (see Section 13.04.05.06.)
- Interest beyond the date the utility facility is put back into service (Section 13.04.07.01).
- Partial/progress billings that exceed the Agreement amount (See following sections.)

13.10.02.04 Partial Billings

Partial bills are usually paid routinely, if the total of the partial bills does not exceed the amount encumbered under the Utility Agreement. A review of partial bills is essential where the Authority is due an unusually large credit, e.g., large betterments, or where billing exceeds work actually completed. The procedure for payment is the same as for final bills as described in Steps 5-10 in Table 13.10-1, "Processing Final Bills."

13.10.02.05 Payment for Engineering Effort

Occasionally, an Owner will expend considerable engineering effort for a required relocation in advance of executing the Utility Agreement. If the Owner requests to be paid for these efforts as they progress, a separate Utility Agreement must be entered into to cover this portion of the overall relocation. This payment is sometimes referred to as a progress payment and is processed the same as for a partial billing.

13.10.02.06 Final Bills

The process for paying final bills is shown on Table 13.10-1, "Processing Final Bills." Final bills must contain detailed charges in a format similar to that in the original estimate and must contain all

information listed in Section 13.10.02.02. (If partial bills contained detailed charges, the details in the final bill could cover only the final portion of work.) The final bill must also contain the "start date" of the physical relocation work. The Utility Coordinator must check the start date against the FRA Specific Authorization date, if applicable, to ensure proper Federal reimbursement. Based on an agreement with the Authority Controller's Office, payment of a final bill may be made up to 125% of the Utility Agreement amount without an amendment.

13.10.02.07 Payment Request Form

Payments for both partial and final bills are requested on the Utility Payment Request, Form RW 13-06. The form is fairly self-explanatory. However, the Utility Coordinator must take special care when more complex relocations are being handled. If there are costs that are not Federally reimbursable, these costs must be separated out and coded appropriately. Costs of this type most often include wasted work, discovered work, spare duct charges, costs incurred prior to Federal authorization and interest during construction.

In the case of an advance of funds to the Owner, the advance payment request is originally coded with an "FAE" code of "8" to suspend the funds. As invoices are received for actual work completed, even though no actual "payment" occurs, the Utility Coordinator must process the RW 13-06 and note in the "Other" category that the request is to "transfer" funds from FAE 8 to FAE 6 (federally reimbursable) or FAE 7 (Authority only funds).

13.10.02.08 Audit of Owner's Bill

Once all payments have been made and any JUA/CCUA/Director's Deeds have been processed, the Utility Coordinator must send a request to Audits for a post audit. Audits will issue an Audit Report identifying any discrepancies discovered during the audit. For money due the Authority on final bills, Audits sends the Audit Report to the Utility Coordinator with instructions to initiate billing the Owner for reimbursement of the discrepancy amount cited. Usually, the auditor will have reached an agreement with the Owner on any identified discrepancies. If the auditor cannot resolve the discrepancy with the Owner, the auditor notifies the Utility Coordinator, who shall take necessary steps to resolve it.

13.10.03.00 Advance Payments to Owners [Hold for Future Use]

13.10.03.01 Loan to Owner [Hold for Future Use]

13.10.04.00 Verification of Transactions [Hold for Future Use]

Table 13.10-1

PROCESSING FINAL BILLS (Section 13.10.03.00)		
Step	**Responsible Party**	**Action**
1	Utility Coordinator	Review the bill against the Utility Agreement (UA), the Owner's approved relocation plans, and the Owner's estimate of cost. Ensure that the Owner has submitted the required notice of completion.
2		Check total cost billed to Authority against amount encumbered by the UA. If final bill exceeds encumbrance, an amended UA must be processed before payment is requested (see Section 13.07.05.00.)
4		Review the bill against the inspector's diary, paying particular attention to items of credit to which the Authority is entitled. Credits for betterment, salvage, and depreciation are to be checked to ensure that they appear reasonable in the bill. Audits makes a final determination of the accuracy (see Section 13.04.05.06.)
5		Prepare the Utility Payment Request (RW 13-06). Refer to Section 13.14.00.00 for federal aid procedures.
6		Prepare the Checklist for Final Utility Invoice (RW 13-07).
7		Send the original invoice, the Utility Payment Request (RW 13-06), and a copy of the UA signature page to Accounting.
8	Utility Coordinator	Send the following package to Audits for review. Copies of: • Final billing invoice and RW 13-06. (Include partial billings and related RW 13-06s if they contain details of the charges.) • Executed Utility Agreement, with amendments if applicable. • Identification of specific concerns in need of Audit review.
10	Audits	Perform an audit of the Owner's bill and prepare the Audit Report, requesting that Utility Coordinator initiate the process to collect funds from the owner or recommending that Utility Coordinator close the file.
11	Utility Coordinator	If funds are to be collected from the Owner, prepare an Accounts Receivable memorandum requesting preparation of a bill. A copy of the Audit Report must be included with the memorandum for forwarding to the Owner with the bill. Forward both documents to Accounting - Accounts Receivable.

13.11.00.00 - PROPERTY RIGHTS CONVEYANCES

13.11.01.00 General

This section explains usage, preparation, and processing of Joint Use Agreements (JUA), Consent to Common Use Agreements (CCUA), and easement (replacement right-of-way) conveyances to the utility owner. The Utility Coordinator is responsible for preparing JUA and CCUA.

13.11.02.00 Requirements for JUA/CCUA

JUA and CCUA are documents that perpetuate the Owner's rights-of-way that are within the Authority's Authority right-of-way. Both documents place limiting restrictions on the Owner's use to ensure the Owner's utility use is compatible with Authority traffic safety. The Owner otherwise retains all their original easement use rights. The fact that the Authority is obligated to pay the cost of relocating the utility facility does not, in itself, entitle the Owner to such an agreement. The documents may be entered into only where the Owner's original easement:

- Possessed prior rights in the right-of-way acquired by the Authority.
- Did not contain termination or relocation clauses that were enforceable by the Authority.

These documents are used only for the portion of the Owner's utility easement that is within the Authority's Authority right-of-way. The Authority may own the right-of-way either in fee (JUA or CCUA) or in easement (CCUA only).

In the case of an easement, the Owner's prior rights must be carefully checked for unusual conditions. For example:

- The Owner may have an easement that requires relocation at the Owner's expense but obligates the landowner (Authority) to issue a new easement (JUA or CCUA) for the newly relocated facilities.
- The Owner's easement may have been granted for a specific time period, in which case the JUA or CCUA must be written to terminate on the specified date. Following termination, the utility facility is considered as being under an Encroachment Permit.

NOTE: A JUA cannot be used where the Authority only possesses an easement right-of-way. The Authority as an easement holder has no legal right to grant a utility easement in a new location.

13.11.02.01 Joint Use Agreements (JUA)

A JUA is used when the Owner's facility will remain on lands used for Authority purposes but will be relocated to a position outside, or partly outside, the Owner's existing right-of-way where the Owner had prior rights. It is also used where the Owner's right-of-way is not occupied by any existing utility facilities but the Owner will not quitclaim the easement because of an unknown future use.

When existing facilities have been relocated to a new location both within the Authority right-of-way and outside the right-of-way on a newly acquired utility easement, the JUA describes only the new location of the facilities within the Authority right-of-way. The easement area outside the Authority is covered by acquisition on the Owner's easement form or conveyed by Authority Director's Easement Deed (DED) if acquired in the Authority's name.

13.11.02.02 Consent to Common Use Agreements (CCUA)

A CCUA (Form RW 13-02 or RW 13-09) is used when all of the Owner's facilities, whether rearranged or not, will remain within the highway area covered by the Owner's existing easement area.

13.11.02.03 Water Code 7034 and 7035 [Hold for Future Use]

13.11.02.04 Local Agency Owned Facilities Within Authority and Frontage Roads

A JUA/CCUA is not required for facilities relocated to frontage roads to be relinquished to the local agency, as the local agency will be vested with all the title the Authority previously held.

In those cases where the local agency's facilities remain within the Authority right-of-way and not in a frontage road and the facilities were installed in local agency streets prior to inclusion in the Authority system, the practice is to enter into a JUA/CCUA only if the local agency so demands.

If the local agency's facilities exist upon a recorded easement, a JUA/CCUA with the local agency covering these facilities is in order.

13.11.02.05 Prescriptive Rights

It is appropriate to perpetuate the Owner's rights established under prescription with a JUA/CCUA. The extent of a prescriptive right, however, must be measured by the Owner's use during the period the Owner occupied the site under prescriptive right (not less than 5 years). Granting any rights greater, or specifying a dimension to the easement where none is documented, is a betterment and constitutes a gift of public funds. Accordingly, the precise extent of the prescriptive right, e.g., "a single line of poles with one cross arm and three 200 pair telephone cables," should be set out in any JUA/CCUA.

A prescriptive right cannot be established over land owned by any governmental entity.

13.11.03.00 JUA/CCUA Preparation

Following are guidelines for preparing JUA/CCUAs:

- The Authority normally prepares JUA/CCUA, and coordination between the Utility Coordinator and Right-of-Way Engineering is essential.
- To the extent practicable, a single JUA/CCUA document is used covering each location or related series of the Owner's easements for a Authority transaction.
- Since the document must be returned to the Authority to allow for documenting the recording information on Authority Record Maps, the Authority's return address must be shown in the upper left-hand corner of the document.
- The document shall have the same number as the Utility Agreement with another numerical digit after the Utility Agreement number, e.g., Utility Agreement No. 01-UT-1234 corresponds to JUA/CCUA Document No. 1234-1.

13.11.03.01 Description of Owner's Rights

The "Owner's easement" portion of the JUA/CCUA document is described by reference to the document and recording information, if any, by which the Owner acquired the utility easement. If the document is unrecorded, language shall be inserted in the JUA/CCUA description stating that a copy of the unrecorded

document is attached and made a part of the JUA/CCUA. (The unrecorded document is then attached.) In the case of Pacific Gas and Electric Company, a copy of the unrecorded document should not be attached to the JUA/CCUA to be recorded. A copy is retained and attached to the Right-of-Way Utilities file copy only.

When the Owner's easement rights have been acquired by prescription, or in any other manner that does not exactly describe the specific location or rights acquired, the "Owner's easement" must be described in precise terms using one of the following clauses as appropriate:

A. "The easement for a (voltage) electric distribution line consisting of a single line of poles with (number) conductors suspended therefrom and appurtenant thereto, together with a right-of-way along said pole line, acquired by (occupancy, etc., as appropriate to the circumstances)."

   NOTE: If a telephone facility is involved, this clause should be modified to describe the number of circuits instead of voltage. It should also include the number of poles erected within the area being described.

B. "The easement for a (size) inches or feet (gas, water, steam, oil, etc.) pipeline with valves and other appurtenances, fittings and connections thereto, together with a right-of-way along said pipeline acquired by (occupancy, etc., as appropriate to the circumstances)."

C. "The easement for a canal or ditch and pertinent structures within a strip of land (number) feet in width, together with a right-of-way along said strip acquired by (occupancy, etc., as appropriate to the circumstances)."

13.11.03.02 Vicinity Description

The "Authority right-of-way" portion of the JUA/CCUA document is described by reference to the vicinity of a city, town, or other commonly recognized locality, the county, and the mile post.

13.11.03.03 Location Description

Utility Coordinator prepares the description of the "new location" or "area of common use." The description is included in the JUA/CCUA in accordance with the following requirements:

A. In some instances, the Owner's existing facility will be located partially within an easement and partially under permit or other lesser right. In those cases, the "new location" or "area of common use" must be apportioned so the Owner has the same ratio of ownership and rights in the new location as were held in the old location. The Owner must not receive a betterment by a grant of an easement for the portion that was previously held under permit or lesser right.

B. The foregoing rule applies notwithstanding the fact that the existing facilities may leave the Authority right-of-way for a portion of their length, so there is in effect more than one crossing of the Authority or right-of-way line.

C. The description preferably should be by attached map, provided the map can be reduced to the size of a recordable document without being illegible.

D. For the purpose of the referenced apportionments, distances are determined by measurement on a scaled map that is an accurate horizontal plan of the affected easements. To the extent possible, the new easement location is described as a continuous strip even though the original easement locations may not have been continuous and abutting. The description for a new longitudinal location generally commences opposite the lowest Authority engineer's station and is measured in the direction of increasing stations. In the case of perpendicular crossings, it commences at the right-of-way line, right or left of the Authority station.

E. If two or more of the Owner's original easements are being combined into a single JUA, the following statement is added to the end of the description of the "new location":
   – "For the purpose of determining the position and length of each of Owner's easements in the new location, said easements shall be deemed to be located in the same sequence as is set forth above, and the length of each easement in the new location shall bear the same proportion to the entire length of the new location as the length of such easement in the old location within the right-of-way of the Authority bore to the entire said length, all lengths to be measured on a scaled map which is an accurate horizontal plan of the affected easements."

F. Where practical, more than one crossing of the Authority right-of-way may be covered in a single JUA/CCUA.

G. When the Owner's rights have been acquired by prescription, or in any other manner that does not exactly describe the specific location or rights acquired, "Owner's easement" must be described in precise terms in the form as shown in Section 13.11.03.01.

13.11.03.04 Access Control Clauses

The JUA or CCUA specifies any limitations on the Owner's right to cross access control lines or fences erected across the new location of the Owner's easement or the area of common use.. If the Owner's facilities in the new location or area of common use do not cross a Authority access control line or fence, the following provision is inserted:

"Authority's access control line does not intersect Owner's easement; not applicable."

If the Authority Authority involved is a freeway and the Owner's facilities in the new location or area of common use will cross the freeway access control line or fence, the parties must enter into a specific understanding on how the Owner will access their right-of-way along the easement portions at each crossing of the freeway fence. Usually, the JUA/CCUA uses one of the clauses in Table 13.11-1, "Clauses - Access Control Across Freeway Fence," for the situations presented. If none of the clauses fits the situation, the parties will agree upon the manner in which the Owner is to exercise their rights. The clause negotiated shall be subject to the Director of Real Property, or designee's, and Legal review and approval.

Table 13.11-1

CLAUSES - ACCESS CONTROL ACROSS AUTHORITY FENCE (Section 13.11.03.04)	
Situation	**Clause**
The Owner needs (a) gate(s) in the Authority fence, and the Authority accepts the need.	"Owner shall exercise its rights-of-way solely by use of the fence, and the Authority accepts the need. Gate installed in the Authority fence (right or left) of Engineer's Stations _____ (Insert as necessary: "together with the road approach thereto constructed within the Authority.") The said gate (and road approach) shall not be used for any purpose other than construction, reconstruction, operation, inspection, repair or maintenance of Owner's facilities now or hereafter installed pursuant to Owner's easement. Owner shall close and lock said gate after each use thereof by Owner."
The Owner agrees that it can adequately maintain the facilities installed on their easement by traveling over city streets, county roads, or Authority Authority that are not planned to be closed, or a private easement owned by the utility.	"Owner shall not, in the exercise of its rights under its easement, pass through or over the Authority fence(s) constructed by Authority across Owner's easement (right or left) of Engineer's Station _____ except in emergencies or when necessary to permit the construction, reconstruction or replacement of Owner's facilities."
If neither clause above is applicable, the Site shall provide a substitute route (or means) for the Owner's use for accessing the easement areas at each crossing of a Authority fence or access control line. In each case, the substitute route (or means) shall be fully described in the document.	"So long as Owner shall have a right to exercise its right-of-way along its easement by the means hereinafter described, or a reasonable substitute therefore, provided by Authority, Owner shall not pass through or over the Authority fence constructed by Authority across Owner's easement except in emergencies or when necessary to permit the construction, reconstruction or replacement of Owner's facilities. Said route (or means) is described as follows: (Provide description or route or means.)"
The Owner's easement does not cross the Authority access control line, or the Owner can only adequately reach their facilities from the freeway. **NOTE:** This situation also requires Division of Design encroachment exception approval.	"Owner shall enter and leave said (new location or area of common use) only by way of said Authority."
The Owner's facilities in the new location are entirely outside of the Authority fence and the Owner can adequately reach their facilities without crossing the fence.	"Owner's facilities in the new location are located entirely outside the Authority fence. This paragraph is therefore not applicable." or Clauses in the four sections above, as applicable, plus: "The foregoing is not applicable to that portion of the new location within a frontage road outside of the Authority in which the Owner's rights can be exercised by entry from such frontage road."

13.11.04.00 JUA/CCUA Processing

The Utility Coordinator processes the JUA/CCUA as shown in Table 13.11-2, "JUA/CCUA Process."

Table 13.11-2

JUA/CCUA PROCESS (Section 13.11.04.00)	
Step	**Description**
1	Request Right-of-Way Engineering to prepare the necessary maps and legal descriptions for the JUA/CCUA.
2	Review the JUA/CCUA for accuracy and compliance with policy.
3	Transmit the original, one counterpart, and one copy of the JUA/CCUA to Owner with the following instructions: • Request Owner to execute and return the original and the counterpart. The copy is for the Owner's records. • Request Owner to provide full organizational names and titles of the signing officers with their signatures acknowledged on the JUA/CCUA. • Advise that a fully executed and recorded original will be returned to Owner following Authority's processing.
4	Upon receipt from the Owner, review the documents to ensure they have been properly executed and acknowledged and sign both the original and the counterpart under "Recommended for Approval."
5	Forward the documents to the person who is appointed as the Authority's Attorney in Fact to execute both the original and the counterpart of the JUA/CCUA on the Authority's behalf.
6	Record the executed original JUA/CCUA. The Authority's return address must be shown in the upper left-hand corner of the document.
7	Upon return of the recorded JUA/CCUA, the Utility Coordinator will: • Send the original recorded JUA/CCUA to the Owner with reference to County, Route, Post, Utility Agreement No., Owner's file reference, and any other information pertinent to the project and file. • Send a copy of the recorded JUA/CCUA to Right-of-Way Engineering for entering on the Record Maps. • Retain the original, counterpart, and the copy of the recorded JUA/CCUA in the Utility File.

13.11.04.01 Recording JUA/CCUA Prior to Relinquishment of Frontage Roads

Occasionally, an Owner's prior rights easement will impact both a Authority Authority and a frontage road that will be relinquished to a local agency. To protect the Owner's prior rights, the JUA/CCUA must be recorded in advance of the relinquishment resolution.

13.11.05.00 Special Clauses

Where the Owner is in a prior right status to the Authority Authority and is requesting a special clause in the JUA/CCUA, one of the following standard clauses may be used as appropriate to cover the Owner's needs. Use of these clauses requires written approval from Headquarters Right-of-Way. The

circumstances warranting use of these clauses shall be included in the transmittal memo to the Director of Real Property, or designee. Under no circumstances are these clauses to be modified without Legal's prior approval.

13.11.05.01 Conversion of Open Ditch to Conduit When Owner Has Prior Rights

Where an open ditch exists under a granted easement, the Authority is on a new alignment, and the Authority is changing the facility to a closed conduit within the Authority right-of-way, the following clause may be added to the JUA/CCUA:

> *"Inasmuch as Water Code Section (7034) (7035) requires AUTHORITY to be responsible for the structural maintenance of the conduit portion of OWNER's facilities which transports water under the Authority at Engineer's Station _____, AUTHORITY will repair or replace the conduit portion of OWNER's facilities which lies within the AUTHORITY Authority right-of-way when such becomes necessary unless such repair or replacement is made necessary by negligent or wrongful acts of the OWNER, its agents, contractors or employees; provided that the OWNER shall keep the conduit clean and free from obstruction, debris, and other substances so as to ensure the free passage of water in said conduit. In no event shall AUTHORITY be liable for any betterments, changes or alterations in said facility made by or at the request of the OWNER for its benefit."*

13.11.05.02 Special Clause for Public Agencies

Sometimes the standard form of JUA/CCUA cannot be used when dealing with another public agency, such as the federal government. To establish equal and concurrent rights to a common use area to be jointly used with the Authority, conveyances to another public agency may include the following clause with the Director of Real Property, or designee's, prior approval:

> *"This grant is subject to all valid and existing encumbrances of record, and is subject to the continuing right of the grantor and its successor to use the said land hereof, in common with the grantee and its successors, with the understanding that after completion of the Authority construction work presently contemplated, whenever either party alters or improves its facilities within such common area, such party shall assume the actual and necessary costs, exclusive of betterments, of accommodating the other's facilities located in such common use area and necessarily affected by the proposed alteration or improvement, and that neither party will undertake any such alterations or improvements without first submitting to and obtaining the written approval by the other of the plans and specifications thereof, which approval shall not be unreasonably withheld."*

This clause is readily adaptable where the Authority is either the grantor or the grantee. Inasmuch as the party initiating the work of altering their own facility within the common use area is liable for the cost of reconstruction and relocation of the other public facility, it is important to carefully consider respective rights of the parties before consenting to use of this clause, and then only after the Director of Real Property, or designee's review and approval.

13.11.06.00 Agreements With Public Agencies

The Bureau of Reclamation and the Department of Water Resources have special agreements with the Authority that provide instructions for preparation of a JUA/CCUA going to them.

13.11.06.01 Bureau of Reclamation Agreements

The Authority and the Bureau of Reclamation have entered into a Master Agreement.

13.11.06.02 Department of Water Resources Agreement [Hold for Future Use]

13.11.07.00 Easement Conveyance Processing

Conveyance of easements to Owners is by deed. To initiate this procedure, the Utility Coordinator must include a clause/clauses in the Utility Agreement for property rights to be conveyed and the form of conveyance. Clause(s) should also include credit to the Authority for the Owner's share of the cost or market value of easements conveyed, as applicable. The cost of Authority acquired utility easements is part of the cost of relocation and must be apportioned between the Authority and the Owner in accordance with the Utility Agreement.

NOTE: Easements to be conveyed across excess lands or developable airspace parcels must be located so as to minimize possible adverse conflicts to site development. Requests for easements across airspace or excess lands not originating as a result of a Utility Agreement obligation should be handled in accordance with usual excess or airspace procedures.

13.11.07.01 Easement Billing Process with Right-of-Way Contract (No Utility Agreement)

This process is used when there is no Utility Agreement because liability is 100% Owner expense, easements have been purchased for the Owner with Authority funds through a Right-of-Way Contract, and the deed has been recorded. The Owner must reimburse the Authority for this cost.

When Acquisition has acquired the easement(s), the Utility Coordinator is responsible to:

- Document the Owner's request for the Authority to purchase easements in the Utility Diary.
- Obtain a copy of the Right-of-Way Contract and Memorandum of Settlement (RW 08-12 or RW 08-13) from Acquisition.
- Highlight the easement description and settlement cost in Paragraph 8 of the Memorandum of Settlement.
- Verify that the payment has been made to the grantor of the property.
- Use Exhibit 13-EX-31 to request an abatement invoice from Authority's Accounts Receivable. Transmit the original and a copy of this exhibit with a copy of the Right-of-Way Contract and Memorandum of Settlement to Accounts Receivable. Retain a copy in the Right-of-Way Utility File.

13.11.07.02 Acquired in Owner's Name

Acquisition of easements in the Owner's name using their deed form is the preferred method since the procedure for transferring this easement deed is the simplest. When Acquisition unit has acquired the easement in the Owner's name, the Utility Coordinator is responsible to:

- Obtain the Owner's approval of the description in advance of execution.
- Collect money due the Authority from the Owner for their share of the easement costs, if applicable.
- Ensure the easement deed is recorded.

- Retain a copy of the easement deed along with a copy of the recording request to the County Recorder.

13.11.07.03 Acquired in Authority's Name

The process for conveying an easement acquired in the Authority's name is slightly more difficult than conveying an easement in the Owner's name. When Acquisition has acquired the easement in the Authority's name, the Utility Coordinator is responsible to:

- Transmit necessary maps and/or legal descriptions (taken from the Authority's Grant Deed) to Excess Lands with a request for Director's Easement Deed (DED) preparation.
- Review the prepared DED for accuracy and transmit a copy of the DED to the Owner for review and approval. Any money due the Authority should be requested pursuant to the Utility Agreement.
- Upon Owner approval and receipt of money due Authority, request Excess Land to process the DED as provided for in Section 16.07.02.00.
- Ensure receipt of a copy of the DED for the Right-of-Way Unit Utility files and follow up to make sure the DED was recorded and sent to the Owner.

13.12.00.00 - LOCAL PUBLIC AGENCY PROJECTS [Hold for Future Use]

13.13.00.00 - NON-PROJECT RELATED RESPONSIBILITIES

13.13.01.00 General

The Utility Coordinator is responsible for taking appropriate action on policies emanating from within other Authority programs, offices, and branches that involve utilities.

13.13.02.00 Excess Land

The purpose of the review of a proposed excess land sale is to identify utility easements that should be conveyed or reserved prior to sale. The review should include the steps in Table 13.13-1 entitled "Excess Land Review."

Table 13.13-1

EXCESS LAND REVIEW	
Step	**Action**
1	Identify and complete easement obligations still outstanding as a condition of a relocation.
2	Identify easements for future relocation needs for projects in the current STIP or list of projects.
3	Identify existing facilities on the property where the Owner may need to acquire an easement from the Authority.
4	Transmit a copy of the excess land property map to the potentially affected Owners asking for: • Identification of facilities on the property. • Size and type of facility on property. • Owner's rights of occupancy on the property. • Owner's interest in purchasing property rights from the Authority. • • Owner's response within 30 days.
5	Review Owner's response and provide Excess Land with the findings: • If no obligations are pending, return to Excess Land with "No objections to sale." • If the Authority's obligations are still pending, request Excess Land to prepare and issue a Director's Easement Deed (DED) to the Owner or to insert a clause in the deed of the property to be sold reserving an easement to the Owner. The Utility Coordinator must provide Excess Land with a plan showing the easement width, location with ties, size and/or type of facility to occupy the easement, and a copy of the Utility Agreement containing the Authority's obligation for the DED or reservation, as appropriate. • If the Owner wishes to acquire property rights, the Utility Coordinator should furnish Excess Land with the information listed above. • If the Owner does not have a vested or prior right, the Excess Land Agent will request an appraisal and offer the Owner the opportunity to purchase an easement for their facility. The easement reservation will be done in the same manner as shown above. • • If the Owner does not wish to purchase the easement, the Excess Land Agent will request the Owner to relocate their facilities outside the surplus parcel.
6	The Utility Coordinator should retain a copy of all correspondence and deeds in the Right-of-Way Utility File.

13.13.03.00 Vacations and Relinquishments [Hold for Future Use]

13.13.04.00 Airspace Leases

Airspace leases may require investigation prior to execution of the lease. Both parties to the lease should be aware of existing utility facilities and the liability for relocation if necessary. The Utility Coordinator will not initiate action on airspace leases until requested.

13.13.04.01 Airspace Lease Not Allowed for Utility Facilities

Since Authority franchise laws do not allow the renting of Authority airspace for utility facility use, all utility use of Authority is covered by Encroachment Permit rules and regulations only.

13.13.05.00 Encroachment Permits

All utility facilities must be installed in accordance with the Authority's "Encroachment Permits Manual." Facilities shall be installed in accordance with PUC General Orders 95, 112-D, 128, and others, if the Owner is regulated by the CPUC, as may be applicable, in a manner that does not impede the maintenance and integrity of the Authority. Facilities shall be installed as close as possible to the Authority right-of-way line, and utility construction activities shall be performed in accordance with prescribed Encroachment Permit requirements.

Longitudinal utility placements shall be located as near the Authority right-of-way line as possible. The Owner shall design the utility placement so as to eliminate or minimize installation of appurtenant facilities such as, but not limited to, stub poles, anchors, and down guys, which are placed closer to the traveled way than the facilities they support. Underground facilities shall be installed in compliance with PUC General Order Nos. 112-D and 128, if a CPUC regulated company, and in accordance with the Authority's "Policy on High and Low Risk Underground Facilities Within Authority Rights-of-Way" and the Authority's "Encroachment Permits Manual."

Owners are entitled to an Encroachment Permit for such reasonable crossings of any Authority as may be required for proper discharge of the Owner's service to the public. Law provides that reasonable discretion must be exercised in acting on applications from Owners for permits to occupy Authority. Interests of both the traveling public and the consumers of public utility services must be considered.

13.13.05.01 Review of Encroachment Permits

Utility Coordinators are to review all utility Encroachment Permit applications. These applications should be logged in and out by date and number since definite time limits for review and issuance of permits have been established by law.

- **Encroachment Permits** - Master Agreements between the Authority and some Owners contain conditions providing that when an Owner initially installs new facilities within the right-of-way of an existing freeway or frontage road by encroachment permit, the owner will pay in its entirety that portion of the cost associated with any future rearrangements of the facilities. These contracts further provide that where the facilities are initially installed before the Authority became a Authority, the cost for rearrangement shall be shared. Any betterment, such as an expansion of capacity, installed following designation of the Authority shall be covered by an encroachment permit, and that portion of the relocation costs associated with the betterment shall be the Owner's liability. Whenever new facilities are installed in an Owner's prior right area and are installed consistent with the granting document, whether installed before or after the Authority designation, subsequent relocation costs shall be the Authority's liability.

  Note: The Utility Coordinator may encounter some encroachment permits which are stamped "Authority Permits." Disregard the stamp and handle as an encroachment permit.

- **For Record Purposes Only Permits** - In those cases where the Owner has, or is entitled to, a JUA/CCUA, the Encroachment Permit shall be stamped or typed with the words, "FOR RECORD PURPOSES ONLY." Care must be exercised to determine that the use proposed by the Owner granted in the JUA/CCUA does not exceed the rights granted in the Owner's original document.

  Example 1: The Owner proposes to install a "buried telephone cable" within the JUA/CCUA area that is limited to "four circuits of open wire;" the permit would not be stamped " Authority Permit" as the new buried cable is not consistent with the rights covered in the JUA/CCUA.

Example 2: The Owner proposes to install larger conductors going from "60KV" to "115KV" and the JUA/CCUA is for the "transmission of electrical energy;" the permit would be stamped "FOR RECORD PURPOSES ONLY" as the new 115KV conductors are consistent with the rights covered under the JUA/CCUA.

13.13.06.00 Utility Franchise Reviews

The Utility Coordinator shall take steps to establish liaison with all city councils and county boards of supervisors to receive notice of all pending applications for utility franchises coming before each city council and county board of supervisors. It is the Utility Coordinators responsibility to determine whether the requested franchise will affect any existing or contemplated Authority Authority.

13.13.06.01 Review of Franchise Applications

If the requested franchise is to be situated in or serve in an area in which there is no Authority Authority, whether existing or contemplated, the Utility Coordinator shall, without referral to the Director of Real Property, advise the city or county that the Authority has no objection to granting the requested franchise. The Utility Coordinator, in each case, shall forward a copy of the related correspondence to the Director of Real Property.

13.13.06.02 Authority Right-of-Way Review of Franchise Applications

Where the requested franchise is to be situated in or serve an area in which Authority Authority are located or contemplated, the franchise shall be submitted for the Director of Real Property, or designee, and Legal review.

The Utility Coordinator must furnish the following information along with the proposed franchise:

- The name of the Owner requesting the franchise.
- A copy of the proposed franchise and applicable ordinance.
- The date of the public hearing.

Initially, the Director of Real Property, or designee, will communicate directly with local representatives of the governmental unit concerned. The Director of Real Property, or designee, will advise the Utility Coordinator, in writing, of action or disposition to be taken. The Utility Coordinator will then handle the matter on the local level with the municipality.

13.14.00.00 – FEDERAL AID PROCEDURES

13.14.01.00 [Hold for Future Use]

13.14.02.00 [Hold for Future Use]

13.14.03.00 [Hold for Future Use]

13.14.04.00 [Hold for Future Use]

13.14.05.00 [Hold for Future Use]

13.14.06.00 [Hold for Future Use]

13.14.07.00 [Hold for Future Use]

13.14.08.00 Special Federal Reimbursement Procedures

Authority procedures have been designed to provide a uniform approach to all transactions regardless of whether or not there is federal funding in the project. This reduces procedural complexity and ensures a more consistent process with Owners. Special rules affect Federal-aid reimbursement and approval requirements and the Utility Coordinator must be aware of these to minimize loss of federal funds where applicable.

13.14.08.01 Non-reimbursable Costs

Federal reimbursement of Authority costs is limited to the more restrictive requirement of either Authority law or Federal regulation. If Authority law, e.g., payment of interest, is more liberal, reimbursement is limited to the Federal standard. If Authority law, e.g., required depreciation credits (see 13.04.05.06), is stricter, Authority rules must be followed. Each element of cost or credit must be individually reviewed and decided. Fortunately, there are only a couple of items, as discussed below, where the Federal rule is more restrictive and therefore controlling for reimbursement.

- **Interest During Construction** – FRA regulations prohibit payment of interest on funds used during construction or borrowed by the Owner (a.k.a. AFUDC). Authority law recognizes interest during construction as a valid charge to the job, with some restrictions. Interest during construction shall be deleted from the voucher for FRA reimbursement (coded as non-reimbursable). Audits will make the final determination of acceptability on the audit certificate.
- **Additional Ducts** - There is a Authoritywide understanding with telephone Owners to allow spare ducts under certain conditions (see Section 13.04.07.09.) FRA will reimburse only for the number of ducts required to convert existing aerial facilities to underground facilities, plus one spare duct. The cost of nonparticipating ducts must be set out in the billing, with final cost determination identified during the audit process and excluded in the Federal voucher.

13.14.08.02 [Hold for Future Use]

13.14.08.03 Service Disconnects and Removals

Ordered utility service disconnects and removal of meters and meter set assemblies should be handled as right-of-way clearance items as this qualifies the associated costs for Federal-aid reimbursement.

Payments to Owners should be coded with the appropriate object code for a federal-aid reimbursable demolition or clearance cost.

Federal regulations prohibit reimbursement for the cost of removing facilities under normal utility relocations unless salvage credits are received by FRA for the removed facilities. (see Section 13.04.07.09.)

13.14.08.04 Owner Retention of Records

Authority records retentions policy requires that Owners retain all records and accounts relating to reimbursed relocation costs for a period of six years from date of final payment to Owner.

13.14.09.00 Owner's Consulting Engineer Agreements

The Owner's employees normally do utility relocation engineering. When a Owner is not adequately staffed to pursue the necessary preliminary engineering work for the utility relocation, a consultant may perform the required engineering if the Owner and the consultant agree in writing on the services to be provided and the fees and arrangements for the services, and if the fees charged are not based on a percentage of the cost of relocation.

When a consultant is used to provide relocation engineering services, the Utility Coordinator ensures the Owner's consultant contract is administered in accordance with 48 CFR 31. The consultant selection process should closely follow the Authority's own consulting engineer selection process.

The Owner's continuing contractor may be used where it it is cost effective to do so and verified that the contract between the Owner and the contractor is in writing and that similar work is regularly performed for the Owner under the contract at reasonable costs.

If the amount to be paid under the consultant agreement exceeds $100,000, the agreement must be submitted to Audits for pre-award evaluation.

All consultant agreements should:

- identify the maximum fee to be paid under the agreement,
- include a fee schedule,
- provide for inspection by the Authority of all books and records,
- require the three-year retention of those books and records,
- contain a description of the work to be performed, and
- include the following clause:

> *"The Contractor agrees that the Contract Cost Principles and Procedures, 48 Code of Federal Regulations, Chapter 1, Part 31 shall be used to determine the allowability of individual Items of cost. Any costs for which payment has been made to Contractor that are determined by subsequent Authority audit to be unallowable under these regulations, are subject to repayment by Contractor to Authority."*

13.14.09.01 Non-applicability of Federal EEO and Wage Rate Laws

Federal laws relating to equal employment opportunities, wage rate requirements, and other similar requirements for recipients of federal aid do not apply to Owner-let contracts. This exception does not

relieve the Owner of meeting federal laws that would apply irrespective of whether federal assistance is involved. 13.14 - 4 unless salvage credits are received by FRA for the removed facilities. (see Section 13.04.07.09.)

CALIFORNIA High-Speed Rail Authority

CHAPTER 14

RIGHT-OF-WAY CERTIFICATION
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14.01.00.00 – INTRODUCTION

14.01.01.00 General

This chapter defines and describes the nature, uses, and procedures of Right-of-Way (ROW) Certifications essential for project delivery. For purposes of this chapter, the term project certification refers specifically to the ROW Certification.

14.01.01.01 Definition

ROW Certification is a written statement summarizing the status of all right-of-way related matters pertaining to a construction segment or a specific parcel on the High-Speed Rail project. The purpose of the ROW Certification is to document that the parcel or project segment is ready for construction and states:

- Real property interests have been, or are being, secured.
- Physical obstructions including utilities and railroads have been or will be removed, relocated, or protected as required for construction, operation, and maintenance of the proposed project.
- Right-of-way acquisition and relocation assistance program requirements were conducted in accordance with applicable federal and state laws and procedures.

The High-Speed Rail Project is being delivered utilizing the Design Build method of project delivery. Unlike a design bid, build project a design build project will normally require multiple ROW Certifications instead of just one. The ROW certifications on a design build project can come at the time of award of the design build contract or at various stages of project development after award. The ROW certification also can be for only one parcel or for a group of parcels on a particular segment.

14.01.02.00 Project Construction Segments Requiring Right-of-Way Certification

The ROW parcels required for a given segment will be identified and tracked for timely certification to the construction contractor for construction.

14.01.03.00 [Hold for Future Use]

14.01.04.00 Responsibility for Right-of-Way Certification

The Director of Real Property is responsible for Right-of-Way Certification.

All matters affecting the validity of a previously issued Right-of-Way Certification shall be brought to the attention of the Direct of Real Property to determine the need to update or rescind the original Certification.

14.01.04.01 Input to Authority Data Base

On the date that the Director of Real Property, or designee certifies the parcel(s) or project segment, the Right-of-Way Certification number and date will be entered into the Authority data base.

14.01.04.02 Certification Rescinded by Authority

When the Authority rescinds a Right-of-Way Certification, for reasons such as design changes prior to construction or discovery of facts that otherwise make the certification invalid, it shall remove then Certification date from the system. The Authority when necessary, shall notify the construction contractor in writing that the Right-of-Way Certification has been rescinded.

14.01.04.03 Project Canceled

Should the construction of any given segment be canceled, the Director of Real Property will be notified immediately. The Director of Real Property shall rescind any active Right-of-Way Certifications, and remove the Certification date from the system, and enter a new Certification target date (Month-Year) if necessary.

14.01.05.00 Age of Certification

For projects not yet listed for advertising, Right-of-Way shall update any certification over one year old, and when requested.

14.01.06.00 Unusual Project Circumstances

"Unusual circumstances" are any deviations from the requirements or standard practices outlined in this chapter. When there are unusual circumstances in a project segment, a full explanation of the circumstances shall be presented to Director of Real Property for approval prior to certification. The approval should be included in the Certification or in an attachment and made a part of the Certification.

14.01.07.00 Modifications to Right-of-Way Certifications

The Authority shall not alter significant factual data in a Certification until a request is confirmed in writing. The request must be attached to and made a part of the original Certification. Revised Certifications must have the word "Revised" clearly stamped and centered at the top of the front page.

14.01.08.00 Project Design Changes

A new ROW Certification must be made when project design changes, resulting in additional right-of-way requirements. When the design changes reduce the Right-of-Way requirements on a parcel or a segment, an updated Right-of-Way Certification will be required to certify the reduced right-of-way needed for construction.

14.01.08.01 Split and Combined Project Segments

It is possible that small project segments may be combined into one contract, or large segments may be split into two or more projects. In this case any Right-of-Way Certifications that have been issued will have to be reviewed to see if they need to be withdrawn or revised. If parcels on a segment have been certified individually and the project segment identification for the parcel has changed, the certification will have to be withdrawn and revised to indicate the new segment identification. Likewise, if a segment has been certified as a whole, the combining or splitting may require withdrawal and reissuing of the certification if the project segment designation has changed.

14.01.09.00 [Hold for Future Use]

14.01.10.00 Certifications and Hazardous Waste

There is no requirement for Real Property Branch to certify the status of hazardous waste on a project segment or parcel.

14.01.11.00 Certification for Design/Build Projects [Hold for Future Use]

14.01.12.00 Right-of-Way Certification File

The Authority shall maintain a Right-of-Way Certification file containing pertinent documents related to the certification of a parcel or project segment, such as but not limited to:

- A diary for recording relevant information about the project.
- The project schedule, project design changes, and correspondence to and from the construction contractor, and the Infrastructure Delivery Branch.
- Any necessary Real Property Branch and federal approvals of unusual project circumstances.
- All clearance documents from various functional areas.

The original Right-of-Way Certification file shall be transferred to the project segments construction file system immediately after the parcel or project segment is certified.

14.01.12.01 Project File System

Authority shall maintain a project file system that contains at a minimum the following documents:

- Right-of-Way Data sheet.
- Right-of-Way Certification file containing the original Right-of-Way Certification
- Title VI Survey Forms.
- Other project-related correspondence.

14.01.12.02 Functional Clearances and Record Retention

Clearances must be documented in the Right-of-Way Certification files when the Authority and not the construction contractor is responsible for clearances such as utility relocations, railroads and local roadways.

14.02.00.00 - CRITERIA FOR CERTIFICATION

14.02.01.00 Prerequisites

Prior to issuing a Right-of-Way Certification, the Real Property Branch should review the construction contract, design right-of-way requirements, environmental documents as necessary to confirm the parcels required and the impacts to railroads, utilities, and local streets/ roads. This review will also include such items as:

- Project Segment Identification (Co.-Seg)
- Federal Aid Project Number
- Location description
- Work description
- Special provisions relating to utility, railroad, and right-of-way clearance coordination
- Confirmation that right-of-way construction contract obligations are properly included
- Confirmation that the right-of-way as shown on the construction plans is consistent with right-of-way being acquired

14.02.02.00 Timing of Right-of-Way Certification [Hold for Future Use]

14.02.02.01 Infrastructure Delivery Branch

The Right-of-Way Certification will be sent to the Infrastructure Delivery Branch for processing, and issuing of a notice to the construction contractor that a specific parcel is immediately available for construction activities.

A Construction memo must be received from ROW addressing the details of each parcel being certified prior to the Infrastructure Delivery Branch turning the property over to the construction contractor.

This construction memo is to be prepared by the Acquisition Branch who acquired or obtained possession of the parcel. It is to be submitted to the Director of Real Property as a part of their ACQ submittal for acquisition document approval. The Delivery Agent is responsible to assure that they have an accurate construction memo and that it is delivered to the Infrastructure Delivery Branch within 5 days of the Right-of-Way Certification.

14.02.02.02 Submittal of Right-of-Way Certificate to FRA [Hold for Future Use]

14.02.03.00 Criteria for DB Right-of-Way Certification

Format for Right-of-Way Certification can be found in Exhibits 14-EX-03.

14.02.03.01 DB Right-of-Way Certification

To certify the project segment or only a parcel, the Authority must ensure the state has full legal and physical possession of all necessary rights-of-way, including control of access rights when pertinent and the right to remove, salvage, or demolish any improvements remaining on the right-of-way. This will indicate:

- All work is within existing right-of-way acquired for a previous construction project, and all new work will be within that existing right-of-way; or

  Acquisitions are complete (escrows closed and/or Final Orders of Condemnation recorded); and/or
- There are effective Orders for Possession, Possession and Use Agreements, Permit/Licenses or Rights of Entry on all remaining un-acquired parcels and all occupants have vacated the lands and improvements. There also may be contractual provisions that will allow owners time to remove improvements or harvest crops and have specifically identified, and
- Relocation assistance and payment requirements have been met, and
- All necessary material and disposal sites have been secured, and
- All Right-of-Way clearance, utility, and railroad work has been completed, or all necessary arrangements have been made (e.g., Utility Notices issued, demolition contracts awarded, and railroad contracts executed) for the work to be undertaken and completed as required for proper coordination with the physical construction schedules.

14.02.04.00 [Hold for Future Use]

14.02.05.00 Usage of Right-of-Way Certifications No. 1 and No. 2 [Hold for Future Use]

14.02.06.00 [Hold for Future Use]

14.02.06.01 Criteria [Hold for Future Use]

14.02.06.02 {Hold for Future Use]

14.02.07.00 Special Certification No. 3 with Work-Around [Hold for Future Use]

14.02.07.01 Criteria [Hold for Future Use]

14.02.07.02 Right-of-Way Clearance

It is standard practice on the High-Speed Rail projects that the clearance of improvements within the right-of-way is the responsibility of the construction contractor. The Real Property Branch has no responsibility for clearance of improvements unless the Right-of-Way Contract contains provisions that the owner will retain and remove the improvement. This provision must be clearly identified and specified in the Right-of-Way Certification.

14.02.07.03 Certification Statements [Hold for Future Use]

14.02.08.00 Right-of-Way Certification Approval and Distribution

After the Certification is prepared in accordance with the current status of the property rights, it must be approved by the Director of Real Property or the delegated representative. The Real Property Branch will submit the original and distribute copies of the Certification to the Certification file, and others as appropriate.

14.02.08.01 Submitted with Plans, Specifications and Estimates (PS&E) Submittal [Hold for Future Use]

14.02.08.02 [Hold for Future Use]

14.03.00.00- CERTIFICATION FORMAT/CONTENTS

14.03.01.00 Right-of-Way Certification Format

Right-of-Way Certification for all projects is made using the Right-of-Way Certification format shown in Exhibits 14-EX-03. Since the format contains specific wording requirements, changes made in wording could invalidate the Certification. Any deviation from the format or the wording must be fully explained in the Certification and must be approved by Director of Real Property.

14.03.02.00 Description of Project Being Certified

The items in the Right-of-Way Certification listed below must match the construction project segment to be certified.

- Project Segment
- Federal Aid Project Number
- County
- Segment Description

The Federal Aid Project Numbers, if available, should be shown on the Right-of-Way Certification. If not available, the letters N/A should be shown.

14.03.03.00 Required Right-of-Way

All parcels required for a project segment must be included in the Right-of-Way Certification. The construction project segment may include work on local agency streets or roads where the local agency acquired some or all of the required right-of-way. Those parcels acquired by the local agency must be included in the Right-of-Way Certification.

Parcels to be included in a Right-of-Way Certification include regular right-of-way parcels acquired by deed, Final Order of Condemnation, Order for Possession, Possession and Use Agreement or Right of Entry and licenses, permits, or other acquisition documents used by certain governmental entities. This section shall include a full explanation of the circumstances regarding the status of possession on each parcel where the state does not have full legal and physical possession by virtue of a recorded deed, recorded Final Order of Condemnation, or effective Order for Possession, Possession and Use agreement or Right of Entry.

Temporary rights, such as temporary easements (whether parcels or sub-parcels) and Permits to Enter (or Enter & Construct), must also be listed in the Right-of-Way Certification. It is important to include the expiration date of any temporary rights so they may be evaluated in terms of the final construction schedule.

14.03.04.00 Certification with Rights of Entry

Certifying a project totally, or where a majority of the parcels are under Rights of Entry, shall be avoided.

Rights of Entry shall not normally be obtained until after an appraisal has been completed and the initial offer of settlement has been presented to the owner.

Rights of Entry obtained prior to making the first written offer can be used only to certify control of right-of-way in emergency or other justifiable situations. If the Real Property Branch believes it is necessary to

solicit a Right of Entry from an owner prior to completing the appraisal and making the first written offer, it must obtain the Director of Real Property, or designee's prior approval.

14.03.05.00 Status of Affected Railroad Operating Facilities

This section of the Right-of-Way Certification is meant to cover operating property of railroads. The railroad determines which of their properties are operating and non-operating. Acquisition of railroad property creates a parcel and is covered under Section 1 of the Certification, "Status of Required Right-of-Way", and in Section 8.69.00.00.

The Railroad Branch is responsible for issuing a Railroad Agreement (also see Right-of-Way Manual Chapter 4 and Exhibit 14-EX-10) to the Director of Real Property when all railroad matters have been resolved and the project construction may commence on railroad right-of-way. The Railroad Agreement forwards Special Contract Provisions confirms that any required Public Utilities Commission authorization has been obtained for the project and provides details of any Service Contracts and Construction and Maintenance Agreements with the railroads.

The Director of Real Property will provide the Infrastructure Delivery Branch with an approved Right-of-Way Certification, certifying as to the fact that the railroad clearance memorandum has been received. Until the clearance memorandum has been received, the Right-of-Way Certification shall not indicate railroad clearance.

The Railroad Agreement is required for any project with railroad involvement.

The operating facilities of a railroad can be "affected" by a construction project in several ways, which would require a statement in this section of the Certification (See Certification format for sample statements).

14.03.05.01 Service Contract (Clearance Memorandum Required)

A Service Contract with the railroad is used where the railroad is paid to do some work.

The Authority may not perform any work within 0.61 m (2 feet) of either side of the tracks. Only railroad personnel can perform work in the track area. For example, the railroads maintain grade crossings.

14.03.05.02 Clearance Clauses to be Incorporated into Contract Special Provisions (Clearance Memorandum Required)

Clauses are required in the Special Provisions as follows:

- Construction work will be performed within the railroad operating right-of-way and within 7.62m (25 feet) of the track - The railroad must be provided insurance, and clauses are required in the Special Provisions.
- Work is done in the railroad operating right-of-way but more than 7.62m (25 feet0 from the track - The contractor is responsible for damages and clauses are required in the Special Provisions.
- Work is done over or under a railroad facility in connection with construction of a grade separation structure - The contractor must notify the railroad when work is to be done. Railroad protection clauses are required.
- Work is done over or under an existing grade separation - The Director of Real Property, or designee will determine if the railroad should be notified and if clauses are required.

NOTE: The clearance memorandum is required when any work is performed within the railroad's operating right-of-way, regardless of the actual distance from the railroad tracks.

14.03.05.03 Rights of Entry

A required right of entry is sometimes included in the railroad Construction and Maintenance Agreement. As a "required parcel," it should be included in both Section 1 of the Certification. Generally, rights of entry on railroad operating property are not effective until the Agreement has been fully executed.

14.03.06.00 Material and Disposal Sites

The Right-of-Way Certification should list all optional or mandatory material and disposal sites that require a state secured agreement and that were made available for use for the project awarded.

On some projects, bidders are advised of available sites that have been previously tested and approved for use. Contractors make their own arrangements for use of such sites. These sites are NOT listed on the Right-of-Way Certification when the project does not require a state secured agreement with the site owner.

14.03.07.00 Status of Required Utility Relocations

If the Authority has reserved the obligation to relocate utilities. The Right-of-Way Certification for the areas where the Authority has retained the utility relocation obligation must not to be issued until either there are no required utility relocations or, if there are, that:

- All utility work has been completed.

Or

- All utility work will be completed by a stated date prior to construction.

Or

- All necessary arrangements have been made for remaining utility work to be undertaken and completed as required for proper coordination with construction. The Contract Special Provisions provide for the coordination.

And

- Arrangements have been made with owners of all utility encroachments that will remain within the project right-of-way so adequate control of the right-of-way will be achieved.
- All notices to owner have been issued.
- Federal participation has been authorized, if applicable.

The Right-of-Way Certification shall include a listing by owner and type of all utility facilities located within the project right-of-way. For those in conflict with the project it shall also include:

- Notice Number
- Notice Date
- Company Name
- Liability - State's expense or Owner's expense
- Schedule for the Utility Relocation work

The schedule shall indicate:

- Specific date owner has agreed to complete work, and/or
- Owner has agreed to concurrent completion of required relocation work that is to be coordinated with project construction

14.03.08.00 High and Low Risk Underground Facilities

A statement is required in the Right-of-Way Certification on the status of High and Low Risk Underground Facilities within the construction project limits. The Authority is responsible for administration of the High and Low Risk policy.

14.03.09.00 Right-of-Way Clearance

The Right-of-Way Certification requires one of the following statements:

- No improvements or obstructions were located within the project limits.
- Improvement Clearance is the responsibility of the construction contractor unless specifically noted herein.
- All Right-of-Way clearance work has been completed, and no improvements or obstructions are remaining within the right-of-way area required for construction.
- All necessary arrangements have been made for remaining Right-of-Way clearance to be undertaken and completed as required for proper coordination with the construction schedule. (see Exhibit 14-EX-03.)

14.03.10.00 Airspace Agreements

If airspace agreements are in effect within the project limits, an explanation of any arrangements required with the lessee must be included in the Right-of-Way Certification and the bid documents.

14.03.11.00 Compliance with Relocation Assistance Program (RAP) Requirements

This section provides assurances that all current policy and procedure requirements for relocation advisory assistance and payments have been followed. Detailed data on any remaining occupants and personal property is also provided in this section of the Right-of-Way Certification (see Exhibit 14-EX-03).

14.03.12.00 Environmental Mitigation

All Right-of-Way Certifications must address the status of any environmental mitigation on a project. This section describes the three status categories.

- No environmental mitigation parcels are required for the project.
- All environmental mitigation parcels on the project have been acquired.
- Acquisition of environmental mitigation parcels is ongoing. Explain acquisition status.

14.03.13.00 Certification – Authorized Signature

Right-of-Way Certifications are issued over the signature of the Director of Real Property or designee.

CALIFORNIA High-Speed Rail Authority

CHAPTER 15

AIRSPACE
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15.01.00.00 - GENERAL

15.01.01.00 Function and Policy

The Airspace function is responsible for leasing and managing all property held for high-speed rail purpose that can safely accommodate a secondary use. A site identified as "airspace" is not only property within the right-of-way limits of an existing high-speed rail alignment, but all Authority-owned and operated facilities that are used to support the Authority's system. This does not include property held for a "future" high-speed rail purpose.

15.01.01.01 Definition

An airspace site is defined as any property within right-of-way limits of an existing high-speed rail alignment that is capable of other development without undue interference with the operation and foreseeable future expansion of the Authority's corridor for other transportation uses without endangering the traveling public. Airspace may consist of:

- Surface rights under a viaduct structure.
- Space at a station.

Airspace may also be defined as all Authority property that can safely accommodate a wireless telecommunications facility. Typical sites are:

- Space within a maintenance station, park and ride lot, office building, or other facility.
- Non-operating and operating right-of-way if access and utilities are from outside the high-speed rail alignment

15.01.01.02 Airspace Policy

Public Utilities Code §185041-185044 authorizes the Authority to lease non-operating right-of-way and areas above and below operating right-of-way in accordance with PUC prescribed procedures.

Established policies and procedures provide guidelines on leasing airspace sites to maximize use of property acquired for transportation purposes by allowing a dual use that must include one or more of the following:

- Increases the local tax base.
- Replaces some commercial services removed by the construction project.
- Promotes area employment.

Provides an asset for the Authority (e.g., park and ride lots).

- Eliminates maintenance expenses of vacant sites.
- Creates an income stream that exceeds expenses to operate the program.
- Contributes to the High-Speed Rail Property Fund pursuant to PUC §185045.

15.01.02.00 Responsibilities Real Property Branch

The Real Property Branch is responsible for:

- Developing all policies and procedures governing all aspects of airspace leasing and management.

  NOTE: Encroachment Permits handles all proposals to use property within the right-of-way with the exception of Authority owned property adjacent to the high-speed facility (e.g., maintenance station).
- Preparing periodic reports on statewide income, expenses, inventory, production, and goals.
- Establishing standards to measure Airspace activity (i.e., income, expenses, production, and workload) in accordance with current and future contracts for region performance.
- Coordinating budget requests for region PY allocation and workload projections.
- Resolving technical issues through research and subsequent written guidance.
- Holding quality meetings, training seminars, and workshops.
- Administering PUC codes §185040-185045.
- Developing standardized lease agreements and language to protect the Authority from potential liabilities and claims from the lessee, sublessees, and adjoining owners.

15.01.02.01 Annual Reports

Real Property Branch prepares Airspace reports.

- Annual Report to the Director of Real Property to provide information on inventory, income, and leasing activity for the previous fiscal year.
- Business Plan - a statewide plan for the Airspace program that establishes next year's objectives and goals. This report must be presented to the Director of Real Property each SFY.

Authority Management or the Legislature may also require special reports or information.

15.01.02.02 Annual Director of Real Property Review

Director of Real Property will, at least once a year to review current operations and ensure accurate instructions are in place to assist Right-of-Way Airspace Unit with the work products and goals. Some of the items the Director of Real Property should review are the effectiveness of:

- Airspace efforts to maximize public and private multiple use of right-of-way.
- Written policies, procedures, and instructions.
- Annual marketing, workload, and budgetary plans used to track PY effort.
- Training to improve operations and prepare for the next budget cycle.

15.01.03.00 Responsibilities of Airspace

To manage an effective Airspace program, the Airspace will:

- Develop a positive marketing program to maximize revenue.
- Implement multiple use concepts during the project planning and design processes.
- Administer and manage all high-speed rail leasehold and airspace areas.
- Identify potential airspace sites and maintain a current and accurate database in the inventory.
- Coordinate with the Environmental Services Branch to identify project environmental implications or determinations and to assist developers with requirements for environmental clearance, storm water pollution prevention, and air quality studies or statements.
- Coordinate to market the joint use of park and ride lots to provide better services to the traveling public while decreasing the Authority's maintenance expenses on the sites.
- Cooperate with private industry to develop suitable sites.
- Protect airspace sites against adverse economic impacts, such as inappropriate utility encroachments and discriminatory down zoning.

15.01.04.00 Airspace Review

Airspace is responsible for conducting a review of all proposals to lease an airspace site. An Airspace Review Committee (ARC) consisting of representatives from Real Property, Engineering Services Branch, Environmental Services Branch, and the State Fire Marshal must approve proposed airspace uses. Additional programs may be included if the program is affected by the proposed use.

ARC will review:

- The initial lease for any property.
- If the use of the property will change.

Prior to submitting the proposal to ARC, Airspace should review the proposal and develop a plan for leasing the site, including:

- Best method to lease the site (public bid or directly negotiated with a public agency).Adjacent property management and excess land sites that could be joined to the site and leased together.
- History of prior leases (including term and use).

Although formal meetings are suggested, informal discussions and routing of the proposal will suffice if the proposal is not complex.

Airspace shall provide relevant information to ARC members, such as:

- Proposed use and term.
- Site improvements (proposed and existing) - paving, striping, curbing, lighting, etc.
- Access - ingress and egress.
- Utilities, including water.
- Major developments - buildings, storage tanks.

ARC representatives should be permanent members from each program who have committed to participate fully in the review. Responses should be returned in the established time frame (e.g., 15 days for conceptual and 45 days for preliminary and final). Close coordination with the proposed lessee is necessary to ensure documents are submitted on time to obtain all approvals prior to scheduled construction or occupancy date.

ARC is responsible for reviewing the proposal to ensure the use and improvements will not adversely affect facility safety nor interfere with operations. Any conflicts between the proposal and internal uses should be mitigated with the proposed lessee to the fullest extent possible.

Airspace should use discretion when forming a ARC review for a proposed use. Only those members that can provide valuable input on the impact to their program should be included in the review. A legal, low-value, non-complex proposal with no improvements may require a less intensive review than a parking structure underneath a viaduct. Additionally, many of these types of proposals may not require extensive review at the conceptual phase. This can be done at the preliminary and final stages after the potential lessee provides more detailed information on the proposed lease.

ARC reviews are held at the conceptual, preliminary, and final phases to ensure previous concerns have been addressed and the proposal has not dramatically changed since conceptual approval.

The preliminary phase is at Airspace's discretion considering the proposal's complexity and the level of review that was performed at the conceptual phase.

AIRSPACE REVIEW PHASES	
Stage	**Review**
Conceptual	1. Does the proposal make sense? 2. Any program objectives? 3. Identify upgrades or modifications to site (e.g., slope or column protection). 4. Other interest parties? 5. Highest and best use. 6. Advise proposed lessee of ARC comments.
Preliminary	1. Preliminary plan review: effect on operations. • access, utilities. • High-speed rail structures. • lessee's improvements. 2. Potential risks and liabilities compared to benefits and revenue. 3. Advise proposed lessee of ARC comments.
Final	1. All ARC comments addressed in final plans. 2. Local and environmental approvals obtained. 3. Construction and maintenance schedule. 4. Final plans showing excavation and trenching. 5. Advise proposed lessee and Permits Coordinator of status.

15.02.00.00 - INVENTORY OF AIRSPACE LEASES AND INTERNAL USES

15.02.01.00 Inventory Requirements

Each airspace site shall be entered into geoAMPS. Refer to the geoAMPS User's Manual for inventory procedures.

The inventory data are used to obtain site-specific information and to prioritize sites with the highest development potential. The prioritized sites are marketed according to the Authority's annual marketing plan.

15.02.01.01 Identification Number

Each site is assigned a High-Speed Train (HST) number using region descriptor, assigned site number, tenancy (e.g., MF-16-0010-01-01). If a site is split for interim or other uses, each site should have a separate site number. If a site is combined with another site (airspace, excess land, property management), the combined site should be assigned the primary airspace site number.

Telecommunications sites are identified with a special site numbering system, using 9XXX, with an alpha for the last character (e.g., MF-16-0101-901A-01 is the first site on the route and the first carrier; MF-16-101-902B-01 is the second site on the route and the second carrier on the site). This helps identify and track all carriers on the same site.

15.02.01.02 New Sites in Inventory

New sites identified as potential leases should be added to the inventory as soon as possible. Potential sites on new freeway projects should be added to the inventory within six months of completion of construction.

To assist in preparing the Authority Marketing Plan, Airspace should indicate which sites in the inventory have the highest revenue potential.

Proposals to lease new sites require ARC review, with a formal recommendation. The request must include a vicinity map and a site map, or an adequate substitute. After review, Airspace will route the request to Director of Real Property for review. If approved by Director of Real Property, the site can be added to the inventory through geoAMPS. Telecommunications (wireless) facilities are added to the inventory after preliminary site approval in order to deposit the processing fee directly into the High-Speed Rail Property Fund. To track the six-month local permitting period, it is necessary to open an account for each carrier at each site. Vicinity and site maps are provided by the carrier and should be on file prior to final approval.

15.02.01.03 Mapping

Maps shall be prepared for each airspace site in accordance with Right-of-Way Engineering 6.01.04.00 and Exhibit 06-EX-1B.

Each airspace site must have a vicinity map and a site map. The vicinity map shows the general location of the site and its relationship to the high-speed rail and local roads. The site map shows the perimeter of the site and its relationship to the high-speed rail centerline and right-of-way lines, including all structures. It also denotes the square feet of leasable area, usable area, usable area, and the area restricted from use (e.g., footprint of the columns).

Refer to "Drafting and Plans Manual of Instructions" Lease Area Maps Figures 4-4.4A through 4-4.4D.

The vicinity map is the only mandatory requirement for adding a site to the inventory or obtaining conceptual approval. The site map can be requested from Right-of-Way Engineering if there is agreement on the size, shape, and area that will be leased and if the likelihood of leasing the site is high. Otherwise, use a copy of the record map with appropriate markings of the proposed airspace site, noting approximate boundaries and square meters. (Dual notations on maps of the area to be leased are allowed for local agency and lessee purposes, e.g., square footage).

15.02.02.00 Authority Use of Airspace Sites

An Authority program may need to use an airspace site for a future transportation project (new construction or modifying an existing facility) or reserve it for an internal use (temporary or permanent). Any vacant or soon to be vacant site may be held for "AUTHORITY USE" if the requesting program's submittal is approved.

The Director of Real Property approves such requests after Airspace analyzes the economic and local factors of removing the sites from the list of "available" sites. The analysis should include:

- Estimated fair market lease rate (FMLR) is based on the fair market value (FMV) of the site considering the highest and best use, the potential length of a lease, and the present worth of the income stream.
- Potential loss of possessory interest tax revenue to the local agency.
- Date the requesting program needs the site for proposed construction or modification to an existing facility.
- If the site is currently leased, probable cost to cancel the lease if the requesting program's need is immediate.
- Environmental considerations of the proposed internal use, including potential neighborhood and community impact.

Airspace presents its analysis of the proposed use to ARC for a recommendation to the Director of Real Property to approve or deny the request.

15.02.02.01 Internal Use

An Authority program may need an airspace site for a permanent or temporary internal use. Examples of permanent uses are maintenance operations (e.g., vehicle storage), landscaping projects, employee parking, and park and ride lots. Examples of temporary uses are sites for relocated businesses due to seismic retrofit, internal construction staging areas, holding areas for historic buildings pending sale, and other immediate needs of the Authority. If the site is not in the inventory, it should be added and coded as "AUTHORITY USE" in geoAMPS to track potential savings to the Authority by using its own real estate assets.

To ensure the Authority is using its land assets properly, Airspace should annually review all sites held for Authority use to ensure the need still exists for the current usage and the current usage is still the best use of the property, considering other potential uses and net return. Airspace must discontinue the internal use if it is a significant underutilization. However, Airspace should consider Authority needs as a high priority and recognize that there may not be an alternative site that will adequately serve the Authority's needs. If the Authority intends to provide contractors with an airspace site for a construction staging area, this should be announced in the Construction Bid Package. If not, the site may be leased to the successful construction contractor Authority's needs. If the Authority intends to provide contractors with an airspace site for a

construction staging area, this should be announced in the construction bid package. If not, the site may be leased to the successful construction contractor.

15.02.02.02 Existing Internal Uses and Potential Airspace Leases

If a site currently held for Authority use can generate a higher return if leased, Airspace must prepare an economic analysis for the Director of Real Property and request termination of the current use so the site can be developed for an external use.

If the internal use is an underutilization of the site and an adequate replacement site is available, Airspace and the user program may consider terminating the existing use and making the property available for lease. The analysis should consider the potential revenue against the cost to relocate the impacted facility and program, factoring in the probability of leasing the site and any risks the proposed lessee may encounter, thus reducing the probability of a successful lease. Relocation should occur only when the program using the site funds the cost.

The analysis may indicate (1) the existing internal use is proper, (2) the use should be discontinued and the site made available for lease, or (3) a portion of the property should be retained and a portion made available for lease as the program will no longer need the entire site.

A program (maintenance, construction) using a site must submit formal written notice to Airspace prior to vacating the site. The notice must state when the site will be vacated, the current condition of the site (e.g., hazardous materials) and list improvements that will remain. Airspace must coordinate termination of the use with the vacating program to ensure the site is ready to lease to a private entity.

15.02.02.03 Property Retention Policy

The procedures for internal and external uses of Airspace property are subject to the Authority's Property Retention Policy, which requires the Director of Real Property to approve any proposed use of Airspace property for other than revenue generation.

15.03.00.00 – PLANNING AND MARKETING

15.03.01.00 General

Properties offered for lease must attract the widest possible market to achieve the maximum return. Standard real estate marketing techniques should be used to ensure adequate exposure of the property for lease. The ability to be flexible as to the terms of lease and potential assemblage of adjoining sites should be brought to the attention of all prospective lessees. Airspace should use additional methods to achieve the widest distribution of leasing information for **specialized** property, such as advertising in technical magazines, developing a homepage on the Internet, or hiring a leasing agent or broker.

15.03.02.00 Planning

Airspace is responsible for working with Design & Construction and Environmental to identify potential multiple use or joint use opportunities in the planning and design phases of transportation projects.

Pursuant to PUC 185044, Airspace shall take necessary action to implement multiple use concepts developed in the project planning and design stage; therefore, staff should provide necessary technical information, including ARC recommendations.

Good working relationships with local agencies responsible for approval of Airspace proposals are necessary for successful planning and marketing activities.

15.03.03.00 Marketing

Prior to preparation of the annual budget, Airspace should prepare its annual plan for the next two fiscal years for marketing and budgeting purposes. The plan includes target workloads for all short term, long term, and telecommunications leasing activity. The plan shows sites Airspace intends to market, by quarter, and the lessee selection process (direct negotiation with a public agency or bid). The plan is used to forecast, schedule, and identify resources.

In addition, each vacant site should have a specific marketing plan identifying and scheduling the leasing activities (e.g., appraisals, lease agreement, and construction).

Although sites in the plan are usually in the Airspace inventory, new sites (not yet approved conceptually) can be included if external interest is high.

As part of the plan, Airspace should review the economic viability of airspace sites in the inventory. If there is little or no interest in a site, Airspace should either change the proposed use or remove the site from the inventory. All site mapping and preliminary work should be retained in a Right-of-Way archive file for future use should interest in the site resurface.

15.03.03.01 Advertising

Sites should be advertised using the appropriate media e.g., newspapers, radio announcements, Internet web sites, and developers' periodicals. Note all advertising efforts in the site diary.

Methods used to advertise low value airspace sites should be limited to those methods that will attract some interest but will not cost more than the potential revenue. For example, an Airspace site that can be used only as unimproved overflow parking does not warrant a major marketing campaign.

15.03.03.02 Signs

Advertising signs should be placed on airspace sites in accordance with the marketing plan and as follows:

- Parking or Open Storage - at least one month prior to bid opening.
- Non-Development or Development - at least three months prior to bid opening.

Airspace should maintain an adequate supply of signs. Approximate cost (1997) is $25/sign.

15.03.03.03 Promotion

There are several ways to make the public more aware of the Airspace Program, such as:

- Standard "For Lease" and "For Auction" Signs should be at least 2' x 3' (aluminum or plastic) and mountable in some fashion. Example:
  - FOR LEASE
  - Contact: (Phone Number)
  - Right-of-way Office
  - (Property of State of California)
- Public Affairs Office's news releases and radio and television public announcements on ongoing and completed developments.
- Staff Presentations to community, local governmental entities, and professional real estate organizations.
- Personal Contact with local builders and developers to discuss the program.

15.03.03.04 Adjoining Owners

When a site becomes available, Airspace should contact adjoining owners and occupants to give them pertinent information about leasing the site, discussing potential uses for their benefit. Note all discussions in the site diary.

15.03.04.00 Broker Commissions

Although not currently a common practice, the Authority is authorized to contract for the services of a real estate broker to assist in developing a long-term lease. If approved by Director of Real Property, the standard agreement must state:

- Commission is paid after the first lease payment is received.
- Installment payments will be made if the commission exceeds the monthly lease rate (e.g., broker receives half the rent paid until the commission is satisfied).
- Commission will not exceed three percent of FMV appraisal.
- The proposed lessee's offer and proposal are submitted with the broker's agreement.
- The proposed lessee's option period does not exceed six months.
- The broker's agreement is site specific and limited to five sites per year.

15.03.05.00 Discriminatory Rezoning

The Authority is concerned about local agency proposals to change the zoning of potential airspace sites that adversely affect their marketability. Airspace should work closely with local planning agencies to prevent general plan and zoning proposals that adversely affect existing or potential Airspace properties. Airspace may be notified of a planning action by direct correspondence from the local agency or by formal notice in a newspaper of general circulation pursuant to GC Sections 65854 et seq. Although formal notices are usually required, Section 65858 provides authority for local agencies to adopt certain interim zoning ordinances as urgency measures without the above notice requirements.

Airspace shall immediately notify the Director of Real Property of any proposed planning or zoning action affecting Airspace property. The Director of Real Property may intercede in instances where it is believed to be in the Authority's best interest to oppose a local agency's planning or rezoning activity. At that point, the Director of Real Property advises Airspace to contact the Legal Office for assistance. If the Director of Real Property determines it is not in the Authority's best interest to intercede, the Director of Real Property will document in writing the reasons for not contesting the local agency's proposed action and forward a copy to the RPSU.

Legal and Director of Real Property will jointly evaluate the local agency's proposed action to determine the appropriate method to oppose the action (e.g., formal correspondence, appearing at public hearings, formal meetings, and legal actions). Prior to initiating any legal action, the matter will be referred to the Director to review opposition attempts to date and to concur that the case warrants legal action.

Opposition will never include applying political pressure on individuals involved in the local planning process.

15.04.00.00 – AIRSPACE LEASES

15.04.01.00 Types of Airspace Leases

The typical airspace lease agreements are:

- Rental Agreement - non-complex, non-developmental use for six months with one six-month extension.
- Parking and Open Storage Agreement - short term, non-developmental use for up to 5 years with no options or extension. Usually the result of an open bid process.
- Non-Developmental Agreement – longer term non-developmental use for more than 5 years (including options), which may involve minor improvements to the site.
- Developmental Agreement - long term developmental use for more than 5 years (including options) involving major construction.
- Park and Ride Agreement - month-to-month agreement with a non-profit organization to use the park and ride facility in exchange for maintenance and security services.
- Directly Negotiated Non-Development Agreement - The Authority may lease to public agencies or private entities or individuals for any term not to exceed 99 years. Only leases with public agencies may be directly negotiated.
- Telecommunications Wireless License (Site License Agreement) - specific site agreement for a wireless facility for 10 years with three 5-year options. Carrier must have executed a Master License Agreement, which defines the specific terms and conditions for all sites.

Other lease agreements may be entered into with public agencies (e.g., local public agencies, school districts, and government agencies) and the motion picture industry.

15.04.01.01 Rental Agreement

Rental agreements are for interim uses (e.g., Christmas tree sales, radio frequency testing, and construction staging areas). The term is limited to six months with one six-month extension and cannot go beyond one year. At no time will the use be extended beyond 18 months.

Although a rental agreement can be used when a site is pending approval of the terms and conditions of a directly negotiated lease with a public agency, the preferred method is to use a Letter of Understanding or Option Agreement. A rental agreement does not imply any approval to lease the site for development purposes.

15.04.01.02 Parking and Open Storage Agreement

Short-term parking and open storage lease agreements are used when the proposed lessee will make limited or no improvements to the site, so does not need an extended period of time to amortize the cost of improvements. The term is normally two years but can be for five years, depending on the need of the lessee and the potential rate of return that may result from a longer term agreement.

The standard agreement can also be used for other non-developmental uses that will not exceed five years as long as all other provisions in the agreement remain the same. Director of Real Property should be contacted prior to modifying any lease provisions for this different use.

The agreement is usually used after a competitive bid per Public Utilities Code section 185044.

15.04.01.03 Non-Developmental Agreement

This agreement is very similar to the Parking and Open Storage Agreement, except the lease term is beyond five years but usually no more than 15 years, including all options and extensions. The longer lease time is needed to generate a higher rate of return, or the lessee needs the site as plottage for an adjoining development or to amortize the minor improvements needed at the site (e.g., paving, striping, lighting, and curbing). Also, local school districts or governmental agencies may require longer terms.

15.04.01.04 Developmental Agreement

The Authority is not actively pursuing developments on airspace sites, particularly those proposals underneath a viaduct structure.

The complex nature of a development lease usually requires writing a specific lease agreement, possibly using the standard agreement as the basic format. Director of Real Property and Legal should be involved in developing the agreement prior to approving and executing the document.

15.04.01.05 Marler Johnson Agreement [Hold for Future Use]

15.04.01.06 Park and Ride Agreement

The Authority may enter into Park and Ride Agreements. If the area is not used to its full capacity, Airspace may need to locate a non-profit organization to occupy a park and ride lot that is not being used to its full capacity. Leasing a portion of the lot provides on-site management of the facility to assist with maintenance and security, which should improve facility usage. In some cases, longer-term leases with other entities may be considered. Consult with Real Property Branch on specific proposals.

The FMLR for the area to be leased is offset against the savings to the Authority from not having to provide security and maintenance. The non-profit organization's use cannot reduce the number of parking spaces available. The minimum lease rate is $1 per month, calculated by subtracting the savings to the Authority from an approved FMLR or $500 (minimum lease rate), whichever is greater.

Example 2:		
FMLR	$400/mo.	
Minimum Lease Rate	$500/mo.	
Maintenance Offset	$600/mo.	
	$499/mo.	(maximum offset)
Lease Rate	$ 1/mo.	(minimum lease rate)

Airspace should review leases annually to ensure usage at the site has improved with on-site management, and that continuing the month-to-month arrangement is in the Authority's best interest. All lease agreements can be terminated with 30-day notice if the Authority needs the entire area, if on-site management has not improved usage, or if the lessee is not providing the required level of security and maintenance.

15.04.01.07 Directly Negotiated Non-Development Agreement [Hold for Future Use]

15.04.01.08 Telecommunications Licenses

A Master License Agreement (MLA) for Cellular and Personal Communications Services (PCS) Carriers allows a licensed carrier to install and operate a wireless facility. Each carrier must execute the MLA with Director of Real Property prior to executing a specific Site License Agreement (SLA) with Airspace.

The MLA allows the carrier to install a facility on any Authority owned property (maintenance facility, park and ride lot, office building, and within operating and non-operating right-of-way) where it is deemed safe and non-interfering.

This does not apply to excess lands that will be sold in the future. The Permit Coordinator may grant a permit for construction while the Real Property Branch will prepare the rental lease. See Property Management Rentals.

15.04.01.09 Public Agency Leases

A school district, local public agency, or other governmental agency can lease an airspace site for public use. Airspace should coordinate renewals and payment schedules with the agency's budget cycles to ensure lease payments are allocated in its budget. Airspace should contact the agency at least six months prior to the budget cycle date to determine if the lease will be renewed. If so, an appraisal should be requested with a due date prior to the date of the lessee's budget request. After the appraisal is approved, Airspace should begin discussions immediately with the lessee to ensure adequate time for the lessee to request additional funds if the lease rate increases.

15.04.01.10 Film Industry Leases

In accordance with GC 14998.7, the Authority shall waive compensation and cooperate fully with the film industry for use of vacant airspace sites or for subletting leased sites.

15.04.02.00 Oil and Gas Leases [Hold for Future Use]

15.04.03.00 Utility Companies

Airspace leases and procedures are not used to establish or to continue the placement of public utility lines in Authority rights-of-way. The Real Property Branch issues permits for the use and occupancy of such rights-of-way for a public utility purpose. In other words, under no circumstances will the Authority grant an airspace lease in the right-of-way to a utility company. Exceptions are granted if a utility company proposes to lease an airspace site for parking or office space. The utility company must be referred to the Real Property Branch, which will handle all requests for an encroachment permit, including requests for exceptions to the longitudinal encroachment policy.

Telecommunications Wireless Carriers are not treated as utility companies, even if some are regulated by the California Public Utilities Commission (PUC) as they do not provide a necessary service to the public, and they operate in a competitive arena. Sites for wireless facilities are handled exclusively as "site licenses" by Airspace and not by Real Property Branch.

15.04.04.00 Lease Agreements

Standard lease agreements for all types of airspace leases are available. Updates and changes to the provisions are submitted via a memorandum and/or electronic methods (E-mail). Airspace should contact Real Property Branch prior to entering into a new agreement to ensure it is the latest version.

Real Property Branch must approve all modifications to the standard lease provisions, and the Director of Real Property must execute the agreement. One original executed copy of all long term leases must be sent to the Real Property Group.

15.04.04.01 Terms and Conditions

The standard terms and conditions of a lease agreement generally include:

- Use and improvements.
- Term of the agreement, including options and extensions.
- Lease rate per approved valuation report, if based on the FMV, and also the rate of return.
- If a bid, the lease rate must be based on the last bid or the previous lease rate.
- Reevaluation provisions and periodic adjustments to the lease rate.
- Default, liability, and termination provisions.
- Sublease, assignment, and transfer provisions.
- Retention and removal of improvements.
- Maintenance responsibilities of all parties.

The standard lease agreement provides for all the above and more, and Real Property Group must pre-approve any modifications to the clauses.

Sample format:

Use:	Improved parking
Term:	10 years, one 5-year extension
Lease Rate:	$835 (rounded) per month
Fair Market Value:	$100,000 as plottage
Rate of Return:	10%
Adjustments:	3.5% annually
Reevaluations:	After 10 years
Improvements:	Paving, striping, curbing
Termination:	Standard - either party after the first 5 years
Liability Coverage:	Standard $5,000,000

15.04.04.02 Insurance Requirements

Each airspace site must be insured for $5,000,000 in liability and, if the site is developed, 100% of replacement cost. The lessee must provide a current certificate of insurance each year. Airspace should review it to insure the fire coverage is sufficient considering increases in value. Each telecommunications wireless facility must be insured for $5,000,000 liability. Rail Operations and Delivery Branch will monitor the insurance requirements for the Telecommunications licenses. Some existing leases only required $2,000,000 or less at the time of execution, and these should be increased to the new minimum as the leases are amended or extended.

15.04.05.00 Option to Lease

An option allows the proposed lessee to hold the site while obtaining all reviews and approvals necessary to construct (e.g., local permits and construction funding). The use of an option for long-term competitive bids does not require prior Director of Real Property approval, but Airspace should consult with the Real Property Branch about the applicability of an option.

15.04.05.01 Option Agreements

The Real Property Branch will assist Airspace in preparing the Option Agreement. If the lease is through direct negotiations with a public agency, the Director of Real Property must pre-approve all requests. The standard option period is three to six months.

15.04.05.02 Option Payments

The Option Agreement will specify the amount of option payment that the proposed lessee (Optionee) must pay to hold the site pending all approvals and executing the lease agreement. The option payment should be based on the minimum bid and the potential rate if leased as is. The standard minimum option payment is one month's rent based on the successful bid.

15.04.05.03 Exercising Option Rights

The optionee/lessee must notify Airspace, in accordance with the notice provisions in the option agreement, whether or not optionee/lessee intends to exercise the option to execute the lease agreement. Extensions can be granted in rare circumstances, and provisions for such extensions should be addressed in the initial Option Agreement.

15.04.06.00 Exercising Option to Extend an Existing Lease

Not to be confused with the Option Agreement, some lease agreements provide for an option to extend the original term (e.g., 10-year lease with three 5-year options). The lessee must state in writing its intent to exercise the option and identify any anticipated changes to the use or the agreement. The Real Property Branch must review terms of the agreement to ensure conditions to extend have been met and determine if the lessor (Authority) has the right to deny the option. Also, the lease agreement may provide for reevaluation prior to the extension, requiring Real Property Branch to coordinate the reevaluation with the lessee. The Real Property Branch sends an acknowledgment letter to the lessee and sends copies of the letter and notice to Rail Operations Delivery Branch.

If there is no change in the provisions of the lease, an amendment to exercise an option is not needed. If there is a change, it is handled in the same manner as amendments.

15.05.00.00 - LEASE RATES AND ADJUSTMENTS

15.05.01.00 Valuation of Lease Rate

The lease rate for an airspace site is established by the following methods:

- Airspace Estimates - used for preliminary discussions with potential users, for minimum value sites, or for uses of six months or less. The lease rate for the rental agreement may not require an airspace estimate if there is already a clear basis in the market for the lease rate.
- Airspace Appraisals - A market value airspace appraisal is required for any site that will be leased on a direct basis to a public agency. The appraisal is valid for one year. When direct negotiations for a development lease are entered into, the appraisal should not be requested until the potential public agency lessee executes a Letter of Understanding (see Section 15.06.04.02) and makes a deposit that is sufficient to cover the cost of the appraisal. The potential lessee has the option of obtaining an independent appraisal report from a list of approved appraisers. A reevaluation of the current lease rate may be required prior to extending the term of a long- term lease agreement, requiring a new airspace appraisal.
- Bid Lease Valuations - A bid lease valuation is required to establish a range of value in determining minimum rental rates on the basis of competitive bids. The valuation is valid for one year. Both current use and lease rate should be considered when the airspace site is leased and the determination of the lease rate will be used to establish a new minimum bid.

see Section 07.15.00.00 for specific procedures.

When the valuation is complete, the Real Property Branch should summarize the report to use in discussions with the proposed lessee or to present the terms and conditions to the AAC (Form RW 15-02).

15.05.01.01 Lease Rate Appraisal

In lieu of a full appraisal report for any non-developmental uses on directly negotiated airspace leases, the The Real Property Branchcan choose a simplified format to determine the value of sites used for parking, storage, or public parks. (see 7.15.05.00 for additional information.)

The appraisal will conclude a specific market lease rate as appropriate to the airspace site's attributes, limitations, benefits, and proposed use and terms.

This streamlined approach cannot be used if the highest and best use is in question or if the airspace site is considered as plottage to an adjoining property. (see 7.15.05.00 for additional information.)

15.05.01.02 Percentage Leases

In rare cases, the FMLR will be a percentage of the gross income the lessee will generate at the site. Airspace must determine the best percentage and establish the method for calculating same (e.g., five percent of gross revenues over a base rent). In addition, the lease agreement must provide for an audit by Airspace, usually on an annual basis, of the lessee’s records to ensure the calculated amount is accurate.

The Audits Branch shall pre-evaluate the lessee's method of keeping books, records, and accounts of financial transactions in connection with the lease. After the lease is executed, Airspace should request the Audits Branch to audit the lessee's records every three years to validate annual audits conducted. Airspace

can also request assistance to calculate the annual percentage rate if there is a question about the information the lessee provided.

15.05.02.00 Plottage Value

The Rail Operations Delivery Branch should advise the Rail and Operations Delivery Branch if the airspace site will be joined to an adjacent site for development. The airspace site may provide additional square footage/meters for parking that a local agency requires before the adjacent site can be developed, or the site may provide needed access to all or a portion of the adjacent site. An airspace site that increases the value of the adjacent site should generate a higher rate of return to the Authority.

15.05.03.00 Rate of Return

A full appraisal report requires the property rights be valued as fee. A suggested rate of return based on market data should be included when the data is readily available. The rate of return will provide the Real Property Branch with a tight range of lease rates to use in negotiating all terms and conditions of the lease. If no data is available, the Real Property Branch must determine the comparable rates of return to use in establishing a lease rate from the FMV of fee; e.g., $100,000 FMV x 10% rate = $10,000 annual FMLR (monthly = $835 rounded).

15.05.04.00 Scheduling Valuation Requests

Annually during the budget process, the Real Property Branch estimates the number and type of airspace site appraisals needed for the next fiscal year. The list identifies the lease areas to be valued and the dates by which the appraisals are needed. This list is used to prioritize preparation of airspace appraisals. The Real Property Branch should also request updates of appraisals over one year old.

Information about the site relevant to its valuation should be given to the appraiser. In cases of direct negotiation with a public agency, the potential lessee's name and intended use are included in the appraisal request.

. The formal request for an estimate, valuation, or appraisal states the Airspace site number, the property rights to be appraised, and includes necessary appraisal maps, plans, and profiles of the freeway. It must include any restrictions that will be placed on use of property. The Real Property Branch should formally check on the status of its request well before the date the requested information is needed.

The appraiser and the Real Property Branch agent should discuss site use and restrictions before start of the appraisal and at the rough draft stage. The appraiser should include in the appraisal, or otherwise convey to Airspace, any data useful in marketing the area to be leased.

15.05.05.00 Lease Payments

The lease rate is typically paid monthly; however, advance lump sum payments can be made on a semi-annual or annual basis (e.g., governmental entities that operate on a specific budgeting cycle or for minimum lease rates to save administration costs).

Prior notice to the Real Property Branch is required in cases of any payments less than the minimum amount.

15.05.05.01 Minimum Lease Rate

The minimum lease rate is the appraised FMLR, but not less than $500 per month or $6,000 per year, with exceptions:

- For Park and Ride (non-profit), the lessee will provide a service to the Authority (e.g., maintenance or security) or there is some other benefit.
- The legislature mandates lease rate (e.g., public agency use, homeless shelters).
- The FMLR supports a minimum rent of less than $500, and the proposed use will benefit the local community or neighborhood.

Any other circumstances should prompt Airspace to consult with the Director of Real Property.

15.05.05.02 Minimum Security Deposit

The minimum security deposit for any airspace site is one month's rent for non-developed, short-term sites, but not less than $500, and three months' rent for non-developed long term sites. The minimum security deposit for developed sites is three months rent, or more if the risk to the Authority is great or the potential for damage and removal of improvements is high. Security deposits are required for all leases except Telecommunications Licenses and public agencies.

When the proposed use represents an extraordinary risk to the Authority, the Real Property Branch will need to ensure the minimum security deposit is increased to reflect this additional risk or liability. Airspace should only allow high-risk uses when the benefits of the proposed use outweigh any risks or liability to the Authority.

15.05.05.03 Periodic Adjustments

The lease rate must be adjusted for all leases over two years. At a minimum, the rate will be equal to the Consumer Price Index (CPI) for the area and adjusted annually. Lease provisions establish a base rent and may not allow the adjusted rate to fall below the initial base rent (the lease rate when the lease was executed). Other lease provisions may not allow the adjusted rate to be less than the previous year's rate. It is imperative that Airspace reviews the lease provisions to determine if negative adjustments to the lease rate can be applied. Other proposals to adjust the rate can be based on a range (e.g., more than 2% but less than 7%) of the CPI, or adjusted at greater intervals than annually, but are compounded annually (e.g., adjusted every 5 years based on the annual CPI not to exceed 25%).

Reevaluations of the lease rate for long-term lease agreements should occur at least every 10 years.

Increases in the lease rate require periodic adjustments to the security deposit to ensure there are sufficient funds to cover potential damages or losses. Some basic lease types establish a mandatory rate increase.

15.05.06.00 Rental Offsets

Rental offsets may not be promised or offered to a lessee unless the offset is part of an approved lease. If a lease is already in effect, the Senior Right-of-Way Agent must approve the offset in writing. This includes Park and Ride lots.

Rental offsets should not be confused with rental adjustments to correct geoAMPS occupancy and billing errors or to process approved adjustments for certain maintenance activities and seismic retrofit credits.

15.05.07.00 Seismic Retrofit Adjustments

If the lease provides for such, adjustments may be made when the Authority needs temporary access to the Airspace site for seismic retrofitting. The temporary use must be less than six months, impact less than 50% of the site, and not impact any of the improvements.

The Director of Real Property must pre-approve a request for an adjustment. The request must be accompanied by the lessee's statement that no other form of compensation will be solicited.

The Authority's long-term use of all or a portion of a leased airspace site may require the leasehold interest be acquired, depending on the specific provisions in the lease agreement.

Refer to appropriate Acquisition and Appraisal policy and procedural instructions for more details.

15.06.00.00 - AIRSPACE LEASES - PROCESSING

15.06.01.00 Rental Agreement

The potential lessee must submit a letter to the Real Property Branch stating the proposed use, the proposed rate, and the rental period (not to exceed six months).

After ARC determines the appropriateness of the use and the lease rate is established, the Real Property Branch executes the standard rental agreement and opens an account in geoAMPS.

The tenant may be granted one six-month extension, for a total occupancy of one year, if no other parties have indicated an interest and if the Real Property Branch does not have plans to market the site for a higher use. If others are interested in the site, the competitive bid process must be initiated immediately.

15.06.02.00 Short-Term Leases - Competitive Bid

Many sites in the inventory are not suitable for development or have not yet attained their highest and best use. In some cases, parking or open storage may be the highest and best use. These sites can generate substantial revenue if leased for uses with shorter terms, such as parking and open storage.

Short-term uses are for two to five years and are most commonly used for parking lots with private lessees. When a site is offered for bid, the Real Property Branch should attempt to contact all interested or potentially interested parties. Marketing efforts may include media advertising, signing of the property, personal contact with owners and tenants of abutting properties, and mailing notices to all parties on the inquiry list.

15.06.02.01 Bid Auction

A bid auction shall be held at least three months prior to expiration of any existing lease. The normal process is to hold an oral auction unless the Real Property Branch anticipates more interest and a higher rate of return by asking for sealed bids. The bid package should identify proposed use, term, conditions, minimum bid, proposed occupancy date, insurance requirements, and selection process (e.g., highest bid). It should also require a minimum deposit to participate in the bid and provisions for payment to secure the site. A copy of the standard lease agreement should be attached or made available to all interested parties. see Exhibit 15-EX-02 for a sample bid package and Exhibit 15-EX-03 for sample bid instructions.

15.06.02.02 Minimum Bids

The minimum bid for a short-term use is established by the following:

- Site Has Never Been Bid Or Leased - minimum bid is based on market data the Real Property Branch establishes.
- Site Has Been Previously Bid - new minimum bid is based on the last minimum bid adjusted for current market conditions, but not less than 75% of the previous minimum bid.
- Site Has Been Previously Leased - new minimum bid is based on the most recent FMLR adjusted for current market conditions and annual adjustments (e.g., CPI percentage).

Director of Real Property must approve reducing the minimum bid below 75% of the bid valuation, the previous minimum bid, or the previous lease rate if the Real Property Branch can substantiate the need to attract more interest in the biding process.

The maximum return to the state should be obtained considering the reduction in costs to maintain a vacant site.

15.06.02.03 Bid Deposit and Payment

Each interested party in the competitive bid process must bring a cashier's check equal to three months of the minimum bid (Bid Deposit) to be allowed to participate in the auction. After completion of the bid or auction, the Real Property Branch shall immediately contact the successful bidder and request an **immediate** payment of the balance due, calculated by multiplying the successful bid by two months, adding the security deposit, and then subtracting the Bid Deposit. All other Bid Deposits are returned to the originators. The successful bidder, now the proposed lessee, must execute the standard lease agreement within 30 days of the bid, or Airspace will contact the second successful bidder in the process. Funds are not returned to the proposed lessee if the agreement is not executed.

15.06.02.04 Renewals

When the current lessee is the successful bidder in a competitive bid to lease the same property, a Lease Renewal (Form RW 15-04) may be used to identify any new provisions in the terms and conditions for continued use (such as storm water pollution prevention requirements), as well as the new rental rate. Extensive changes to the previous agreement would require a new lease agreement.

A renewal is different from an extension to an existing long-term lease agreement.

15.06.03.00 Long-Term Leases - Competitive Bid

Long-term bid leases are not commonly used and are rarely used for development. The process is generally the same for both non-development and development leases. Since there will be at least minimal construction (e.g., fences, landscaping, and paving) in most non-developmental leases, the requirements for plans may still apply. The plans should also show circuitry of traffic on the site and the ingress and egress routes.

Refer to Table 1, "Process - Long Term Bid Lease," on the following page.

TABLE 1 PROCESS – LONG-TERM BID LEASE		
Step	**Responsible Party**	**Action**
1	Real Property Branch	Identify site to be leased, either by an inquiry or as part of the marketing plan.
2		If not in inventory, request maps from Right-of-Way Engineering.
3		Submit to RARC indicating proposed use. Include Permits and SFM as appropriate.
4	ARC	Review and approve/disapprove request.
5	Real Property Branch	If ARC does not approve, determine the problem and try to resolve any difficulty with the proposal. If the problem cannot be resolved and a short-term use cannot be identified, remove the proposal from the marketing plan and the inventory.
6		If ARC approves the request, ensure all program restrictions and conditions are included in the bid package and the lease agreement (e.g., access limitations, column protection, and landscaping).
7		Send ARC comments and a site map FRA conceptual approval.
8		Request bid lease valuation if not already scheduled.
9		Send proposed marketing plan and bid package to Director of Real Property for review and approval as appropriate. If the bid package suggests an option period, the proposed Option Agreement should be developed and included in the package. If not, the standard agreement should be included.
10		Sign site, place media ads, and contact neighboring owners/tenants.
11		Mail bid package to interested parties; conduct a site review as needed.
12		Open Offer and Proposal bids. Analyze and send recommendation of the successful bidder to Director of Real Property. Director of Real Property will reconfirm FRA approval if the proposal differs slightly from the approved use.
13	Lessee	Execute the standard option or lease agreement. Any modifications or changes require prior Director of Real Property approval.
14		An Option Agreement requires payment when executed by Optionee.
15		The proposed use must have final approval before the lease can be executed. (see Final Approval - 15.06.11.03.)
16	Real Property Branch	Submit Agreement to Director of Real Property or delegated representative.
17	Director of Real Property Delegated Rep	Sign Option and/or Agreement and return to the Real Property Branch, as appropriate.* *Note - required for development purposes only.
18	Lessee	After final reviews/approvals are obtained, apply for an encroachment permit to construct.
19	the Real Property Branch	Monitor lessee's move onto the site, including any construction, and begin property management activities.

15.06.03.01 Offer and Proposal

An airspace site that will be developed with a longer-term lease agreement requires a different method of selecting the successful bidder. While shorter-term parking or non-development leases are awarded based on the highest bid (lease rate), the preferred method for longer-term development leases is to evaluate the offers and proposals received from developers.

The bid package should specify exactly how the successful bidder will be selected, requiring an Offer and Proposal (O&P) from prospective bidders. The O&P describes in detail the type of development proposed (e.g., amusement park, office building, and major recycling center) and the proposed lease rate over a period of years (e.g., graduated payments and percentage of revenues). The airspace site should be awarded to the developer that proposes the best and highest return to the Authority.

Selection of the successful bidder should involve evaluating the best development and use of the site, as well as the quality and certainty of the investment return ("income") to the Authority. The construction of an amusement park may be less intensive than an office building, but the Authority may have little use for the amusement park after the lease has expired. A major recycling center may generate a higher return in the earlier years of the lease but not generate the highest return over the entire term of the lease. Also, there may be more risks associated with a major recycling center because of contaminants. An office building, however, may require a longer option period before all approvals to construct are obtained.

Director of Real Property will work closely with the Real Property Branch in determining the best method to lease a site for development and, if a competitive bid is selected because of considerable interest in the site, provide assistance in developing the bid package for O&Ps.

15.06.04.00 Long-Term Leases - Directly Negotiated

The Director of Real Property must approve directly negotiated leases for a long-term agreement (more than 5 years), with some exceptions. Direct negotiations are only allowed with public agencies and are often approved when an airspace site's potential revenue is increased if the site is "joined" with an adjacent site (governmentally owned). Processing a directly negotiated lease is generally the same for development and non-development leases. In most non-development leases, there will be at least minimal construction (such as fences, landscaping, and paving), so the requirements for plans may still apply.

AAC concurrence is not needed to directly negotiate with a public agency.

Refer to Table 2, "Process – Long-Term Negotiated Lease," on the following page.

TABLE 2 PROCESS – LONG-TERM NEGOTIATED LEASE – PUBLIC AGENCIES ONLY		
Step	**Responsible Party**	**Action**
1-7	Various	See Steps for Long Term Bid Lease.
8	Real Property Branch	Send "Consent to Directly Negotiate from the AAC" (see Exhibit15-EX-05) to Director of Real Property 30 days prior to the next quarterly AAC meeting.
9		The request should explain why it is in the Authority's best interest to negotiate directly with the proposed lessee, including any attempts or barriers to offering the site for competitive bid. For example: • Return to the State would be much higher. • Site is landlocked with a single user. • Plottage value could be expected.
10		The request should include a location map, site map, square footage of the usable and non-usable area, and the proposed use.
11	Director of Real Property	Submit the request to the AAC and arrange for the Real Property Branch to present the matter at the next quarterly meeting.
12	Real Property Branch	If approved, the Real Property Branch may provide the proposed lessee with a Letter of Understanding (Exhibit 15-EX-04) detailing the anticipated lease agreement, with a copy to Director of Real Property.
13		Request an appraisal report for the proposed use, either through the Appraisal Unit or from the proposed lessee. Director of Real Property must approve the appraisal report.
14		After lessee is advised of the FMLR, negotiate all other terms and conditions of the lease, including time frame, term, and extensions. *No term is independent of another, so the Real Property Branch should negotiate the best terms for the Authority, with the understanding that a favorable position for the Authority in one area may require a less favorable term elsewhere.*
15		Secure preliminary plans and submit for ARC approval.
16		Request "Director of Real Property Approval of Terms and Conditions" through the AAC by sending a memorandum to Director of Real Property.
17	Director of Real Property	Submit the request to the AAC and arrange for the Real Property Branch to present the matter at the next quarterly meeting.
18		If AAC recommends approval, request "Director of Real Property Approval of Terms and Conditions" at the next monthly meeting.
19	Real Property Branch	If Director of Real Property approves terms and conditions, request lessee to execute the lease agreement and forward it to Director of Real Property for execution (unless delegated). All final approvals must be obtained PRIOR to execution (See Final Approval).
20-26	Various	Same as Long Term Bid Leases Steps 13-19.

15.06.04.02 Letter of Understanding

A Letter of Understanding (Letter) is sent to the proposed public agency lessee. The letter states the Authority's intent to negotiate in good faith for the proposed lease. This will assist the proposed lessee in obtaining all local approvals and construction funding prior to executing the lease agreement, as the Authority is agreeing to keep the site off the market pending successful negotiations.

The Letter requires a $1,000 processing fee and states the AAC's consent to directly negotiate is valid for **one year**. The Letter will also request funds to pay for the appraisal of the airspace site, which must be received prior to the Appraisal Branch completing the report. The Letter should also outline the time frame for negotiations and satisfaction of any issues the Real Property Branch, FRA, ARC, or AAC have identified.

If mutual agreement cannot be reached on the terms and conditions within one year, the AAC may grant an extension. If the proposed lessee wishes to continue negotiating, there is no additional processing fee. If negotiations will not continue beyond the first year due to AAC, lessee, or the Real Property Branch desiring to terminate discussions, the Real Property Branch must send written notice to the proposed lessee canceling the negotiations and any and all agreements stated in the Letter. No fees or funds are returned to the proposed lessee.

see Exhibit 15-EX-04.

15.06.05.00 AAC and Director of Real Property Approval [Hold for Future Use]

15.06.05.01 AAC Consent to Directly Negotiate [Hold for Future Use]

15.06.05.02 Director of Real Property Approval of Terms and Conditions

The Director of Real Property must approve the negotiated terms and conditions before the lease agreement is executed. A Request for Approval (Exhibit 15-EX-06) will be submitted after the Real Property Branch presents the terms and conditions to the AAC (Exhibit 15-EX-07) and AAC recommends approval.

15.06.06.00 Public Agency Leases

Leases with public agencies do not require AAC consent to negotiate directly. Prior to concluding negotiations, the Real Property Branch must receive approval from the Director of Real Property of the proposed rate and the appraised value. The executed lease agreement must have the appraisal summary supporting the lease rate stating it is fair market.

NOTE: The site **must** be used for a "public" purpose.

15.06.07.00 Processing Other Lease Agreements [Hold for Future Use]

15.06.08.00 Park Lease

the Real Property Branch shall specifically notify all appropriate local agencies of the availability of airspace for park and recreational uses that meet Authority's criteria. Local agencies should be contacted about leasing potential sites.

the Real Property Branch shall ensure that development is made in accordance with approved plans and within the time limits set forth in the lease.

Local agencies should contact the Real Property Branch about leasing a site within non-operating rights-of-way. the Real Property Branch shall review the local agency's request and, if the site will not generate a higher return if leased for some other use, initiate the process to lease the site to the local agency.

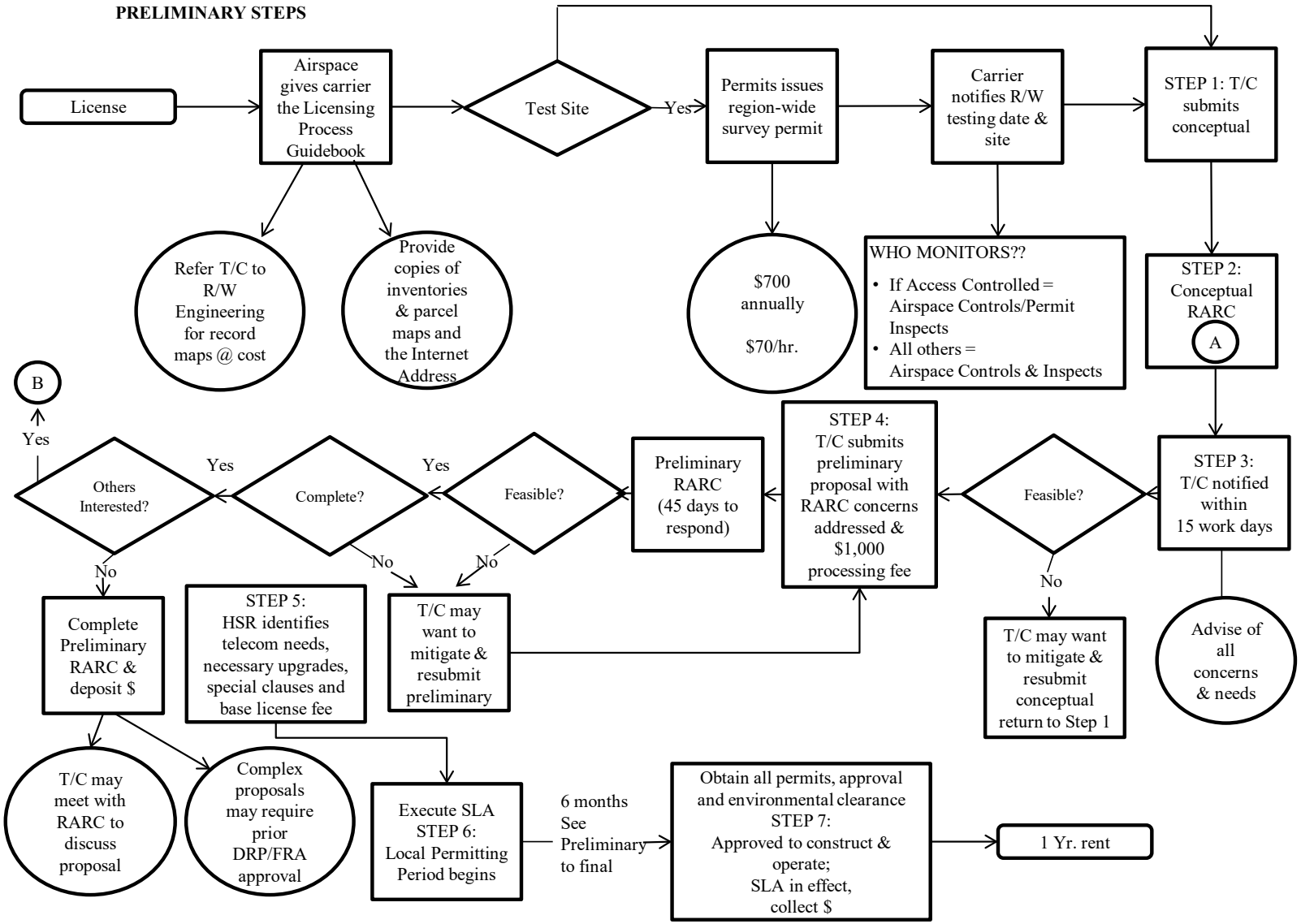
After determining that a park or recreational use is appropriate, the Authority may offer a lease for a period of ten years with five year extensions at the Senior Right-of-Way Agent's discretion. FMLR is required, but the rate may be offset up to the amount the Authority will save in landscaping and maintenance expenses. Special provisions to terminate the lease are included in the standard lease agreement.

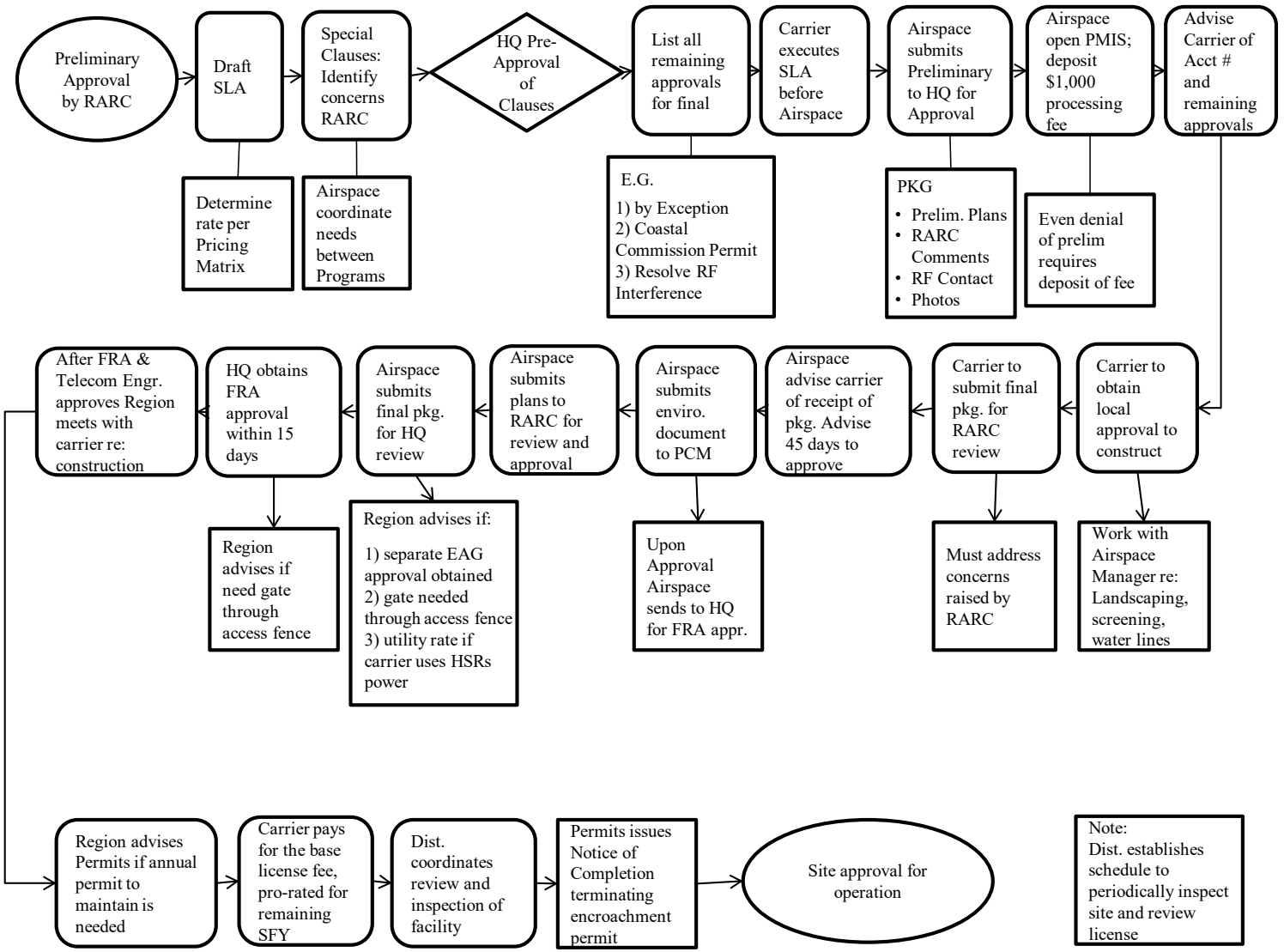
15.06.09.00 Toll Bridge Authority Lease [Hold for Future Use]

15.06.10.00 Subsequent Lease Documents

After a lease has been executed, the lessee may need additional formal consent from the Real Property Branch to construct or modify operations on the site.

The lessee should be charged a processing fee to obtain approval of most subsequent documents, primarily subleases, assignments, and encumbrances. The processing fee is based on time involved in the review and provisions in the lease agreement to charge fees. When the Real Property Branch has the latitude to determine the rate, a standard $1,000 fee per action can be applied in most circumstances.


PRELIMINARY STEPS
License
Airspace gives carrier the Licensing Process Guidebook
Test Site
Yes
Permits issues region-wide survey permit
Carrier notifies R/W testing date & site
STEP 1: T/C submits conceptual
Refer T/C to R/W Engineering for record maps @ cost
Provide copies of inventories & parcel maps and the Internet Address
$700 annually
$70/hr.
WHO MONITORS??
• If Access Controlled = Airspace Controls/Permit Inspects
• All others = Airspace Controls & Inspects
STEP 2: Conceptual RARC
A
B
Yes
Others Interested?
Yes
Complete?
Yes
Feasible?
Preliminary RARC (45 days to respond)
STEP 4: T/C submits preliminary proposal with RARC concerns addressed & $1,000 processing fee
Feasible?
STEP 3: T/C notified within 15 work days
No
No
No
No
Complete Preliminary RARC & deposit $
STEP 5: HSR identifies telecom needs, necessary upgrades, special clauses and base license fee
T/C may want to mitigate & resubmit preliminary
T/C may want to mitigate & resubmit conceptual return to Step 1
Advise of all concerns & needs
T/C may meet with RARC to discuss proposal
Complex proposals may require prior DRP/FRA approval
Execute SLA STEP 6: Local Permitting Period begins
6 months See Preliminary to final
Obtain all permits, approval and environmental clearance STEP 7: Approved to construct & operate; SLA in effect, collect $
1 Yr. rent


Preliminary Approval by RARC
Draft SLA
Special Clauses: Identify concerns RARC
HQ Pre-Approval of Clauses
List all remaining approvals for final
Carrier executes SLA before Airspace
Airspace submits Preliminary to HQ for Approval
Airspace open PMIS; deposit $1,000 processing fee
Advise Carrier of Acct # and remaining approvals
Determine rate per Pricing Matrix
Airspace coordinate needs between Programs
E.G.
1) by Exception
2) Coastal Commission Permit
3) Resolve RF Interference
PKG
• Prelim. Plans
• RARC Comments
• RF Contact
• Photos
Even denial of prelim requires deposit of fee
After FRA & Telecom Engr. approves Region meets with carrier re: construction
HQ obtains FRA approval within 15 days
Airspace submits final pkg. for HQ review
Airspace submits plans to RARC for review and approval
Airspace submits enviro. document to PCM
Airspace advise carrier of receipt of pkg. Advise 45 days to approve
Carrier to submit final pkg. for RARC review
Carrier to obtain local approval to construct
Region advises if need gate through access fence
Region advises if:
1) separate EAG approval obtained
2) gate needed through access fence
3) utility rate if carrier uses HSRs power
Upon Approval Airspace sends to HQ for FRA appr.
Must address concerns raised by RARC
Work with Airspace Manager re: Landscaping, screening, water lines
Region advises Permits if annual permit to maintain is needed
Carrier pays for the base license fee, pro-rated for remaining SFY
Dist. coordinates review and inspection of facility
Permits issues Notice of Completion terminating encroachment permit
Site approval for operation
Note:
Dist. establishes schedule to periodically inspect site and review license

15.06.10.01 Estoppel Certificate

Lenders and potential assignees may want assurances that the lessee is not in default prior to executing any agreements with the lessee. The lessee's financial institution may request the Real Property Branch provide the lease status prior to approving the lessee's construction loan. The Estoppel Certificate states there is a valid lease agreement, the lessee is in full compliance with the terms and conditions, and the lease payments are current.

see Exhibit 15-EX-08 for the **mandatory** format.

15.06.10.02 Encumbrance

The lessee may need to encumber the airspace site in order to secure a loan. Standard lease agreements may allow encumbrance with the Real Property Branch approval before the loan is secured. If granted, the Real Property Branch should ensure the financial institution will be responsible for all lease payments in the event lessee defaults on the airspace lease.

The lease agreement should be reviewed carefully regarding any special language or provisions for encumbering.

see Exhibit 15-EX-09.

15.06.10.03 Memorandum of Lease

When a lessee applies for a loan, the lending institution may require a Memorandum of Lease (MOL) signed by the Director of Real Property.

Prior to executing the MOL, the Real Property Branch must recommend its execution, stating the lessee is not in default with any provisions of the lease agreement.

see Exhibit 15-EX-10.

15.06.10.04 Sublease and Assignment

the Real Property Branch must approve lessee's request to assign or sublease any or all interests in an Airspace lease. Each lease agreement provides for the notice and approval process, along with a fee and a sharing of any increase in the lease rate generated by the transfer.

the Real Property Branch will execute the Assignment of Lease (Forms RW 15-06 or RW 15-07) or Consent to Sublease (Form RW 15-08) after review of the:

- Lease agreement with the lessee.
- Proposed assignment or sublease between the parties.
- Statement detailing assignee's or sublessee's proposed use.
- Proposed assignee's or sublessee's financial statement (unless it is a bank or financial institution).
- Current lessee's status as a tenant.

In rare circumstances, the Real Property Branch may relieve the primary lessee of the responsibilities in the lease agreement should the assignee or sublessee default. In some cases, the primary lessee's bank or financial institution may become the new lessee due to defaults between the two parties.

15.06.10.05 Amendments

If an amendment to an executed lease is considered a **major** change, prior approval from AAC, the Director of Real Property, and FRA may be required. Any change that affects the following is considered major:

- Term of lease (primary or option).
- Reduced rental rate or the return to the State for the remaining term.
- Use including the type and square footage of the development.
- Lease adjustments and reevaluations (e.g., frequency or rate).

The Real Property Branch must explain the effect of the amendment, justifying their recommendation of it. Any standard lease provisions that were not part of the existing agreement should also be included at this time.

15.06.11.00 Reviews and Approvals

The Real Property Branch must ensure that each airspace site is thoroughly reviewed and appropriately approved to reduce potential risks to the Authority. All affected programs and those entities with authority over the process should review each use.

The Reference File provides current information on mandatory review and approval processes for the different leases and when the Director of Real Property has discretion or delegated authority to review and approve the use.

15.06.11.01 Conceptual Approval

Either The Real Property Branch or a proposed lessee may want to have an airspace site approved for a conceptual use. ARC must recommend the proposed use to FRA. Based on information provided by The Real Property Branch, FRA approves the general concept of the proposal only and is in no way bound to accept the final proposal. FRA does not need to conceptually approve the use if the same use was approved when entered into the inventory.

15.06.11.02 Preliminary Approval

Preliminary approval is only needed when the information at conceptual approval was insufficient to determine the major impacts on the property or when the proposed use differs. A site may have conceptual approval as unimproved parking, but at the preliminary phase the lessee wants to pave, light, and stripe (with some excavation). The ARC should review the proposal again to determine the effects on operations (e.g., drainage, column protection, ingress, and egress). Restrictions and conditions are provided to the proposed lessee so all requirements are identified on the final plans. FRA preliminary approval is also required.

15.06.11.03 Final Approval

Before the lease agreement is executed, the proposed use must receive final approval. Generally, formal approval for a lease over five years includes:

- ARC approval of the final construction plans of the proposal.
- Local agency concurrence that the proposal does not conflict with local zoning ordinances (as evidenced by issuing a building permit).
- Recommendation of lessee's environmental document by Environmental Services Branch.
- FRA approval of the final construction plans, environmental document, and, if necessary, an air quality study.
- Evidence of insurance per the lease agreement.
- Execution of the lease agreement and payment of the lease rate per terms of the agreement.
- Application and issuance of an encroachment permit to construct from Permits Office.

Sites offered for competitive bid must have conceptual approval for the proposed use. The bid package must state that final approval in accordance with these procedures must be obtained before the site is occupied.

Airspace sites for short-term unimproved parking and open storage, with no change in the approved use or improvements, may need less formal review for final approval.

See Reference File for the most current review and approval authority by phase and by office/program.

15.06.12.00 Environmental Status

Every site must have an approved document for the proposed use that addresses environmental issues. Proposed lessee must obtain final approval of their plan from the local agency, which usually requires an environmental study. The study must be submitted to Environmental for review and recommendation for approval to FRA. The recommendation states the document meets applicable CEQA and NEPA requirements. A new lease for the same use will require an approved environmental document within the last 3 years.

The Real Property Branch should consult the Environmental Manual or the Environmental Services Branch on specific questions.

15.06.13.00 FRA Approval

FRA approval of airspace leases is required when the airspace site is located on a high-speed rail corridor or when the high-speed rail project received any federal funds for design, construction, or maintenance.

If the proposal is considered a major environmental action, FRA will require an appropriate Environmental Impact Statement (EIS) or Environmental Assessment (EA).

FRA's final approval is required before the encroachment permit for construction can be issued. The Real Property Branch must submit the final ARC comments, the environmental document, an air quality statement or study, the proposed use and terms, and the final construction plans.

All issues ARC and FRA raise at the conceptual phase must be addressed in the final package.

See table below:

FRA APPROVAL REQUIRED FOR
• Conceptual use of an airspace site not in the current inventory. (Requires a narrative describing the use and a location map.)
• A change in use (whether new lease, assignment, amendment, etc.).
• Preliminary and final approval of the proposed use, including site plans, on any airspace site within the right-of-way (Includes telecom sites). **Note 1:** Preliminary approval not required if only minor improvements (paving, striping, lighting) will be made. **Note 2:** Final approval of an airspace or telecom site requires detailed mapping and plans of all impacts to the land (location of buildings, excavation, trenching, utilities). **Note 3:** ARC notes must be submitted with any request for conceptual, preliminary, or final approval.
• Categorical Exemption or Environmental Impact Document of any new lease or a new lessee if the previous Categorical Exemption is over five years.
• Air Quality Statement.

15.06.14.00 Air Quality

An air quality study or statement is required for all Airspace sites when the use will involve vehicle traffic, especially short-term parking. The study or statement will consider the impact of the frequency of hot and cold starts of the vehicles.

The determination of whether an air quality statement or study is needed depends on the site's status. If the site has never been leased, an Air Quality Assessment from the local Air Quality Regional Board or the local Association of Governments (e.g., SCAG) is required. This assessment must address the impacts of the proposed use on air quality based on each Region's Air Quality Assessment Model.

If the proposed use is the same as the previous use, a statement from the local Metropolitan Transportation Commission (MTC) is needed. The statement should address the fact that the Airspace lease is not regionally significant and is not a transportation project. A blanket approval for all future Airspace leases (new and renewals) for a specified use only (e.g., parking lots with less than 250 parking spaces) may be obtained from the local MTC.

FHWA must approve the air quality study or statement prior to execution of the lease agreement.

The air quality requirement applies to all new leases, any lease with a change in use, or a renewal of a lease if it is a different lessee. All other leases are currently exempt from the process.

15.06.15.00 Transmitting Documents

The Director of Real Property's involvement in the lease process varies depending on the level of review and approval for the different lease agreements and the degree of delegations to the Director of Real Property. To ensure the appropriate level of review and involvement by the Director of Real Property occurs on a timely basis, the Real Property Branch should use a transmittal checklist in routing documents for processing.

Use Form RW 15-09 to transmit documents to the Director of Real Property. (See Reference File for information on the most current review and approval authority and delegations.)

15.07.00.00 - INSPECTION AND USE REQUIREMENTS

15.07.01.00 Inspections

The Real Property Branch is responsible for security and maintenance of all leased airspace sites, so must regularly inspect sites to ensure lessees are maintaining sites properly. Inspections of all developed sites are required quarterly and inspections of all non-developed sites (e.g., parking lots) are required annually. Some uses may require more periodic inspections. The Real Property Branch should inspect and document all activities related to the lessee's property management activities.

When a leased site is not properly maintained, The Real Property Branch shall immediately inform the lessee of the violation and provide the lessee with a list of actions that must be taken and a time period within which to make corrections. If action is not taken, The Real Property Branch may initiate default proceedings to secure the site.

If a condition requires **immediate attention** (e.g., public safety and hazardous materials), the lessee should be given a formal 30-day notice to correct the problem and properly maintain the premises or to quit pursuant to lease provisions. If the condition is not corrected within that time, the lessee is declared in default and served a three-day notice. Violations requiring a 30-day notice shall be reported to the Director of Real Property.

The Real Property Branch may negotiate with the Rail and Operations Delivery Branch to assist with periodic inspections of occupied sites, charging their time to the Airspace account. As maintenance crews are in the field on a more regular basis, their assistance is needed in ensuring that hazardous or unsightly conditions do not occur. If problems are found, the Rail and Operations Delivery Branh should notify The Real Property Branch in writing.

Storm water inspections of leased airspace are required under the Authority's Storm Water Management Plan (see Section 15.07.10.00 and Exhibit 15-EX-14). Storm water inspections can be done at the same time as regularly scheduled airspace inspections, but should be done at least annually. Date of inspection must be entered into geoAMPS.

15.07.01.01 Inspections of Vacant Sites

The Rail Operations Delivery Branch is responsible for inspection, security, and maintenance of all vacant airspace sites within operating and non-operating right-of-way.

Maintenance work on vacant sites is charged to the appropriate maintenance expenditure authorization. The Real Property Branch should not budget property management funds for sites that are or will be vacant. The Real Property Branch should also consider removing them from the Airspace inventory.

The Real Property Branch will advise The Rail Operations Delivery Branch when a site has been vacated and there are no immediate plans to lease it. Maintenance will not automatically maintain vacant sites that appear to be leased (e.g., improved sites).

15.07.02.00 Column Protection

Airspace sites underneath high-speed rail structures require special provisions to protect support columns. Two basic elements to consider in determining what type of protection is required is based on:

- Design of the columns.
- How the property will be used.

If the columns are made of steel and the use is anything other than passive (e.g., park or landscaping use), they must be protected as described in Exhibit 15-EX-11. Note that use of 0.109 galvanized steel pipe is not acceptable as a barrier protecting steel columns.

If the columns are concrete, the Structures Office will determine specific column protection. Protection may not be required for all parking leases as the types of vehicles and the specific parking area may not mandate barriers. Heavy usage, pattern of traffic, truck parking, and RV storage, however, require the maximum level of column protection. The required protection method ranges from nominal to sophisticated.

On all new leases, renewals, or extensions, column protection must be installed as part of the terms for renewing, extending, or leasing the site.

see Exhibit 15-EX-11 (multiple pages) for various methods of column and other structural protections, including backflushing.

15.07.03.00 Backflushing

Vertical drains are susceptible to clogging. On open systems, Structures Maintenance must backflush with air and water from the outlet end.

Backflushing is very difficult where enclosed columns and closed drainage systems have been installed. To make backflushing possible on closed systems, gate valves accessible from within the building are required on the outlet end of column drains.

15.07.04.00 Viaduct Structures

All proposed developments underneath a viaduct structure (e.g., buildings, multilevel parking structures, recreational areas) require the lessee to prepare a Project Study Report (PSR) addressing the safety and potential liability of leasing the site. Issues to address are number and frequency of people at the site, proposed use, hazardous or valuable materials to be stored, and current status of seismic retrofit work on the structure and its columns.

At-grade parking and open storage proposals to use an airspace site underneath a viaduct structure will require less review than a parking structure or office building.

See Reference File for the most current exhibits to be attached to long term development lease agreements for airspace sites underneath structures.

15.07.05.00 Mini-Warehouse Inspections

Inspections of mini-warehouse structures should include reviewing the resident manager's restrictions on storage of high value or high risk personal property. The resident manager may be required to provide immediate access to individual storage units for Airspace or Fire Marshal inspection. The Real Property Branch should review the lease agreement for specific provisions on access and inspections. The Real Property Branch should review the lessee's standard sublease agreements to ensure the tenants are advised of all the Authority's restrictions and rights.

15.07.06.00 Groundwater Inspections

Local agency or other mandate may require The Real Property Branch to inspect Airspace sites after a storm to ensure standing water does not collect contaminants before entering the storm water drainage system. Typical sites are paved parking and open storage sites that may have oil and gas residue.

15.07.07.00 Encroachment Permits

Encroachment permits are issued for all Airspace sites when construction occurs. This requirement applies to new paving, striping, lighting, electrical, and curbing, as well as all buildings. Modifications to an existing parking or storage area's traffic pattern may also require an encroachment permit. Minor modifications to the site will generally not require a permit.

Refer to the Encroachment Permits Manual for specifics.

15.07.07.01 Encroachments by Exception [Hold for Future Use]

15.07.07.02 Permits for Telecommunications Licenses

The Telecommunications License Program may require three encroachment permits to perform work in the right-of-way. These are:

- Survey Permit - to test the radio frequency of proposed facility prior to submitting preliminary proposals to The Real Property Branch.
- Encroachment Permit - to construct if proposed use is approved.
- Annual Permit - to maintain the equipment if the proposal is within operating right-of-way.

Refer to the Telecommunications License Process and Guidelines and the Encroachments Manual for more information.

15.07.07.03 Permits Office

As required in the lease agreement, the lessee shall obtain an encroachment permit prior to construction. In no case shall an encroachment permit substitute for a lease.

Lessees may be required to obtain an encroachment permit prior to making any changes to the airspace site. The standard lease agreement requires The Real Property Branch confirm that all ARC concerns have been satisfactorily addressed and that ARC has reviewed and approved the final plans.

The Real Property Branch should formally advise the lessee of the encroachment permit process (e.g., application and required sets of plans). A copy of the letter to Permits will advise that all final approvals

(e.g., environmental, local building permit, and ARC review) have been obtained and the lease agreement has been executed.

The lessee must obtain a performance bond and a payment bond, or a performance bond containing the provisions of the labor and material bond supplied by tenant's contractors, provided the bonds are issued jointly to tenant and Authority as obligees. An "Irrevocable Letter of Credit" is not acceptable as evidence for performance of a construction obligation.

NOTE: Permits Office does not accept dual obligee bonding. Authority must be the only agency on the bond.

15.07.07.04 Monitoring Construction

Permits and Airspace shall carefully monitor construction of all developments on airspace sites. The permit shall provide that lessee will not occupy the improvements until all work is completed to the Authority's satisfaction and a notice of completion has been issued to the lessee.

These permits shall specify that notice to the The Rail Operations Delivery Branch is required 48 hours prior to installing any attachments to a structure. If construction involves bridge structures, The Real Property Branch may request assistance from the Engineering Services Branch in monitoring the project.

Any changes in the plans shall require prior written approval of the Real Property Branch and the Rail and Operations Branchand revised plans covering these changes must be attached to the permit.

The local agency's planning Authority issues a Notice of Completion in accordance with their building permit. Permits issue an Encroachment Permit Completion Notice. The Permits Inspector does not ensure that building construction conforms to local standards; that is the responsibility of the local agency.

A copy of the final plans shall be forwarded to Structures Operations to ensure that a complete set of as-builts is on file for every structure in the State.

15.07.08.00 State Fire Marshal Inspections

23 CFR 713, Subpart B, requires that the State Fire Marshal (SFM) concur with proposed airspace uses. SFM will inspect for fire safety, unapproved construction, illegal or dangerous storage practices, wiring, fire extinguishers, and sprinklers.

The Engineering Services Branch established general guidelines (Exhibit 15-EX-12) that satisfy FRA requirements and that SFM uses to inspect all facilities. The Real Property Branch should advise potential developers of these standards.

The regional SFM supervisor, whose final approval is required for development leases, storage of higher risk items (e.g., recycling centers), and all uses underneath a structure, is a member of the ARC. At a minimum, separate copies of the preliminary and final plans for development should be submitted to the regional SFM office for review and comments.

The SFM will also make an initial inspection of telecommunications wireless facility pre-fabricated shelters.

15.07.08.01 State Fire Marshal Inspection Responsibilities

All lease agreements require SFM have access to the property at any reasonable time for appropriate inspection of the site.

Annually, The Real Property Branch and the SFM will develop a list and schedule of required inspections, identifying those sites needing quarterly or annual inspections and any new sites that will be leased requiring an initial and periodic inspection.

The SFM will conduct quarterly internal and external inspections of all buildings, annual inspections of open storage areas, inspections by request, and proposals for construction of buildings.

15.07.08.02 Conducting Inspections

The SFM will conduct inspections per the established schedule, contacting The Real Property Branch when a problem is identified, when assistance is needed to gain access to the site, or when the inspection cannot occur as scheduled.

15.07.08.03 Inspection Reports

The SFM will submit an inspection report, identifying any areas needing immediate correction. The Real Property Branch will confirm the problem and give the lessee a 30-day notice to correct deficiencies. The Real Property Branch may initiate default proceedings if lessee does not correct the problem.

15.07.08.04 Special Requests

The Real Property Branch may request special assistance from the SFM for:

- Persistent problems with lessee's correction of noted deficiencies, especially if The Real Property Branch has instituted legal action.
- Situations involving extreme danger of fire or explosion requiring SFM and The Real Property Branch to take immediate action to prevent the lessee from continuing the practice.

The SFM must send a written report within one week.

15.07.09.00 Hazardous Materials and Waste

The Authority's policy is to ensure that all airspace sites are, and continue to be, free of hazardous materials and waste. A material is hazardous if it poses a threat to human health or the environment. Hazardous materials are defined in the California Code of Regulations, Title 26, Division 4, Section 8-339.

The Real Property Branch must review all proposals to use or store hazardous materials on an Airspace site. The Environmental Services Branch should be included in the ARC to ensure any approved use of hazardous material is under control and in accordance with applicable statutes and regulations. Of particular concern are materials that are flammable, reactive (subject to spontaneous explosion or flammability), corrosive, toxic, or radioactive.

Hazardous **waste** is any of the above materials that have escaped or been discarded or abandoned creating a potential liability for the Authority. The Real Property Branch should closely monitor all approved uses

of hazardous materials on an airspace site to ensure conformity with applicable laws, regulations, and local ordinances.

15.07.09.01 Inspections

Airspace sites should be inspected regularly for hazardous materials or waste that could contaminate the property. If The Real Property Branch discovers hazardous waste, the following action should be taken.

- Hazardous Waste Exists - If lessee's operation is causing the waste, notify lessee the action must cease or the lease will be terminated. Lessee is required to cleanup any hazardous waste or material. Cooperation with the Environmental Services Branch, Legal, and Strategic Delivery may be required. The Director of Real Property must specifically approve any new lease or lease renewal for a site confirmed to contain hazardous waste or materials.
- Hazardous Materials Exist - The risk of allowing the operation to continue with possible cleanup costs must be weighed against net rent, long term liability, community impact and any positive factors. Document the justification for continuing the lease and retain in the file.

In each situation, the lease agreement should be reviewed to determine what is allowed and what remedial action is needed. The Real Property Branch should request amending the lease agreement to include the standard hazardous waste clause if the lessee will continue to occupy the site.

Environmental Services Branch can assist The Real Property Branch in all inspections and determinations of hazardous materials or waste.

15.07.09.02 Hazardous Waste Coordinator

If inspection of an Airspace site indicates a potential for a problem with hazardous waste, The Real Property Branch should formally request that the Environmental Services Branch investigate and test the site immediately to determine if the site is actually or potentially contaminated.

The Environmental Services Branch will inspect the site and determine if:

- Testing Is Not Necessary - Environmental Services Branch provides a written statement that no hazardous waste is present.
- Further Investigation Is Necessary - Environmental Services Branch hires a consultant to determine if hazardous waste actually exists.
- No Hazardous Waste Is Present - Lessee is authorized to use hazardous materials but the use prompts the Environmental Services Branch to recommend future inspections and specific controls to reduce the Authority's potential liability.
- Hazardous Waste is Present - Lessee is required to immediately and effectively remediate hazardous situations.

The Environmental Services Branch recommendation may require corrective action by the lessee, more frequent monitoring of the condition, or termination of the current use or the lease agreement.

15.07.09.03 Inventory

Airspace and the Environmental Services Branch must ensure all vacant or occupied sites with any identified hazardous waste are included in the tracking system maintained by Strategic Delivery Branch. This includes all Airspace sites with underground storage tanks.

15.07.09.04 Potential Surface Contamination

Certain developments may have a greater potential for hazardous waste contamination. Examples include service stations, paint companies, machine shops, light and heavy industrial manufacturing, fertilizer storage, junk and auto wrecking yards, and muffler shops. Proposals to use Airspace sites for these uses should not be allowed in most cases.

15.07.09.05 Lease Clause

Standard Airspace leases contain a hazardous materials clause stating the lessee is responsible for cleanup and mitigation of all hazardous material and waste deposits on the site, regardless of the source or cause.

Use of the hazardous waste clause and the lessee's proposed list of hazardous materials to be permitted should alert The Real Property Branch to potential problems. Before any lease is executed, The Real Property Branch must inquire into the specific type of use and consider the risk, with advice from the Environmental Services Branch as needed.

15.07.10.00 Storm Water Management

Airspace sites are within the Authority's municipal separate storm sewer system (MS4) and are covered by the Authority's Statewide Storm Water Permit and Storm Water Management Plan (SWMP). Airspace sites are therefore managed to prevent the discharge of pollutants to the storm water drainage system in compliance with the Authority's Permit and SWMP. The Real Property Branch will use standardized lease language that conforms with the SWMP in new leases and in existing leases that come up for renewal. The lease language requires implementation of storm water best management practices (BMPs) that are activity specific and elimination of unauthorized illicit connections/illegal discharges to the storm drain system. Storm water education and outreach materials, including storm water pollution prevention fact sheets, will be provided to the lessee/tenant. The fact sheets contain the BMPs applicable to the lessee's activities.

The Real Property Branch will maintain a list of leases with industrial activities that require coverage under the General Permit for Storm Water Discharges Associated with Industrial Activity (General Industrial Permit) issued by the State Water Resources Control Board (SWRCB). The list of leases requiring such coverage will be included in the Authority's Annual Report to the SWRCB.

Lessees whose industrial activities on the lease premises require coverage under the General Industrial Permit will be required to provide the following:

- Copy of Notice of Intent (NOI) filed with SWRCB (or No Exposure Certification).
- Copy of Receipt letter from SWRCB with Waste Discharge Identification (WDID) number.
- Copy of Storm Water Pollution Prevention Plan (SWPPP) covering lessee's facility and activities.

In addition to obligations to maintain compliance with lease terms pertaining to storm water pollution prevention, lessees are required to comply with all federal, state and local storm water laws and ordinances.

The Real Property Branch will conduct annual inspections of leased property using the Airspace Storm Water Inspection Report (Exhibit 15-EX-14), to comply with the SWMP's measurable objectives and assess lessee's conformance with lease terms. The results of the inspections will be used to develop annual reports that document the Authority's compliance with its SWMP.

Refer to the Right-of-Way Property Management and Airspace Storm Water Guidance Manual for storm water pollution prevention fact sheets, guidance materials and compliance procedures.

15.07.11.00 Default

The lessee is considered in default if any of the lease provisions are violated. Typical defaults are:

- Delinquent account.
- Insurance certificate not current.
- Failure to maintain site to current standards.
- Current use not authorized.
- Allowing others to use the site without The Real Property Branch 's prior approval (e.g., assignment and sublease).

The Real Property Branch should monitor each Airspace lease to ensure any violations are found while there is still time to take corrective action (e.g., collect delinquent rent prior to lessee vacating, getting a current insurance certificate before a situation occurs, and preventing hazardous materials from becoming hazardous waste).

The lessee must correct violations in a timely manner. To ensure this, The Real Property Branch should issue formal written notice to make corrections within a specific time frame (usually 30 days, unless it is a safety issue, which may require a 3-day notice). If action is not taken, The Real Property Branch should initiate default proceedings (e.g., termination, eviction, lawsuit, and collections).

Prior to initiating action, The Real Property Branch should carefully review the lease agreement to determine the appropriate remedies available. Director of Real Property and Legal should be contacted to determine if there are additional steps that can be implemented.

15.08.00.00 – MANAGING THE AIRSPACE PROGRAM - PROPERTY MANAGEMENT AND THE MARKETING PLAN

15.08.01.00 General

The Senior Right-of-Way Agent should ensure sufficient staff is assigned to and adequate time is spent on managing the Airspace program, which includes property management activities, marketing plan to lease sites, and program efficiency.

15.08.02.00 Property Management

Property management activities are those actions taken after a site is leased and any developments are constructed. (see Section 15.07.00.00.) The Real Property Branch must ensure the lessee is complying with all terms and conditions of the lease agreement. As each site is developed differently, the degree of property management activities will differ with each lease. At a minimum, The Real Property Branch should review the current status of each lease to ensure:

- **Monthly** - The lease payment has been received and the account is not delinquent. If after proper notification, the lessee does not pay any arrears, default proceedings should be initiated.
- **Monthly** - Expiring rental agreements or lease agreements will be scheduled for renewal, extension, or termination.
- **Quarterly** - Future adjustments to the lease rate have been calculated and are scheduled to be billed per the percentage established in the lease agreement. The lessee must be advised in writing of the increase in the lease rate at least 30 days prior to the billing date.
- **Quarterly** - Lessee's insurance certificate provides the appropriate liability coverage and is current. Developed sites will also require fire insurance for all improvements. Failure to provide a current insurance certificate is cause to initiate default proceedings.
- **Quarterly** - SFM's inspection report has been received on all developed properties. Follow-up when necessary to ensure deficiencies are corrected.
- **Annually** - SFM's inspection report has been received on all non-developed properties requiring inspection. Follow-up as necessary to ensure deficiencies are corrected.
- **Annually** - Lessees paying on a percentage of gross revenues have scheduled audits to calculate the next year's lease payments. The Real Property Branch and the lessee should initiate the review of gross receipts at least 60 days prior to the next billing cycle.

Field reviews are important in property management activities, and each site should be inspected on a regular basis to ensure the site is being used and maintained as authorized. The lessee should keep the site clean of debris and of **hazardous waste**. Upkeep should be consistent with or superior to neighborhood standards. At a minimum, The Real Property Branch should inspect each expiring lease prior to renewal, extension, or termination (monthly); each developed site (quarterly); and each non-developed and vacant site (annually).

All activities should be noted in the site diary with copies of all correspondence kept in the site file.

15.08.03.00 Lease File

Each Airspace lease must have a file that includes a diary of all written and verbal communications, including all requests and approvals. The site file must contain written documentation (letters, memoranda, and attachments) on the leasing procedures (bid vs. direct negotiations with a public agency), proposed use,

ARC comments (all phases), development plans, environmental and air quality documents, marketing plan for the site, standardized lease agreement, bid package, ROWDES set up, request to add to inventory, field inspections, deficiencies corrected by lessee, default actions initiated, and all other pertinent information.

15.08.04.00 geoAMPS

The Airspace Inventory is maintained in the geoAMPS), which generates reports on property management workload, number and type of leases, potential and actual income, internal uses, high priority sites, telecommunications licenses, and due dates (e.g., expiration, inspections, and adjustments). Financial Office also uses geoAMPS to generate bills and to track account payments and adjustments.

The Real Property Branch should ensure the system is current by reviewing the data entries on a regular basis. The list of sites in the inventory should also be reviewed to determine if vacant sites should remain in the inventory or be removed.

15.08.05.00 Income

geoAMPS and accounting programs track all revenues received through leasing sites. All funds are deposited into the High-Speed Rail Property Fund, which shall be available to the Authority upon appropriation by the Legislature for use in the development, improvement, and maintenance of the high-speed rail system, consistent with appropriate uses for each funding source. As such, FRA does not require a percentage of the income received but expenses are not eligible for federal reimbursement.

Since gross income (funds actually received) is reported to management and the legislature periodically, it is critical The Real Property Branch make all efforts to collect lease payments on a timely basis.

15.08.06.00 Marketing Plan

The marketing plan to lease sites provides a working plan for Airspace on high priority sites, a marketing plan to lease vacant sites, and anticipated workload and schedule to lease all sites.

The Senior Right-of-Way Agent should review the marketing plan at least quarterly to ensure all ongoing negotiations and activities are on schedule and that appropriate reviews and approvals are being obtained as scheduled. Processing the documents and following up on their review and approval are critical (e.g., requests for appraisals, reviews of environmental documents, and FRA's concurrence).

The success of the program depends greatly on The Real Property Branch 's responsiveness to the proposed lessee and the reviewing and approving entities (e.g., FRA, AAC, and ARC members). Resolving problems with or barriers to leasing the site should be a high priority.

The Real Property Branch should monitor the future expiration of rental agreements and leases and develop plans to lease the sites again through the bid or negotiation process.

The marketing plan for high priority sites (those that will generate the highest return if developed) should be evaluated to ensure the best methods for marketing and advertising the sites are used. Additionally, interim uses should be considered pending full development of the sites.

Scheduling competitive bids for sites new to the inventory, recently vacant, or expiring should be part of the marketing plan. Each site should be evaluated to determine:

- Highest and best use (if different than the previous use).

- Fair market lease rate based on the term of the new lease (e.g., a five-year lease may generate a higher rate of return than a two-year lease).
- Best method for leasing the site.

15.08.07.00 Program Efficiency

The Senior Right-of-Way Agent is responsible for program efficiency. This requires monitoring the current year income and expenditures closely to ensure the income to expense ratio is within the norm for the Authority, based on past year results and new procedures in place.

PY usage should not exceed the budget allocation nor be less than the contracted usage for delivering the program. Modifications to the allocation and contract require the Director of Real Property approval.

The Real Property Branch prepares periodic reports to the AAC, and the Director of Real Property on income and expenses for the statewide program. The Property Management Branch should use the periodic reports to monitor gross revenues and operational expenses quarterly to evaluate possible changes in activities and to correct charging errors.

The targeted work load and actual work production should be reviewed quarterly. The report assists the Senior Right-of-Way Agent with evaluating charging practices versus statewide average, monitoring staff production, and accomplishing The Real Property Branch ’s annual goals.

15.08.08.00 Policy and Procedural Manuals

The Director of Real Property should ensure each the Real Property Branch has the current Airspace procedures outlined in the Airspace Chapter with Exhibits and Forms, the Reference File, forms and exhibits, and other written guidance or instructions.

There should also be a plan to review the staff’s work product to ensure it complies with all applicable laws and policies and that the work is being done on time and in accordance with the marketing plan.

15.08.09.00 Training and Development

Agents assigned to lease Airspace sites should be at the Associate level and have rotated through the major disciplines within Right-of-Way. A lesser degree of training and experience is acceptable for Agents who are assigned to property management activities only.

The Senior Right-of-Way Agent should ensure staff has adequate training and experience to accomplish assigned tasks in a professional manner. In addition to the Airspace chapter:

- Agents assigned property management activities should be familiar with property management requirements, geoAMPS procedures and reports, and rules on collecting funds.
- Agents assigned non-developmental leasing activities through competitive bid should be familiar with standard bidding and auctioning techniques, appropriate laws on contracting with the private sector, clauses in standard lease agreements, marketing techniques, and rules on collecting bid deposits.
- Agents assigned more complex leasing activities (developmental, direct negotiations with local agencies) should be familiar with negotiation and conflict resolution techniques, development costs, rates of return, CPI trends, special lease language, provisions for assignments and subleases, and AAC procedures to obtain approval to execute lease agreements.

- Agents should expand their knowledge and skills by attending formal courses on leasing, development, auctioning, marketing, and negotiating offered by the California Authority of Real Estate, IRWA, and other organizations.
- Senior Right-of-Way Agents should also encourage staff to expand their knowledge of Airspace practices by providing opportunities to:
- Conduct a bid or auction.
- Meet with and make presentations about the program to local agencies and the planning Authority's.
- Negotiate terms, including fair market lease rate and rate of return, or developmental uses.
- Evaluate the risks and benefits of potential uses and proposed modifications to standard leases.
- Develop site specific and overall program marketing plans, analyzing potential income to expenses.

15.08.10.00 Reference Library

The Real Property Branch should establish a reference library that contains appropriate manuals, guidebooks, information, and periodicals. At a minimum, it should contain:

- Airspace chapter with exhibits, forms, and reference file.
- Appropriate right-of-way policies and procedures from Appraisals, Property Management, Planning and Management, Encroachment Permits, Environmental, and Maintenance.
- All references in the Right-of-Way Airspace chapter, exhibits, forms, and reference file.
- Standard lease agreements.
- AAC agenda and minutes, and reports to the Director of Real Property.
- Airspace business plan.
- geoAMPS inventory.
- The Authority's annual marketing plan.

CALIFORNIA High-Speed Rail Authority

CHAPTER 16

EXCESS LAND
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16.01.00.00 GENERAL

16.01.01.00 Function and Responsibility

The Excess Land function is responsible for administering the inventory and disposition of California High-Speed Rail Authority (Authority) owned real property that is no longer required for rights-of-way or other operational purposes.

Prior to selling the real property or interest therein in any other manner authorized under this section, the authority shall send notification by certified mail to the last known owner of the real property or interest therein at his or her last known address, advising him or her that the real property or interest therein will be offered for sale. The Authority shall not sell the real property or interest therein until at least 30 days after the notification has been sent.

The Director of Real Property shall have full delegation to operate and approve within the parameters outlined herein, and as shown in the matrix in Right-of-Way Manual Section 2.05.00.00. Any activities outside the scope of this Manual and/or the delegation matrix shall be subject to approval by the Director of Real Property. A copy of said approval shall be placed in each Excess Land parcel file to which it applies.

16.01.02.00 Creation of Excess Land

Excess land may be created in several ways. Landlocked or uneconomic remnants not required for the right-of-way may have been acquired. Down-scoping of the Project, land acquired as part of an administrative settlement, and superseded rail segments. Properties no longer required for Project purposes, such as maintenance facilities or material and disposal sites, may be declared excess.

16.01.03.00 Definitions [Hold for Future Use]

16.01.03.01 Excess Land

Excess land is real property, title to which is vested in the State of California, California High-Speed Rail Authority, and which is determined and certified to be not required for rights-of-way or other Project purposes of the Authority. The requirements for rights-of-way are established by the certificate of sufficiency contained in the appraisal report. Requirements for real property for other Project purposes are established and authorized by approval of specific Project Reports.

Excess land does not include:

- Real property interests under or over High-Speed Rail
- Hydrocarbon, mineral, or water rights
- Personal property
- Operating material and disposal sites

16.01.03.02 Inventory Parcel

An inventory parcel is excess land that is carried on the accounting inventory as an asset. Each inventory parcel has a VTA, Value at the Time of Acquisition. Inventory parcels are all excess land, as defined above, except those parcels specifically defined as non-inventory. Inventory parcels include land decertified at the request of adjoining owners.

16.01.03.03 Non-Inventory Parcel

A non-inventory parcel is excess land the Authority intends to convey to a specific entity under the terms of a written agreement, and decertified access rights. These parcels are not part of the Authority's Accounting inventory and do not have a VTA.

Examples of non-inventory parcels of excess land include:

- Property rights to be conveyed pursuant to an executed utility agreement for facility relocations.
- Property specifically acquired for another agency under terms of a written agreement.
- All decertified access rights where no other property rights are involved.
- Property rights, including underlying fee in local streets, to be conveyed to a local agency under terms of a High-Speed Rail project and/or cooperative agreement.
- Parcels acquired for exchange pursuant to a written agreement.
- Parcels acquired for replenishment housing facilities.
- Parcels acquired for functional replacement (see Section 8.30.00.00).

16.01.03.04 Planning Parcel

A planning parcel is a parcel identified only for planning purposes. It represents un-acquired or undeclared excess land that may or may not eventually become excess. These parcels are not part of the Accounting system.

16.01.03.05 Disposal Unit

A disposal unit is the number given to the property for disposal purposes. It may consist of one or more parcels. When parcels are grouped for disposal, the lowest parcel number becomes the disposal unit number. Multiple parcel disposal units may be split or combined (along the original parcel lines ONLY) at the discretion of the Excess Land Manager to optimize marketability or disposal potential as necessary.

16.01.03.06 Inventory Value (VTA)

Inventory Value (VTA) is the fair market value of the excess at the time of acquisition, considered as a separate parcel. The inventory value may not exceed the pro rata cost of the parcel.

16.01.03.07 Acquisition Price (Pro Rata Cost)

The amount paid by State for the excess parcel at the time of original acquisition.

16.01.03.08 Direct Conveyance of Easements

This category is limited to the State's conveyance of easements to public utility companies and political subdivisions, special districts, etc., or by direct sale where grantee has the power of eminent domain.

16.01.03.09 Direct Conveyance Pursuant to Cooperative Agreement

Pertains to the State's conveyance of property acquired pursuant to an agreement under which the public body and the State agree to jointly share in the acquisition and construction of an improvement jointly benefiting the State and the public body, with the fee or easement title to be conveyed to the public body for their future maintenance of the facility.

16.01.03.10 Direct Fee Sale or Lease to Government Agencies

The Authority may sell the property to Municipalities or other local agencies at their request, without calling for competitive bids, at a price representing the fair market value thereof, and upon a determination that the intended use is for a public purpose (PUC Section 185040) provided no Federal/State match funds were used in the parcel acquisition.

The Authority may accept as all or part of the consideration for the sale or lease any substantial benefits the state will derive from the municipality or other local agency's undertaking maintenance or landscaping costs that would otherwise be the obligation of the state (PUC Section 185041).

The Authority may lease non-operating right-of-way and may contribute toward the cost of developing local parks and other recreational facilities on those areas. The Authority may accept as all or part of the consideration for the lease or for the state contribution any substantial benefits the state will derive from the municipality or other local agency's undertaking maintenance or landscaping costs that would otherwise be the obligation of the state. Those leases shall contain a provision that whenever the leased land is needed for the high-speed rail operating purposes the lease shall terminate (PUC Section 185042).

16.01.03.11 Direct Sale to Eligible Present Occupants

If it is improved property, the property may be sold to a former owner who has remained in occupancy, or to a residential tenant of five years or more with all rent obligations current or paid in full (PUC Section 185040).

16.01.03.12 Decertification

Properties once certified as required for the project that are subsequently determined no longer needed and may then be declared surplus and available for disposal.

16.01.03.13 Direct Sale to Housing Entity

Direct sale, at less than fair market value (i.e., at a reasonable price), to a housing entity that will use the property for low- and moderate-income housing purposes pursuant to Government Code Section 54235, et seq.

16.01.03.14 Exchange Per Contract

Authorized by PUC Section 185040, whereby excess land is conveyed to a party from whom the State is acquiring right-of-way and by using the value of the excess land as whole or part consideration for the required property or interest needed for high-speed rail purposes. This provision does not authorize exchanges where the value of the state-owned property exceeds the value of the property the Authority seeks to acquire, unless the excess value is incidental and subdivision of the state-owned property, in order to produce a smaller parcel of equal value to the value of the property the Authority seeks to acquire, would reduce the total value of the state-owned property.

16.01.03.15 Finding "A" Sales

Direct sale to adjoining owner, without calling for competitive bids, of small, odd-shaped, fee-owned parcels incapable of independent development and having a higher and better use as part of the adjoining property or, if sold to other than the adjoining owner, would cause an undue or unfair hardship to such adjoining owner in the normal development or operation of their property (PUC Section 185040 (c)(1)(A)).

16.01.03.16 Finding "B" Sales

The sale of such excess parcels to other than the adjoining owner would cause an undue or unfair hardship to the adjoining owner in the normal use of the adjoining owner's land. (PUC Section 185040 (c)(1)(B)).

16.01.03.17 Miscellaneous Conveyances

Pertains to the sale of State's interests (such as access rights, or easements outside of the operating right-of-way) no longer required for operation of the High-Speed Rail corridor.

16.01.03.18 Appraised Value

An estimate of the highest price the property will bring under the market conditions to which it is exposed as supported by a written staff or independent fee appraisal report.

16.01.03.19 Nominal Value Appraisals

A conclusion of low value as defined in Right-of-Way Manual Chapter 7.02.14.00.

16.01.03.20 Public Sale Estimate (PSE)

An abbreviated report that estimates the fair market value of the parcel for the purpose of a public auction.

16.01.03.21 Private Sale

When property is sold by sealed bid after Notices of Sale have been mailed only to adjoining owners due to the peculiar size, shape, or landlocked condition of the property that precludes its independent development.

16.01.03.22 Public Sale

Public sales are by voice auction, sealed bid, or continuous bid after Notices of Sale are mailed to prospective purchasers.

16.01.04.00 Organization

The Excess Land Manager is responsible for the efficient and expeditious disposal of excess land and improvements thereon in accordance with PUC Section 185040. Responsibilities for all parcels in the Excess Land Inventory shall be properly assigned to ensure disposal in accordance with the principles outlined herein. The Director of Real Property will evaluate the effectiveness of the Excess Land Manager through periodic reviews and audits.

In accordance with community planning and environmental values, sound business practice, integrity, and State law, the Excess Land Manager will:

- Minimize the number of parcels on the Excess Land Inventory.
- Minimize the holding period from date of acquisition to date of disposal.
- Maximize the return from sale of the land or interest conveyed.

16.01.05.00 Review of Appraisal Maps

The Director of Real Property is responsible for reviewing and approving the location of right-of-way lines to assure that fragmentary remainders are minimized. Right-of-Way approval is required prior to:

- Issuance of any appraisal map that contains excess land.
- Revision of any appraisal map that affects or creates excess land.

The appraisal certification should contain documentation of the review of appraisal maps for minimizing excess.

The Director or Real Property reviews all initial right-of-way requirements and any design changes in accordance with criteria in the table entitled "Review Criteria."

REVIEW CRITERIA		
Type of Parcel	**Action**	**Consideration**
Meets the minimum standards of local zoning ordinances, or may be granted zoning variances, and is capable of independent development.	Should not be incorporated in the right-of-way at the time of appraisal map review.	In evaluating potential for independent development, consider such factors as topography, size, shape, and access as well as zoning requirements.
Not capable of independent development, but may be plotted to adjoining ownerships with reasonable expectation of enhancement to the adjoining property.	Should not be incorporated in the right-of-way at the time of appraisal map review.	In evaluating enhancement, consider the extent to which existing improvements and development on the receiving property would have to be rearranged to make suitable use of the plotted excess parcel. Also consider the potential for rezoning and redevelopment and the interest of adjoining property owners in purchasing such excess parcels.
Not capable of independent development and not considered to have potential for reasonable enhancement to adjoining properties if plotted.	Should be incorporated in the right-of-way.	Consider the costs of maintenance and weed abatement and the aesthetic effect on both the community and the rail facility if the parcel is not incorporated and subsequently determined to be unsalable.

16.01.06.00 Map Review Prior to Plans, Specifications, and Estimates (PS&E)

A second review of maps is required prior to submission of PS&E to Authority if the project involves purchase of right-of-way or the creation of excess land. Parcels not originally incorporated into the right-

of-way and parcels offered for sale with unsatisfactory results should be reconsidered for incorporation. At the conclusion of the review, Excess Land Manager includes a statement in the PS&E submittal that it has completed a review of the contract plans and maps.

16.01.07.00 Parcel File

The Authority maintains a file on every parcel in the Excess Land Inventory until final disposition is completed, including full re-conveyance. The parcel file shall contain as a minimum the items listed in Exhibit 16-EX-23.

16.01.08.00 Parcel Diary

A parcel diary sheet is required for each disposal unit. The diary is maintained in sufficient detail to document the steps taken towards ultimate disposal of the property. It is part of the Excess Land parcel file and includes the following information as a minimum:

- Name of Assigned Agent
- Signed and Dated Entries - documenting verbal and written inquiries, review dates and suggested actions, personal contacts regarding design studies and proposed routes, and personal contacts involving sales attempts.
- Public Sales - dates and results.
- Other - any information necessary to understand the handling of the disposal unit.

The diary and/or file shall contain documentation that prior to public sale, "FOR SALE" sign(s) were posted on the property, advertisements were placed in newspaper(s), notices of sale were sent to appropriate governmental agencies, and copies of brochures were mailed to all owners adjoining the property being sold.

16.01.09.00 Excess Land Parcel Acquisition/Disposal Summary (Form RW 16-01)

An Excess Land Parcel Acquisition/Disposal Summary (RW 16-01) is prepared and maintained for each individual parcel of excess land and retained in the Excess Land parcel file during the Authority's ownership.

The Excess Land Manager is to provide a copy of the RW 16-01 to Accounting after recordation of the Director's Deed. The RW 16-01 notifies Accounting to remove the VTA from the Accounting inventory.

16.01.10.00 Excess Land Inventory Memorandum (Form RW 16-28)

The Excess Land Manager prepares Form RW 16-28 and sends it to Accounting to record the VTA. This form is also used to make changes to the VTA. VTA additions or expenditure adjustments are due to actions district staff takes to create, adjust, return, incorporate, or delete excess parcels.

16.01.11.00 Excess Land Fiscal Transmittal (Form RW 16-29)

The Excess Land Manager prepares Form RW 16-29 to document fiscal transmittals to Accounting:

- Cashiering Unit - funds received from a buyer in connection with sale of excess land, decertification deposit, or miscellaneous fees.

- Accounts Receivable Unit - request regarding related adjustments, such as refunds or forfeiture of deposits.

16.01.12.00 Discriminatory Rezoning

The Excess Land Manager will investigate and monitor local agency master plan and zoning proposals that affect the Authority's excess property and property held for future construction. Notification of a planning action may be by direct correspondence from the local agency or by formal notice in a newspaper of general circulation pursuant to Government Code Sections 65854 and 65856. Although formal notices are usually required, Section 65858 provides local agencies with authority to adopt certain interim zoning ordinances as urgency measures without the above notice requirements.

Excess Land Manager shall notify the Legal Division when it appears a loss in value will result from a proposed planning or zoning action affecting the Authority's property. Legal and Right-of-Way jointly evaluate the proposed action as promptly as practicable to allow an appropriate departmental response.

Excess Land shall review proposed master plan or rezoning activity that is unreasonable, would discriminate against the Authority, or would reduce the value of the property.

Active opposition to discriminatory planning and rezoning activity is the Authority's standard policy. Active opposition includes appearing at public hearings to present arguments and consulting with local agency staff. Opposition does not include efforts amounting to political pressure on individuals involved in the local planning process.

Legal shall initiate action unless the Director of Real Property decides that it is not in the best interest of the Authority to oppose a local agency's planning or rezoning activity. The Excess Land Manager shall document by memorandum the reasons for not contesting the local agency's proposed action.

Excess Land Manager shall notify Director of Real Property if Legal's opposition is unsuccessful. Director of Real Property will refer the matter to the Authority to determine whether the case warrants filing a lawsuit against the local agency.

16.01.13.00 Initiating Zoning Upgrades of Excess Land

Subject to approval of the Director of Real Property, the Excess Land Manager may initiate zoning upgrades of excess land.

The Excess Land Manager may consider hiring consultants to obtain zoning upgrades and entitlements for excess property in limited cases. The Excess Land Manager must prepare a marketing analysis demonstrating the benefits clearly exceed the risks and costs. The analysis must be forwarded to Director of Real Property. The Director or Real Property's approval of the analysis is not required.

16.01.14.00 Environmental Management of Excess Land [Hold for Future Use]

16.02.00.00 - EXCESS LAND INVENTORY

16.02.01.00 Inventory

The Excess Land Manager maintains records in geoAMPS and SharePoint of all parcels defined as "excess land," inventory and non-inventory. There are three independent records of excess land that constitute the official inventories:

- Accounting Records - General ledger accounts maintained by Accounting. Accounting records do not include non-inventory parcels.
- Right-of-Way Record Maps - maintained by Right-of-Way Engineering.
- Excess Land Parcel Files - maintained by Excess Land Manager.

Each record serves a separate purpose; together they provide a comprehensive record of accountability that facilitates management and disposition of excess land. The respective functions independently input data to the inventory from the three basic records. The three records must be kept current and the Right-of-Way Record Maps and Excess Land Parcel files (see Section 16.02.06.00) must be the Real Property Branch.

On federal-aid projects, all excess land files and documents, including maps, Inventory Disposal Records, correspondence, options, leases, notices, contracts, and agreements, shall carry the federal-aid project number for federal vouchering purposes.

The Authority will utilize a database that will be used to record, monitor, and report the status of the excess land inventory. Multiple parcel may be split or combined (along original acquisition parcel lines ONLY) at the discretion of Director of Real Property to optimize the marketability or disposal potential as necessary. Each parcel has an inventory or non-inventory category.

16.02.02.00 Inventory Categories

The inventory categories are as follows:

1. Disposable Category
   a) Available for immediate sale
2. Hold Category
   a) Engineering Hold 2B -Public Agency Hold 2C -Administrative/Legal Hold 2D Environmental Hold
3. Entry Category
   a) New excess land pending immediate clearance or pending hold category assignment.

16.02.03.00 Inventory Process and Control

New excess parcels are placed in Category 3 pending clearance and transfer to another category. (see 16.03.00.00 for clearance procedures). Parcels can remain in Category 3 no longer than 90 days and are automatically classified as 1A (available for sale) at 90 days.

Parcels in Category 1A should be disposed of as soon as possible. Authority to transfer excess from 1A to a hold category requires specified approvals by the Director of Real Property

16.02.04.00 Transmittal of Hold Requests

The Director of Real Property evaluates properties to be retained.

Excess Land is responsible for updating entries into geoAMPS.

The Director of Real Property is responsible for reviewing geoAMPS reports and periodically auditing files of RW 16-03 forms to assure procedures and approvals are correctly being followed.

See the "Inventory Matrix" on the following pages for additional information.

16.02.05.00 Inventory Value - Value at Time of Acquisition (VTA)

Inventory value is the fair market value at the time of acquisition of the excess considered as a separate parcel. The inventory value may not exceed the acquisition cost (pro rata cost) of the excess parcel.

Accounting practice requires carrying the VTA as the parcel value on inventory; it is the lower of cost or market value at the time of acquisition.

An arbitrary VTA of $1.00 may be used in the following situations:

- The Authority acquired title to the excess by donation or legislative enactment.
- The value at the time of acquisition cannot be determined or estimated (e.g., lost records).
- The actual cost is less than $1.00.

16.02.05.01 Items Not Included in VTA

The following items are not included in the VTA even though they may be part of the Authority's capital cost of acquisition:

- Cost of easements (see Section 16.03.07.00 for special treatment of easements).
- Cost of personal property since these are inventory items in the property management files.
- Damage payments on partial acquisition parcels.
- Relocation assistance payments.
- Demolition costs incurred in the removal of improvements.

INVENTORY VALUES	
Type of Parcel	**Value**
Regular Excess Parcels Acquired Through Acquisition	The VTA from the "Federal Participation Memorandum" (Form RW 08-16) or from Form RW 07-13 (Excess Property Inventory Valuation) in the acquisition appraisal.
Rescinded Route Parcels	The cost of acquisition shown in the MOS including, if applicable, the credit received for exchanged parcels. If credits to the acquisition cost are made, adjust the VTA to reflect these credits after preparing an Analysis of Cost with Adjustments to Inventory Value, Form RW 16-02, for inclusion in the Excess Land parcel file.
Excess Created by Contractor Change or Adjoining Owner Request	Established by Excess Land as if the parcels were regular excess. (Examples include de-certifications, revisions, and down-scoped projects.)
Former Maintenance Stations and Material or Disposal Sites	The value of the property at the time of acquisition. Adjustments, if any, are made in accordance with Accounting procedures.

INVENTORY MATRIX			
CATEGORY		**DESCRIPTION**	**PROCESS**
1 – Disposable	1A	Parcels Available for Immediate Sale - placed in Category 1A and disposed of as soon as possible. Parcels in Category 1A that do not have clearances, valuations, and/or maps and deeds are NOT available for immediate sale, and should be transferred immediately to the appropriate hold category. Authority to transfer excess to any other category requires approvals as described in Section 16.02.04.00.	Dispose of in accordance with guidelines set forth in Section 16.05.00.00. Handle improved properties occupied by former owner or on rescinded routes in accordance with Government Code Sections 54235, 54237, and 54238.6
2 - Hold	2A	Parcels held at the specific request of an engineering branch for possible additional right-of-way requirement or mitigation purposes: • On the same project for which the parcel was acquired. • For possible additional right-of-way requirement for another project. • Parcels required for operational purposes, for example: − To provide the contractor with improved access to a construction site. − For a batch plant site or similar use. − For parking space for trailers to be used by engineering personnel (vacant land only). − For temporary detours. − For temporary material/disposal sites	In addition, each application must specifically identify the planned use for the property and the date by which the parcel will be transferred to the project or released. A parcel map must be attached to each application.

INVENTORY MATRIX			
CATEGORY		**DESCRIPTION**	**PROCESS**
2 – Hold (Cont.)	2B	Parcels Held for Sale to a Public Agency - parcels shall not be held for a public agency unless an official authorized to bind the agency to buy the land submits a written, signed request within 60 days after the property is offered. The property may be held up to a maximum of one year after receipt of the written request and deposit. This allows the agency time to arrange financing. The request must contain: • Property description or map. • The public purpose to which the land will be put. • The agency's intent to buy the property. • The date the sale will be concluded and reason for delay, if any. Authority for direct sales to public agencies is contained in Government Code Section 54220, et seq.; State Constitution, Article XIX, Section 9	Coastal Zone Property (Section 9, Article XIX State Constitution): Order maps and legal descriptions if not previously requested. Other: Order maps, deeds, and appraisals if not previously requested. Offer property at market value after appraisal approved and give 60 days to respond. If official written acceptance not received within 60 days, transfer to Category 1A and sell.
	2C	Parcels Held for Administrative or Legal reasons - examples are: • Clearances, valuations, maps/deeds not completed. • Relocation assistance or replenishment housing purposes. • Pending resolution of potential claims against the Department. • Judicial or legislative actions. • Routes that are candidates for rescission or down-scoping. • Written instructions to hold received from, the Director of Real Property, or. • Parcels held for optimum return or for exchange. Examples include: − Other acquisition of adjacent land will provide access or make salable unit, − Access will not be available until construction is completed, − Exchange for needed right-of-way requested by Acquisition.	Document holds by written communication from the appropriate department including the reason for the hold and the release date. Document economic justification where optimum return claimed as basis for hold. Document hold request for exchange with a memo from Acquisition justifying the hold.
	2D	Parcel held for environmental compliance or for mitigation purposes.	Document reasons for the hold.

INVENTORY MATRIX			
CATEGORY		**DESCRIPTION**	**PROCESS**
3 - Entry	3	Temporary Hold for Clearance - place new parcels in this category pending clearance and transfer to another category. Parcels cannot remain in this category longer than 90 days. geoAMPS will automatically place Category 3 disposal units in 1A after 90 days. To subsequently transfer from 1A to a hold category.	Upon entry, immediately obtain internal functional clearances; e.g., • Relocation Assistance • Property Management • Park and Ride • Utilities • Environmental • Maintenance • Project Development • Planning Obtain clearances from other governmental agencies, where appropriate: • Department of General Services • Caltrans Division of Aeronautics • OPR and HCD • Departments of Parks and Recreation, Fish and Game, and the Wildlife Conservation Board and the State Coastal Conservancy • Local agencies Select disposal method, where possible. Select category. Obtain approvals for holds, where appropriate. Request maps, deeds, appraisals, etc. Transfer to appropriate category within 90 days whether clearances have been obtained or not.

16.02.05.02 Adjustments to VTA

Adjustments to the VTA may be required in the following situations:

- Improvements have been sold or removed.
- A portion of the property has been sold as excess land.
- The cost includes prepaid bond assessments and refunds have been received.
- Portions of the property have been encumbered with public roads under cooperative agreement or encroachment permits in anticipation of the proposed project.
- The property has been encumbered with utility easements.
- The property has been encumbered with private easements for access or other purposes.

16.02.06.00 Annual Inventory Review

The State Administrative Manual Section 8652 requires that a physical inventory be conducted at least once every three years for all parcels with a VTA over $5,000. This inventory is to assure that records are accurate and that all parcels have had a field review.

Excess Land and Right-of-Way Engineering to review parcels in the field.

The team must determine that right-of-way record maps, excess land inventory, and excess land sales files depict ownership of the same land. See the table entitled "Review Process."

Excess Land is the team leader and is responsible for ensuring that:

- An annual review is completed to assure covering the entire inventory within a three-year period;
- All discrepancies are identified and brought to the attention of the Director of Real Property.

The team members are responsible for reviewing the inventory, files, record maps, and parcels in the field.

The team members shall sign a verification statement confirming that the review was completed according to this section.

The review is based on current fiscal year data. Excess Land assures that the annual review is done by June 30, and that a report of the results is completed no later than July 31 of the same year.

REVIEW PROCESS		
Step No.	**Action**	**Description**
1	Selection	Select sufficient excess land annually to allow a review of the total inventory within a three-year period. The RWM 834-A, organized by route and post mile, should be used to compare the Right-of-Way Record Maps and Excess Land Parcel files. Depending on the size of the inventory, a 100% review may be feasible in one annual review. In this instance, the next review would not be due for three years, unless a significant number of parcels are added in the intervening years.
2	Review of Records	The following records must be reviewed for each parcel selected. Each should contain the listed minimum information: <u>Right-of-Way Record Maps:</u> • The total excess parcel delineated. • The excess parcel identified by a ten-digit number. • The area of the excess shown, either on the map proper or in the property box. <u>Excess Land Parcel Files:</u> •A copy of a map denoting the excess. • Form RW 16-01, "Excess Land Parcel Acquisition/Disposal Summary." <u>Excess Land Inventory:</u> A ten-digit parcel number must appear on the RWM 834-A.
3	Comparison	Compare the three sets of records: • Record Maps - find a corresponding number on the inventory and an excess land parcel file for each parcel. • Excess Land Files - find a corresponding number on the inventory and identification of the parcel on the record maps for each parcel. Identify any discrepancies found between the records and note them on the RWM 834-A. Minor discrepancies in area should be corrected by Right-of-Way Engineering prior to disposing of the parcel. A major discrepancy may require a field review by the Records Review Team.
4	Physical Inventory	The team conducts a field review of parcels. Selection should be by route for optimum results per travel day. The same RWM 834-A used for the record review should also be used for the field review. Field reviews determine whether the parcel: • Requires any weed abatement; • Is littered or is becoming a dump site; • Has no obvious presence of hazardous waste. • Appears to be unsafe; • Has any encroachments or unauthorized occupants; and • Appears to be the same size and configuration as shown on record maps. Note any problems found on the RWM 834-A. Photos can be useful for documentation purposes.
5	Documentation	The RWM 834-A serves as the working papers. It shall include: • Names of team members. List team members separately as necessary. • Signed team verification and dates of inspection.

		• Date next review is required. • List of elements checked and identification of discrepancies in the records. • Identification of deficiencies in physical condition.
6	Report	The report summarizes by county, route, and post-mile limits: • How many parcels were reviewed; • How many parcels were in compliance; • How many parcels were not in compliance; • Any discrepancies found among the two record sources, such as area differences, are noted on the RWM 834-A. Major discrepancies will need to be researched and corrected as part of a follow-up process; • Deficiencies in the physical condition of the parcels are noted on the RWM 834-A; • A follow-up plan and schedule to correct any deficiencies is noted on the RWM 834-A. Excess Land prepares the report for review by the Director of Real Property.
7	Corrections	The Property Management Unit is responsible for correcting the discrepancies, errors, and deficiencies.
8	Certification	Authority ROW will send a certification letter to Accounting annually, as of August 1. This letter summarizes the results and: • Certifies that the annual review has been completed and complies with the State Administrative Manual Requirements; • Gives the date of the next annual review required to meet the three-year total inventory review requirement; and • States that the report and working papers are on file in the district for any subsequent audit review.

16.02.06.01 Federal Reporting of Real Property

2 CFR 200.329 requires annual reports on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances, the Federal awarding agency may require reporting at various multi-year frequencies. The report shall be summarized by county of all real property owned, leased or otherwise managed by the Authority.

16.03.00.00 - CLEARANCE PROCEDURES

16.03.01.00 Various Functional Reviews

Excess Land establishes clearance procedures to assure that the property is not required for a definite use by other units in the Authority. The various functional units are consulted, including:

- **Acquisition** - to determine if the excess is needed for exchange.
- **Relocation Assistance** - to determine if an eligible relocatee is in possession of an improved property or if the property can be used by a displacee.
- **Property Management** (Rentals and Clearance) - to determine whether a State tenant occupies the property. If a property will be sold subject to a tenancy, no State property shall be removed without full knowledge of its removal being given to prospective purchasers. If the State is leasing or renting the property to be sold, Property Management attaches a copy of the lease or rental agreement to the clearance document.
- **Utilities** (3rd Party and ROW Utilities Unit) - to determine if the excess parcels are needed for utility purposes.
- **Environmental** - to determine if the excess has potential for use as a mitigation site, either for projects currently being developed or for mitigation banking purposes.
- **Rail and Operations Delivery Branch** - to determine if the excess is required by any planning project.
- **Design and Construction** - to determine if the excess is needed for the project.
- **Safety and Security Unit** - to determine if the excess is needed for safety or security purposes.

16.03.02.00 Environmental Compliance

In compliance with the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), the environmental consequences of acquiring excess properties are analyzed either as part of the Authority's section-specific environmental documents or, as appropriate, after the environmental documents are completed using the Authority's environmental re-examination process. If significant impacts could not be avoided, supplemental environmental documents would be prepared. If significant impacts cannot be avoided, supplemental environmental documents would be prepared.

16.03.03.00 Hazardous Substances

Excess parcels may not be offered for sale until the Authority's Environmental Branch, in consultation with the Engineering Branch, has provided a Hazardous Substances Disclosure Document allowing sale of the parcel. The disclosure document will certify one of the following three conditions:

1. The parcel is clear of hazardous substances and may be offered for sale; or
2. That hazardous substances exist on the property but the property may be offered for sale with appropriate and full information disclosure regarding the nature and extent of the contamination; or
3. That hazardous substances exist/may exist on the property and further investigation or remediation is required, and the disclosure document is an attachment to an Excess Land Hold Request.

The Hold Request must show an estimated schedule for the investigation or remediation. The responsible unit for the investigation or remediation will normally be the unit that controlled or maintained the property.

16.03.03.01 Lead-Based-Paint Disclosure

For properties improved with structures constructed prior to 1978, Excess Land must disclose the possible exposure to lead-based paints.

16.03.04.00 Notices to Other State Agencies

Notification to other State agencies of the proposed sale of excess land is required as shown on the table entitled "Notice Requirements for Other State Agencies" on the following pages.

Offers of direct sale to federal agencies may be made at the discretion of Director of Real Property based on knowledge of interest by a federal agency or physical proximity to a federal facility.

16.03.05.00 Offers to Local Public Agencies and State Resources Agency

Before surplus residential property as defined in Government Code Section 54236, is offered for sale to the public, it must be offered for sale or lease to local public agencies, housing authorities, or redevelopment agencies within whose jurisdiction the property is located. Excess Land Manager must send Offers to Sell or Lease Surplus Land, Exhibit 16-EX-04, as shown below on the table entitled "Requirements for Offering to Local Public Agencies." The important elements of the offer are shown on the table entitled "Elements of Offer."

Other than the offers as required by statute for low/moderate income housing or park/recreational use, offers of direct sale to local public agencies are at the discretion of Excess Land.

REQUIREMENTS FOR OFFERING TO LOCAL PUBLIC AGENCIES		
Purpose	**Sent to**	**Remarks**
Developing low- and moderate-income housing	Any local public agencies including, but not limited to, housing authorities or redevelopment agencies within whose jurisdiction the surplus land is located.	With respect to any offer to purchase or lease, priority shall be given to offers for development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.
Park and recreational or open-space.	• Any park or recreation department of any city within which the land is situated. • Any park or recreation department of the county within which the land is situated. • Any regional park authority having jurisdiction within the area in which the land is situated. The State Resources Agency or any agency that may succeed to its powers.	

NOTICE REQUIREMENTS FOR OTHER STATE AGENCIES			
State Agency	**Description of Property**	**Process**	**Minimum Information Required**
Department of General Services Real Estate Services Division Attn. Real Estate Sales Section 400 R Street, Suite 5000 Sacramento, CA 95814	• Any parcel, regardless of size, that abuts property owned by another branch of State government • Any parcel, one acre or larger in size, that has access to a public road • Any parcel, regardless of size, that in the district's opinion may be of value or use to another State agency.	Send a letter to DGS. (see Exhibit 16-EX-02.) If a response is not received within the 60 days, dispose of the property in the normal manner.	• General location or vicinity map • Detailed parcel map showing local roads and streets and any adjoining property owned or controlled by any branch of State government • Appraised value, if available, or a statement that a fair market value appraisal will be made if there is an affirmative response
Department of Transportation Aeronautics Program P.O. Box 942873 Sacramento, CA 95273-0001	Any parcel within a two-mile radius of any public airport.	Send a notice to Aeronautics. (see Exhibit 16EX-02.) Aeronautics notifies the appropriate Airport Director of the availability of properties. The notification prescribes a 60-day response time and specifies the name and phone number of a contact person. During the prescribed 60-day period, the Airport Director should notify the district directly of their needs for the parcel. If a response is not received within the 60 days, dispose of the property in the normal manner.	• Present zoning • Highest and best use • Topography • Improvements, if any • Encumbrances or copy of State's policy of title insurance • Other remarks as appropriate, e.g., access, utilities available
Housing and Community Development (HCD) 1800 Third Street Sacramento, CA 95814	Parcels that local public agencies have not expressed interest in purchasing but that may have unique affordable housing potential, as determined by HCD in isolated cases.	Send copies to HCD of all offers of property to local public agencies in accordance with statutory requirements outlined in Section 16.03.05.00. HCD notifies Caltrans within the prescribed 60-day period on a case-by-case basis and requests that the parcel be withheld from immediate sale for a specific time.	Copy of the offer to the local public agency.

NOTICE REQUIREMENTS FOR OTHER STATE AGENCIES			
State Agency	**Description of Property**	**Process**	**Minimum Information Required**
• Department of Parks and Recreation P.O. Box 942896 Sacramento, CA 95814 • Department of Fish and Game 1416 Ninth St., 12th Floor Sacramento, CA 95814 • Wildlife Conservation Board 801 K Street, Suite 806 Sacramento, CA 95814 • State Coastal Conservancy 1330 Broadway, Suite 1100 Oakland, CA 94612-2530	Excess parcels that meet the requirements of Section 9, Article XIX, State Constitution • Coastal Zone land as defined in Section 9 • Lands within 1000 yards of any property that has been listed on, or determined by the State Office of Historic Preservation to be eligible for, the National Register of Historic Places • Lands within the Lake Tahoe region as defined in Government Code Section 66905.5	Notify the listed State agencies. Any proposed sale of such land requires authorization by the Legislature. If the agencies do not respond within 60 days, dispose of the property in the normal manner. Notification requirements do NOT apply to "exempt surplus land." To be considered exempt, the surplus land must be sold to an owner of contiguous land and must meet one of the following criteria: 1. Less than 5,000 square feet in area. 2. Less than the minimum legal residential building lot size for the local jurisdiction or 5,000 square feet in area, whichever is less. 3. Has no record access; is less than 10,000 square feet in area; is not contiguous to land owned by a State or local public agency that is used for park, recreational, open-space or low- and moderate-income housing purposes.	• Parcel number • Area • Location • Acquisition cost • Overhead to acquire the property

ELEMENTS OF OFFER	
Element	**Explanation**
Leasing Property To Be Sold at Fair Market Value	Any direct sale pursuant to PUC Section 185040 must be at current fair market value, which fair market value may be established through public auction or closed bidding. The Authority may lease surplus real property pending the sale or exchange of such property. The lease rate must be high enough to ensure that the eventual sales price of the parcel, when sold, if subject to the lease, is not unreasonably adversely affected by the lease.
Notification of Intent To Purchase or Lease Surplus Land	The entity desiring to purchase or lease surplus land from the Authority must notify the Authority in writing of its intent within 60 days after receipt of the Offer to Sell or Lease Surplus Land.
Re-sales of Land for Development of Low- and Moderate-Income Housing	A local public agency, housing authority, or redevelopment agency that purchases land from the Authority may reconvey the land to a nonprofit or for-profit housing developer for development of low- and moderate-income housing as authorized by law.
Payment Period	PUC Section 185040 allows the Authority to provide for a payment period of up to 10 years in any contract of sale or sale by trust deed for: • Surplus land to be used for park, recreation, open-space, or school purposes. • Improved surplus land to be used for low- and moderate--income housing purposes.
Multiple Offers	If the Authority receives offers to purchase or lease from more than one eligible entity, first priority shall be given to the entity that agrees to use the site for housing for persons and families of low- or moderate-income. By exception, first priority may be given to an entity that agrees to use the site for park or recreational purposes if the land being offered is already being used and will continue to be used for park or recreational purposes, or if the land is designated for park and recreational use in the local general plan and will be developed for that purpose.

The preferred disposition for these properties is a direct sale, and when notice is received from two or more public agencies, preference shall be given to an agency that proposes to purchase the property.

When a notice is received from any entity desiring to purchase or lease surplus land, the Excess Land Manager prepares:

Appraisal - of the fair market value if sold.
Lease Rate -if the property is to be leased pending sale or exchange.

After completion of an appraisal or lease rate determination, the Excess Land Manager and the entity negotiate to determine mutually satisfactory sales or lease terms (sales price must be based on the fair market value appraisal), subject to the approval of the Director of Real Property. If the price or terms cannot be agreed upon after 60 days, Excess Land may dispose of the surplus land by direct sale of lease to the public.

16.03.06.00 Outdoor Advertising Signs

Excess Land must assure that the Authority has no obligation for outdoor advertising signs located on excess property that continues beyond the sale of such property. Excess Land determines whether or not a sign is located on the property prior to sale by:

- Reviewing the appraisal and acquisition documents.
- Clearing the property for sale through Right-of-Way Property Management.
- Visually inspecting the property.

If previously-sold excess property involves outdoor advertising signs where the Authority retains a contractual obligation to ultimately pay when said signs are removed, Excess Land should review the situation in detail.

16.03.07.00 Clearance of Other Items

Excess Land should ensure that a parcel is not conveyed until it determines the Authority has no unfilled contractual obligations to convey easements or other rights for utility or other purposes over the property. If any such unfulfilled obligations exist, appropriate exceptions or reservations shall be included in the Director's Deed. Such items should be brought to the attention of prospective purchasers in the Sales Notice.

Procedures for clearance of other items are shown in the table entitled "Procedures for Clearance of Other Items."

<table>
<tr><th colspan="3">OUTDOOR ADVERTISING SIGN OBLIGATIONS</th></tr>
<tr><th>Sign Status</th><th>No Executed ROW Contract and Quitclaim Deed</th><th>Executed ROW Contract & Quitclaim Deed Covering Sign Relocation/Removal</th></tr>
<tr><td>Illegal Sign - Sign that was illegally placed on State High-Speed Rail right-of-way and one that does not have a current State Outdoor Advertising Permit.</td><td>Notify sign owner to remove the sign. Removal must be accomplished prior to sale of the property.</td><td>If sign owner refuses to remove sign, Demolish the sign and bill owner for cost.</td></tr>
<tr><td>Nonconforming Sign - Sign was lawfully placed but does not conform to current law.</td><td>Have the sign removed as a right-of-way obligation prior to sale of the excess property.</td><td rowspan="2">Have sign owner execute an Advertising Structure Agreement and a rescinded Right-of-Way Contract.
Consult with Legal about filing an action to rescind the existing contract if sign owner refuses to execute an agreement and/or a rescinded contract.
As an alternative to expedite sale of the excess property, order sign owner to remove the sign. The Authority shall pay the amount set forth in the existing Right-of-Way Contract.</td></tr>
<tr><td rowspan="2">Old Advertising Structure Agreement
Nonconforming Signs - Sign occupies property under an old agreement with a termination clause but no reference to construction.
Conforming Signs -Sign conforms to current law. Occupies property under an old agreement with ambiguous termination clauses, e.g., one clause provides termination by 30-day notice; another ties removal of sign to future High-Speed Rail construction.</td><td>Sell the property subject to the sign interest.</td></tr>
<tr><td>ROW Property Management organization has sign owner execute a new Advertising Structure Agreement prior to sale.
Consult with Legal on the next appropriate action if sign owner refuses to execute a new agreement.</td><td></td></tr>
</table>

PROCEDURES FOR CLEARANCE OF OTHER ITEMS	
Item	**Procedure**
Fee Conveyances Prior to Easement Conveyance Over Same Parcel	Where the State has easements that cross excess land that have not yet been conveyed to a third party pursuant to a contractual obligation, it is permissible to include the clause below in the fee Director's Deed of the affected excess parcels. The clause is to be used only when a Director's Deed easement across excess has not been recorded and posted on the Right-of-Way Record Maps at the time the Director's Deed for conveyance of the excess is prepared. When the easement deed is recorded and posted prior to preparation of the Director's Deed for conveyance of the fee excess, the Director's Deed of fee will make no mention of the easement except for the clause printed on the Director's Deed form that states "...subject to special assessments, if any, restrictions, reservations and easements of record." *"Subject to an easement granted or to be granted to (name of company) for (purpose of easement) and incidents thereto upon, over and across: (Description of easement area)."* It is essential that the "name of company," "purpose of easement," and "description of easement" are identical in the Director's Deed for the easement and the Director's Deed for the excess fee. Under normal circumstances, property or other rights acquired expressly pursuant to a contractual obligation or easements being conveyed over excess lands are not part of the Excess Land Inventory.
Easements No Longer Needed for Authority Purposes	Easements no longer required for Authority's purposes may either be vacated or sold depending on the circumstances. The Director of Real Property determines the method of disposal after considering the facts. Although easements are normally vacated, they can be appraised and disposed of in the normal manner where circumstances warrant, such as when easements are acquired for an Authority use but are never used. When easements are no longer needed, they are noted in geoAMPS.
Superseded Fee-Owned Right-of-Way	When title to a superseded right-of-way is owned in fee, it may be conveyed to a private owner only by Director's Deed. Salable segments of such right-of-way may be used in exchange the same as any other fee-owned property.

Excess Property That Has a History of Soil Instability	The clause below is included in all Director's Deeds, Sales Contracts, and Sales Notices used in the disposal of excess properties that have a history of soil instability caused in part or entirely by State High-Speed Rail construction. *"It is mutually agreed and understood that this property may be subject to soil instability and that the grantees, for themselves and their successors or assigns, hereby waive any and all claims for damages resulting from further earth movement or soil instability which may occur because of prior actions by the State of California, its officers, agents and employees."*
Parcel Contractual Obligation Review	All excess land resulting from partial acquisitions is subject to a contractual obligation review prior to sale. Evidence of a completed contractual obligation review is first noted in the Parcel Diary and then in the property description portion of Form RW 16-01 by the following statement: *"A parcel review has been completed and there are no contractual obligations".* If contractual obligations are found, their disposition must be explained in full.
Flood Hazard Notice	The following notice is placed in all Sales Notices when there is a potential for flood hazards: *"CAUTION: We are hereby putting you on notice that this property may be subject to potential flood hazards. The California High-Speed Rail Authority does not assume any liability for any damage which may be caused by such flood hazards. We recommend that you fully investigate the potentiality of such hazards with the appropriate Federal, State and local agencies."*
Excess Property Located in Fault Hazard Zones	Section 2621.9 of the Public Resources Code (see Section 16.12.05.00) requires any person who is a seller or acting as an agent for a seller of real property located within a "delineated special studies zone" to disclose to any prospective purchaser of such property the fact that it is located within such a zone. To ensure the Authority complies with all statutory requirements, the following statement is added to all contracts and agreements and to all Sales Notices used to notify prospective purchasers of the Authority's intent to dispose of real property located within a special studies zone: *"The real property which is the subject of this sale may be situated within a Special Studies Zone as so designated under the Alquist-Priolo Special Studies Zones Act Sections 2621-2625, inclusive, of the California Public Resources Code. As such, approval of any future construction or development of any structures for human occupancy on this property may be subject to the findings contained in a geologic report prepared by a geologist registered in the State of California. No representations on this subject are made by the California High-Speed Rail Authority, and any prospective purchasers should make their own inquiry or investigation into the potential effects of this Act on this Property."*

16.04.00.00 - EXCESS LAND APPRAISAL

16.04.01.00 General

The appraisal or value estimate is the basis on which property is sold, and no property may be disposed of until valuation is completed. Excess land valuations shall conform to guidelines set forth in the Appraisal Chapter.

An appraisal is required for utility easements to be located on excess land, except where providing the easement is the State's obligation pursuant to a contractual obligation.

16.04.02.00 Public Sale Estimates (PSE)

Either a market value appraisal or a public sale estimate, as defined in the Appraisal Chapter, is sufficient for determining minimum bids when excess land is offered at public sale. Generally, the least intensive report shall be prepared where the proposed sale method is by public sale.

Excess Land may prepare public sale estimates. Value conclusions are reviewed and approved by a Supervising Right-of-Way Agent. Consideration, however, should always be given to having complex and/or controversial valuations obtained by Appraisers regardless of value. Annual reviews are not required for appraisals and public sale estimates used in connection with public sales.

16.04.03.00 Market Value Appraisals

A market value appraisal is required for all direct sales of excess land. This includes the valuation of leases, easements, and fee parcels to be conveyed to local agencies as outlined in Section 16.03.05.00. Fair market value appraisals cannot be prepared by any member of the Excess Land unit, except for "nominal" value appraisals.

Excess parcels valued for direct sale to private parties at $500,000 or more require dual appraisals as outlined in the Appraisal Chapter. Parcels conveyed to another State agency by a Transfer of Control and Possession Agreement are excluded from the dual appraisal requirement. Since the process for securing an independent report may be time consuming, Excess Land should identify those parcels requiring two appraisals sufficiently in advance of proposed sale dates to enable hiring fee appraisers.

Approval of a market value appraisal for a direct sale is assumed to be valid for one year from the date of the appraisal unless Excess Land determines that a significant change in value during the year requires a review.

6.04.04.00 Nominal Value Appraisals

Right-of-Way Agents may prepare nominal value appraisals following the format and approval process described in Sections 7.14.01.00 and 7.14.04.01.B of the Appraisal Chapter.

The Certificate of Appraiser statements should state:

> *"I understand I may be assigned as the Excess Lands sales agent for one or more parcels contained in this appraisal report, but this has not affected my professional judgment nor influenced my opinion of value."*

Although a yearly review is not required, Excess Land may request a review of nominal parcels any time one is warranted.

16.05.00.00 - DISPOSAL METHODS AND PROCEDURES

16.05.01.00 General

Excess property shall be disposed of as soon as possible commensurate with sound business practices, statutes, so the number of parcels on inventory is maintained at minimal levels.

Property is not to be withheld from sale without full justification, including economic, environmental, and community considerations. Parcels shall be offered for sale if the Authority determines that real property or an interest therein, is no longer necessary for high-speed rail purposes. All efforts made to sell the property shall be documented in the file.

16.05.02.00 Methods of Disposal

Excess real property can be disposed of as follows:

- Internal transfers
- Public sale - by auction, sealed bid, or continuous bid
- Direct sale - to adjoining owner (Findings A and B), to former owners in occupancy, and to eligible present occupants
- Private sale - between adjoining owners
- Exchange - by Right-of-Way Contract
- Functional Replacement - by agreement (see Section 8.30.00.00)
- Other direct conveyances: To other governmental agencies, pursuant to utilities agreement, pursuant to cooperative agreement, pursuant to legislation
- Leasing - pursuant to PUC Section 185040
- Lease-Purchase
- Transfer of Control and Possession - to other State agencies
- Private Brokers

All conveyances of excess property are subject to the final approval of the Director of Real Property. (see also Section 16.07.01.00.) Incorporations of property within the Authority's operating rights-of-way are at the discretion of the Director of Real Property.

All printed matter, including the terms of sale, must clearly state that the sale is subject to Authority's approval, and is not binding upon the State prior to such approval.

16.05.03.00 Internal Transfers [Hold for Future Use]

16.05.03.01 Incorporation of Excess Parcels Within Operating Right-of-Way

Excess Land initiates appraisal map reviews, as set forth in Sections 16.01.04.00 and 16.01.05.00, to eliminate small remnants of excess land that can be included within the right-of-way. Examples include:

- Unsalable Excess Parcels - Consideration should be given to incorporating small unsalable parcels into the right-of-way.

16.05.03.02 Inter-Program Transfers

Excess property may be transferred within the Authority to another program, such as Safety and Security or Rail and Operations Delivery Branch. An accounting transaction transfers the property at its VTA to the appropriate program. Excess Land initiates the transfer by completing RW 16-01 and RW 16-28 with the required supporting data and submitting them to the Director of Real Property for final approval.

16.05.03.03 Charging Excess Land to Projects [Hold for Future Use]

16.05.04.00 Public Sales [Hold for Future Use]

16.05.04.01 General

Excess Land shall develop sales procedures to attract the widest possible market and to obtain the maximum return. The sales standards described in Right-of-Way Manual Section 16.05.04.08 and 16.05.04.14 are the minimum necessary to ensure adequate exposure of public sale property.

16.05.04.02 Purchase Agreement (RW 16-05 and RW 16-06)

Generally if an excess parcel is capable of independent development compatible with its environment, it should be disposed of by public sale. Public sale may be by oral auction, sealed bids, or continuous bid, whichever provides the greatest return. Bids that fall below a published minimum shall be rejected. If no bids are received, the minimum should reanalyzed before the property is again offered for sale.

The right to purchase is awarded to the highest responsive bidder. If the highest bidder defaults, consideration should be given to awarding the right to purchase to the second highest bidder at the second high bid amount.

The right to purchase shall be 60 days after the date of sale.

Any extensions of the right to purchase period must be approved, in advance, by the Director who shall assess 1% per month penalty payable by the purchaser at the close of escrow on the property. (NOT to be applied to the purchase price)

The purchase deposit must be sufficient to cover out-of-pocket costs of the sale, e.g., printing and mailing the Sales Notice and advertising. The minimum deposit shall be:

Minimum Bid Amount:	Minimum Deposit Required:
Over $5,000	10% of minimum bid rounded down to the nearest $100
$500 to $5,000	$500
Under $500	Actual amount of bid

16.05.04.03 Default or Withdrawal of Highest Bidder

If the highest bidder fails to exercise the purchase rights within the prescribed period or fails to comply with the sale terms, Accounting retains the deposit until damages and costs are determined. Damages and costs include but are not limited to staff time and overhead, costs associated with advertising and marketing the property again, and the reduction in the market value, if any, at a subsequent sale. Upon default, the Excess Land notifies the highest bidder that the deposit is being retained until damages are determined through subsequent resale of the property. The remainder of the deposit, if any, is refunded to

the bidder. Excess Land has the implied responsibility to schedule another sale as soon as practicable. If Excess Land determines that it is in the best interests of the State not to schedule another sale attempt, the deposit (less appropriate costs) is to be refunded to the bidder immediately.

If the highest bidder defaults or withdraws from the sale pursuant to Section 16.07.06.00 prior to recordation of the deed, Excess Land may offer to award a right to purchase to the second highest bidder. If the second highest bidder accepts award, the deposit required and the terms of right to purchase are the same as stated in the Sales Notice. However, the right to purchase period shall commence on the first day following the date Excess Land receives written notice of acceptance by the second highest bidder.

16.05.04.04 Minimum Bids

The following guidelines apply to property available for public sale and property previously offered to public agencies in accordance with PUC Section 185040 as further specified in Chapter 11 (Property Management).

- **Marketing Plan** - Excess Land must consider the following while preparing the marketing plan:
  - Reducing the minimum bid.
  - Using an unannounced minimum.
  - Reviewing appraisal/PSE for concepts that may be inappropriate and revising appraisal/PSE as necessary.
  - Combining with other parcels.
  - Reducing the number of parcels in the disposal unit.
  - Expanding advertising.
  - Using other innovative marketing techniques.
  - Alternate sales methods.
  - Holding the disposal unit until market conditions improve.

16.05.04.05 Unannounced Minimum Bid

Parcels may be auctioned with an unannounced minimum bid, in which case all the foregoing requirements apply, with the following additional conditions and exceptions:

- All other terms of the sale, including required deposit, are indicated in the Sales Notice with the word “unannounced” after the term “Minimum Bid.” NOTE: Deposit amount should vary from the 10% standard in order to keep bidders from determining the minimum bid.
- The PSE and the unannounced minimum bid are confidential information and shall not, under any circumstances, be divulged to a prospective bidder or the general public. Excess Land is responsible for the actual amount of the minimum bid, which shall be established in writing by concurrence between Excess Land and his/her immediate supervisor). The minimum bid amount must be kept in a confidential and secure file. If the PSE or minimum bid is given to a prospective bidder, Excess Land shall cancel the sale and initiate a resale of the parcel using the PSE as the basis for the minimum acceptable bid.
- The Sales Notice shall include a provision allowing 10 days to evaluate the bids received. Excess Land has discretionary approval to accept any bid that exceeds 80% of the unannounced minimum acceptable bid. Otherwise Right-of-Way approval is required prior to acceptance of the bid. Requests for acceptance will include the total number of bids, the bid amounts, and Excess Land recommendation with reasons therefore.

- Bids accepted by Excess Land that are less than the unannounced minimum bid shall be justified by an Administrative Authorization memorandum. This authority may not be delegated.
- Unannounced minimum bids must be at least 75% of PSE.

16.05.04.06 Credit Term Agreement (RW 16-05)

The Credit Term Agreement provides that the purchaser has a prescribed number of days during the right to purchase period to open an escrow at purchaser's expense. Purchaser shall deposit a sum that equals 30% of the successful bid when added to the initial bid deposit. The total period for making final payment shall be no longer than the right to purchase period prescribed in the Sales Notice.

It may be in the Authority's best interest to extend the right to purchase period if requested by the purchaser. Excess Land may extend the period as supported by a full analysis (to be retained in the Real Property Branch regional offices) on the following terms:

- A right to purchase extension charge of 1% per month on the bid amount is made for the period of the extension. If the transaction closes prior to the end of the extension period, Excess Land may prorate the extension charges allowing monies for the unexpired term of the right to purchase period to be credited to the purchase price or refunded.
- The extension charge is not applied to the purchase price.
- If the right to purchase is not exercised, neither the bid deposit nor the extension charge is refunded.

16.05.04.07 Notice of Surplus Real Estate Sale (RW 16-04)

A Notice of Surplus Real Estate Sale (Sales Notice) is used for properties sold by public auction, sealed bid, or continuous bid. Deviations from the standard terms and conditions require documentation and Director of Real Property approval. Innovation in preparing the front covers of these notices is encouraged, particularly for those properties having specialized uses or high values. The Sales Notice shall clearly state if credit terms are being offered, and, if so, all sales are subject to satisfactory proof of the buyer's creditworthiness. Credit reports will be obtained at buyer expense.

Accuracy about access, zoning, and availability of utilities is important when describing the characteristics of the property. Investigations regarding such factors should be thorough so the Sales Notice is reliable.

A copy of the Sales Notice shall posted on the Authority's website and copies mailed or delivered to ASC, all adjoining owners, and all any other person who has expressed be interested in purchasing the property. Emphasis should be on reaching those segments of the market that specialize in the particular class of property.

If a public sale is by sealed or continuous bid, the appropriate bid form shall be attached and mailed with the Sales Notice.

16.05.04.08 Posting of Property and Physical Inspection

Real estate type "For Sale" signs shall be placed on excess land offered for public sale and shall contain information about the parcel, the words "For Sale," and the address and phone number of Excess Land Signs should be of sufficient size and shape to be readily identifiable by the public and constructed of materials that will withstand the elements. Where high value or special purpose properties are for sale,

consideration should be given to more extensive signing, or other types of display, to assure maximum exposure.

At the time of the appraisal and again upon posting, an Agent of the Authority shall physically inspect the property to determine existence of any adverse interests, advertising signs, hazardous material/waste, persons in possession (trespassers or State's tenants), or easements. These interests shall be checked against the State's title policy and either cleared or brought to the attention of prospective bidders in the Sales Notice or during the auction.

Excess Land should check the property periodically during the advertising period to assure that "For Sale" signs are still posted.

16.05.04.09 Public Sales of Landlocked Parcels

Excess Land should undertake public sales of landlocked parcels of substantial area or value only after it has attempted to secure an access option from adjoining owners. Negotiations should be based on securing adequate rights commensurate with the highest and best use of the parcel.

The parcel diary should contain a notation that Excess Land reviewed the landlocked parcel with Design and no alternate means of access was or could be made available.

Options to purchase access may only be obtained on a voluntary basis, and the following guides should be used in attempts to secure options:

Option Period - Sufficient to allow grantee to exercise the option within the terms prescribed in the Sales Notice. Allow sufficient time to advertise and complete all aspects of the sale.
Option Value - Appraisals shall certify that the price to be paid for the optioned property is reasonable and that the optioned rights are adequate to serve the excess land.
Consideration for Option - Shall normally be $500.
Form of Agreement - The option agreement follows the form shown in Exhibit 16-EX-05. (To be issued.)

16.05.04.10 Transfer Costs

The Authority shall not pay fees for recording, escrow, title insurance, documentary stamp tax, or any other charges involved in the transfer of title to excess property. This policy should be stated in the Sales Notice and brought to the attention of prospective bidders.

16.05.04.11 Oil, Gas and Mineral Reservations

Excess Land shall avoid retention of oil, gas, and mineral rights at the time a fee-owned parcel is disposed of. In areas where active community oil and/or gas leases are in effect, the income or royalties there from are to be considered in the valuation of the excess property.

16.05.04.12 Delinquent Taxes

Excess Land shall investigate the status of taxes and assessments and report the status on Form RW 16-01 under "Fee Title" information section. Although property will generally not be subject to delinquent taxes, cancellation should be requested if they do exist. If property must be sold subject to delinquent taxes or assessments, this fact shall be brought to the attention of prospective bidders in the Sales Notice.

16.05.04.13 Mailing List

Excess Land shall maintain a comprehensive mailing list or file with names and addresses of persons and firms who are interested in purchasing excess property from the Authority. The lists must be reviewed and purged annually in accordance with Government Code Section 14911. (see Section 16.12.03.00.)

A separate, return-addressed verification card may be attached to the material mailed. The card should state that the mailing list is reviewed annually as required by State law. It should provide a space for the recipient to affix postage when returning the card as an indication of desire to remain on the mailing list.

Suggested text for the message side of the verification card:

"Your name is on our mailing list to receive notice and terms of sale for lands to be sold at public sale. If you wish to continue to receive these notices, please sign this card, place adequate postage on the reverse side, and mail immediately. If this card is not returned by (specify date), your name will be removed from our list. This notice is required annually by Government Code Section 14911. Please correct the address shown if incorrect; be sure to include zip code."

The mailing list is confidential and shall not be made available to the general public, except as otherwise required by law or court order.

16.05.04.14 Advertising Excess Property Public Sale

Since advertising is the key to successful sales of real property, Excess Land must be thoroughly familiar with advertising practices of the local and national real estate markets.

Prior to the sale, Excess Land must take the following actions as a minimum, and document them in the file:

- Send notifications to appropriate governmental agencies.
- Post "For Sale" sign on property.
- Place advertising on the Authority's website(s).
- Provide copy of Sales Notice to adjoining owners.

Use of advertising should be maximized with attention given to specialized publications, notices, or other information outlets (e.g., the Internet) for properties with special uses or characteristics. Format and placement of real estate advertisements, as well as cost, shall be in conformance with normal real estate transactions. Minimum advertising requirements are listed in the table below entitled "Minimum Advertising Requirements."

MINIMUM ADVERTISING REQUIREMENTS	
Minimum Bid	**Requirement**
Less than $5,000	Advertising is discretionary.
More than $5,000	Advertise on Authority's website.

MINIMUM ADVERTISING REQUIREMENTS	
Minimum Bid	**Requirement**
More than $50,000 or Special Purpose Properties	In addition to advertising on the Authority's website, advertise in specialized real estate publications having regional or national distribution. The Public Information Officer shall be advised of all such sales for consideration of a news release.

Minimum content includes size, location, zoning, topography, other pertinent information, and date, time, and method of sale. In the case of public auctions, the location of the auction should be carefully specified. If sale is by sealed bid, the advertisement shall include date and time for receipt of bids and information on where bid proposal forms may be obtained. It should be made clear that bids must be made on the Authority's bid forms. The address and telephone number of the office where additional information may be obtained should be included.

16.05.04.15 Conduct of Public Auction Sales

When excess property is sold by public auction, the auction shall be conducted by two Agents from Right-of-Way, one of whom shall act as the auctioneer. The auction may be held on the premises or at another location. Sufficient copies of the Sales Notice must be available for people attending the auction.

At the time of the auction, the auctioneer ascertains that everyone present has at least one copy of the Sales Notice and is familiar with the terms and conditions. The auctioneer should be prepared to provide any additional or special information that affects the property and to answer any questions from prospective bidders. Upon reading the breach of contract provisions and the minimum bid and deposit requirements, pertaining to the sale, the auctioneer re-qualifies bidders, if practical, by asking for the showing of deposit/registration checks. The auctioneer then announces, "The bidding is now open."

The auctioneer shall assure that adequate time is allowed for bidding before closing the sale. A right to purchase shall be awarded to the highest responsive bidder.

One of the Agents secures all necessary signatures on the proposal. The highest bidder shall sign the original proposal sheet, showing the highest bidders addresses and telephone number. The Agent shall accept the deposit/registration remittance by cashier's check or certified check and deliver a receipt and a duplicate proposal sheet to the high bidder. Personal checks are not acceptable. Cash deposits should be discouraged. The Agent transmits the monies to Accounting with a RW 16-29, which places the funds in the special deposit account.

The highest bidder must furnish the required deposit at the time of the auction as prescribed by the Sales Notice, otherwise the auctioneer may reopen the bidding and award the right to purchase to the second highest bidder. Alternatively, the sale may be canceled and rescheduled.

One of the Agents shall obtain the name, address, and telephone number of the second highest bidder to be used in the event the highest bidder defaults. (see Right-of-Way Manual Section 16.05.04.03 for procedures when the highest bidder defaults.)

16.05.04.16 Personal Checks

Excess Land may not accept personal checks.

16.05.04.17 Conduct of Sealed Bid Sales

When sales are by sealed bids, a representative of Right-of-Way opens the bids at the prescribed time and place in the presence of prospective purchasers. The representative tabulates all bids and announces the highest bidder.

Immediately after the bid opening, deposits shall be returned to the unsuccessful bidders. If an unsuccessful bidder is present when the deposits are released, the check may be hand delivered if a receipt is obtained.

see Section 16.05.04.03 for procedures when the highest bidder defaults.

The number of bids received shall be kept confidential prior to opening bids, and no additional bids shall be accepted after the bid submission deadline. Bidders may withdraw or revise their bids prior to the bid submission deadline.

16.05.04.18 Notification of Tenants

To meet statutory requirements and maintain good public relations, Excess Land should advise tenants of progress made toward the sale of the property they occupy. Written notification shall be sent as follows:

- Notify tenants on rescinded routes that they may have a right to purchase pursuant PUC Section 185040.
- Send a copy of the appropriate Sales Notice to each occupant so they can bid on purchasing the parcel, if they so desire.
- Immediately notify each occupant of the name, address, and phone number of the purchaser upon completion of the public sale. Notify each occupant if the parcel does not sell at the public sale.
- Notify each occupant of the specific date of the recording of the Director's Deed that divests the State of ownership of the particular property.

16.05.04.19 Sale of Excess Land and Improvements Leased as Resident Engineer's Offices [Hold for Future Use]

16.05.04.20 Public Sale of Fragmentary Remainders

Whether landlocked or not, fragmentary remainders of nominal value are normally sold under Finding A procedures. If the adjoining owners have refused to purchase the parcel, it may be sold at public sale after a public sale estimate has been obtained. A documented refusal must be obtained from all adjoining owners within a reasonable time prior to public sale of the parcel. It is not appropriate to spend inordinate amounts advertising these parcels.

16.05.04.21 Protection of Improvements on Excess Land Following Public Sale

It is the Authority's policy to minimize losses resulting from vandalism of improvements located on excess property on which a sale has been awarded. The policy is considered satisfied if the improved property is occupied by tenant(s) under a Authority rental agreement.

For sales of unoccupied improved excess parcels, Excess Land should include terms in the purchase agreement obligating the purchaser to execute an agreement that results in:

- Immediate possession of the property by the purchaser.
- Elimination of the Authority's liability for claims for damage resulting from injury to any person or property.
- Cancellation on the date of expiration or extension of the sale period or recordation of the Director's Deed, as applicable.
- Return of possession of the property to the Authority in the event of default in a condition equivalent to that which existed on the date the sale was awarded.

These provisions may be satisfied by minor modifications to a standard rental agreement, but the Authority must receive a fair rental for the property for the specified use. Temporary access for one day or less may be given to purchasers to facilitate sale of the property. Property Management shall assist Excess Land in preparing the agreement and establishing a fair rental rate.

Property Management is responsible for notifying Excess Land immediately of the receipt or issuance of a 30-day termination notice involving tenants of improved excess property on which escrow is still open. Excess Land notifies the purchaser of the pending termination date of the tenancy. If the property will become vacant more than 15 days prior to the last day of the right to purchase period, the purchaser is requested to accept a Right of Entry. If the purchaser will not accept a Right of Entry, Excess Land should make all efforts to either expedite close of escrow or ensure security of the improvements. "No Trespassing" signs and periodic checks by local police, the California Highway Patrol, and Excess Land may be necessary in high-risk areas.

Improvements that contribute a zero or negative value to the property may be removed prior to public sale of the parcel with proper documentation and approval by the Director of Real Property.

16.05.04.22 Change in Terms and Conditions of Sale Subsequent to Publication of Sales Notice

Occasionally it is necessary to alter the terms and conditions of sales after initial publication of the Sales Notice. If time permits, Excess Land should mail an addendum to the Sales Notice to all persons known to have received the original Notice. In addition, the State representative must announce the changes at the sealed bid opening or at the public auction. The highest bidder shall be required to execute a written statement of understanding that the sale is made subject to those specific terms and conditions, as well as the terms and conditions contained in the original Notice.

16.05.04.23 Eviction of Occupants of Excess Property

Excess land is normally sold subject to the occupancy of existing tenants since an Authority-initiated eviction may create renewed RAP eligibility, unless the eviction is for cause. The Relocation Agent and Excess Land must agree to all proposed evictions of former eligible occupants. Evictions of former RAP eligibles should only take place where there is a clear economic advantage or other compelling reason.

The sale of occupied excess to another public entity for ultimate clearance and use may also create RAP eligibility. All sales agreements with other public agencies must contain a clause specifying that the purchasing agency assumes responsibility for relocation benefits that may accrue to existing occupants. If agreement cannot be reached, the Excess Land should request a legal determination of liability before consummation of the agreement.

16.05.05.00 Direct Sale to Adjoining Owners, Finding A and B

Excess Land may sell, fee-owned, excess parcels directly to adjoining owners without calling for competitive bids under the provisions of PUC Section 185040 Exhibit 16-EX-06. Finding A and B parcels are defined as follows:

- Finding A - Direct sale to adjoining owner, without calling for competitive bids, of fee-owned parcels not reasonably capable of independent development and having a higher and better use as part of the adjoining property or, if sold to other than the adjoining owner, would cause an undue or unfair hardship in the normal development or operation of such adjoining owner's property.
- Finding B - The sale of such excess parcels to other than the adjoining owner would deprive such adjoining owner of vested right of access to a public highway and would create a possible cause for action against the Authority.

Upon making either a Finding A or B determination, Excess Land may sell the excess parcel to the adjoining owner. The minimum consideration shall be the appraised fair market value of the parcel considered as part of the adjoining property.

If the adjoining owner refuses to purchase the excess for such consideration, Excess Land may sell it by competitive bid at public auction. The Authority shall retain title to the excess if sale to another party would deprive an adjoining owner of an existing vested right of access to a public High-Speed Rail (Finding B).

All offers of direct sales made to an adjoining owner are confirmed in writing. Any refusal to purchase at the offered price shall be documented and, if possible, signed by the adjoining owner.

16.05.05.01 Adjustment of Sales Price to Adjacent Owners

The Director of Real Property has the authority to approve Finding A and B sales when there is a difference between the proposed sales price and the approved market value appraisal. The Excess Land Manger provides a memorandum of administrative authorization for the file, approving the sale, in the overall public interest for social, environmental, or economic purposes. The memorandum shall fully justify the sale and state the reasons, based on sound business judgment and in accordance with statute and policy, for selling the parcel for less than the approved market value appraisal. Such justification shall include an economic analysis of the cost of incorporating and maintaining a property or holding for future sale as opposed to selling for less than market value. Criteria based on specific or local conditions addressing social or environmental perspectives must be quantified economically to the greatest extent possible. Generally speaking, the greater the variance between the sale price and the appraised value, the more substantial the justification needs to be.

By federal law, sales of federally participating excess land at less than fair market value requires either prior FTA approval OR federal reimbursement. Compliance with this section shall constitute compliance with FTA regulations regarding prior approval.

All sales are subject to Director of Real Property approval, and Excess Land must fully justify and document the reasons for selling the parcel below the approved market value appraisal.

16.05.05.02 Payment of Recording Fees - Purchase Consideration $100 or Less

When the total consideration is $100 or less, Excess Land may pay recording fees in consideration of the savings in maintenance costs. The sales agreement must contractually obligate the Department to pay the recording fees.

16.05.05.03 Finding A and B Sales to Other Governmental Agencies

Finding A and B sales may be made to other governmental agencies in the same manner and under the same conditions that apply to privately-owned adjoining property.

Sales made to other governmental units for public road or street widening or extension purposes shall be treated as direct sales.

16.05.06.00 Direct Sale to Eligible Present Occupants [Hold for Future Use]

16.05.06.01 Direct Sale of Commercial Property [Hold for Future Use]

16.05.06.02 Direct Sale to Present Residential Tenant-Occupant at Fair Market Value

PUC Section 185040 authorizes the direct sale to present residential tenant occupants provided that:

- The purchase price shall be at fair market value, as supported by an approved appraisal prepared for such sale;
- The tenant is current in all rent obligations; and
- The tenant has been in occupancy as a tenant of the State for a minimum of five consecutive years.

Excess Land must determine whether an eligible residential tenant is interested in purchasing the property at fair market value, and must document the offer of direct sale and the tenant's intentions in the parcel file.

If an eligible residential tenant refuses the offer to purchase at the approved appraised value, Excess Land should immediately schedule the parcel for public sale.

16.05.07.00 Private Sale Among Adjoining Owners

Excess Land shall offer an excess parcel that qualifies under Finding A procedures for direct sale to more than one adjoining owner by private sale, sealed bid, or auction among all adjoining owners if:

- The parcel can be properly used by two or more adjoining owners, and the sale is consistent with normal land use and would not impose a hardship on any of the remaining adjoining owners.
- Written waivers cannot be obtained from all but one of the adjoining owners.

Waivers from adjoining owners are retained in the Excess Land files. Where written waivers cannot be obtained, certified letters to the adjoining owners confirming their noninterest will suffice.

The value of the excess land may differ depending upon which adjoining ownership it is considered a part of for appraisal purposes. In this case, the minimum bid is set at the lowest appraisal value as plottage to the owners who have expressed interest in bidding.

When a parcel is offered by private sale among adjoining owners, Excess Land shall send a Sales Notice to all adjoining owners by certified mail whether waivers have been obtained or not. The Notice sets forth the terms and conditions of sale and contains sales terms in the manner detailed in Section 16.05.04.00 for public sale parcels. Sale by sealed bid or auction is discretionary.

16.05.08.00 Exchange by Right-of-Way Contract

The Authority is authorized by PUC Section 185040 to acquire lands in excess of its needs and to exchange the same for other property needed for high-speed rail purposes. Information regarding exchange transactions is contained in the Appraisal and Acquisition Chapters. Appropriate documentation of exchange transactions is found in the table in Right-of-Way Manual Chapter 16.07.00.00 entitled "Excess Land Disposal File Documentation."

16.05.09.00 Other Direct Conveyances [Hold for Future Use]

16.05.09.01 Governmental Agencies

PUC Sections 185040-185044 governs direct conveyances of excess land to public agencies, including redevelopment agencies and Federal agencies. This does not apply to conveyance of fee-owned land to public agencies that:

- Qualify for direct sale under Finding A and B procedures.
- Qualify for direct conveyance pursuant to special legislation. In negotiating with another public agency for direct sale, it is important for the agency to understand that the agreed sale price is subject to final approval by:
- Director - if a Director's Deed is required or a Transfer of Control and Possession Agreement is required.

16.05.09.02 Direct Sales to Governmental Agencies

Direct sales to public agencies shall be for a public use, and generally at fair market value. The governing body of the public agency must provide a resolution that states the excess land will be used for public purposes. "Public purposes" means the preponderant area of the property shall be substantially for government, as opposed to proprietary, functions. The intended specific use of the property shall be stated in the resolution. A copy of the resolution shall be submitted with the resumé package to the Director of Real Property for approval.

For direct sales to public agencies at less than fair market value, Excess Land shall include a reversionary clause in the Director's Deed. The clause shall require substantial public use for a period of 15 years to control use and resale of the property consistent with the intent and language of the statute or other authority authorizing or mandating the direct sale. A direct sale to a redevelopment agency MAY be exempt from this section if the property is within the redevelopment agency's jurisdiction and identified in the redevelopment plan.

Proposed public sales at less than the approved market value appraisal shall be in accordance with Right-of-Way Manual Section 16.05.05.01.

The sales agreement with a governmental agency for the purchase of real property may be in the form of a one-year exclusive right to purchase. This requires a minimum 10% nonrefundable cash deposit that will be applied to the purchase price if the right to purchase is exercised.

If the agency wishes to extend the option, it must request the extension prior to expiration. The exclusive right may be extended for an additional one year provided:

- The appraisal is updated to reflect the current market value of the property and the sale price adjusted accordingly.
- The agency pays the Authority an additional 10% nonrefundable deposit, also to be applied to the purchase price.

16.05.09.03 Conveyances to Utility Companies

Land acquired in the State's name for replacement of public utilities facilities pursuant to a Utilities Agreement is disposed of in accordance with the terms of the Agreement. The acquisition appraisal shall stand in lieu of the excess land appraisal.

Where the property was not acquired specifically for replacement purposes but by terms of the Utilities Agreement it is necessary to relocate a utility facility on excess land, an excess property appraisal shall be provided and the degree of title required by the Utilities Agreement shall be conveyed pursuant to terms of the specific agreement.

If the excess parcel is sold before the easement is conveyed to the utility company and the easement was acquired in the State's name, an easement shall be reserved to the State. The easement is subsequently conveyed to the utility company.

Every effort should be made to acquire these replacement facilities easements directly in the name of the utility company involved. If possible, use the utility company's easement form.

16.05.09.04 Cooperative Agreements

Land acquired in the name of the State for use or partial use by another agency pursuant to a Cooperative Agreement is conveyed under the terms of the Agreement. The acquisition appraisal serves as the excess appraisal.

If the Agreement provides for conveyance of lands acquired for other purposes, an excess property appraisal shall be provided.

When the Agreement provides for conveyance of land or lesser interests for nonmonetary consideration (such as construction work to be performed by the other agency or savings in future maintenance costs to the Authority the functional unit responsible for originating the Agreement must provide an evaluation of the benefits or savings accruing to the Authority. This assures that the consideration being received is commensurate with the value of the property being conveyed.

16.05.09.05 Joint Exercise of Powers Agreement With Department of Parks and Recreation

Transfers made pursuant to the above agreement are subject to the Property Acquisition Law; they are transmitted pursuant to the procedures specified in Section 16.05.11.00.

16.05.10.00 Coastal Zone

Article XIX of the State Constitution, Section 9, requires the Authority to offer excess land parcels in the Coastal Zone, as defined by Section 30103 of the Public Resources Code, to the following agencies and departments:

- Department of Parks and Recreation
- Department of Fish and Game
- Wildlife Conservation Board
- State Coastal Conservancy

These parcels may be transferred for a consideration at least equal to the Authority's acquisition costs, including overhead. Any proposed sale requires authorization by the Legislature, and the acquiring agency is responsible for pursuing Legislative authorization.

16.05.11.00 Transfer of Control and Possession

All transfers are authorized by Government Code Section 14673 and Section 13332.12 It is the responsibility of the agency acquiring property to inform the Authority if the transfer of excess land is subject to PAL.

Procedures for preparing and approving Transfer of Control and Possession Agreements is shown in the following table:

TRANSFERS OF PROPERTY Government Code Sections 13332.12 and 14673	
Responsible Party	**Action**
Requesting State Agency	Responds within 60 days of Notice of Intent to Sell Excess Land. Informs the Property Management Unit of the following: 1. To transfer the excess parcel to them at fair market value and for a specified purpose. 2. The budget authority to pay for the excess parcel and that payment is NOT subject to the PAL. 3. Legislative authority if for less than fair market value.
Right-of-Way	4. Prepares an appraisal, legal description, maps, and the Transfer Agreement, Exhibit 16-EX-15. 5. Requests ASC to prepare Accounts Receivable Bill (or credit to the appropriate land bank after the Transfer is recorded*) in the amount of the agreed purchase price.
Accounting Service Center	Provides Accounts Receivable Bill.
Right-of-Way	1. Has the Director of Real Property or designee signed the original and one copy of Agreement? 2. Transmits agreements, maps, and the A/R Bill to the requesting agency for execution. 3. Retains a copy of the Agreement and A/R Bill for reference during processing.
Requesting Agency	Signs the original and one copy of Agreement and sends both along with maps to DGS for approval.
Real Property Branch	1. Reviews the transaction and has the Director of Real Property approve and sign the original and one copy of the Agreement. 2. Returns one of the fully-executed Agreements to the Right-of -Way for recording. 3. Retains the second signed Agreement for conforming recording reference on the Agreement and for the State Proprietary Index (SPI) and archives.
Right-of-Way	4. Sends copy of executed Agreement. 5. Records the Transfer Agreement. 6. After recorded, sends original Transfer Agreement to requesting agency. 7. Retains one copy of recorded Agreement in file. 8. Make entries in geoAMPS. 9. Forwards RW 16-01 no form yet to ASC to record transaction and remove parcel(s) from inventory. *If this is a credit to a land bank account, provide ASC a memo of explanation at this point.

16.05.12.00 Requests to Decertify and Purchase [Hold for Future Use]

16.05.13.00 [Hold for Future Use]

16.05.14.00 [Hold for Future Use]

16.05.15.00 Use of Private Brokers (Including Public Auction Brokerages)

A private broker, including a public auction brokerage, with prior Director of Real Property approval, may be hired to provide broader exposure for specialized or high value properties than could be realized under the normal public sales processes. This includes properties infrequently marketed by the State, such as office buildings or other commercial and industrial properties.

A broker or public auction brokerage should only be used when previous public sales attempts have not been successful and Excess Land believes there will not be sufficient qualified buyers to achieve the highest price. Broker or public auction brokerage participation should only be used if the sale cannot be conducted satisfactorily by the Excess Land Agent (Government Code Section 19130b).

A broker or a public auction brokerage must be solicited on an "open listing" basis. A licensed real estate broker may submit a bid, less their commission, on behalf of a potential buyer. The highest bid less the commission is selected.

A public auction brokerage and, in rare instances, a real estate broker, must be selected by a competitive process under the State's contracting process.

16.05.16.00 Relinquishment or Sale of Access Rights Requiring FRA Approval

FRA approval of a proposed relinquishment or sale is required when any portion of the affected right-of-way lies within the access control lines, as shown on the plans for a federal-aid project previously approved by FRA. Project Development determines when access rights are no longer needed and obtains the necessary approval from FRA. Right-of-Way Engineering should notify Contractor at the earliest practicable time of proposals to relinquish or sell access rights. This gives adequate time to obtain FRA approval and prevents processing delays. Prior to disposal, FRA shall be advised in writing when Federal/State match funds were used for acquisition.

16.06.00.00 - FEDERAL RAILROAD ADMINISTRATION REQUIREMENTS ON DISPOSAL OF EXCESS LAND

16.06.01.00 General Policy Regarding Acquisition of Excess

Federal statute provides that "the Federal Share of the net income from the revenues obtained by the State under subsection (a) shall be used by the State for projects eligible under this title." Because net proceeds of excess land sales are deposited in the State High-Speed Rail Account, Excess Land need not segregate federally reimbursed excess proceeds from non-federally reimbursed excess proceeds, and no federal credits are required. Prior to disposal, FRA shall be advised in writing when Federal/State match funds were used for acquisition.

16.07.00.00 - PROCESSING TRANSACTIONS

16.07.01.00 General

Excess Land is responsible for review of all excess land transactions prior to submission to the Director of Real Property. If Excess Land has a unique or unusual transaction, informal discussions or field reviews are encouraged to resolve any questions prior to submitting the package. After Excess Land reviews the complete transaction package and finds it acceptable, the excess land resumé is presented to the Director of Real Property for approval.

Excess Land is to prepare and retain in the parcel file all applicable items shown on the table entitled "Excess Land Disposal File Documentation."

16.07.02.00 Deed Approval Delegated to Real Property Branch Offices [Hold for Future Use]

16.07.03.00 Transmittal of Director's Deed [Hold for Future Use]

16.07.04.00 [Hold for Future Use]

16.07.05.00 [Hold for Future Use]

16.07.06.00 Recordation of Director's Deeds

Excess Land shall record all Directors' Deeds prior to delivery to the purchaser, except for conveyances to other public agencies. The Director's Deed may be delivered to an escrow agent, when applicable, with appropriate instructions regarding recordation and payment of transfer costs. Recordation costs are borne by the purchaser, except as noted in Section 16.05.05.02. The Authority will not participate in any other costs involved in the transfer of title, such as escrow fees and policies of title insurance.

Deeds to other public agencies may be delivered to them for acceptance and recordation. The public agency is required in these cases to provide Excess Land with recording data when available.

EXCESS LAND DISPOSAL FILE DOCUMENTATION	
Item	**Explanation**
Excess Land Transaction Resumé - approved deeds only	Prepared on transmittal form.
RW 16-01	For multiple-parcel disposal units, include a separate RW 16-01 (sections I, II, and III) for each parcel in the disposal unit, and a recapitulation in sections IV through VIA/B.
Director's Deed	The original is executed and recorded by Excess Land and sent to the buyer.
Parcel Map	Clearly showing the property to be conveyed, and, for direct sales, identifying all adjoining owners and any abutting State-owned excess land.
Appraisal Report or Public Sale Estimate (PSE)	Original or copy.
Vicinity Map	In sufficient detail to show the property being conveyed in relation to adjacent streets and highways.
Correspondence	Copies of any correspondence or other information that has bearing on the disposal, gives a total picture of the transaction, or facilitates review (e.g., legal opinions, legislative inquiries, administrative authority to sell for less than appraised value or minimum bid.)
Purchase Agreement	One copy.
Additional Information	Memorandum of Substantial/Non-substantial Reduction For parcels that were not originally full-take acquisitions shall contain the following statement in the property description section of RW 16-01: "A parcel review has been completed and there are no contractual obligations." If contractual obligations are found, their disposition shall be explained in full.
Adjustments	For VTA of rescinded route parcels and any other adjustments to VTA on RW 16-28.
Right-of-Way Contract	Copy of the contract and any amendments, the MOS, and a parcel map for exchange transactions.
Note and Deed of Trust	One copy retained in Real Property Branch regional offices. (Original sent to Accounting until re-conveyed.)
Utilities Agreement	Copy of the agreement establishing the State's obligation for transactions with utility companies.
Transfer of Control and Possession Agreement	Archive copy. For conveyances to other State agencies.
Notice of Determination	For those parcels that require an environmental document. (see Section 16.03.02.00).

16.07.07.00 Cancellation of Sale Prior to Approval

Excess Land may cancel a sale prior to approval. Excess Land shall act expeditiously to notify all concerned parties of the cancellation and to reschedule the sale of the excess land at the earliest possible date. The reasons for the cancellation are documented in the parcel file. If a bidder requests cancellation of sale prior to approval, Excess Land retains that portion of the deposit representing actual damages; i.e., cost of sale and loss, if any, due to a lower selling price received at the subsequent resale of the property.

16.07.08.00 Cancellation of Sale Prior To Recordation

Prior to recordation of the deed, the buyer or the State may wish to withdraw from the sale if it is discovered that the condition of the parcel has changed to the detriment of the buyer or material facts advertised in the selling of the parcel were in error. Under these circumstances Excess Land has the following options:

- Cancel sale and notify the Director of Real Property.
- Request Director of Real Property approval to adjust the selling price.

16.07.09.00 Correction Deeds

If an executed Director's Deed contains deficiencies or defects in the legal description and a Correction Deed must be secured, either before or after recording of the original, Excess Land shall consult with Right-of-Way Engineering for appropriate corrective measures.

File documentation for correction deeds must clearly state the error being corrected and cite the delegated authority to approve.

Director's Deeds approved by the Director of Real Property requiring a change or correction in the vesting must be submitted to the Director for approval with a summary of the need for change or correction and recapitulates prior action by the Director.

16.08.00.00 - CREDIT SALES

16.08.01.00 General

PUC Section 185040 authorizes the Authority to sell, contract to sell, sell by trust deed, or exchange real property, or interest therein, found to be in excess of State High-Speed rail needs upon terms, standards, and conditions established by the legislature. The payment period in any such contract of sale or sale by trust deed shall not extend longer than 10 years.

Such transactions with private parties shall require a down payment of at least 30% of the purchase price. Excess Land will verify the creditworthiness of the buyer of any property to be sold by Trust Deed. see Right-of-Way Manual Section 16.08.05.00.

16.08.02.00 Low- and Moderate-Income Housing

When unimproved real property is sold or exchanged for the purpose of housing for persons of low and moderate income, as defined in Section 50093 of the Health and Safety Code (see Section 16.12.04.00), the payment period may not exceed 40 years and the down payment shall be at least 5% of the purchase price. The rate of interest for any such contract of sale shall be computed annually and shall be the same as the average rate returned by the State's Pooled Money Investment Fund for the five fiscal years immediately preceding the year in which the payment is made. Such contracts of sale or sale by trust deed shall not be used if the proposed development or sale qualifies for financing from other sources and if such financing makes feasible the provision of low and moderate income housing

16.08.03.00 Credit Sale by Trust Deed

Credit terms should not be offered when adequate financing is available and shall not be offered without prior Director of Real Property approval. A potential buyer's inability to secure financing is not adequate justification to offer credit terms. Credit terms are limited to properties selling for $100,000 or more. Sales under $100,000 must be for cash, except for those sold under informal time payment plans (see Section 16.05.04.00). Requirements for credit sales are shown on the table entitled "Credit Terms - Sale by Trust Deed" on the following page. All improved residential property sold to a local public agency, if subsequently sold or transferred to a nonprofit housing organization for housing of persons and families of low and moderate income sold and financed pursuant to shall be endorsed by the city in which the parcels are located, or the county if located in an unincorporated area. The endorsement shall provide that the housing remain at affordable costs to persons and families of low or moderate income and very low income households for the longest feasible time as determined by the city or the county, but not less than 15 years. By endorsing such a sale, the city or county accepts responsibility for ensuring the housing remains affordable. The local public agency shall record covenants or restrictions implementing this provision in the office of the county recorder. Notwithstanding any other provision of law, the covenants or restrictions shall run with the land and shall be enforceable against the original purchaser from the Authority and successors in interest.

16.08.03.01 Escrow Requirement

The purchaser shall open an escrow with a title company satisfactory to both parties and shall deposit a fully executed Note and Deed of Trust into the escrow within 30 days after execution of the sales agreement.

The balance of the down payment, equal to 30% of the purchase price, is due prior to recordation of the Director's Deed. The Note and Deed of Trust shall be written in the amount of the balance of the purchase price and shall be payable to the State of California, acting by and through the California High-Speed Rail Authority. The title company handling the escrow shall be the trustee, and the purchaser shall bear all costs.

CREDIT TERMS - SALE BY TRUST DEED		
Term	**Requirement**	**Type of Real Property**
Credit Check	All purchasers on credit terms, except for government agencies, must prove creditworthiness. The cost of the credit check will be borne by the purchaser.	All property.
Payment Period	Not to exceed 10 years	All improved and unimproved real property with the following exceptions.
	Not to exceed 40 years	Unimproved real property sold or exchanged to provide housing for persons of low- or moderate-income.
Down Payment	At least 30%	All real property, with the exception of unimproved property, to be used for low- or moderate-income housing.
	At least 5%	Unimproved real property sold or exchanged to provide housing for persons of low or moderate income.
Interest Rates - established semi-annually by Real Property Branch	Prevailing federal funds rate as established by the Federal Reserve Bank, plus five percent.	All properties other than unimproved real properties sold or exchanged to provide housing for persons of low and moderate income.
	Average rate (computed annually) returned by the State's Pooled Money Investment Fund for the past five fiscal years immediately preceding the year in which payment is made.	Unimproved real property sold or exchanged to provide housing for persons of low or moderate income.

16.08.03.02 Provisions of Trust Deed and Note

The Trust Deed and Note shall designate the purchaser as Trustor; the title company as Trustee; and the State of California, acting by and through the California High-Speed Rail Authority, as Beneficiary. These provisions are common to those contained in the standard forms of major title companies. Each Trust Deed pertaining to property to be used to housing for persons of low or moderate income must contain a restrictive covenant limited the use of the property to such housing for a minimum of 20-years, or the term of the payment period provided for pursuant to Section 16.08.03.02.

16.08.03.03 Processing of Director's Deed Sale With Trust Deed

The package prepared for the sale shall contain Form RW 16-01 indicating:

- The sale is on credit terms pursuant to Section 16.08.03.00.
- The amount of the deposit received.
- The date the required balance of the down payment will be deposited with the escrow agent.

16.08.03.04 Deposit of Director's Deed With Escrow Agent

The Authority's escrow instructions, containing substantially the same language as shown on Exhibit 16-EX-17, shall be forwarded with the Director's Deed to the title company handling the escrow.

16.08.03.05 Retention of Trust Deed and Note

Excess Land shall forward the recorded Trust Deed and executed Note to Accounting with a request to forward a statement to the purchaser. The statement shall provide for quarterly payments at the specified interest rate for the term of the Note. Accounting is responsible for safekeeping the Note and Trust Deed during the term of the trust and ensuring the purchaser’s compliance therewith

16.08.03.06 Full Reconveyance Upon Payment

Accounting shall notify the Authority Right-of-Way upon receipt of final payment of the outstanding balance or written notice by the trustee that full payment has been deposited in escrow for the Authority. The Director of Real Property shall execute a Full Re-conveyance. Excess Land forwards the signed Note and Request for Re-conveyance to the trustee for cancellation and issuance of the Full Re-conveyance. The purchaser pays all fees in connection with the re-conveyances.

16.08.03.07 Partial Reconveyances, Subordinations, and Assumptions

Partial re-conveyances may be authorized if:

- It is in the Authority’s best interest.
- The remaining property is adequate security for the balance of the loan.

The Real Property Branch regional office shall prepare a memorandum to the file, which shall explain and justify the proposed partial re-conveyance and estimate the value of the remaining property. An appropriate fee will be charged to the borrower ($250 minimum).

Subordination of the Authority's interest is limited to easements required by public utilities or public agencies in connection with a public project. All monies received by the purchaser in connection with conveyance of the subordinated interest are paid to the Authority and credited against the principal obligation.

The Excess Land Manager shall document requests and justify subordination approvals in the excess land parcel file.

Assumption of a loan may be allowed with the Authority's approval. An approved credit report and an Assumption Agreement (Form RW 16-18) are required.

16.08.03.08 Prepayments

The principal obligation under a Trust Deed may be prepaid in full or in part at any time without penalty. Partial payments made in advance of the regular schedule shall be applied against the principal obligation and shall not replace regularly scheduled payments.

16.08.03.09 Fire Insurance Coverage

The purchaser shall deposit with the escrow agent a Fire Insurance Policy in an amount commensurate with the value of any substantial improvements located on the parcel at the time of purchase. This Policy names the State of California, acting by and through the California High-Speed Rail Authority, as co-insured with the purchaser if the improvements are of substantial value, habitable, or usable in connection with operation of the property.

Fire insurance policies are written to cover a one or three-year period. Excess Land must assure that the policy is renewed prior to expiration of the prescribed term.

The Authority may be named as co-payee on a check for settlement of a claim resulting from fire damage to insured improvements. Excess Land shall forward the check to the Director of Real Property for endorsement along with a complete report of the extent of damage and a statement of the amounts, if any, to be paid to the State. Excess Land's recommendation should consider the outstanding balance under the Trust Deed and the security the remaining property represents.

16.08.03.10 Defaults

If the purchaser defaults after commencement of payments and recordation of the Trust Deed, Excess Land shall notify the trustee to begin default proceedings in accordance with terms of the Trust Deed. Excess Land shall take all actions necessary, including attendance at the default proceedings and payment of reasonable costs, to enter a bid in the trustee sale on the State's behalf. Excess Land should contact Legal regarding specific guidelines. Accounting will provide the necessary calculations of amounts due.

Alternately, Excess Land may restructure the debt at the request of the purchaser provided that the original term, interest rate, and return to the State remain unchanged. Balloon payments or partitioning of a single note into two or more notes (where the property may be subdivided and developed or sold) are two examples of allowable debt restructuring. In any event, Excess Land shall ensure that the net sum of proceeds to the State, including, but not limited to, principal, interest, and late charges, is not reduced.

Excess Land must affirm that restructuring the debt would reasonably result in payment, and may make it a condition of approval to the purchaser to demonstrate such payment. If Excess Land determines that restructuring the debt would still result in a foreclosure, Excess Land must deny the request for restructuring and proceed with foreclosure.

When the purchaser requests a restructuring of debt, Excess Land shall advise the purchaser of the State's terms and limiting conditions noted above. If the purchaser agrees to those terms and conditions, Excess Land shall charge the purchaser a nonrefundable administrative fee of $750.00 to implement the restructuring.

16.08.03.11 Acceleration Clause in Trust Deeds

The acceleration clause shall be enforced if the purchaser sells the property by deed or installment contract. Before enforcing the clause, Excess Land should discuss the factual circumstances of the sale with Legal.

Enforcement of the acceleration clause is not required in the following instances:

- Conveyance of non-substantial utility easements.
- Conveyance of non-substantial portion of property for public purpose.
- Conveyance to either spouse resulting from dissolution of marriage.
- Encumbrance of the property with a second trust deed or other junior encumbrance by the purchaser.

16.08.03.12 Trust Deed Late Payment Penalties

Payments are due on the first day of the month beginning 30 days after close of escrow and the first day of each month thereafter, unless other payments terms are expressly provided for by the parties. For example, if escrow closes on December 15, the first payment is due January 1. All credit sale promissory notes shall provide for a penalty of 5% of any trust deed payment that is paid more than 10 days after its due date.

16.08.04.00 Trustor Bankruptcy

Excess Land should contact Legal and request assignment of an attorney immediately after being notified that the Authority's trustor has filed for bankruptcy.

The Clerk of the Bankruptcy Court will send a Notice of Meeting of Creditors to the debtor, the creditors, and other interested parties. Excess Land should attend this meeting to ensure the Authority is on the list of creditors filed by the debtor (trustor). If not, a proof of claim must be filed with the court within a specified time.

The State's attorney should attend all subsequent meetings and hearings to ensure protection of the Authority's interest.

16.08.05.00 Credit Check

Excess Land shall establish the creditworthiness of prospective credit buyers. At a minimum, existing Authority records must be reviewed to determine that the applicant is not currently in default on prior credit sales, and a satisfactory credit report must be received from an established credit reporting agency. The buyer shall pay the costs of the credit report at the public sale. Such costs are nonrefundable in the event the buyer defaults.

16.09.00.00 [HOLD FOR FUTURE USE]

16.10.00.00 - SALES OF SURPLUS RESIDENTIAL PROPERTIES AND REPLACEMENT HOUSING [HOLD FOR FUTURE USE]

These provisions have been superseded by Government Code Section 54235, et seq., and are rescinded in their entirety.

16.11.00.00 - PARK LEASES [HOLD FOR FUTURE USE]

16.12.00.00 – STATUTES

16.12.01.00 General

This section contains statutes referred to in this chapter that are not included in the California High-Speed Rail Authority's Statutes Publication (1996).

16.12.02.00 CEQA Guidelines 15312 (14-CCR 15312)

15312. CLASS 12. SURPLUS GOVERNMENT PROPERTY SALES. *Class 12 consists of sales of surplus governmental property except for parcels of land located in an area of statewide, regional, or area wide concern identified in Section 15206(b)(4).*

However, even if the surplus property to be sold is located in any of those areas its sale is exempt if:

(a) The property does not have significant values for wildlife habitat or other environmental purposes, and

(b) Any of the following conditions exist:

(1) The property is of such size, shape, or inaccessibility that it is incapable of independent development or use, or

(2) The property to be sold would qualify for an exemption under any other class of categorical exemption in these guidelines, or

(3) The use of the property and adjacent property has not changed since the time of purchase by the public agency.

16.12.03.00 [Hold for Future Use]

16.12.04.00 Health and Safety Code

§ 50093. Persons and families of low, moderate, and median income; definitions; filing and publication of standards and criteria.

"Persons and families of low or moderate income" means persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the department in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. However, the agency and the department jointly, or either acting with the concurrence of the Secretary of the Business and Transportation Agency, may permit the agency to use higher income limitations in designated geographic areas of the state, upon a determination that 120 percent of the median income in the particular geographic area is too low to qualify substantial number of persons and families of low or moderate income who can afford rental or home purchase of housing financed pursuant to Part 3 (commencing with Section 50900) without subsidy.

"Persons and families of low or moderate income" includes very low income households, as defined in Section 50105 and lower income households as defined in Section 50079.5, and includes persons and families of low income, persons and families of moderate income, and middle-income families. As used in this division:

(a) "Persons and families of low income" or "persons of low income" means persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to this division.

(b) "Persons and families of moderate income" or "middle-income families" means persons and families of low or moderate income whose income exceeds the income limit for lower income households.

(c) "Persons and families of median income" means persons and families whose income does not exceed the area median income, as adjusted by the department for family size in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

As used in this section, "area median income" means the median family income of a geographic area of the state, as annually estimated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. In the event these federal determinations of area median income are discontinued, the department shall establish and publish as regulations income limits for persons and families of median income for all geographic areas of the state at 100 percent of area median income, and for persons and families of low or moderate income for all geographic areas of the state at 120 percent of area median income. These income limits shall be adjusted for family size and shall be revised annually.

For purposes of this section, the department shall file, with the Office of Administrative Law, any changes in area median income and income limits determined by the United States Department of Housing and Urban Development, together with any consequent changes in other derivative income limits determined by the department pursuant to this section. These filings shall not be subject to Article 5 (commencing with Section 11346) or Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, but shall be effective upon filing with the Office of Administrative Law and shall be published as soon as possible in the California Regulatory Code Supplement and the California Code of Regulations.

The department shall establish and publish a general definition of income, including inclusions, exclusions, and allowances, for qualifying persons under the income limits of this section and Sections 50079.5 and 50105, to be used where no other federal or state definitions of income apply. This definition need not be established by regulation.

Nothing in this division shall prevent the agency or the department from adopting separate family size adjustment factors or programmatic definitions of income to qualify households, persons, and families for programs of the agency or department, as the case may be.

16.12.05.00 Public Resources Code

§ 30103. Coastal zone; map; purpose

(a) "Coastal zone" means that land and water area of the State of California from the Oregon border to the border of the Republic of Mexico, specified on the maps identified and set forth in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting this division, extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less, and in developed urban areas the zone generally extends inland less than 1,000 yards. The coastal zone does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, established pursuant to title 7.2 (commencing with Section 66600) of the Government Code, nor any area contiguous thereto, including any river, stream, tributary, creek, or flood control or drainage channel flowing into such area.

(b) The commission shall, within 60 days after its first meeting, prepare and adopt a detailed map, on a scale of one inch equals 24,000 inches for the coastal zone and shall file a copy of the map with the county clerk of each coastal county. The purpose of this provision is to provide greater detail than is provided by the maps identified in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting this division. The commission may adjust the inland boundary of the coastal zone the minimum landward distance necessary up to a maximum of 100 yards except as otherwise provided in this subdivision, or the minimum distance seaward necessary up to a maximum of 200 yards, to avoid bisecting any single lot or parcel or to conform it to readily identifiable natural or manmade features. Where a landward adjustment is requested by the local government and agreed to by the property owner, the maximum distance shall be 200 yards.

16.12.06.00 Public Utilities Code (PUC)

§ 185040 – 185045. Rights of Way

(a) If the authority determines that real property or an interest therein, previously or hereafter acquired by the state for high-speed rail purposes, is no longer necessary for those purposes, the authority may sell or exchange the real property or interest therein at fair market value in the manner set forth in this section.

(b) Prior to selling the real property or interest therein in any other manner authorized under this section, the authority shall send notification by certified mail to the last known owner of the real property or interest therein at his or her last known address, advising him or her that the real property or interest therein will be offered for sale. The authority shall not sell the real property or interest therein until at least 30 days after the notification has been sent.

(c) The authority may sell the property to an adjoining landowner if it makes either of the following findings:

(1) (A) That the property is of a size or shape that it is below the average normal standard size and shape of other privately owned properties in the immediate neighborhood, and that if the property were sold to other than the adjoining owner, it would give rise to a land use development thereof that would be below and not consistent with the normal land use of other properties in that neighborhood, (B) that the sale of the property to a party other than the adjoining owner may cause an undue or unfair hardship to the adjoining owner in the normal land use development or operation of his or her property, (C) that the property considered as part of the adjoining property would have a higher and better use than under separate ownership, and (D) that the fair market value of the property considered as part of the adjoining property would be higher than under separate ownership.

(2) (A) That the sale of the excess parcel to other than the adjoining owner would deprive the adjoining owner of an existing vested right of access to a public highway and thereby create a possible cause of action against the authority or the state.

(B) A sale to an adjoining landowner pursuant to this subdivision may be by contract to sell or trust deed. The payment period in a contract of sale or sale by trust deed shall not extend longer than 10 years from the time the contract of sale or trust deed is executed, and a transaction involving a contract of sale or sale by trust deed to private parties shall require a downpayment of at least 30 percent of the purchase price.

(d) The authority may sell the property to municipalities or other local agencies at their request, without calling for competitive bids, at a price representing the fair market value thereof, and upon a determination that the intended use is for a public purpose.

(e) If it is improved property, the property may be sold to a former owner who has remained in occupancy, or to a residential tenant of a tenure of five years or more with all rent obligations current or paid in full.

(f) Any real property or interest therein may in like manner be exchanged, either as whole or part consideration, for any other real property or interest therein as needed for high-speed rail purposes. This provision does not authorize exchanges where the value of the state-owned property exceeds the value of the property the authority seeks to acquire, unless the excess value is incidental and subdivision of the state-owned property, in order to produce a smaller parcel of equal value to the value of the property the authority seeks to acquire, would reduce the total value of the state-owned property.

(g) Except as otherwise provided in this section, property shall be sold either by receipt of competitive sealed bids, or at public auction, whichever method is determined by the authority to be more likely to achieve the higher sales price.

(h) Any payments received under this section for the sale of real property no longer necessary for high-speed rail purposes shall be deposited in the High-Speed Rail Property Fund created pursuant to Section 185045, and shall be available to the authority upon appropriation as provided in that section.

(Amended by Stats. 2016, Ch. 169, Sec. 1. Effective August 22, 2016.)

185041.

The authority may sell or lease excess Right-of-Way parcels to municipalities or other local agencies for public purposes, and may accept as all or part of the consideration for the sale or lease any substantial benefits the state will derive from the municipality or other local agency's undertaking maintenance or landscaping costs that would otherwise be the obligation of the state.

(Added by Stats. 2013, Ch. 132, Sec. 8. Effective January 1, 2014.)

185042.

The authority may lease nonoperating Right-of-Way areas to municipalities or other local agencies for public purposes, and may contribute toward the cost of developing local parks and

other recreational facilities on those areas. The authority may accept as all or part of the consideration for the lease or for the state contribution any substantial benefits the state will derive from the municipality or other local agency's undertaking maintenance or landscaping costs that would otherwise be the obligation of the state. Those leases shall contain a provision that whenever the leased land is needed for high-speed rail operating purposes the lease shall terminate. The authority is authorized to classify portions of high-speed rail rights-of-way as nonoperating.

(Added by Stats. 2013, Ch. 132, Sec. 8. Effective January 1, 2014.)

185044.

The authority may lease to public agencies or private entities or individuals for any term not to exceed 99 years the use of areas above or below operating rights-of-way and portions of property not currently being used as operating rights-of-way, subject to any reservations, restrictions, and conditions that it deems necessary to ensure adequate protection of the safety and adequacy of high-speed rail facilities and of abutting or adjacent land uses. Prior to entering into any lease, the authority shall determine that the proposed use is not in conflict with the zoning regulations of the local government concerned. The leases shall be made in accordance with procedures to be prescribed by the authority, except that, in the cases of leases with private entities or individuals, the leases shall be made only after competitive bidding. The possibilities of entering into the leases, and the consequent benefits to be derived therefrom, may be considered by the authority in designing and constructing the high-speed rail system. Revenues from the leases shall be deposited in the High-Speed Rail Property Fund created pursuant to Section 185045.

(Added by Stats. 2013, Ch. 132, Sec. 8. Effective January 1, 2014.)

185045.

The High-Speed Rail Property Fund is hereby created in the State Treasury for the deposit of revenue received from the sale, lease, or grant of any interest in or use of real property owned or managed by the High-Speed Rail Authority. Revenues in the fund shall be available to the authority, upon appropriation by the Legislature, for use in the development, improvement, and maintenance of the high-speed rail system, consistent with appropriate uses for each funding source.

(Added by Stats. 2013, Ch. 132, Sec. 8. Effective January 1, 2014.)