

**PROCEDURES FOR EEM PROJECTS  
INVOLVING ACQUISITION OF REAL PROPERTY OR CONSERVATION EASEMENT**

1. CTC adopts the annual EEM Program.
2. Applicant requests CTC funding allocation for the specific EEM project.
3. HQ EEM Program Coordinator prepares and forwards the following materials to the Applicant:
  - One (1) copy of the CTC-Stamped Resolution allocating funds to the project (when available).
  - One (1) original copy of the Applicant-State Agreement (Exhibit 20-D).
  - One (1) original copy of the Agreement Declaring Restrictive Covenants (ADRC) (Exhibit 20-E) or EEM Restrictive Covenants Agreement for Conservation Easement (Exhibit 20-E1).

One (1) cover letter which gives website location for: *California Transportation Commission Guidelines for Allocating, Monitoring, and Auditing of Funds for Local Assistance Projects and EEM Guidelines* at <http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm> under Policies and Procedures, and Resources Agency's *EEM Program Procedures and Criteria* at: <http://resources.ca.gov/>.

Preparation of the **Applicant-State Agreement** by the HQ EEM Program Coordinator (except where noted) includes:

- Providing an Applicant-State Agreement Number.
- Providing a Project Number (application number).
- Providing the Expenditure Authorization (EA) Number.
- Stating the effective date of the Agreement.
- Stating the Applicant's name (must be consistent with CTC Resolution adopting EEM Program, if not, a "Change of EEM Applicant Status Request Letter" form must be completed).
- Completing Attachment A "Project Description and Financing" of Exhibit A, including project location, establishing EEM funding and local contributions along with percentages.
- Defining specific roles and responsibilities for all entities involved in performing the work on the project including management and maintenance of property, records retention, and audits.
- If Applicant wishes that State EEM funds to be deposited directly into an escrow account, Attachment E "Remarks and Covenants" of Exhibit D, must be completed by Applicant as follows:

"Pursuant to the terms of Applicant-State Agreement No. \_\_\_\_\_, dated \_\_\_\_\_ and effective immediately, the (*Name of Applicant*) \_\_\_\_\_ requests and authorizes the EEM fund warrants be made out in the name of the \_\_\_\_\_ (Escrow company) and mailed to \_\_\_\_\_ (Escrow Address) Attention: *Name of Escrow Agent* for Escrow No. \_\_\_\_\_ Phone # \_\_\_\_\_, Close of Escrow Date \_\_\_\_\_, Title Company Tax I.D.# \_\_\_\_\_."

Preparation by the HQ EEM Program Coordinator of the **Agreement Declaring Restrictive Covenants** (ADRC) for projects involving acquisition of property in fee title or the **Restrictive Covenants Agreement for Conservation Easement (RCACE)** for acquisition of a conservation easement includes:

- Providing the Project Number (application number), Applicant-State Agreement Number and Name,

- Effective date of the ADRC or Restrictive Covenants Agreement (to be completed by applicant),
  - Including Exhibit 20-E (Attachment A “Legal Description of Real Property”), (Attachment B “Original EEM Application”) to the ADRC or Exhibit 20 - E1 (Attachment A “Legal Description of Conservation Easement”) and (Attachment B “Original Application”) to RCACE, and
- For the acquisition of a conservation easement, the Applicant may, in lieu of executing the Restrictive Covenants Agreement, may include the following State-approved “condemnation” language in the Deed of Conservation Easement”:

**CONDEMNATION:** The Conservation Easement (“EASEMENT”), described in Attachment A, Exhibit 20-E1\_\_\_ (“*Legal Description of Conservation Easement*” consistent with *EEM Grant Application*), attached hereto and incorporated herein by this reference, to be acquired, developed, rehabilitated or restored pursuant to the Applicant-State Agreement No. \_\_\_\_\_ by the APPLICANT, will be operated, managed, and maintained into the future consistent with Attachment B, Exhibit 20-E (“*Original EEM Grant Application*”), attached hereto and incorporated herein by this reference. If the EASEMENT is taken by the exercise of the power of eminent domain by any public, corporate, or other authority, the State of California, Department of Transportation (“STATE”) shall make the determination if such a taking creates a loss of use, as described in Attachment B, Exhibit 20-E (“*Original EEM Grant Application*”), due to an unsustainable environmental habitat resulting from the material loss of water, access, ground water flows, etc., so as to annul the purposes intended to be achieved by this EASEMENT.

If the STATE determines there is such a loss, the Grantee shall be entitled to compensation in accordance with applicable law for the value of the Conservation EASEMENT taken and Grantor shall be entitled to compensation in accordance with applicable law for the value of the underlying Fee taken.

The Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of Grantee’s and Grantor’s interests at the time of this grant, it being expressly agreed that this EASEMENT constitutes a compensable property right. All expenses incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds.

Grantee shall be entitled to compensation in accordance with applicable law for the value of the EASEMENT taken and Grantor shall be entitled to compensation in accordance with applicable law for the value of the underlying Fee taken. The ratio of the value of the EASEMENT to the value of the underlying Fee is \_\_\_\_\_%, such amount having been determined at the time of the grant of this EASEMENT by that certain real property appraisal prepared by \_\_\_\_\_, dated \_\_\_\_\_, on file with the Grantee.

The EEM grant made to the Grantee is for the purpose of acquiring the EASEMENT in the amount of \$\_\_\_\_\_. The EEM Grant represents \_\_\_\_\_% (the “EEM Share”) of the total cost of the Easement. If the EASEMENT is proposed to be taken in whole or in part by exercise of the power of eminent domain, the condemning authority shall notify STATE of the proposed taking by sending written notice to: State of California, Department of Transportation, Attn: Legal Department - MS 57, 1120 N Street, Sacramento, California 95814, and the State Highway Account shall be reimbursed as follows: Grantee shall pay STATE the EEM Share, \_\_\_\_\_%, of net proceeds received by Grantee from any taking of the EASEMENT (after Grantee deducts costs incurred by Grantee from the gross proceeds received by Grantee in connection with the condemnation) to reimburse STATE for the EEM Grant.

Grantee shall not be obligated to pay STATE as set forth above if STATE approves in writing Grantee’s use of those proceeds for the protection of equivalent environmental resources protected by similar conditions to the extent applicable.

If the EEM Share, \_\_\_\_\_%, of the net proceeds received by Grantee is less than the EEM Grant, \$\_\_\_\_\_, then Grantee shall pay STATE, from the balance of the net proceeds received by Grantee (i.e., the remaining \_\_\_\_\_% of the net proceeds which shall be referred to herein as the "Remainder Proceeds"), an amount sufficient that STATE is reimbursed a total of the EEM Grant, \$\_\_\_\_\_, or as close thereto as the Remainder Proceeds will allow. Grantee shall not be obligated to pay STATE any portion of the Remainder Proceeds if the Remainder Proceeds are contractually required to be paid to any other source who provided funds for the acquisition of the EASEMENT, or if STATE approves in writing Grantee's use of the Remainder Proceeds for the protection of alternative environmental resources subject to the protection of STATE's interests in those resources with similar conditions to the extent applicable.

4. Applicant:

- Reviews the Applicant-State Agreement for accuracy and completeness.
- Forwards two (2) original signed Applicant-State Agreement to HQ EEM Program Coordinator for immediate processing, and sends one copy of the Applicant-State Agreement to the DLAE.
- Signs each original agreement discussed under Step 3. Signatures must be notarized to be approved.
- Prepares Invoice (See Attachment D of Exhibit 20-D, Applicant-State Agreement) only for applicants requesting direct deposit of EEM funds into an escrow account and includes Title Company information (for applicants seeking reimbursement of EEM funds after the close of escrow, see Section 20.8, Item 10 of this chapter for preparation of invoice).
- Obtains copy of Preliminary Title Report (covering subject acquisition) with legal description of property or easement.
- Obtains a copy of the Deed of Conservation Easement.
- Compiles draft escrow instructions.
- Obtains copy of current appraisal (supporting the purchase price agreed to between the seller and the applicant).
- If the warrant is to be picked up by Applicant's courier, compiles information with name of courier and Applicant's account number.
- Compiles all above required acquisition documents and sends entire package to DLAE along with the Invoice Payment Request Memo (Exhibit 20-H).

5. Caltrans HQ EEM Program Coordinator:

- Assigns project Expenditure Authorization (EA) number to Agreement.
- Forwards two (2) original Applicant-State Agreements to LPA.

6. Local Program Accounting:

- Encumbers project funds and certifies Agreements.
- Returns the Agreements to HQ EEM Program Coordinator to be conformed.

7. HQ EEM Program Manager:

- Returns one (1) original of the Applicant-State Agreement to Applicant.
- Conforms the original retained Applicant-State Agreement and forwards one copy each to the DLAE, LPA and EEM files.

8. District Local Assistance Engineer:

- Forwards acquisition documents to the District Right-of-Way Division Chief along with a copy of the

original EEM Grant Application and copy of the Applicant-State Agreement for Right-of-Way review and approval of acquisition.

9. District Right-of-Way Division Chief:

- Assures that the real property or conservation easement acquired is a part of the approved project (see Exhibit 20-D, “Applicant-State Agreement,” Attachment A, “Project Description and Financing”).
- Reviews the preliminary title report and assures it adequately covers the property or conservation easement for which the EEM funds have been allocated. Also assures the title for the property or conservation easement is sufficient for the proposed use and no adverse conditions affect title (see Exhibit 20-E, “Agreement Declaring Restrictive Covenants,” Attachment A “Legal Description of Real Property” or Exhibit 20-E1, “EEM Restrictive Covenants Agreement for Conservation Easement”, Attachment A “Legal Description of Conservation Easement”).
- Assures the management and maintenance of the real property or conservation easement (see Exhibit 20-E, “Agreement Declaring Restrictive Covenants,” Attachment B “Original EEM Application” or Exhibit 20-E1, “EEM Restrictive Covenants Agreement for Conservation Easement,” Attachment B “ EEM Original Application) is consistent with the original Grant Application and the “Applicant-State Agreement.
- Drafts further instructions to escrow agent by providing additional Caltrans instructions to the Title Company escrow instructions. If EEM funds are to be direct deposited into an escrow account, the instructions should included how the funds are to be used (i.e., for the purchase of the subject real property or conservation easement when escrow requirements have been met); requests that the ADRC or EEM Restrictive Covenants Agreement for Conservation Easements is recorded; a certified copy of the recorded Grant Deed, or Deed of Conservation Easement; and Closing Escrow Statement are forwarded to the District EEM Coordinator upon close of escrow.
- Assures that the “Condemnation” language is included in the Deed of Conservation Easement, if there is no Restrictive Covenants Agreement.
- Reviews the appraisal to assure the settlement price for the acquisition or conservation easement does not unreasonably exceed or fall below the fair market value for the property or easement. For most projects, this can be accomplished with a “desk review.”
- Reviews the Deed of Conservation Easement or EEM Restrictive Covenants Agreement for Conservation Easements to ensure it contains adequate language to protect the State’s investment if the easement is ever taken by the power of eminent domain.
- Approves the Invoice for payment, at this time, only for projects with direct deposit of EEM funds to an escrow account.
- Signs and notarize the ADRC or EEM Restrictive Covenants Agreement.
- Returns the documents to the DLAE.

10. District EEM Coordinator:

- Makes a copy of the signed, notarized ADRC or Restrictive Covenants Agreement and escrow instructions, then sends original ADRC, or Restrictive Covenants Agreement and escrow instructions to the title company.
- Forwards one original and two copies of the Invoice at this time only for projects with direct deposit of EEM funds to an escrow account along with Exhibit 20-H, “Invoice Payment Request Memo,” to HQ Local Program Accounting (LPA) for processing not more than 60 days prior to the close of escrow (for reimbursement of EEM funds after the close of escrow see Section 20-8, Item 10, “Invoice and Reimbursement Process” and Final Project Expenditure Report to close out of the project).

11. LPA:

- Ensures Title Company has a tax ID number on file with State, if not, LPA will contact applicant for necessary tax information to pay out EEM funds.
- Process the invoice for payment of EEM funds at this time only for direct deposit of EEM funds to escrow account, and forwards to Accounts Payable.

12. Accounts Payable:

- Processes request and forwards to State Controllers Office.

13. State Controller's Office:

- Sends check to Title Company.

14. Title Company:

- Records the grant deed and Agreement Declaring Restrictive Covenants or Restrictive Covenants Agreement with the county where property is purchased.
- Recorded ADRC or Restrictive Covenants Agreement is returned to District EEM Coordinator by county where property is purchased.
- Sends a copy of recorded grant deed or Deed of Conservation Easement and copy of closing escrow statement to District EEM Coordinator.

15. District Local Assistance:

- Forwards original recorded ADRC or Restrictive Covenants Agreement, copy of recorded grant deed or Deed of Conservation Easement, and closing escrow statement along with completed final report (see Chapter 20, Exhibit 20-M) to the Caltrans HQ EEM Program Coordinator.
- Forwards copy of closing escrow statement to LPA to close out project, along with Final Report.
- For Applicants with acquisition projects requesting reimbursement of EEM funds after the close of escrow, see Section 20-8, Item 10, "Invoice and Reimbursement Process" for processing the final invoice and Final Project Expenditure Report to close out of the project.

16. HQ EEM Coordinator

- Forwards copies of the recorded grant deed and ADRC or Restrictive Covenants Agreement to the Headquarters Office of Right-of-Way Engineering and Operations Research.
- Confirms original recorded ADRC or Restrictive Covenants Agreement and sends copies to applicant and District EEM Coordinator, and files original in DLA archives.

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