

Section 7 Legal Relations and Responsibility

Section 7 Legal Relations and Responsibility

3-701 Laws to Be Observed

3-701 Laws to Be Observed

According to the specifications, the contractor must be familiar with and comply with all laws, regulations, and ordinances that affect the labor, materials, or conduct of the work. However, the specifications do not intend or require that the resident engineer exercise police enforcement power. If the engineer learns that the contractor has violated a work-related law or regulation, the engineer must bring the matter to the contractor's attention in writing.

3-701A Reporting Apparent Attempts at Fraud on Construction Contracts

Resident engineers are confronted occasionally with situations where contractors or their subcontractors or suppliers attempt to obtain improper additional payment.

These matters may differ in magnitude and intent, and minor situations may be resolved satisfactorily at the project level. However, certain fraudulent acts, such as presenting false weight certificates, padding the number of loads of a commodity delivered, tampering with scales or falsifying test or inspection reports may require special investigation and appropriate action. Such investigations are confidential and begin with a discussion between the resident engineer and the construction engineer. To request a special investigation, write a letter to the construction field coordinator.

3-701B Labor Code Requirements and Fair Labor Standards Act

For the resident engineer's duties with regard to Labor Code requirements and the Fair Labor Standards Act, see Chapter 8, "Employment Practices," of the *Construction Manual* (manual).

3-701C Contractor's Licensing Laws

According to the specifications, all contractors and bidders must be licensed. For bidders and prime contractors, the Office of Contract Awards and Services in the Office of Office Engineer verifies compliance with the specifications. If you become aware that a prime contractor or subcontractor is not licensed for the work being performed, notify the California Contractors State License Board.

3-701D Vehicle Code

In any areas open to public traffic within the project's limits, the contractor is not exempt from Vehicle Code requirements. Equipment that fails to comply with the Vehicle Code must not be operated on detours or any other roadway open to public traffic.

3-701D (1) Weight Limitations

Except for special conditions described in Section 7-1.02, "Load Limitations," of the *Standard Specifications*, all equipment hauling materials over roads or streets open to public traffic to, from, or within the project must comply with weight limitations required by the Vehicle Code. To enforce weight limitations for overloads hauled over public roads and streets, follow the procedure outlined below. The permitted tolerance described below is selected to make Caltrans actions compatible with

routine enforcement procedures used by the California Highway Patrol (CHP). Here is the procedure to follow:

- The assistant resident engineer receiving a weight slip indicating an overload may accept a load that is not more than 90 kg over the legal gross weight. However, advise the contractor immediately that if the violation continues, Caltrans will refuse to accept such loads and will notify the CHP.
- When a weight slip indicates that a load is more than 90 kg over the legal gross weight, reject the load and notify the CHP that overloads are being hauled.
- Prohibit rejected material from being used in the work unless the load is reduced to or below the legal maximum weight (not including the tolerance) and is again weighed to establish a new weight.
- Record the identification of rejected weight slips in the daily report.

The objective of the above procedure is to discourage hauling overloads. Minor variations in the above procedure are acceptable provided the objective is met.

3-701E Trench Safety

The Office of Structure Construction's *Trenching and Shoring Manual* provides technical guidance for analyzing designs of trenching and shoring systems. It also contains information regarding California's legal requirements for trench safety.

3-701F Falsework Erection or Removal

Detailed instructions for reviewing falsework for bridges or other major structures are contained in the Office of Structure Construction's *Falsework Manual*. When the erection or dismantling of falsework is over or adjacent to a traveled way, project personnel must do the following:

- Before the erection or removal of falsework, determine the exact method of operation the contractor proposes to use.
- If any possibility exists that a material or equipment failure or human error could endanger the public, ensure traffic is rerouted or temporarily stopped during critical portions of the erection and removal operations.
- Normally, the contract will provide necessary detours or other restrictions such as the time of day when certain operations may be performed. In the absence of specific contract requirements, require the contractor to take the necessary measures in accordance with Section 7-1.09, "Public Safety," of the *Standard Specifications*.
- Ensure unplanned detours are paid for in accordance with Section 4-1.04, "Detours," of the *Standard Specifications*.
- Notify the Transportation Permits Branch of the upcoming reduction of vertical clearance. See "Impaired Clearance (temporary)" later in this section.

3-701G Air Pollution Control

See Chapter 7, "Environmental," of this manual.

3-701H Water Pollution

See Chapter 7, "Environmental," of this manual.

3-701I Use of Pesticides

The resident engineer's duties regarding pesticide use are included in Section 4-20, "Erosion Control and Highway Planting," of this manual.

3-701J Sound Control Requirements

See Chapter 7, "Environmental," of this manual.

3-702 Load Limitations

Section 7-1.02, "Load Limitations," of the *Standard Specifications* permits overloads within the project limits under certain conditions. The special provisions may also provide conditions under which the contractor may haul overloads. However, the contractor must provide any necessary protective measures and repair any damage resulting from overloads.

The resident engineer, in accordance with Caltrans policy for overloads, will handle requests for nonrepetitive overloads on completed work within the contract limits. You can obtain details from the Transportation Permits Branch. The *Bridge Construction Records and Procedures Manual* contains procedures for allowing certain overloads on structures.

3-703 Safety and Health Provisions

The contractor must conform to all Division of Occupational Safety and Health standards. See Section 2-1, "Safety," of this manual for guidelines for administering the contract's safety requirements.

3-704 Public Convenience

The following five sections provide guidelines for enforcing the provisions in Section 7-1.08, "Public Convenience," of the *Standard Specifications* and contain discussion of other topics related to the passage of public traffic through construction projects.

3-704A Convenience of the Public and Public Traffic

The contractor has a contractual obligation to provide for the convenience of the public and public traffic. Section 7-1.08 requires that operations be conducted in such a way as to prevent the least possible obstruction and inconvenience to the public. The public consists of anyone passing through or affected by construction operations, including pedestrians and residents, as well as vehicular traffic.

The resident engineer must ensure the contractor has made adequate provisions for public convenience when the specifications leave the manner of providing for convenience to the contractor's discretion. The resident engineer must also ensure the contractor does not unnecessarily delay or interfere with traffic for the contractor's own benefit or convenience.

The "least possible obstruction and inconvenience" will always depend on judgment. What is permissible should be that which is accepted as good practice in the industry, complies with the specifications, and does not materially diminish the degree of convenience and free passage through the area that existed before construction. For instance, do not accept a trench that lies adjacent to a traffic lane for the entire length of the project and that was excavated just to suit the contractor's convenience. A length of trench sufficient to accommodate an orderly and workmanlike progression of operations is reasonable. Likewise, it is physically impossible to carry on a series of operations between an existing roadway and adjoining properties that have

3-702 Load Limitations

3-703 Safety and Health Provisions

3-704 Public Convenience

access to the roadway without temporarily disrupting the access. However, whether permanent or temporary, restore the access as soon as possible without waiting for the work to be completed past all the adjacent access points.

The intent of Section 7-1.08, “Public Convenience,” of the *Standard Specifications* is to ensure public convenience, not a minimum construction cost. Frequently, the contractor can achieve both through careful planning and skillful operation.

3-704B Contingency Plans for Reopening Lane Closures

The special provisions for contracts that allow lane closures require the contractor to prepare a contingency plan for reopening closed lanes. The contractor’s contingency plan must include two elements:

1. A critical path analysis of the operation. This analysis must include a detailed review of each segment of the operation, including placing and removing traffic control.
2. Actions to be taken if the operation is not proceeding as planned and needs to be terminated early. Early termination can consist of either stopping the contractor’s operation so that lanes can be reopened within the specified time limits or stopping the contractor’s operation to reopen the lanes before the time specified for reopening.

When an operation is terminated before the time the specifications allow because of circumstances beyond the contractor’s control, consider granting time, compensation, or both, within the terms of the contract. If the operation is terminated before completion of the planned work because of circumstances within the contractor’s control or because of equipment breakdown, do not allow compensation and charge a working day as appropriate.

3-704C Maintenance and Improvement of Passageway Through Construction

Normally, paved detours will be provided for the passage of public traffic during construction. On low volume roads where the cost of detour construction is unreasonably high, the contract may provide for traffic to pass through the work during the grading and structural section operations. Section 7-1.08 specifies the responsibility of the contractor for providing reasonably smooth and even surfaces for passage of public traffic through the work. This section also specifies Caltrans’ responsibility for paying for the cost of maintaining the surface that would carry public traffic. Any ordered construction to provide improved conditions for the convenience of the traveling public is considered to be detour construction and is paid for as provided in Section 4-1.04, “Detours,” of the *Standard Specifications*. Also, any ordered construction or improvement of facilities required for pedestrians or the resident public, not otherwise provided for in the contract, is to be paid for in a like manner.

3-704D Relief From Responsibility for Damage by Public Traffic

Only in some cases will Caltrans pay to repair damage to completed permanent facilities caused by public traffic. Section 7-1.08 covers such exceptions. Completed permanent facilities are any features constructed by the contractor that will become a permanent part of the project. Caltrans will not pay for damage to temporary facilities, such as falsework and forms.

The facility need not be 100 percent complete for the contractor to be compensated, but it must be functional. Caltrans must not pay for damage from public traffic to

facilities that are not considered functional yet. For instance, guardrail posts or guide marker posts or a bridge still supported by falsework would not be considered functional. However, for a concrete barrier that only requires a specified light abrasive blast finish, Caltrans may pay for damage caused by public traffic because the barrier is functional.

The specification for relieving the contractor of responsibility for damage to completed permanent facilities only applies when a section of surfacing or the deck of a structure has been completed and opened to public traffic. Such relief is also dependent on the resident engineer's written order.

Here are some guidelines for administering the specification:

- Whenever the resident engineer orders the pavement or deck of a structure opened to public traffic, the contractor is relieved of responsibility for damage to the completed permanent facilities caused by public traffic. The contractor will be relieved of responsibility whether the opening to public traffic occurs before the scheduled opening time, occurs as the natural sequence of events, or occurs as the result of a contract specification. The contractor will be relieved of responsibility for damage to completed permanent facilities caused by public traffic whether traffic is placed on new alignment not previously used by traffic or new resurfacing opened after daily closures. Compensation for damage caused by public traffic is appropriate if the completed surfacing consists of an asphalt concrete base or leveling course.
- If the contractor requests an opening ahead of the normal schedule, the following applies:
 1. When the opening does not conform to the specified order of work, it must be covered by a contract change order approved by headquarters, in accordance with Section 5-3, "Contract Change Orders," of this manual. If Caltrans will not compensate the contractor for damage to completed permanent facilities, the contract change order must state this fact.
 2. When the opening does not conform to the specified order of work, the resident engineer will normally base approval or disapproval of the contract change order on an evaluation of the benefit to public traffic. If the benefit is substantial, it is appropriate to approve the contract change order and compensation in accordance with Section 7-1.08, "Public Convenience," of the *Standard Specifications*. If measurable benefits accrue to the contractor, ensure the contract change order provides a credit to Caltrans.
 3. If the benefits to public traffic are borderline or negligible, it is appropriate to approve the contract change order under the condition that the contractor be responsible for damage caused by public traffic. The contractor must acknowledge the condition in writing. Again, if measurable benefits accrue to the contractor, include a credit to Caltrans in the contract change order.
 4. If good reason exists for doing so, the resident engineer can refuse to approve a proposed opening.
- Except as provided for in Section 7-1.15, "Relief From Maintenance and Responsibility," of the *Standard Specifications*, Caltrans will not relieve the contractor from responsibility for damage to completed permanent facilities if the contractor never does the following:

1. Moves public traffic from the existing traveled way.
 2. Places public traffic on new pavement.
- When the contractor temporarily routes public traffic closer to the facilities than the traffic will be after completion of the work, the contractor will be relieved of responsibility for damage to the completed permanent facilities caused by public traffic. For example, Caltrans will relieve the contractor of responsibility if damage occurs to a completed guardrail at the edge of the shoulder when public traffic is temporarily placed on the shoulder to facilitate construction.

3-704E Maintenance Within Construction Limits

If the highway in question is a state highway, Caltrans' maintenance forces must maintain the highway as a maintenance expense. A clear understanding must exist between the maintenance area supervisor or area superintendent and the resident engineer about which portions of the highway Caltrans' maintenance forces will continue to maintain during the project's construction. The following guidelines should be used when discussing roadway maintenance:

- If new work is required along an existing highway, the owner (Caltrans or the local authority) will continue to maintain the highway, or portions of it, until the contractor takes possession by erecting signs or begins contract item work. The owner will resume maintaining the highway or portions of it when the contractor is relieved from maintenance responsibility, as provided for in Section 7-1.15, "Relief of Maintenance and Responsibility," of the *Standard Specifications*.
- Often, on widening or improvement projects, existing highway facilities will be located outside of the actual areas of work where alterations, modifications, or replacements are not planned. In these cases, except for repair of damage due to the contractor's operations, the owner will maintain the highway. If the new work consists of widening the existing highway's pavement or roadbed and the contractor's operations are restricted to a portion of the width of the roadway, the owner will continue maintaining the balance of the width.
- If damages caused by the public occurs to any existing facility within the construction limits, and the work required to repair the damage is similar to the work being done by the contractor, it is preferable to have the repairs done by the contractor.
- In case of emergency conditions within construction limits the maintenance area supervisor and the resident engineer should determine who should respond so that the condition is addressed in the quickest and safest manner.
- Pay as extra work any work the contractor does to maintain and repair damage to existing facilities (except for damage caused by the contractor).

3-705 Public Safety

3-705 Public Safety

The contract must bear all expenses associated with those devices primarily intended to protect traffic from hazards arising because of the contractor's operations. Typical items classified as public safety devices include barricades, signs, and lights placed to guard the public against damage. The contractor must protect traffic from falling rocks, falling trees, collision with equipment (whether idle or in operation), open trenches, and other excavations.

Some of the factors affecting public safety include the disposition, placement, movements, and actions of workers and equipment, and the placement and handling of materials.

Under the specifications, the engineer can point out the contractor's failure to carry out any of the specification requirements. The specifications do not relieve the contractor of the cost of protecting the public simply because the engineer has or has not called attention to an unsafe situation.

3-705A Clearance and Bridge Permit Rating Changes (Temporary)

The following guidelines apply to situations where temporary changes exist in vertical or horizontal clearance for vehicular traffic or where temporary changes exist in bridge permit ratings.

3-705A (1) Temporary Vertical and Horizontal Clearance Changes

Whenever the operation will reduce clearances available to public traffic, the specifications require the contractor to notify the resident engineer at least 18 days and not more than 90 days before the anticipated start of an operation that will change the vertical or horizontal clearance available to public traffic (including shoulders). At least fifteen days before implementing proposed vertical and horizontal clearance changes, notify the Transportation Permits Branch by fax of the proposed changes and their duration. If the clearance change is on a local jurisdiction roadway, notify the affected agency in writing at the same time. When vertical clearance is temporarily reduced to 15.5 feet or less, place low-clearance warning signs in accordance with Part 2 of the California MUTCD and the specifications.

3-705A (2) Temporary Bridge Permit Rating Changes

Fifteen days before implementing proposed bridge permit rating changes, the structure representative must notify the resident engineer in writing and the bridge rating engineer by fax of the proposed ratings and their duration. The bridge rating engineer must then immediately notify the Transportation Permits Branch of any rating changes.

Within three days of the removal of the temporary bridge permit rating, the structure representative must notify the resident engineer in writing and the bridge rating engineer by fax. The bridge rating engineer must then immediately notify the Transportation Permits Branch.

3-705B Clearance and Bridge Permit Rating Changes (Permanent)

The following guidelines apply to situations where permanent changes exist in vertical or horizontal clearance for vehicular traffic or where permanent changes exist in bridge permit ratings.

3-705B (1) Permanent Vertical and Horizontal Clearance Changes

Fifteen days before implementing proposed permanent vertical and horizontal clearance changes, the resident engineer must notify the Transportation Permits Branch by fax of the proposed changes. Also, to confirm the necessary information, the resident engineer must consult the Transportation Permits Branch before actual field measurements.

3-705B (2) Permanent Bridge Permit Rating Changes

Fifteen days before implementing the proposed bridge permit rating changes, the structure representative must notify the resident engineer in writing and the bridge

rating engineer by fax of the proposed bridge permit ratings. The bridge rating engineer must then immediately notify the Transportation Permits Branch of any rating changes.

3-705B (3) Notification Procedure

Submit changes to be reported in accordance with the above procedures to either the North Region or South Region construction/maintenance liaison in the Transportation Permits Branch. The North Region liaison is responsible for districts 1, 2, 3, 4, 5 (except San Luis Obispo and Santa Barbara Counties), 6 (except Kern County), and 10. The South Region liaison is responsible for districts 5 (San Luis Obispo and Santa Barbara Counties only), 6 (Kern County only), 7, 8, 9, 11, and 12.

To submit changes, use the following forms, maintained by the Office of Traffic Safety Program and Research:

- Form TR-0019, “Notice of Change in Clearance or Bridge Weight Rating”
- Form TR-0020, “Notice in Change in Vertical or Horizontal Clearance”
- Form TR-0029 “Notice of Change in Clearance or Bridge Weight Rating”

The Transportation Permits Branch will, within one business day, send a fax to the resident engineer confirming receipt of the change.

3-706 Preservation of Property

3-706 Preservation of Property

The contract makes the contractor responsible for the preservation of all property involved in the project, including that which is not in sight. It is in the best interests of all parties for the engineer to be diligent in determining and pointing out the existence of all such property of which Caltrans has knowledge, especially that which is not in sight. For information about locating and protecting underground utilities, see Section 3-809, “Utility and Non-Highway Facilities,” of this manual.

The plans and specifications may require that certain trees, shrubs, and other vegetation be preserved. The resident engineer must ensure the contractor is aware of all plant life to be saved.

The resident engineer must also ensure the contractor does all that is required under the contract to protect and preserve property. However, the contractor’s responsibility includes only that which is necessary to protect against damage by the construction activity. If any permanent protection is ordered, such as rubble tree wells in the planned slope, pay for this work as you would for any other ordered additional work.

3-707 Indemnification and Insurance

3-707 Indemnification and Insurance

The following are guidelines for enforcing and administering the requirements in the *Standard Specifications* for contractors’ insurance and for railroad insurance as required by the special provisions.

3-707A Evidence of Insurance

At or before the preconstruction conference, the contractor must provide the resident engineer with evidence of insurance, as required by Section 7-1.12B, “Insurance,” of the *Standard Specifications*. The resident engineer must do the following:



- Ensure the evidence of insurance conforms to the specified requirements.
- Ensure the contractor's required insurance does not lapse during the life of the project.
- If the contractor fails to maintain insurance coverage, request the contractor to immediately obtain the necessary coverage. If the contractor fails to do so, the resident engineer may consider contacting the insurance carrier to make arrangements to maintain the required coverage and charge the expense to the contractor.
- If the above procedures do not result in obtaining coverage, contact the Division of Construction for guidance.

3-707B Railroad Insurance

State highway construction occasionally requires that a contractor's operations be performed on or near a railroad's operating properties. This proximity varies from minor side encroachments to work involving the direct crossing of a railroad's tracks. Section 13, "Railroad Relations and Insurance Requirements," of the special provisions defines the relationships between Caltrans, the contractor, and the railroad.

When work must be performed on or near a railroad's operating properties, the contractor must provide insurance to ensure the financial ability to meet legal liability for damage, and to cover the losses that a railroad might sustain because of the contractor's operations.

Although contract specifications regarding railroad insurance have been standardized, occasional changes occur because of special situations. Requirements for railroad protective liability insurance vary depending on the railroad company involved. In Section 13 of the special provisions, the Division of Right of Way and Land Surveys, Railroad Agreements Coordinator, will normally issue special instructions for irregular situations.

3-707B (1) Insurance Approvals

Deliver all railroad insurance policies and copies provided to cover the prime contractor in accordance with Section 13 of the special provisions. Allow a minimum of four weeks for the railroad's notice of approval of the insurance. In cases of emergencies, you can obtain verbal release and authority to start work after the railroad has received all the documents.

3-707B (2) Responsibility

The resident engineer must ensure the specified insurance is in force at all times when work is being performed that requires such insurance.

Prohibit work that involves encroachment on railroad property, either by a prime contractor or a subcontractor, until the following conditions have been met:

- The railroad or the Division of Right of Way and Land Surveys, Railroad Agreements Coordinator, has advised the resident engineer that the contractor, subcontractor, or both, have furnished the specified insurance.
- The resident engineer has a copy of the certificate of insurance.

3-707B (3) Insurance Renewal

Approximately four weeks before the expiration date of an insurance certificate furnished by either a contractor or subcontractor, the resident engineer must notify the contractor, by letter, of the expiration date. If work is to continue on railroad property, request the contractor to obtain renewal insurance. At that time, determine whether work on the railroad property has been completed.

Renewals may be accomplished by endorsing the extension of existing certificates or by issuing new certificates.

Allow sufficient time for railroad approval after the submission of a new railroad protective policy.

3-708 Disposal of Material Outside the Highway Right-of-Way

3-708 Disposal of Material Outside the Highway Right-of-Way

Do not allow the contractor to dispose of material outside the right-of-way until the contractor has met all the requirements in Section 7-1.13, "Disposal of Material Outside the Highway Right of Way," of the *Standard Specifications*. When these requirements have been met, give the contractor written permission for disposal sites not covered by an agreement between the property owner and Caltrans.

When disposal of material on a property outside the highway right-of-way is not covered by an agreement between the property owner and Caltrans, the resident engineer should provide the contractor with a copy of the model agreement titled, "Agreement for the Authorization between a contractor working on state facilities and a real property owner for the placement of construction related material outside of the State Right-of-Way." The contractor may use this sample agreement or provide an equivalent agreement.

After the contractor and property owner complete an agreement and obtain all the necessary permits, licenses, and environmental clearances, the contractor must submit the signed agreement to the resident engineer for approval. The resident engineer must provide written approval to the contractor for the disposal of the material after review and verification of the adequacy of the contractor's agreement, necessary permits, licenses and environmental clearances that were submitted. A sample written approval and a sample agreement are located at the end of this section of the manual.

The agreement between the contractor and the property owner regarding disposal of material outside of the right-of-way is not required for the disposal of waste material to a commercial landfill or treatment facility. To verify the permit status of the landfill or treatment facility, the resident engineer should access the California Water Resources Control Board or Department of Toxic Substances Control websites at:

http://www.waterboards.ca.gov/water_issues/programs/#permit

<http://www.dtsc.ca.gov/HazardousWaste/>

Alternatively, contact the facility to obtain a copy of the facility's permit.

Approval of the disposal of materials outside the highway right-of-way guards against disposal that would harm the highway or cause environmental damage, disposal site damage, or unsightliness.

3-709 Relief From Maintenance and Responsibility

Under conditions specified in Section 7-1.15, “Relief From Maintenance and Responsibility,” of the *Standard Specifications*, the contractor may be relieved from maintaining and protecting certain completed portions or sections of the work.

Caltrans policy recommends relief only for those portions of the work specifically mentioned in the specifications unless exceptions are fully justified in the request for relief.

For completed roadways, the specified length of 0.5 km is the minimum practical length of completed main roadway upon which a recommendation can be made for relief from maintenance and responsibility. However, shorter units of completed work, such as on-ramps, off-ramps, frontage roads, or approaches to undercrossings and overcrossings, may also be eligible for relief from maintenance and responsibility. Do not recommend relief from maintenance and responsibility on 0.5 km sections that contain exceptions within that length unless you provide a valid reason presented with and supporting the recommendation.

Exceptions, if any, must be defined by longitudinal sections of highway or certain specified areas. For example, it is unacceptable to recommend relief from maintenance for a total project except for the inlet ditch to the right of stations 20 to 25. It is acceptable to recommend relief for the total project except for stations 15 to 27 (the section of highway that could be affected by the uncompleted ditch to the right of stations 20 to 25).

The following describes what constitutes a “bridge or other structure of major importance”:

- For purposes of relief from maintenance and responsibility, a bridge is as defined in Section 1, “Definitions and Terms,” of the *Standard Specifications*. A structure will be considered a bridge if it is so identified in the plans or other portions of the contract.
- Other structures that are to be considered of major importance are culverts in excess of 2000 mm in diameter or of approximate equivalent area.
- A facility not meeting the above criteria will be considered of major importance only if its final cost exceeds 5 percent of the original total bid for contract items (including mobilization).

Projects with noncontiguous locations may be accepted location by location provided the work at each requested location is completed in all aspects. Noncontiguous areas of work outside of the right-of-way on major projects may also be accepted, provided that the procedures outlined in Section 3-513A, “Work for Other Agencies or Owners,” of this manual have been followed.

Relief from maintenance and responsibility relieves the contractor of responsibility for repair of damage from the elements. Before recommending any request for relief from maintenance and responsibility, determine that the requested work will not be damaged as a result of incomplete adjoining work. For instance, a roadway section may be complete while an upstream culvert remains incomplete. Water flowing past the uncompleted culvert may damage a portion of the requested roadway section.

Before recommending relief from maintenance and responsibility, analyze each situation critically to determine if it qualifies in all respects. The project’s proper completion must not be jeopardized by indiscriminate recommendations for relief

3-709 Relief From Maintenance and Responsibility

from maintenance and responsibility. Once the contractor is relieved from maintaining and protecting a portion of the work, the contractor cannot be required to do more work on it except by agreement or to remedy defective work or materials.

If you have any doubts about the requested area's eligibility, deny the contractor's request for relief from maintenance and responsibility. Inform the contractor in writing so no doubt exists as to the status of the contractor's request and the nature of uncompleted work. The *Standard Specifications* clearly state that the portion of work must be complete in all respects before it becomes eligible for relief from maintenance and responsibility.

For landscape projects, a special provision is usually included to allow the granting of relief from maintenance and responsibility for items not directly connected with plant establishment work or highway planting and irrigation systems. Under the special provision, relief from maintenance and responsibility could be granted for typical items of work such as asphalt concrete placed as island paving or sidewalks and seal coats placed on islands, curbs, and fences. In many cases, these items would not have a direct bearing on the success or failure of plant establishment, and it is unreasonable to require the contractor to maintain these items.

However, to be consistent with the policy for non-landscape contracts, this type of relief from maintenance and responsibility will not be granted item by item, but only for an entire group of items. Any item that protects the planting or is involved in plant establishment should not be submitted for relief from maintenance and responsibility. Items typical of this category include planter boxes, sprinkler systems, header boards, or mesh.

Roadside rests will not be accepted item by item, but they may be recommended as completed units.

Relief from maintenance and responsibility denotes recognition of work that is completed. Therefore, any recommendations for this action on work for other public agencies or owners also require the concurrence of these agencies and owners. Before recommending relief from maintenance and responsibility on such portions of the work, complete the procedures outlined in Section 3-513A, "Work for Other Agencies or Owners," of this manual. In the communication recommending relief, include a statement that the agency authorities concur, or in the absence of such concurrence, include a justification for relief.

For requests for relief from maintenance and responsibility, use Form CEM-0501, "Relief from Maintenance."

The resident engineer must conduct a maintenance review of areas for which relief from maintenance and responsibility is to be granted. For guidelines on maintenance reviews, see Section 3-5, "Control of Work," of this manual.

3-710 Acceptance of Contract

3-710 Acceptance of Contract

On the day that project work is completed in accordance with all the requirements of the *Standard Specifications*, special provisions, plans, and approved contract change orders, send to the district construction office a fax recommending acceptance of the contract by the district.

For recommendations of acceptance, use Form CEM-6301, "Contract Acceptance."

Follow the same procedure for the acceptance of emergency contracts.



3-711 Rights in Land and Improvements

Generally, the contractor may use the right-of-way for purposes that are reasonably necessary to perform the required work. The contractor has no right to make use of the property, or to allow others to make use of it, when such use is not reasonably necessary to perform the required work. For example, residency trailers must not be placed within the right-of-way although one trailer may be allowed for yard security purposes. Prohibit any use of a Caltrans right-of-way that conflicts with the above requirement. Discuss unusual or complicated situations with the construction field coordinator.

As stated in Section 7-1.19, “Rights in Land and Improvements,” of the *Standard Specifications*, the contractor may enter into a rental agreement to use state-owned property outside the right-of-way.

3-711A Nonoperating Right-of-Way (Airspace)

Usable property under bridges or viaducts or other property that cannot be sold as excess, but can be leased, has been classified as nonoperating right-of-way (also known as “airspace”). Each district involved with the development of such property has established an inventory. The special provisions will normally cover the use, or prohibition against use, of nonoperating right-of-way by the contractor. On those occasions when the use of an airspace parcel is not part of the contract and a contractor later requests such use, the contractor must negotiate a lease for the parcel. A standard form is used for the lease and calls for payment based on fair market value. No special consideration will be given because the lessee is performing Caltrans work. Also, all of the normal provisions requiring insurance and parcel protection will be enforced.

3-711 Rights in Land and Improvements

Example 3-7.1

AGREEMENT BETWEEN A CONTRACTOR WORKING ON STATE FACILITIES AND A REAL PROPERTY OWNER FOR THE PLACEMENT OF CONSTRUCTION-RELATED MATERIAL OUTSIDE THE STATE RIGHT-OF-WAY

Contract No.: _____

County/Route/Kilometer post: _____

The contractor, _____, (“Contractor”) has entered into Contract No. _____ (“Contract”), with the State of California, Department of Transportation (“Department”), for work that is described as follows: _____ (“Project”).

The owner, _____, (“Owner”) of the real property (“Property”) located at _____ (for example, address, location, county and parcel number(s), project station(s), offsets, and other property location information) agrees to allow the placement of approximately _____ cubic yards of _____ (such as soil, asphalt grindings and other material) (“Material”) generated from the Project on the Owner’s Property by the Contractor.

Owner agrees that the Contractor has assumed ownership of the Material that is being deposited on the Property from the Department.

Contractor and Owner agree to obtain and furnish to the Department’s engineer, all necessary permits, licenses and clearances prior to placing Material on the Property.

By submission of this agreement to the Department’s engineer, Contractor and Owner are acknowledging that they have been informed, or otherwise apprised, of all restrictions, laws and permit requirements associated with the transporting and placement of the Material on the Property and have agreed to abide by the same. These laws include but are not limited to:

- Local Ordinances - Grading permits for the placement, filling, excavation, storage or disposal of soil or earthen material.
- California Fish and Game Code (Section 1602), “Lake or Stream Bed Alteration Agreement” - A permit required prior to the placement of material in a location where it can pass into waters of the state, directly or indirectly through causes such as erosion or maintenance.



Example 3-7.1

- California Fish and Game Code (Section 5650) - A prohibition against the deposition of petroleum products (including asphalt), or any material deleterious to fish, plants, or birds where it can pass into the waters of the state.
- Federal Clean Water Act (Section 301 and 402), “General Permit for Discharges of Storm Water Associated with Construction Activity”—A permit is required prior to soil disturbance of an area of one acre or more.
- Federal Clean Water Act (Section 404), “Permit for Discharge of Dredged or Fill Material”—A permit from the United States Army Corps of Engineers may be required for the discharge of fill material into waters of the United States including wetlands.

Owner and Contractor agree that the Material will be transported, deposited and left in a manner that will not cause injury or harm to any person or property. If an injury or harm does occur to any person or property or should any environmental impacts or litigation arise as a result of the transportation, deposition, or the final form in which the Material is left on the Property, the Owner and Contractor regardless of manner or form, agree to indemnify, defend, protect, and hold harmless the Department in any action in law or equity.

Pursuant to the Contract, Owner acknowledges Contractor will submit this agreement to the Department as evidence that the Owner has authorized the placement of the Material on the Property. Owner acknowledges that the Contractor is not authorized to make any representations or agreements on behalf of the Department. Contractor and Owner agree that the Department is released from any and all obligations to Owner made by Contractor under this agreement.

Owner and Contractor acknowledge that they have had the opportunity to receive independent legal advice with respect to the meaning, implications and advisability of entering into and executing this agreement.

Date: _____

(Signature of Property Owner)

Date: _____

(Signature of Contractor’s Authorized Representative per Std Spec 5-1.06)

Example 3-7.2

DEPARTMENT OF TRANSPORTATION

DIVISION OF CONSTRUCTION
1120 N STREET
P. O. BOX 942874
SACRAMENTO, CA 94273-0001
PHONE (916) 654-2157
FAX (916) 654-6345
TTY 711



*Flex your power!
Be energy efficient!*

Date

Address

Attn:

Subject: Approval of Disposal of Material Outside the Highway Right-of-Way

Dear _____:

In accordance with the provisions of Section 7-1.13, "Disposal of Material Outside the Highway Right-of-Way," of the *Standard Specifications*, approval is granted for disposal of _____ cubic yards of _____ (type of material) ("Material") to (property owners') property. Pursuant to the submitted agreement, (contract) and (property owner) have represented all necessary permits, licenses, and clearances were obtained and submitted prior to the disposal of the Material and have released the Department of Transportation (Department) from any obligations from its disposal. The agreement also includes (contractor's and (property owner's) promise to hold the Department harmless from all claims for injury to persons or damage to property resulting from the disposal.

The Department does not warranty or guaranty that the Material is of any type or is suitable for any particular purpose.

In accordance with the provisions of Section 7-1.12, "Indemnification and Insurance," of the *Standard Specifications*, _____ (contractor) shall defend, indemnify, and save harmless the state from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever, arising out or in connection with _____ (contractor's) performance of this contract.

Sincerely,

Resident Engineer

c:

bc:

