

LEASEHOLD ACQUISITIONS

3334

(Sept 1999)

INTRODUCTION

3334.1

(Sept 1999)

The acquisition of leased land rights requires many of the same steps as does fee ownership acquisition. The project must be justified, funded, and found environmentally acceptable. The ownership must be checked and proper signatures obtained. Signature authority for acceptance of leased rights into state control is vested with DGS.

LEASES

3334.2

(Sept 1999)

The leasing of land used for construction or operation of a facility is a function of DGS, RESD. Use of a Standard Form 9, Space Action Request, is required to submit the request to RESD. Justification, term, CEQA compliance and ownership information and any special conditions, must accompany STD 9 when it is transmitted to RESD by Technical Services. To assure the timely acquisition or renewal of leaseholds, the region's request to Technical Services must be transmitted so as to allow Technical Services and RESD at least six months' processing time prior to occupancy or renewal.

New Lease

Justification

All programs requesting a facility or land upon which to build a facility must be justified, funded, and found environmentally acceptable. The communication made to Technical Services requesting the preparation of lease documentation must contain proper justification.

Term

For use of an existing facility, the longest period of time the program can sustain ought to be requested. Request the right to terminate after a certain period of time, to protect CDF in the event that program funding should cease.

A minimum term period of 25 years is required for a lease of land on which a facility will be built using Capital Outlay funds.

- CEQA Compliance** If construction requires a leasehold, full CEQA procedures must be completed before leasing can be accomplished.
- Ownership** Ownership information known about the required parcel should be submitted with the request.
- If CDF field personnel made contact with the property owner prior to submitting their request to Technical Services, that contact should be mentioned, along with any outcome thereof.
- Special Conditions** All facts relating to the use of the land should be mentioned in the request, so that what is acquired will be that which was required.

Lease Renewal

For facilities with a tenure remainder of five years or less (a five-year lead period for consideration is highly recommended as a critical minimum), lease evaluations should be made, as follows:

- Consider the facility's future usefulness and its capability for serving changing conditions in its emergency response area.
- Analyze the facility's structural integrity and remaining usefulness.
- Determine if the site should be retained or relocated.
- If it should be retained, indicate the period of retention and the procedures for retention, either a lease renewal or purchase. If the site should be relocated, indicate the means of securing a new site and facilities.

In conjunction with the foregoing, it is suggested that the following be considered:

- Funds, other than operating funds, should not be spent on facilities which do not have their sites secured by a lease term suitable to properly amortize the expenditure.
- Negotiations, as to lease terms with the other party, are the delegated responsibility of the Department of General Services.
- A minimum of five years is required to budget, purchase, and construct a facility.

Processing Procedures

Once STD 9 has been sent to RESD, its leasing agent will be the sole contact with the property owner and will conduct all further negotiations. If any additional information is required, RESD will request it through Technical Services.

When negotiations have been completed, but before the lease has been signed, RESD will send Technical Services the negotiated conditions on Form 6 (SMD-142) for approval. If all conditions are as requested by the region, Technical Services will approve; if different, Technical Services will so inform the region and request approval of the change. RESD will not conclude the lease without an approved Form 6 from CDF.

Approximately six months prior to a lease's termination, RESD will request CDF to report on renewal, with reply on SMD-124. Technical Services maintains a listing of upcoming lease renewals and will be requesting information from the region concerning its intentions for the facility.

EASEMENTS AND RIGHTS OF WAY

3334.3

(Sept 1999)

This section sets forth procedures by which CDF can obtain permission to enter upon the property of others for the purpose of constructing and maintaining our facilities thereon. Any work performed by the state on another's property must be authorized in writing.

Purpose and Scope of

Directives

In the pursuit of its objectives, especially in fire control, CDF frequently finds it necessary to cross or use lands that are not owned or leased by it. Truck trails, pole lines, pipe lines, fuelbreaks, helispots, and many other types of facilities require use of lands belonging to other landowners. Written agreements with these individuals, properly prepared and used, serve to protect the state and its employees from prosecution of trespass. This chapter sets forth the procedures by which to obtain permission to enter or cross the property of others and to construct, maintain, and use such facilities. Such permission is referred to as a "right-of-way," even though these types of agreements may be called easements, permits or licenses.

A written contract is necessary for entry onto the land. Authorities such as Simpson On Contracts pointedly quote the Statute of Frauds requirements that, when any interest in land is created or conveyed, a contract be written in order for it to be enforceable, verbal assurances to the contrary.

Existing Rights

If CDF has an existing right over a parcel of land which currently is held by a new owner, new land rights are not to be negotiated. A right, once held, is binding upon the new ownership, as long as the following hold true:

- CDF has utilized the right (built the facility),
- CDF has shown possession through years of continuous use.

Prior to work being performed, a letter should be sent notifying the new ownership of the work to be performed and informing them of the prior agreement. Only when an existing right has been canceled or terminated will new rights be required. Full justification must then be made regarding why the right was canceled or permitted to terminate and why new rights are now requested. Also, full environmental procedures will be required to renew the rights.

Rights of Entry (Letters of Understanding)

To protect itself from trespass and to fulfill its legislated responsibilities, CDF must acquire right of entry through the lands of others for the establishment of fire prevention facilities. A form A-19 should be used for this purpose (see Section 3334.4).

Any grant of easement imposes a varying degree adverse interest to the possessor of land. It is the delegated responsibility of all branches of government to protect the interest of the citizen—as well as of itself. Our intrusive requirements should be minimized, and used only to the extent necessary for us to undertake the desired action.

Co-Existent Easements or Other Encumbrances

More than one type of encumbrance may occupy the same ground. The right and use by the first or senior title may not be interfered with by the new or junior title, nor may the property owner insert any claims adverse to the first or encumbrance. A Subordination Agreement must be used to correct the situation.

Prior Leases If the landowner has previously leased the land to others (as for example oil or gas prospectors, cattle or lumber interests, etc.), the written consent from these prior Lessees must be obtained before entering into an agreement with the Lessor.

The owner of the land should be asked whether or not there exist leases affecting his lands, the nature of these leases and the addresses of lessees. A title search by DGS, RESD may be necessary to ascertain the existence or nonexistence of such encumbrances.

All lessees of this nature are requested to give their written consent to the state's proposed easements by a simple statement to that effect.

For example:

Letter of Consent Form

"I (We), the Lessee(s) of the (given property description), for the purposes of (cattle grazing, power line, easement, etc.) do hereby consent to the construction of (road, telephone line, etc.) by the State of California, Department of Forestry and Fire Protection, for purposes of fire control over and across this property.

Signed: _____"

The above statement or some equivalent permission must be attached to the Agreement.

Subordination Agreements

When an easement for a proposed CDF facility is found to have the junior title (as shown by either title search or physical evidence), a subordination agreement or a letter of consent (see example above) must be obtained from the holder of the right-of-way with the senior title. A quitclaim deed may also be used in place of the subordination agreement, if its application is correct.

State's Sharing of Rights

Under an agreement which grants the state an easement establish a fire control road, the state will not have the exclusive right to use the roadway. The landowner may grant third parties use of the roadway, provided that they do not interfere with the state's right to use the roadway for fire control purposes. It is not the duty of the state as possessor of easements to protect the easement from unauthorized entry by third parties. This is the responsibility of the landowner. If litigation is filed by third parties claiming rights in the easement area, the state would not be likely to have an interest in the litigation. Only in the event that the rights claimed by such third parties would interfere with the state's use of the fire road would the state become actively involved in such litigation.

TEMPORARY AGREEMENTS (CDF STD FORM A-19) (Sept 1999)

3334.4

In the acquisition of temporary land rights, where CDF will be establishing visible land use of others, a permit will need to be acquired. The form used by CDF is a CDF Standard Form A-19 (see Exhibit 3334.4). CDF has been authorized to accept form A-19 without General Services review under certain conditions (see appropriate heading under this section). CDF Standard Form A-19 is negotiated between the unit and the landowner, with unit personnel signing as witness to the grantor's signature and Technical Services obtaining CDF management signature as grantee.

Grouped By Project

When a proposed project requires permission of several landowners, permission of one or more may be of no use to CDF until the permission of all has been obtained. Except in a few special cases, submit no agreements to Technical Services for acceptance until the entire group of agreements affecting a given project has been obtained.

If, for any reason, Technical Services has not previously been sent a full description and justification for the project, and CEQA compliance has not been satisfied, an environmental checklist should accompany the agreements. Where fuelbreak projects are accomplished in phases, CEQA documentation for the whole of the project should be processed initially.

Title Search Preliminary title reports are usually not required unless dispute as to ownership arises, or CDF has received reliable information of questionable title or control.

Determination of Ownership

It is the duty of the region to ascertain the “owner of record” (see Definitions, Section 3315) of the parcels of land on which the CDF facility is to be developed. Ownership should be verified from the County Assessor’s records. Copies of the County Assessor’s plats and ownership rolls should accompany submission of agreement documents. The true owner might not be the person generally regarded by neighbors as the owner, for there have been cases where landowners, public or private, are mistaken as to their ownership of certain parcels of land.

Ownership Map

A map must be prepared outlining the ownership’s affected by the right being acquired. On this plat, the differing ownership’s should be indicated in contrasting colors, together with the route of the facility (road, telephone line, etc.). This map is not normally made a part of any agreement, but is used for file identification purposes.

If individual maps are attached to and made a part of the agreement, the route of the facility must be shown in color. These maps must be initialed by the licensor and licensee to make them part of the agreement by reference.

Easement for Benefit of State

Need for the easement is to be based primarily upon CDF’s requirements. No condition should imply that its purpose is to provide special advantage accruable to the landowner, such as improving his timber management, range improvement, etc. Terms such as “to produce the maximum growth of timber” or “removal of broad-leaved trees,” or “seeding of palatable grasses only,” etc., must not be used.

Preplanning

Most landowners are not given sufficient lead time to weigh the consequences and plan alternative locations for the fire facility.

An ill chosen location, one where the landowner's interests are not also taken into account, can lead to ill will and resentment, with a determination to "never again" grant any land rights to CDF.

A face-to-face review with the landowner of a planned facility, and our ready willingness to adjust plans to lessen intrusive impact, would seem to be obligatory for all those soliciting easements. If feasible, the routing selected for the facility should complement, and not materially interfere with current and future planned land use.

Accurate Performance

The field work necessary to prepare documentation and establish property ownership's must be performed accurately. Such preparation will guarantee continued acceptance and approval by DGS and allow CDF to maintain its delegated authority.

Forms for

Licenses/Permits

Agreements Only those forms approved by Technical Services are to be used for acquiring Licenses. If the standard forms are unsuitable because of special desires of the grantors, the proposed document must have Technical Services' acceptance before the agreement will be considered for final processing. Should questions arise regarding the adequacy of proposed documents or their format, Technical Services should be consulted prior to obtaining the grantor's signature.

Solicitation of Licenses/Permits

No license is to be solicited from landowners until the project for which license is needed has full administrative approval. Such approval is considered granted under the following circumstances:

- When Capital Outlay funds have been appropriated by the Legislature for the project, or
- When the project is included in the department's budget presentation, or

- When the project is included in the state's Fire Plan, to be financed from support funds at an anticipated cost of less than \$1,500. Priority of the project will allow it to successfully compete for support funds.

Delegated Authority, Use of Form A-19

To expedite processing of documents, Sacramento Headquarters has been authorized to consummate agreements prepared by CDF on form A-19 (6/78), for the acquisition of temporary rights for fire access truck trails, fuelbreaks, helispots, and automatic weather telemetering stations, without the approval of the DGS, provided the following conditions are met:

- Each such agreement meets other criteria and conditions of the State Administrative Manual, as amended.
- The acquisition is acquired by use of form A-19 (6/78).
- The state pays no more than \$24,000 for the rights acquired and the term is three years or less.
- The agreement doesn't contain any provision whereby the state agrees to assume responsibility for matters beyond its control.
- If the instrument contains a contingency liability against the state, the following clause, word for word, is used, or any variation thereof that DGS may deem more appropriate.

"To the extent that they can legally do so, both parties to this agreement agree to hold each other harmless against any and all claims for injury to the person or damage to the property, arising from the uses herein stated, except where such injury or damage is proximately caused by the negligent or willful acts of the others, its servants, agents, or employees."

- All other procedures for state approval, such as acquisition of environmental clearances, are followed.
- The document not be recorded.
- The agreements contain the following certification:

"I hereby certify that all conditions for exemption have been complied with, and this agreement is exempt from the Department of General Services' approval."

NOTE: The signature for certification is a separate action from the authentication of the agreement.

- Agreement is only for acquisitions provided for in the approved budget program.

- Each agreement does not exceed the amount provided for in the appropriate approved budget allotments, nor create any obligations requiring the augmentation of such an allotment.
- The document is approved in writing by the director of CDF or his departmental designated representative.
- Agreements with county, city, district, or other local public body, are accompanied by a legal resolution, order, motion, or ordinance from the political subdivision authorizing the entering into of the agreement and the executing of the same.

Retain one copy of each agreement in a separate file by CDF for three years after the termination of the agreement or until reviewed by the DGS, whichever occurs earlier; this provision does not diminish or alter the agency's duty to retain these files for audit by the Department of Finance.

Processing Form A-19

Form A-19's are negotiated between the unit and the landowner.

Submittals to Technical Services must contain the following information:

- I. Unrecorded Version (4 signed copies minimum)
 - A. Required Accompaniments
 1. An adequate overall map, generally a copy of the quad sheet, showing the entire project and listing all the ownership's which will ultimately be involved.
 2. A documentary map attachment, with the project routing through the grantor's property outlined.
 3. A current Assessor's plat and listings covering the requested area.
 4. An Environmental Checklist and Environmental Information Forms properly filled out. For phased projects, cover all units with one environmental submittal, if possible.

B. Clause Requirements

1. If an indemnity clause is required, use the standard language furnished by DGS.
2. Required signatures, based upon the current Assessor's listings for that property. Marital status, if any, must be indicated. For married couples, both parties must sign unless listed as separate property. Corporate signers must list adequate title to indicate authority to sign, or show legal documentation of authority to sign.
3. Agreements with county, city, district, or other local public body, accompanied by a legal resolution, order, motion, or ordinance from the political subdivision authorizing entering into and executing the agreement.

C. Cautionaries

1. The term or duration should be adequate to permit construction in phases, the documentation submitted for the project phase should be sufficient unto itself, with termini between two ridges, two roads, two water courses, etc., otherwise notification should be furnished explaining why the unit is not complete.

2. Recorded Version (5 signed copies minimum)

Generally used when the state has significant investment, such as administrative roads, camps, lookouts, pipelines, service lines, heliports, water cisterns, etc.

A. Required accompaniments

1. All items necessary for unrecorded version.
2. Title search normally necessary.
3. An adequate map containing proper survey information.
4. Acknowledged grantor's signature.

B. Clause Requirements

1. Standard indemnity clause as furnished by DGS.

2. Term or duration adequate for capital recovery.
3. No conditional liability clauses, or assumption of liabilities or responsibilities beyond state's control.

C. Cautionaires

1. Be sure all the owners listed on Assessor's records sign.
2. If a delegated individual signs, his legal documentary authority to sign must be attached.
3. Marital status and possessory rights, as listed in the Assessor's records, must be a basis for required documentary signatures.

RECORDATION

3334.5

(Sept 1999)

Some documents must be recorded, particularly documents conveying permanent land rights. However, temporary agreements are not recorded unless capital improvements are involved. In that case, a Memorandum of Lease must be prepared for RESD for recordation. Technical Services will obtain the final state acceptance signature and return the executed copy to the region. The original requested recording must be accompanied by one copy of a "Certificate of Acceptance" (see Section 3334.6). The region will require the document to be recorded by the appropriate county recorder. When this is accomplished, the region will return a copy containing the recording information, date, book, and page, within 15 days of the recording date, to Technical Service.

STATE'S CERTIFICATE OF ACCEPTANCE

3334.6

(Sept 1999)

The county recorder will not accept for recordation any Real Estate documents in which the state is named as grantee, without the consent of the state as evidenced by one copy of an attached Certificate of Acceptance. Such certificate is required by Paragraph 27281, Title 3, Division 2 of the Government Code (Government of Counties). This form must accompany the original copy of any document to be recorded. DGS has the only authority to sign the certificate for the state. Technical Services is responsible for obtaining DGS's signature and for forwarding the signed certificate to the region.

RECORDING FEES

3334.7

(Sept 1999)

By law (GC §27383), county recorders are required to record state Real Estate documents free of charge when the document is for the benefit of the state. Recordation fees can be assessed by the county if it benefits a private party.

FORMS AND/OR FORMS SAMPLES: RETURN TO ISSUANCE HOME PAGE FOR FORMS/FORMS SAMPLES SITE LINK.

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