

SUPREME COURT COPY

COPY

Supreme Court Case No. S178799

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MARIA CABRAL,

Plaintiff and Respondent,

vs.

RALPHS GROCERY COMPANY,

Defendant and Appellant.

SUPREME COURT
FILED

MAY 06 2010

Frederick K. Ohlrich Clerk

Deputy

After A Decision By The Court Of Appeal
Fourth Appellate District, Division Two,
4th Civil No. E044098
San Bernardino County Superior Court Case No. RCV-089849

**OPPOSITION TO REQUEST FOR JUDICIAL
NOTICE; DECLARATION OF LILLIE HSU**

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Plaintiff and respondent Maria Cabral has filed a Request for Judicial Notice asking this court to take judicial notice of section 7-02 of the Caltrans Traffic Manual, entitled “Clear Zone Concept.” Plaintiff contends that judicial notice is proper under Evidence Code section 452, subdivision (c) because the document is an official act of a state’s executive department. Plaintiff’s request should be denied.

I. THE REQUEST FOR JUDICIAL NOTICE VIOLATES THE CALIFORNIA RULES OF COURT.

Under rule 8.252(a)(2) of the California Rules of Court, a motion requesting judicial notice “must state: (A) Why the matter to be noticed is relevant to the appeal; (B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court; and (C) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.”

Plaintiff’s Request for Judicial Notice contains none of this information. This alone warrants denying the request, since the requesting party bears the burden of demonstrating that the material is relevant to the appeal and that judicial notice is proper. (See *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 544, fn. 4 [denying request]; *Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 418.) Moreover, as explained below, the request is improper because section 7-02 of the Caltrans Traffic Manual was never presented to the trial court and is irrelevant to this court’s review.

II. THE REQUEST SHOULD BE DENIED BECAUSE THE DOCUMENT WAS NEVER BEFORE THE TRIAL COURT, BY JUDICIAL NOTICE OR OTHERWISE.

“[N]ormally ‘when reviewing the correctness of the trial court’s judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered.’” (*Vons Companies, Inc.*

v. Seabest Foods, Inc. (1996) 14 Cal.4th 434, 444, fn. 3, citation omitted.) Accordingly, reviewing courts “do not take judicial notice of evidence not presented to the trial court” absent “exceptional circumstances.” (*Ibid.*; *Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 325-326 [declining to take judicial notice of matter that “should have been” but was not “presented to the trial court for its consideration in the first instance”]; see also *Ess v. Eskaton Properties, Inc.* (2002) 97 Cal.App.4th 120, 125, fn. 3 [denying request because “there is no showing the agreement was before the trial court, through judicial notice or otherwise”].)^{1/}

Here, section 7-02 of the Traffic Manual was never before the trial court or the court of appeal, by judicial notice or otherwise. Plaintiff never attempted to present that section to either court, even though it appears to have been available.^{2/} She presents no reason at all, not to mention “exceptional circumstances,” to justify her failure. This court should decline to take judicial notice at this late date.

^{1/} A reviewing court will also disregard statements in briefs that are based on documents or facts not presented to the trial court. (*Truong v. Nguyen* (2007) 156 Cal.App.4th 865, 882 [denying request for judicial notice].) Thus, this court should disregard any reference to section 7-02 of the Traffic Manual in plaintiff’s opening brief on the merits.

^{2/} Plaintiff has not provided any information to show when the current version of section 7-02 took effect. However, the Caltrans website suggests that the current version may have been in effect since at least September 26, 2006. (See Hsu Decl., Ex. A [Caltrans webpage stating, “As of September 26, 2006, [Caltrans] has adopted the California Manual on Uniform Traffic Control Devices The non-traffic control device topics of the 1996 Caltrans Traffic Manual,” including Chapter 7, “are being retained in their current form until they are assimilated into other manuals”].) The Caltrans website also contains an earlier version of section 7-02, which the website says was effective on May 19, 2004; that version is similar to the version provided by plaintiff, except that the measurements are metric. (See Hsu Decl., Ex. B [Caltrans webpage stating that “[t]he Traffic manual provided below is May 19, 2004 version”], Ex. C [Traffic Manual, former § 7-02].)

III. PLAINTIFF’S REQUEST SHOULD BE DENIED BECAUSE SHE IMPROPERLY SEEKS JUDICIAL NOTICE OF THE TRUTH OF MATTERS ASSERTED IN THE DOCUMENT.

Appellate courts generally will not judicially notice evidentiary matters that cannot properly be considered on appeal. (*Simmons v. Southern Pac. Transportation Co.* (1976) 62 Cal.App.3d 341, 366-367 [whether judicial notice should be taken “must be considered in light of the propriety of considering the matter on review”].) That is the case here.

Plaintiff’s opening brief on the merits cites section 7-02 for the proposition that:

“An area clear of fixed objects adjacent to the roadway is desirable to provide a recovery zone for vehicles that have left the traveled way. Studies have indicated that on high-speed highways, a clear width of 30 feet from the edge of the traveled way permits about 80 percent of the vehicles leaving the roadway out of control to recover. Therefore, 30 feet should be considered the minimum, traversable clear recovery area for freeways high-speed expressways. High-speed is defined as operating speeds greater than 45 mph.”

(Opening Brief on the Merits [“OBOM”] 21 [quoting § 7-02].) Based on this quotation from section 7-02, plaintiff argues that “Caltrans not only foresaw the risk of roadside obstacles along California freeways, it studied the problem and concluded that a 30-foot clear recovery zone should be part of California’s freeway design to minimize exactly the kind of accident that occurred here.” (OBOM 21-22.) A big rig parked 16 feet from the roadway “negates the concept of a clear recovery area” and presents a “foreseeable risk.” (OBOM 22.) Because the risk is foreseeable, plaintiff argues, truck drivers should owe passing motorists a duty to avoid stopping in such a manner.

It is unclear whether plaintiff intends the Traffic Manual to show that (1) a 30-foot recovery zone is desirable because it allows 80% of vehicles

leaving the road to recover, or (2) *Caltrans believes* that such a recovery zone is desirable. Either way, judicial notice is improper.

If plaintiff intends to show that a 30-foot recovery zone is in fact desirable because it allows 80% of vehicles leaving the road to recover, she is asking this court to take judicial notice of the *truth* of matters asserted in the Traffic Manual. But “matters of which judicial notice is taken are considered only for their existence, not for the truth of the matters asserted in them.” (*In re Marriage of Eaddy* (2006) 144 Cal.App.4th 1202, 1209; *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1062, overruled on another ground as stated in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257 [in lawsuit challenging cigarette advertising, Supreme Court refused judicial notice of U.S. Surgeon General’s report on tobacco use]; *North Beverly Park Homeowners Ass’n v. Bisno* (2007) 147 Cal.App.4th 762, 779-780 [in proceeding to disqualify judge, trial court properly took judicial notice of institution of proceedings by Commission on Judicial Performance, but correctly did not take judicial notice of truth of allegations in the notice].) Moreover, such a use of the Traffic Manual is hearsay – an out-of-court statement “offered to prove the truth of the matter stated” – and inadmissible. (Evid. Code, § 1200, subs. (a) & (b).)

If plaintiff submits the Traffic Manual to show that *Caltrans believes* that a recovery zone is desirable or requires a recovery zone, judicial notice is equally improper.

First, to use section 7-02 the Traffic Manual as evidence of *Caltrans’s* belief or policy, plaintiff would need to introduce expert testimony interpreting the section, explaining how *Caltrans* uses the Traffic Manual, and showing the section’s application to the particular roadway at issue here. Expert testimony is required “if the matter at issue is one within the knowledge of experts only and not within the common knowledge of laymen” – particularly when a standard of care is at issue. (*Miller v. Los*

Angeles County Flood Control Dist. (1973) 8 Cal.App.3d 689, 702, emphasis omitted [trial court correctly required expert testimony as to building practices in the area to establish standard of care applicable to builder of plaintiffs' home, because building homes is a complicated activity in which laypersons lack experience]; *Landeros v. Flood* (1976) 17 Cal.3d 399, 410, superseded by statute on another ground as stated in *Avivi v. Centro Medical Urgente Medical Center* (2008) 159 Cal.App.4th 463, 468-469; see also *Stephen v. Ford Motor Co.* (2005) 134 Cal.App.4th 1363, 1373 [expert testimony required to establish causation where plaintiff's theory was "plainly beyond the common experience of both judges and jurors"].)

Thus, in *Landeros*, this court held that expert testimony was required to determine whether the standard of care required a physician to know how to diagnose and treat battered child syndrome. (17 Cal.3d at pp. 410-411.) The court noted that the medical literature had previously identified and analyzed the syndrome and made recommendations, but commented:

Despite these published admonitions to the profession, . . . neither this nor any other court possesses the specialized knowledge necessary to resolve the issue as a matter of law. We simply do not know whether the views espoused in the literature had been generally adopted in the medical profession by the year 1971, and whether the ordinarily prudent physician was conducting his practice in accordance therewith. The question remains one of fact, to be decided on the basis of expert testimony.

(*Id.* at p. 410.)

Similarly here, whether or how Caltrans follows the Traffic Manual, and whether it applies to this particular freeway in this particular region, are matters beyond the common experience of laypersons, requiring expert testimony. Accordingly, in cases where a party has relied on the Caltrans Traffic Manual, the party has typically introduced expert testimony to

interpret the manual and explain its effect. (See *Hernandez v. Department of Transp.* (2003) 114 Cal.App.4th 376, 380-381 & fn. 5; *Wyckoff v. State of California* (2001) 90 Cal.App.4th 45, 57.) Indeed, here plaintiff called two experts to testify regarding a different section of the Traffic Manual dealing with signs, which she properly presented as evidence at trial. (AA 173-175 [Trial Exhibit 15]; 2 RT 574; 3 RT 637, 643, 645-646, 655 [Exhibit 15 received into evidence].) Now, on appeal to this court, she has no such expert testimony to support her belated, improper attempt to introduce a different section of the Traffic Manual as substantive evidence.

Second, section 7-02 of the Traffic Manual is irrelevant. Plaintiff seeks judicial notice of that section to establish that a big rig driver owes passing motorists a duty to avoid stopping 16 feet from the edge of a freeway. But the Traffic Manual's specifications merely provide guidelines or recommendations; they do not establish a standard of care. (See *Sutton v. Golden Gate Bridge, Highway & Transportation Dist.* (1998) 68 Cal.App.4th 1149, 1162 ["The Caltrans Traffic Manual does not *require* that a median barrier be installed but that median barriers be *considered and investigated* if certain cross-median accident rates are met"], emphases added; *Alvarez v. State of California* (1999) 79 Cal.App.4th 720, 725, 738-739, overruled on other grounds in *Cornette v. Department of Transportation* (2001) 26 Cal.4th 63, 74 & fn. 3 [Traffic Manual's specifications for median barriers "do not reflect a determination that the lack of a barrier creates a dangerous condition"]; *Wyckoff, supra*, 90 Cal.App.4th at pp. 56-57.) Indeed, section 7-02.1 does not say that a clear area is required, but only that it is "desirable." (Request for Judicial Notice, Ex. 1.) That section further recognizes that "[o]n most conventional highways, a 30-foot clear zone distance *may be difficult to justify* for engineering, environmental or economic reasons," and therefore says that

“a minimum, traversable clear recovery area of 20 feet on conventional highways is *advised*.” (*Ibid.*, emphases added.)^{3/}

The Foreword to the Traffic Manual, also available on Caltrans’s website, explicitly states:

[T]his manual establishes engineering *guidelines*, policies and procedures for traffic functions of [Caltrans]

Many of the instructions given herein are subject to amendment as conditions and experience warrant. Special situations may call for variation subject to sound engineering judgment *This manual is not intended to be a substitute for engineering knowledge, experience or judgment. It contains material that is intended to serve as an aid in the solution of various traffic situations. It is not intended that any standard of conduct or duty toward the public shall be created or imposed by the publication of this manual.*

(Hsu Decl., Ex. D, emphases added.) And anyone who has driven on California freeways knows that often there is *not* 30 or even 20 feet of clear space next to the outermost travel lanes; for example, there may be a brick wall, a concrete median barrier, or a construction barrier right next to the travel lane.

Even if the Traffic Manual did purport to establish a standard of care, it would be irrelevant here. At most, the manual might be relevant to establishing a standard of care for *roadway design*, or might establish that Caltrans, through engineering studies, foresaw that drivers might go off the road with a particular frequency. But it would not establish that such information would be foreseeable to a reasonable *truck driver* so as to establish a legal duty.

^{3/} So is it 30 feet, 20 feet, or neither? Plaintiff needs an expert to explain.

CONCLUSION

As shown, plaintiff's request for judicial notice is improper because section 7-02 of the Caltrans Traffic Manual was never before the trial court, and this court cannot consider that document for the purpose for which plaintiff offers the evidence. The request should be denied.

Dated: May 5, 2010

Respectfully submitted,

BELL, ORROCK & WATASE, INC.
Stanley Orrock

GREINES, MARTIN, STEIN & RICHLAND LLP
Timothy T. Coates
Lillie Hsu

By: _____



Lillie Hsu

Attorneys for Defendant and Appellant
RALPHS GROCERY COMPANY

DECLARATION OF LILLIE HSU

I, LILLIE HSU, declare as follows:

1. I am an attorney, duly licensed to practice law in the State of California, and an associate with the law firm of Greines, Martin, Stein & Richland LLP. This firm is associated with Bell, Orrock & Watase, Inc. for purposes of representing defendant and appellant, Ralphs Grocery Company, in this appeal.

2. Attached hereto as Exhibit A is a printout of a webpage from Caltrans's website, www.dot.ca.gov, entitled "Traffic Manual (CURRENT)," which I printed from the following page within the site:

<<http://www.dot.ca.gov/hq/traffops/signtech/signdel/trafficmanual-current.htm>> [as of May 3, 2010].

3. Attached hereto as Exhibit B is a printout of a webpage entitled "Traffic Manual (ARCHIVE)," which I printed from the following page within the same website:

<<http://www.dot.ca.gov/hq/traffops/signtech/signdel/trafficmanual.htm>> [as of May 3, 2010].

4. Attached hereto as Exhibit C is a section of a former version of the Caltrans Traffic Manual entitled "Section 7-02 – Clear Zone Concept," which I printed from the following page:

<<http://www.dot.ca.gov/hq/traffops/signtech/signdel/pdf/TMChapter7.pdf>> [as of May 3, 2010].

This page can be accessed from the following webpage within the Caltrans website:

<<http://www.dot.ca.gov/hq/traffops/signtech/signdel/trafficmanual.htm>> [as of May 3, 2010].

5. Attached hereto as Exhibit D is a section of the Traffic Manual entitled "Foreward [sic]," which I printed from the following page:

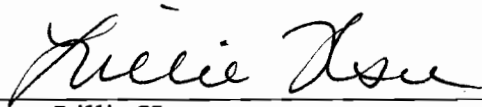
<<http://www.dot.ca.gov/hq/traffops/signtech/signdel/pdf/TMCoverForeward.pdf>> [as of May 3, 2010].

This page can be accessed from the following webpage within the Caltrans website:

<<http://www.dot.ca.gov/hq/traffops/signtech/signdel/trafficmanual.htm>> [as of May 3, 2010].

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on May 5, 2010 at Los Angeles, California.

A handwritten signature in cursive script, appearing to read "Lillie Hsu", written in black ink. The signature is positioned above a horizontal line.

Lillie Hsu



CALIFORNIA DEPARTMENT OF TRANSPORTATION

[Caltrans](#) > [Traffic Operations](#) > [Signs, Markings & External Support](#) > [Signs & Work Zones Branch](#) > **Traffic Manual (CURRENT)**

Traffic Manual (CURRENT)

As of September 26, 2006, the California Department of Transportation has adopted the California Manual on Uniform Traffic Control Devices (FHWA's MUTCD 2003 Revision 1, as amended for use in California), also called the California MUTCD, to prescribe uniform standards and specifications for all official traffic control devices in California. This action was taken pursuant to the provisions of the California Vehicle Code Section 21400 and the recommendation of the California Traffic Control Devices Committee (CTCDC).

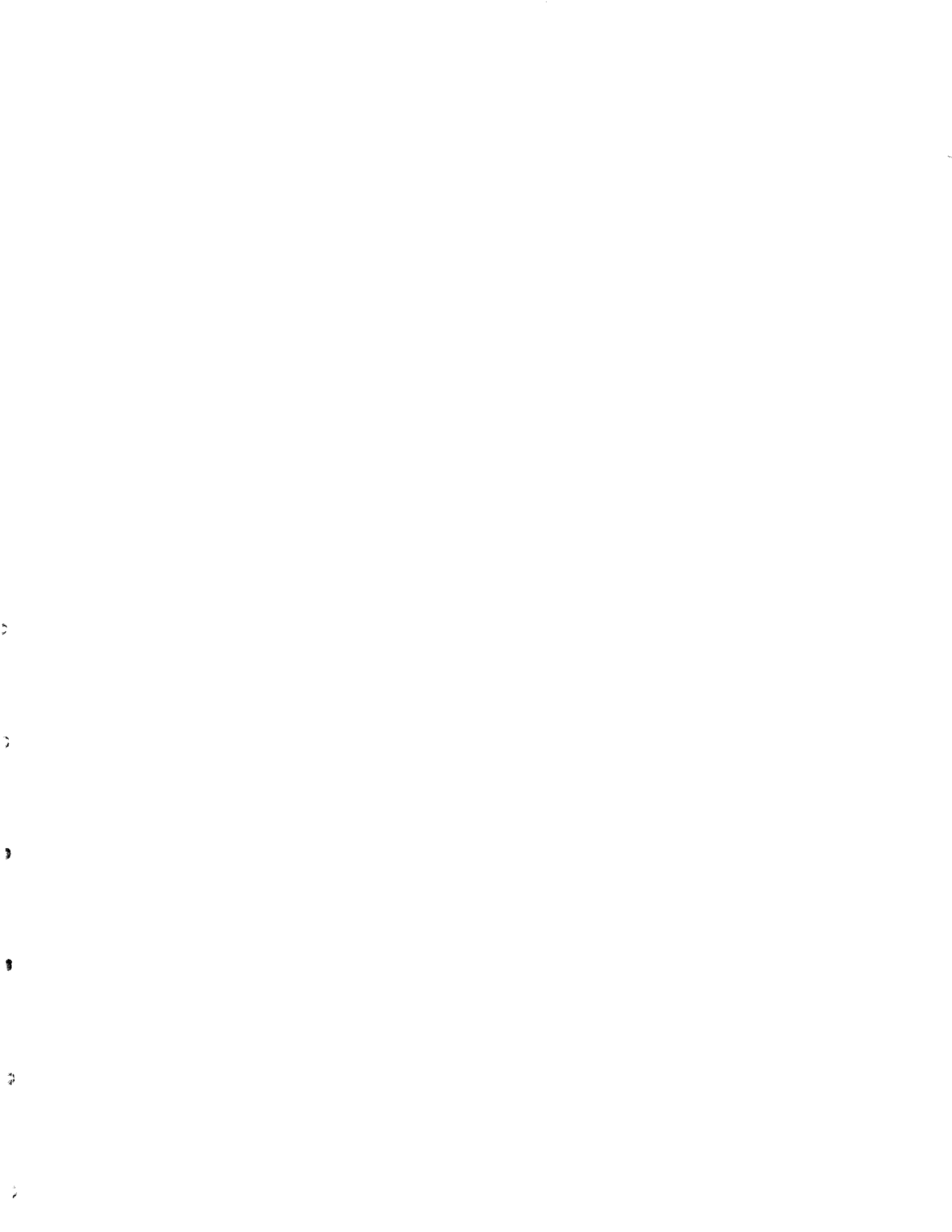
The non-traffic control device topics of the 1996 Caltrans Traffic Manual (Chapters 1, 2, 3, 7 and the lighting portion of chapter 9) are being retained in their current form until they are assimilated into other manuals or guidelines not yet determined.

Traffic Manual (1996 Metric Version with updates) as effective on May 19, 2004.

Description	Last Update
Ch. 1 - General Information	11/78
Ch. 2 - Traffic Volumes Systems	8/79
Ch. 3 - Accident and Roadway Records	8/96
Ch. 4 - Signs (Refer to the California MUTCD Part 2)	9/26/06
Ch. 5 - Traffic Controls for Construction and Maintenance Work Zones (Refer to the California MUTCD Part 6)	9/26/06
Ch. 6 - Markings (Refer to the California MUTCD Part 3)	9/26/06
Ch. 7 - Traffic Safety Systems	n/a
Ch. 8 - Regulations (Refer to California MUTCD Parts 1A, 2B, 3B and 6C)	9/26/06
Ch. 9 - Traffic Signals and Lighting	- - -
(For Traffic Signals, refer to California MUTCD Part 4)	9/26/06
(For Lighting, information in the Traffic Manual is still current)	11/02
Ch. 10 - School Area and Pedestrian Safety (Refer to the California MUTCD Part 7)	9/26/06
Ch. 11 - Rules and Regulations (Refer to the California MUTCD Part 1, 2, 3, 4, 6, and 7)	9/26/06
Ch. 12 - Bikeway Signs and Markings (Refer to the California MUTCD Part 9)	9/26/06

Traffic Manual Change Transmittals

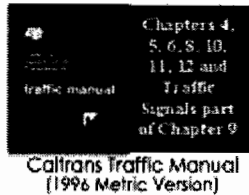
PDF File Description	File Size	Effective Date
Ch. 9 - Traffic Signals and Lighting	1.06 Mb	11/13/02
Ch. 6 - Markings	73 kb	9/13/02
Ch. 7 - Traffic Safety Systems	5 kb	9/13/02
Ch. 7 - Traffic Safety Systems	182 kb	1/15/99
Ch. 5 - Manual of Traffic Controls	10 kb	1/30/00



CALIFORNIA DEPARTMENT OF TRANSPORTATION

[Caltrans](#) > [Traffic Operations](#) > [Signs, Markings & External Support](#) > [Signs & Work Zones Branch](#) > [Traffic Manual \(ARCHIVE\)](#)

Traffic Manual (ARCHIVE)



The updated version of the Traffic Manual (1996 Metric Version with updates) that was effective in California on May 19, 2004 is posted below for historical/archive reference purposes and to maintain transition between the various documents.

NOTE: On May 20, 2004 Chapters 4, 5, 6, 8, 10, 11, 12 and the traffic signals portion of chapter 9 of this 1996 Caltrans Traffic Manual were superseded and replaced by the adoption of MUTCD 2003 in conjunction with the California Supplement followed by the California MUTCD on September 26, 2006. Please be aware that as of September 26, 2006, the California Department of Transportation has adopted the California Manual on Uniform Traffic Control Devices (FHWA's MUTCD 2003 Revision 1, as amended for use in California), also called the California MUTCD, to prescribe uniform standards and specifications for all official traffic control devices in California. The California MUTCD supersedes and replaces Chapters 4, 5, 6, 8, 10, 11, 12 and the traffic signals portion of chapter 9 of the 1996 Caltrans Traffic Manual, as amended, and all previous editions thereof.

PLEASE NOTE: The Traffic Manual provided below is May 19, 2004 version.

For the current Traffic Manual, [CLICK HERE](#).

Traffic Manual (1996 Metric Version with updates) as effective on May 19, 2004.

Description

Cover & Foreward

Ch. 1 - General Information

Ch. 2 - Traffic Volumes Systems

Ch. 3 - Accident and Roadway Records

Ch. 4 - Signs

Ch. 5 - Traffic Controls for Construction and Maintenance Work Zones

Ch. 6 - Markings

Ch. 7 - Traffic Safety Systems

Ch. 8 - Regulations

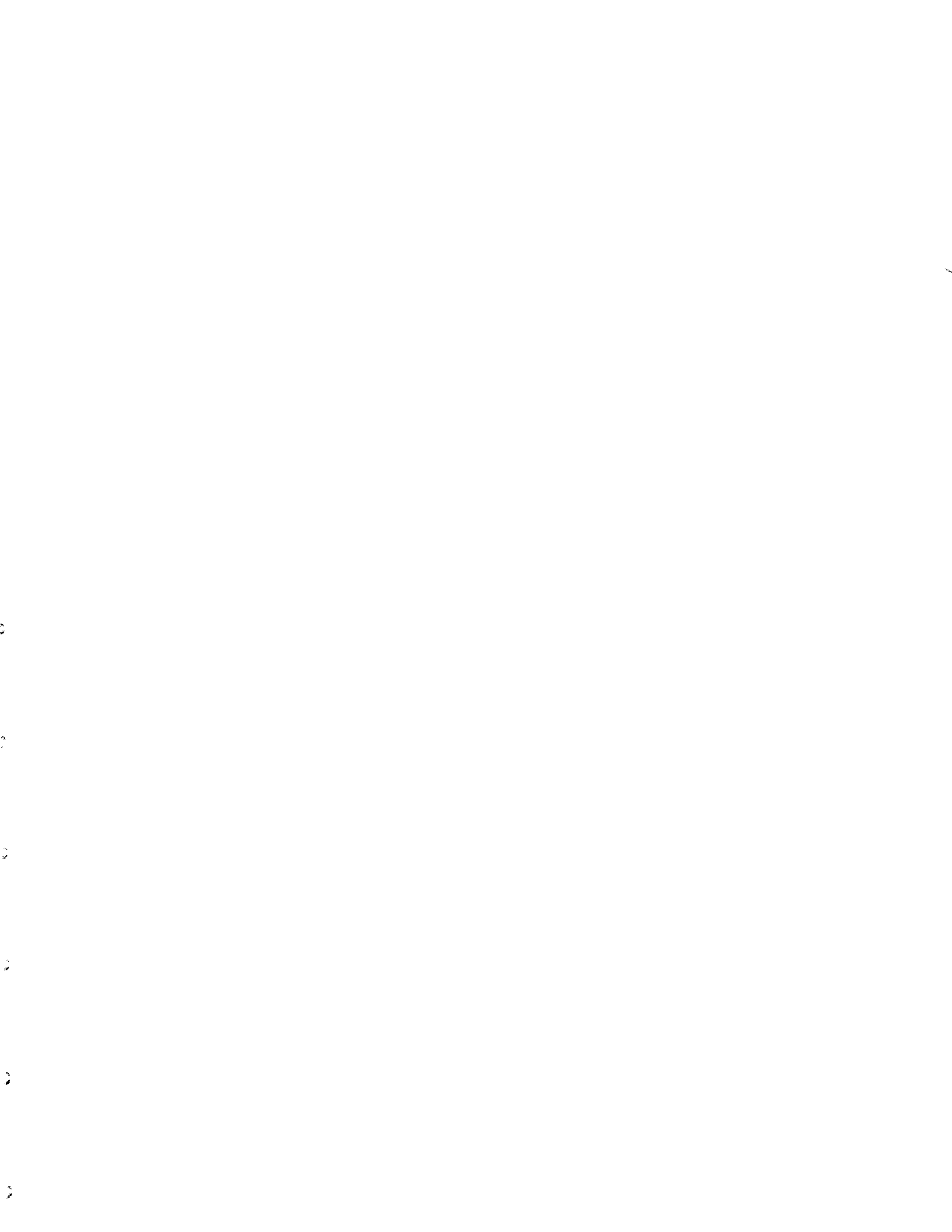
Ch. 9 - Traffic Signals and Lighting

Ch. 10 - School Area and Pedestrian Safety

Ch. 11 - Rules and Regulations

Ch. 12 - Bikeway Signs and Markings

Index



Section 7-02 - Clear Zone Concept

7-02.1 Introduction

An area clear of fixed objects adjacent to the roadway is desirable to provide a recovery zone for vehicles that have left the traveled way. Studies have indicated that on high-speed highways, a clear width of 9 m from the edge of the traveled way permits about 80 percent of the vehicles leaving the roadway out of control to recover. Therefore, 9 m should be considered the minimum, traversable clear recovery area for freeways and high-speed expressways. High-speed is defined as operating speeds greater than 70 km/h.

On most conventional highways, a 9 m clear zone distance may be difficult to justify for engineering, environmental or economic reasons. For these reasons, a minimum, traversable clear recovery area of 6 m on conventional highways is advised. The designer must keep in mind that site-specific conditions such as volume, speed, alignment, side slope, weather, adjacent development, and environmental conditions should be evaluated when determining the clear recovery zone. Obstacles located in the clear recovery zone should be removed, relocated, made breakaway, or shielded by guardrail or crash cushions where justified in accordance with the following guidelines.

Additional information regarding this subject is available in the *Roadside Design Guide*, American Association of State Highway and Transportation Officials (AASHTO), and the Caltrans *Highway Design Manual*.

7-02.2 Remove/Relocate the Obstacle

There are several locations where a fixed object can be relocated from the clear recovery zone. By order of preference, they are:

1. Remove it if practicable.
2. Move it to a location where it is unlikely to be hit, such as up a slope or behind a guardrail or wall that is required for other reasons.
3. Relocate it far enough from the traveled way to minimize its chances of being struck. Non-traversable ditches, drainage structures, columns, utility poles, and overhead sign structures may be handled by this method.
4. Relocate an obstacle in the median or gore to a location beyond the right shoulder, thereby reducing the risk of exposure to at least one direction of travel.

7-02.3 Make the Obstacle Breakaway

If fixed objects such as light standards and ground-mounted sign supports cannot be moved out of the clear recovery zone, they should be considered for breakaway treatment.

The standard breakaway support for light standards is a three-point triangular slip-base, see Standard Plans for details. All light standards located where they can be struck by a vehicle should have a slip-base, except where pedestrians might be struck by the falling standard or it could conflict with traffic.

The laminated wood box beam is the standard breakaway support system for large ground-mounted signs.

Laminated wood box beam posts have replaced large timber poles for new installations.

Intermediate size ground-mounted signs may be mounted on dimensioned wood posts. Any sign post 100 mm x 150 mm or larger should be drilled to make it breakaway. Details for the size and location of the holes are contained in the Standard Plans.

Small ground-mounted signs may be supported on dimensioned wood posts or approved commercially available yielding steel supports. Contact your District Traffic Safety Systems Coordinator for information regarding commercially available yielding steel supports.

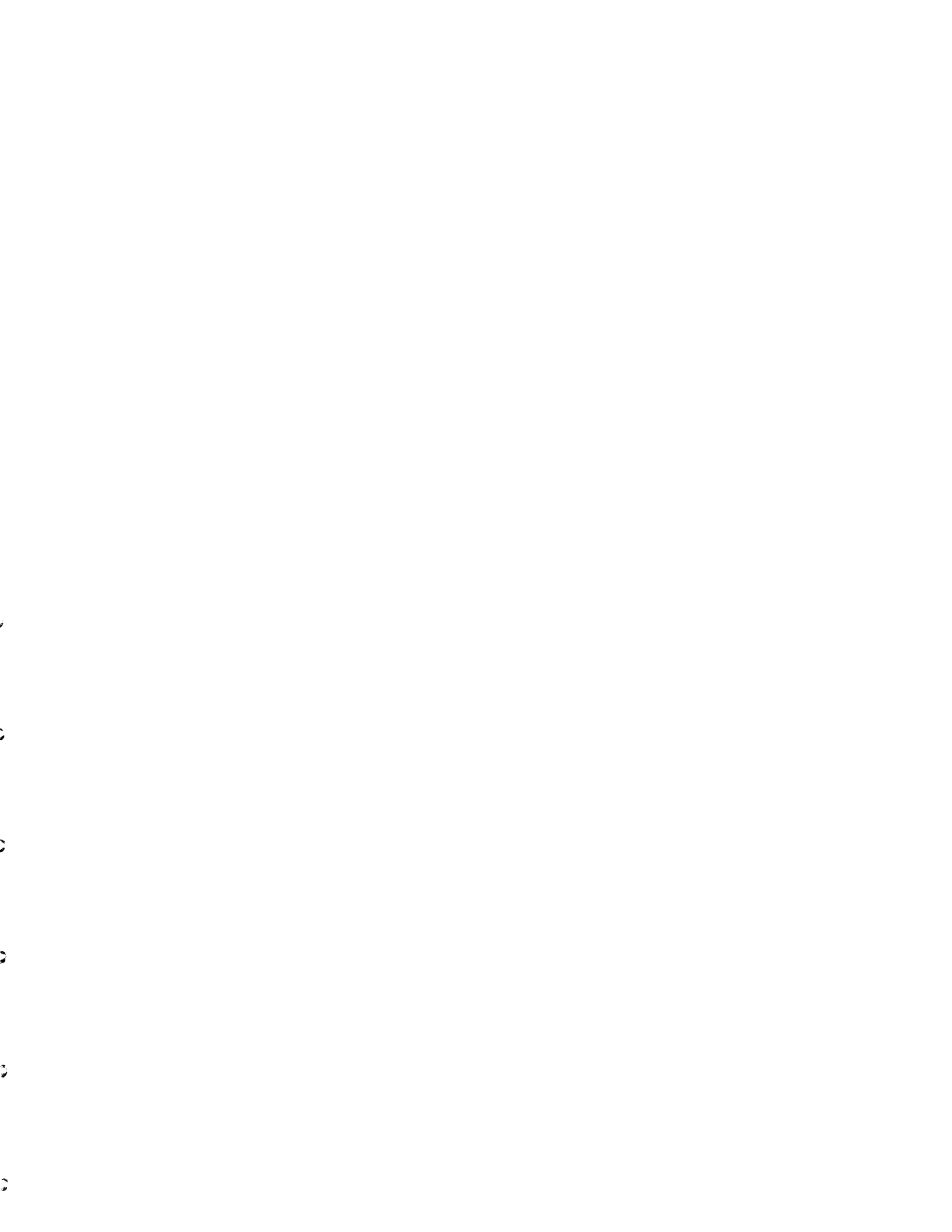
Mailboxes should be mounted on wood posts no larger than 100 mm x 100 mm or steel pipe no larger than 50 mm in diameter. Spacing between multiple mailbox posts shall be at least 3/4 the height of the post. Multiple mailboxes should never be mounted on a longitudinal rail within the clear zone. There is a commercially available yielding mailbox support system that will accommodate up to four mailboxes. The cluster mailboxes installed by the U.S. Postal Service do not perform acceptably on impact and should not be installed in the clear zone beside high-speed highways. For more information on mailbox support design and placement, see *A Guide for Erecting Mailboxes on Highways*, AASHTO. Contact Headquarters Office of Traffic Safety Program and Research for approval before the use of non-standard mailbox support design.

Call boxes and chain control signs should be mounted on slip-bases where appropriate. Other features in the vicinity should not impede the function of the breakaway device or adversely influence the vehicle response.

7-02.4 Shield the Obstacle

If it is not practical to eliminate, relocate, or make a fixed object break away, then the object should be shielded. All the systems available to shield fixed objects are also fixed objects. They do not prevent an accident but are intended to reduce the severity of the accident. Longitudinal barriers such as guardrail, median barrier, and bridge railing are designed to redirect a vehicle away from its errant path. These barriers have been tested for structural integrity and occupant risk.

Crash cushions are designed to safely decelerate a passenger car to a stop in head-on impacts. When a vehicle strikes the cushions, it expends its kinetic energy by, compressing or crushing material, tearing metal, displacing sand, or moving a metal cable or strap through a restricted path. Crash cushions are generally used to shield relatively narrow objects such as piers, columns, overhead sign supports, and median barrier installations. A list of approved crash cushions may be obtained from your District Traffic Safety Systems Coordinator, Headquarters' Traffic Operations Liaison or Headquarters' Office of Traffic Safety Program and Research.



Foreward

Purpose

Except as provided for under the next heading, Rules and Regulations, this manual establishes engineering guidelines, policies and procedures for traffic functions of the California Department of Transportation (Caltrans). It is in substantial conformance with the Manual On Uniform Traffic Control Devices published by the Federal Highway Administration (FHWA). This manual is subject to all state statutes, in particular the California Vehicle Code.

Many of the instructions given herein are subject to amendment as conditions and experience warrant. Special situations may call for variation subject to sound engineering judgment. On state highways significant variations are subject to Headquarters approval. This manual is not intended to be a substitute for engineering knowledge, experience or judgment. It contains material that is intended to serve as an aid in the solution of various traffic situations. It is not intended that any standard of conduct or duty toward the public shall be created or imposed by the publication of this manual. Statements as to duties and responsibilities of any given classification of state officers or employees mentioned herein refer solely to duties or responsibilities owed by those in such classification to their superiors. However, in their official contacts, employees should recognize the necessity for good relations with the public.

Rules and Regulations

The only provision in this manual which has been adopted by the Department of Transportation as rules and regulations and which, therefore, has the force and effect of law is Chapter Eleven. These Rules and Regulations were adopted pursuant to the authority of California Vehicle Code sections 21400 and 21401. Local jurisdictions are to use these rules and regulations accordingly.

Traffic Safety Program

This manual contains current highway design standards, criteria and policies. Design standards have evolved over a period of many years; consequently,

many existing roads do not fully conform with current standards. It is not economically feasible to upgrade all roads to current design standards; however, certain roadway features may be upgraded where it is cost-effective to do so. The Traffic Safety Program has been developed to identify and prioritize locations where it is economically feasible to upgrade existing roads to a current design standard. The Traffic Safety Program provides a system which assures that the limited funds available for upgrading existing roads will be spent at locations where it will result in the greatest benefit to the highway user.

Scope

This Manual is not a textbook or a substitute for engineering knowledge, experience or judgment. It includes techniques as well as graphs and tables not ordinarily found in textbooks. These are intended as aids in the quick solution of field and office problems. Except for new developments, no attempt is made to detail basic engineering techniques; for these, standard textbooks should be used.

Form

The loose-leaf form was chosen because it facilitates change and expansion. New instructions will be issued as sheets in the format of this manual; these may consist of additional sheets or new sheets to be substituted for those superseded.

Organization of the Manual

A numbering system is used which permits identification by chapter, section and article. Within a chapter, an article number contains, first, a chapter number, secondly, a dash followed by a two digit section number, and thirdly, a decimal followed by the article number.

Consecutive page numbering is used in this manual. The upper outside corner of each page shows the page number. This number is composed of a chapter number, a dash and the actual page number.

The date of each page is shown under the page number.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On **March 5, 2010**, I served the foregoing document described as: **OPPOSITION TO REQUEST FOR JUDICIAL NOTICE; DECLARATION OF LILLIE HSU** on the parties in this action by serving:

Michael Brian Horrow, Esq.
Donahue & Horrow LLP
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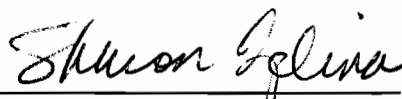
Attorneys for Plaintiff and Respondent

(X) **By Envelope** - by placing () the original **(X)** a true copy thereof enclosed in sealed envelopes addressed as above and delivering such envelopes:

(X) **By Mail:** As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on **March 5, 2010**, at Los Angeles, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Sharon Zelina

