

## CHAPTER 15

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## **15.00.00.00 - AIRSPACE**

### **15.01.00.00 - GENERAL**

#### **15.01.01.00      Function and Policy**

The Airspace function is responsible for leasing and managing all property held for a transportation purpose that can safely accommodate a secondary use. A site identified as “airspace” is not only property within the right of way limits of an existing operating highway, but all Caltrans owned and operated facilities that are used to support the transportation system. This does not include property held for a “future” transportation purpose.

#### **15.01.01.01      Definition**

An airspace site is defined as any property within right of way limits of an existing highway, excluding conventional highways, that is capable of other development without undue interference with the operation and foreseeable future expansion of the transportation corridor for highway or other transportation uses without endangering the traveling public. Airspace may consist of:

- Surface rights under a viaduct structure.
- Space above the traveled lanes.
- Space within a loop of an interchange.
- Space between the main lanes and on or off ramps.
- Area in cut or fill slopes.

Airspace may also be defined as all Caltrans property that can safely accommodate a wireless telecommunications facility. Typical sites are:

- Space within a maintenance station, park and ride lot, roadside rest, office building, or other facility.
- Non-operating and operating right of way if access and utilities are from outside the travelway.

#### **15.01.01.02      Airspace Policy**

S&H Code 104.12, “Leasing of Airspace,” authorizes the Department to lease airspace above and below highways to public and private entities in accordance with CTC prescribed procedures. Airspace leasing activities are conducted pursuant to policies established by the CTC Resolutions, guidelines recommended by the CTC’s Airspace Advisory Committee (AAC), FHWA policies stated in 23 CFR 713, Subpart B, and procedures established in this chapter.

Established policies and procedures provide guidelines on leasing airspace sites to maximize use of property acquired for transportation purposes by allowing a dual use that must include one or more of the following:

- Increases the local tax base.
- Replaces some commercial services removed by a highway construction project.
- Promotes area employment.

- Provides an asset for the Department (e.g., park and ride lots and jointly developed roadside rest areas).
- Eliminates maintenance expenses of vacant sites.
- Creates an income stream that exceeds expenses to operate the program.
- Contributes to the State Highway Account.

See Reference File for the most current CTC Resolution.

**15.01.02.00      Responsibilities of Headquarters, Airspace Development Branch**

The Headquarters Airspace Development Branch (HQ A/S) is responsible for:

- Developing all policies and procedures governing all aspects of airspace leasing and management.  
  

**NOTE:** District Permits handles all proposals to use property within the right of way of a conventional highway with the exception of Department owned property adjacent to a conventional highway (e.g., maintenance station).
- Delegating districts/regions to review and approve airspace uses and lease agreements.
- Preparing periodic reports on statewide and district/region income, expenses, inventory, production, and goals.
- Establishing standards to measure Airspace activity (i.e., income, expenses, production, and workload) in accordance with current and future contracts for district/region performance.
- Liaison with district/region Airspace Seniors, AAC, CTC, FHWA, other programs, and all external agencies.
- Coordinating budget requests for district/region PY allocation and workload projections.
- Preparing the annual Business Plan and the Annual Airspace Report and presenting them to AAC and CTC.
- Resolving technical issues through research and subsequent written guidance.
- Monitoring district/region activities to ensure the most effective and streamlined procedures are in place and working with districts/regions to make necessary changes to district/region activities or statewide procedures.
- Holding quality meetings, functional councils, training seminars, and workshops.
- Administering S&H Code Sections 72 (Route 480 Earthquake Damage), 104.11 (Joint Development), 104.12 (Leasing of Airspace), 104.17 and 104.18 (Homeless), and 146 (Mass Transit) and Government Code (GC) Section 14013 (Marler Johnson).
- Developing standardized lease agreements and language to protect the Department from potential liabilities and claims from the lessee, sublessees, and adjoining owners.

### **15.01.02.01      Annual Reports**

HQ A/S prepares four annual Airspace reports.

- **Marketing Plan** - generates the workload in the R122 (“R/W Production Statistics”) report. Used to allocate PYs for the next two fiscal years by MSA Codes. Long term leasing activities are by work unit and projected completion date. Data is requested in the spring of every year and is reported by June 30, the end of the State Fiscal year (SFY), to HQ A/S.
- **AB 142 Report** - statewide inventory, by district/region, that lists leased and vacant sites including use, internal uses, and potential income. Data is requested in the spring of every year and is reported at the end of the SFY.
- **Annual Report to the AAC, CTC, and Legislature** - districts/regions provide information on inventory, income, and leasing activity for the previous fiscal year with specifics on Marler Johnson leases, Park and Ride Joint Development, Park and Ride Demonstration Program, internal uses, building development, seismic retrofit, and other major programs. Per S&H 104.12, data is requested for the previous SFY in the fall of each year and reported after October 1.
- **Business Plan** - a statewide plan for the Airspace program that establishes next year’s objectives and goals. This report must be presented to the AAC and the CTC each SFY.

Management or the Legislature may also require special reports or information.

See Reference File for the most current reports.

### **15.01.02.02      Annual HQ Staff Assistance Visits (SAV)**

HQ A/S staff will visit the Senior Agent for Airspace (Senior) at least once a year to review current operations and ensure accurate instructions are in place to assist Region and District Airspace Units (Airspace) with the work products and goals. Some of the items HQ A/S and Airspace may discuss are the effectiveness of:

- Airspace efforts to maximize public and private multiple use of right of way.
- Written policies, procedures, and instructions.
- Annual marketing, workload, and budgetary plans used to track PY effort.
- HQ A/S assistance and training to improve district/region operations and prepare for the next budget cycle.

### **15.01.03.00      Responsibilities of Region and District Airspace Development Units**

To manage an effective Airspace program, the Senior and staff will:

- Develop a positive marketing program to maximize revenue.
- Implement multiple use concepts during the project planning and design processes.
- Administer and manage all freeway leasehold and airspace areas.

- Identify potential airspace sites and maintain a current and accurate database in the inventory.
- Coordinate with the Environmental Branch to identify project environmental implications or determinations and to assist developers with requirements for environmental clearance, storm water pollution prevention, and air quality studies or statements.
- Coordinate with district/region Maintenance and Landscape units to market the joint use of roadside rest areas and park and ride lots to provide better services to the traveling public while decreasing the Department's maintenance expenses on the sites.
- Cooperate with private industry to develop suitable sites.
- Protect airspace sites against adverse economic impacts, such as inappropriate utility encroachments and discriminatory down zoning.

#### **15.01.04.00      District/Region Airspace Review**

Airspace is responsible for conducting a district/region review of all proposals to lease an airspace site. A District Airspace Review Committee (DARC) consisting of representatives from Right of Way, Traffic Operations, Landscape Architect, Project Development, Maintenance, Environmental, Structures, Hydraulics, and the State Fire Marshal must approve proposed airspace uses. Additional programs may be included if the program is affected by the proposed use (e.g., the Park and Ride representative from Traffic Operations).

Prior to submitting the proposal to DARC, Airspace should review the proposal and develop a plan for leasing the site, including:

- Best method to lease the site (bid or directly negotiated).
- Adjacent property management and excess sites that could be joined to the site and leased together.
- History of prior leases (including term and use).

Although formal meetings are suggested, informal discussions and routing of the proposal will suffice if the proposal is not complex.

Airspace shall provide relevant information to DARC members, such as:

- Proposed use and term.
- Site improvements (proposed and existing) - paving, striping, curbing, lighting, etc.
- Access - ingress and egress.
- Utilities, including water.
- Major developments - buildings, storage tanks.

DARC representatives should be permanent members from each program who have committed to participate fully in the review. Responses should be returned in the established time frame (e.g., 15 days for conceptual and 45 days for preliminary and final). Close coordination with the proposed lessee is necessary to ensure documents are submitted on time to obtain all approvals prior to scheduled construction or occupancy date.

DARC is responsible for reviewing the proposal to ensure the use and improvements will not adversely affect highway safety nor interfere with operations. Any conflicts between the proposal and internal uses should be mitigated with the proposed lessee to the fullest extent possible.

Airspace should use discretion when forming a DARC review for a proposed use. Only those members that can provide valuable input on the impact to their program should be included in the review. A legal, low-value, non-complex proposal with no improvements may require a less intensive review than a parking structure underneath a highway structure. Additionally, many of these types of proposals may not require extensive review at the conceptual phase. This can be done at the preliminary and final stages after the potential lessee provides more detailed information on the proposed lease.

DARC reviews are held at the conceptual, preliminary, and final phases to ensure previous concerns have been addressed and the proposal has not dramatically changed since conceptual approval.

The preliminary phase is at Airspace’s discretion considering the proposal’s complexity and the level of review that was performed at the conceptual phase.

See Section 15.06.13.00.

<b>DISTRICT/REGION AIRSPACE REVIEW PHASES</b>	
<b>Stage</b>	<b>Review</b>
Conceptual	<ol style="list-style-type: none"> <li>1. Does the proposal make sense?</li> <li>2. Any program objectives?</li> <li>3. Identify upgrades or modifications to site (e.g., slope or column protection).</li> <li>4. Other interest parties?</li> <li>5. Highest and best use.</li> <li>6. Advise proposed lessee of DARC comments.</li> <li>7. Does the lessee understand the requirement to pay a fair market lease rate?</li> </ol>
Preliminary	<ol style="list-style-type: none"> <li>1. Preliminary plan review: effect on operations. <ul style="list-style-type: none"> <li>• access, utilities.</li> <li>• highway structures.</li> <li>• lessee’s improvements.</li> </ul> </li> <li>2. Potential risks and liabilities compared to benefits and revenue.</li> <li>3. Advise proposed lessee of DARC comments.</li> </ol>
Final	<ol style="list-style-type: none"> <li>1. All DARC comments addressed in final plans.</li> <li>2. Local and environmental approvals obtained.</li> <li>3. Construction and maintenance schedule.</li> <li>4. Final plans showing excavation and trenching.</li> <li>5. Advise proposed lessee and Permits Office of status.</li> </ol>

**NOTES:**

## **15.02.00.00 - INVENTORY OF AIRSPACE LEASES AND INTERNAL USES**

### **15.02.01.00      Inventory Requirements**

Each airspace site shall be entered into RWPS. Refer to the RWPS User's Manual for inventory procedures.

The inventory data are used to obtain site-specific information and to prioritize sites with the highest development potential. The prioritized sites are marketed according to the district/region's annual marketing plan.

### **15.02.01.01      Identification Number**

Each site is assigned a freeway lease area (FLA) number using district/region number, county abbreviation, highway route number, assigned site number, tenancy (e.g., 04-SF-101-0010-01). If a site is split for interim or other uses, each site should have a separate site number. If a site is combined with another site (airspace, excess land, property management), the combined site should be assigned the primary airspace site number.

Telecommunications sites are identified with a special site numbering system, using 9XXX, with an alpha for the last character (e.g., 04-SF-101-901A-01 is the first site on the route and the first carrier; 04-SF-101-902B-01 is the second site on the route and the second carrier on the site). This helps identify and track all carriers on the same site.

### **15.02.01.02      New Sites in Inventory**

New sites identified as potential leases should be added to the inventory as soon as possible. Potential sites on new freeway projects should be added to the inventory within six months of completion of construction.

To assist in preparing the District Marketing Plan, Airspace should indicate which sites in the inventory have the highest revenue potential.

Proposals to lease new sites require DARC review, with a formal recommendation through HQ A/S to FHWA. The request must include a vicinity map and a site map, or an adequate substitute. After review, HQ A/S will route the request to FHWA for review. If approved by FHWA, the site can be added to the inventory through IRWS and RWPS. Telecommunications (wireless) facilities are added to

the inventory after preliminary site approval in order to deposit the processing fee directly into the Airspace Account (vs. 84 Account). To track the six-month local permitting period, it is necessary to open an account for each carrier at each site. Vicinity and site maps are provided by the carrier and should be on file prior to final approval.

### **15.02.01.03      Mapping**

Maps shall be prepared for each airspace site in accordance with R/W Engineering Section 6.01.04.00 and Exhibit 6-EX-1B.

Each airspace site must have a vicinity map and a site map. The vicinity map shows the general location of the site and its relationship to the state highway and local roads. The site map shows the perimeter of the site and its relationship to the highway centerline and right of way lines, including all structures. It also denotes the square meters of leasable area, usable area, and the area restricted from use (e.g., footprint of the columns).

Refer to "Drafting and Plans Manual of Instructions" Lease Area Maps Figures 4-4.4A through 4-4.4D.

The vicinity map is the only mandatory requirement for adding a site to the inventory or obtaining conceptual approval. The site map can be requested from R/W Engineering if there is agreement on the size, shape, and area that will be leased **and if** the likelihood of leasing the site is high. Otherwise, use a copy of the record map with appropriate markings of the proposed airspace site, noting approximate boundaries and square meters. (Dual notations on maps of the area to be leased are allowed for local agency and lessee purposes, e.g., square meters/ square footage).

### **15.02.02.00      Department Use of Airspace Sites**

A Department program may need to use an airspace site for a future transportation highway project (new construction or modifying an existing highway facility) or reserve it for an internal use (temporary or permanent). Any vacant or soon to be vacant site may be held for "CALTRANS USE" if the requesting program's submittal is approved.

The DD approves such requests after Airspace analyzes the economic and local factors of removing the sites from the list of “available” sites. The analysis should include:

- Estimated fair market lease rate (FMLR) is based on the fair market value (FMV) of the site considering the highest and best use, the potential length of a lease, and the present worth of the income stream.
- Potential loss of possessory interest tax revenue to the local agency.
- Date the requesting program needs the site for proposed construction or modification to an existing facility.
- If the site is currently leased, probable cost to cancel the lease if the requesting program’s need is immediate.
- Environmental considerations of the proposed internal use, including potential neighborhood and community impact.

Airspace presents its analysis of the proposed use to DARC for a recommendation to the DD to approve or deny the request.

A final decision by the Headquarters Deputy Director of Project Development is required if the DD’s conclusion is at variance with other Department guidance, instructions, standards, or delegations for approval. HQ A/S approval is not required.

#### **15.02.02.01      Internal Use**

A Department program may need an airspace site for a permanent or temporary internal use. Examples of permanent uses are maintenance operations (e.g., vehicle storage), landscaping projects, employee parking, and park and ride lots. Examples of temporary uses are sites for relocated businesses due to seismic retrofit, internal construction staging areas, holding areas for historic buildings pending sale, and other immediate needs of the Department. If the site is not in the inventory, it should be added and coded as “CALTRANS USE” (“CT” in RWPS) to track potential savings to the Department by using its own real estate assets.

To ensure the Department is using its land assets properly, Airspace should annually review all sites

held for Caltrans use to ensure the need still exists for the current usage and the current usage is still the best use of the property, considering other potential uses and net return. Airspace must discontinue the internal use if it is a significant under utilization. However, Airspace should consider Caltrans needs as a high priority and recognize that there may not be an alternative site that will adequately serve the Department’s needs. If the Department intends to provide contractors with an airspace site for a construction staging area, this should be announced in the Construction Bid Package. If not, the site may be leased to the successful construction contractor at PMR.

#### **15.02.02.02      Existing Internal Uses and Potential Airspace Leases**

If a site currently held for Caltrans use can generate a higher return if leased, Airspace must prepare an economic analysis for the DD and request termination of the current use so the site can be developed for an external use.

If the internal use is an under utilization of the site and an adequate replacement site is available, Airspace and the user program may consider terminating the existing use and making the property available for lease. A Project Report is required, and the cost to relocate and reestablish the internal use at the new site should be considered. The analysis should consider the potential revenue against the cost to relocate the impacted facility and program, factoring in the probability of leasing the site and any risks the proposed lessee may encounter, thus reducing the probability of a successful lease. Relocation should occur only when the program using the site funds the cost.

The analysis may indicate (1) the existing internal use is proper, (2) the use should be discontinued and the site made available for lease, or (3) a portion of the property should be retained and a portion made available for lease as the program will no longer need the entire site.

A program (maintenance, construction) using a site must submit formal written notice to Airspace prior to vacating the site. The notice must state when the site will be vacated, the current condition of the site (e.g., hazardous materials) and list improvements that will remain. Airspace must coordinate termination of the use with the vacating program to ensure the site is ready to lease to a private entity.

**15.02.02.03      Property Retention Policy**

The procedures for internal and external uses of Airspace property are subject to the Department's Property Retention Policy, which requires the Property Review Committee (PRC) recommend any proposed use of Airspace property for **other than revenue generation.**

**NOTES:**

## 15.03.00.00 – PLANNING AND MARKETING

### 15.03.01.00      General

Properties offered for lease must attract the widest possible market to achieve the maximum return. Standard real estate marketing techniques should be used to ensure adequate exposure of the property for lease. The ability to be flexible as to the terms of lease and potential assemblage of adjoining sites should be brought to the attention of all prospective lessees. Airspace should use additional methods to achieve the widest distribution of leasing information for **specialized** property, such as advertising in technical magazines, developing a homepage on the Internet, or hiring a leasing agent or broker.

### 15.03.02.00      Planning

Airspace is responsible for working with Project Development and Environmental to identify potential multiple use or joint use opportunities in the planning and design phases of transportation projects.

Pursuant to S&H Code Section 104.12, Airspace shall take necessary action to implement multiple use concepts developed in the project planning and design stage; therefore, staff should provide necessary technical information, including DARC recommendations.

Good working relationships with local agencies responsible for approval of Airspace proposals are necessary for successful planning and marketing activities.

### 15.03.03.00      Marketing

Prior to preparation of the annual budget, Airspace should prepare its annual plan for the next two fiscal years for marketing and budgeting purposes. The plan includes target workloads for all short term, long term, and telecommunications leasing activity. The plan shows sites Airspace intends to market, by quarter, and the lessee selection process (direct negotiation or bid) (RW Form 15-01). The plan is used to forecast, schedule, and identify resources.

In addition, each vacant site should have a specific marketing plan identifying and scheduling the leasing activities (e.g. appraisals, CTC approval, lease agreement, and construction). See Exhibit 15-EX-01.

Although sites in the plan are usually in the Airspace inventory, new sites (not yet approved conceptually) can be included if external interest is high.

As part of the plan, Airspace should review the economic viability of airspace sites in the inventory. If there is little or no interest in a site, Airspace should either change the proposed use (requiring prior FHWA approval) or remove the site from the inventory. All site mapping and preliminary work should be retained in a District/Region archive file for future use should interest in the site resurface.

### 15.03.03.01      Advertising

Sites should be advertised using the appropriate media e.g., newspapers, radio announcements, Internet web sites, and developers' periodicals. Note all advertising efforts in the site diary.

Methods used to advertise low value airspace sites should be limited to those methods that will attract some interest but will not cost more than the potential revenue. For example, an Airspace site that can be used only as unimproved overflow parking does not warrant a major marketing campaign.

### 15.03.03.02      Signs

Advertising signs should be placed on airspace sites in accordance with the marketing plan and as follows:

- **Parking or Open Storage** - at least one month prior to bid opening.
- **Non-Development or Development** - at least three months prior to bid opening.

Airspace should maintain an adequate supply of signs. Approximate cost (1997) is \$25/sign.

**15.03.03.03**      **Promotion**

There are several ways to make the public more aware of the Airspace Program, such as:

- **Standard "For Lease" and "For Auction" Signs** should be at least 2' x 3' (aluminum or plastic) and mountable in some fashion.  
Example:

*FOR LEASE*  
*Contact: (Phone Number)*  
*Right of Way Office*  
*(Property of State of California)*

- **District Public Affairs Office's** news releases and radio and television public announcements on ongoing and completed developments.
- **Staff Presentations** to community, local governmental entities, and professional real estate organizations.
- **Personal Contact** with local builders and developers to discuss the program.

**15.03.03.04**      **Adjoining Owners**

When a site becomes available, Airspace should contact adjoining owners and occupants to give them pertinent information about leasing the site, discussing potential uses for their benefit. Note all discussions in the site diary.

**15.03.04.00**      **Broker Commissions**

Although not currently a common practice, the Department is authorized, per CTC resolution, to contract for the services of a real estate broker to assist in developing a long-term lease. If approved by DDC-R/W, the standard agreement must state:

- Commission is paid after the first lease payment is received.
- Installment payments will be made if the commission exceeds the monthly lease rate (e.g., broker receives half the rent paid until the commission is satisfied).
- Commission will not exceed three percent of FMV appraisal.
- The proposed lessee's offer and proposal are submitted with the broker's agreement.

- The proposed lessee's option period does not exceed six months.
- The broker's agreement is site specific and limited to five sites per year.

**15.03.05.00**      **Discriminatory Rezoning**

The Department is concerned about local agency proposals to change the zoning of potential airspace sites that adversely affect their marketability. Airspace should work closely with local planning agencies to prevent general plan and zoning proposals that adversely affect existing or potential Airspace properties. Airspace may be notified of a planning action by direct correspondence from the local agency or by formal notice in a newspaper of general circulation pursuant to GC Sections 65854 et seq. Although formal notices are usually required, Section 65858 provides authority for local agencies to adopt certain interim zoning ordinances as urgency measures without the above notice requirements.

Airspace shall immediately notify the DDC-R/W, who will advise the DD, of any proposed planning or zoning action affecting Airspace property. The DD may intercede in instances where it is believed to be in the Department's best interest to oppose a local agency's planning or rezoning activity. At that point, the DD advises Airspace to contact the Legal Office and HQ A/S for assistance. If the DD determines it is not in the Department's best interest to intercede, the DD will document in writing the reasons for not contesting the local agency's proposed action and forward a copy to the Deputy Director Project Development.

Legal and HQ A/S will jointly evaluate the local agency's proposed action to determine the appropriate method to oppose the action (e.g., formal correspondence, appearing at public hearings, formal meetings, and legal actions). HQ A/S may also involve the AAC and the CTC as appropriate. Prior to initiating any legal action, the matter will be referred to the Director to review opposition attempts to date and to concur that the case warrants legal action.

Opposition will never include applying political pressure on individuals involved in the local planning process.

## 15.04.00.00 – AIRSPACE LEASES

### 15.04.01.00      Types of Airspace Leases

The typical airspace lease agreements are:

- **Rental Agreement** - non-complex, non-developmental use for six months with one six-month extension.
- **Parking and Open Storage Agreement** - short term, non-developmental use for up to 5 years with no options or extension. Usually the result of an open bid process.
- **Non-Developmental Agreement** – longer term non-developmental use for more than 5 years (including options), which may involve minor improvements to the site. Usually the result of direct negotiations.
- **Developmental Agreement** - long term developmental use for more than 5 years (including options) involving major construction. Usually the result of direct negotiations.
- **Marler Johnson Park Agreement** - Local public agency's use of a site for a park or recreational facilities.
- **Park and Ride Agreement** - month-to-month agreement with a non-profit organization to use the park and ride facility in exchange for maintenance and security services.
- **Three-Year Directly Negotiated Non-Developmental Agreement** - three-year lease with no right of extension, resulting from direct negotiations for sites that are not good candidates for bidding, or have been offered for competitive bid but no bids were received.
- **Telecommunications Wireless License (Site License Agreement)** - specific site agreement for a wireless facility for 10 years with three 5-year options. Carrier must have executed a HQ A/S Master License Agreement, which defines the specific terms and conditions for all sites.

Other lease agreements may be entered into with public agencies (e.g., local public agencies, school districts, and government agencies) and the motion picture industry.

#### 15.04.01.01      Rental Agreement

Rental agreements are for interim uses (e.g., Christmas tree sales, radio frequency testing, and construction staging areas). The term is limited to six months with one six-month extension and cannot go beyond one year. At no time will the use be extended beyond 18 months.

Although a rental agreement can be used when a site is pending approval of the terms and conditions of a directly negotiated lease, the preferred method is to use a Letter of Understanding or Option Agreement. A rental agreement does not imply any approval to lease the site for development purposes.

#### 15.04.01.02      Parking and Open Storage Agreement

Short-term parking and open storage lease agreements are used when the proposed lessee will make limited or no improvements to the site, so does not need an extended period of time to amortize the cost of improvements. The term is normally two years but can be for five years, depending on the need of the lessee and the potential rate of return that may result from a longer term agreement.

The standard agreement can also be used for other non-developmental uses that will not exceed five years as long as all other provisions in the agreement remain the same. HQ A/S should be contacted prior to modifying any lease provisions for this different use.

The agreement is usually used after a competitive bid process but in rare circumstances can be used after direct negotiations (e.g., with an adjoining owner of a landlocked site).

See Section 15.06.00.00 for processing these leases.

**15.04.01.03**      **Non-Developmental Agreement**

This agreement is very similar to the Parking and Open Storage Agreement, except the lease term is beyond five years but usually no more than 15 years, including all options and extensions. The longer lease time is needed to generate a higher rate of return, or the lessee needs the site as plottage for an adjoining development or to amortize the minor improvements needed at the site (e.g., paving, striping, lighting, and curbing). Also, local school districts or governmental agencies may require longer terms.

This agreement is usually the result of direct negotiations but, on rare occasions, can be the result of a competitive bid.

If Airspace determines direct negotiations will result in a higher return to the Department, the request must be submitted to the AAC and CTC (See Section 15.06.05.00). HQ A/S must concur with Airspace's recommendation prior to submitting the request to the AAC.

**15.04.01.04**      **Developmental Agreement**

The Department is not actively pursuing developments on airspace sites, particularly those proposals underneath a highway structure. Should Airspace be approached with a developmental use (e.g., office building, mini-warehouse, or parking structure), however, DARC must thoroughly review the proposal before requesting approval to negotiate directly with the proposed lessee. Since competitive bids are rarely used for developmental leases, there is no standard format. If Airspace determines that this is the best approach to generate the highest rate of return, it should consult HQ A/S when preparing the bid package and developing the selection process for the Offer and Proposals.

The complex nature of a development lease usually requires writing a specific lease agreement, possibly using the standard agreement as the basic format. HQ A/S and Legal should be involved in developing the agreement prior to approving and executing the document.

If Airspace determines direct negotiations will result in a higher return to the Department, it must submit a request to the AAC and CTC (See Section 15.06.05.00).

HQ A/S must concur with Airspace's recommendation prior to submitting the request to the AAC.

**15.04.01.05**      **Marler Johnson Agreement**

Pursuant to the Marler Johnson Highway Park Act of 1969 and the terms and conditions established by the CTC, a local agency can request use of an airspace site for park or recreational purposes. The normal DARC process is followed and a FMLR is established. Rental offsets for anticipated savings to the Department can be deducted from the FMLR to determine the actual rate.

<b>Example 1:</b>	
FMLR	\$825/mo
Security costs from previous SFY	-212/mo
Maintenance costs (debris, weeds, fire abatement) from previous SFY	<u>-372/mo</u>
Actual rate	\$241/mo

Airspace should ensure local agency proposals do not propose a children's play area **directly** underneath the edge of the highway structure as this could create an unsafe condition should debris be tossed over the side by a passing vehicle.

**15.04.01.06**      **Park and Ride Agreement**

An FHWA approved demonstration program allows month-to-month tenancies on park and ride lots to enhance lot occupancy by providing security and maintenance.

Traffic Operations, Park and Ride Office, may request assistance from Airspace in locating a non-profit organization to occupy a park and ride lot that is not being used to its full capacity. Leasing a portion of the lot provides on-site management of the facility to assist with maintenance and security, which should improve facility usage. In some cases, longer-term leases with other entities may be considered. Consult with HQ A/S on specific proposals.

The FMLR for the area to be leased is offset against the savings to the Department from not having to provide security and maintenance. The non-profit organization's use cannot reduce the number of parking spaces available. The minimum lease rate is \$1 per month, calculated by subtracting the savings to the Department from an approved FMLR or \$500 (minimum lease rate), whichever is greater.

**Example 2:**

FMLR	\$400/mo.	
Minimum Lease Rate	\$500/mo.	
Maintenance Offset	\$600/mo.	
	\$499/mo.	(maximum offset)
Lease Rate	\$ 1/mo.	(minimum lease rate)

Airspace should review leases annually to ensure usage at the site has improved with on-site management, and that continuing the month-to-month arrangement is in the Department's best interest. All lease agreements can be terminated with 30-day notice if the Department needs the entire area, if on-site management has not improved usage, or if the lessee is not providing the required level of security and maintenance.

**15.04.01.07      Three-Year Directly Negotiated Non-Development Agreement**

Airspace is authorized to negotiate directly with a proposed lessee on a site that has been unsuccessfully bid or cannot be bid because it is landlocked. The term cannot exceed 3 years, even with extensions, and the use cannot require any major site improvements. The following guidelines apply.

- The use is non-developmental, with limited improvements (e.g., paving, striping).
- Lease rate is based on an estimate of FMLR.
- FMLR is adjusted 5% each year.
- There is only one potential lessee.
- DARC and FHWA must approve the use.
- The use complies with local zoning and is considered non-controversial.
- No hazardous materials can be produced, stored, or transported.

This process was developed to streamline Airspace attempts to get a site occupied when it is in the Department's best interest but the intended use, rate, and term do not justify the time needed to get AAC and CTC approval.

The AAC is advised annually on the status of these leases and can terminate this practice if the agreements are not being used successfully.

**15.04.01.08      Telecommunications Licenses**

A Master License Agreement (MLA) for Cellular and Personal Communications Services (PCS) Carriers allows a licensed carrier to install and operate a wireless facility. Each carrier must execute the MLA with HQ A/S prior to executing a specific Site License Agreement (SLA) with Airspace.

The MLA allows the carrier to install a facility on any Caltrans owned property (maintenance facility, park and ride lot, office building, and within operating and non-operating right of way) where it is deemed safe and non-interfering.

The current MLA does not apply, however, to proposals to install wireless facilities on conventional highways. The Permits Office must handle those requests.

Refer to the Telecommunications Licensing Process and Guidelines (August 1997) for further details.

**15.04.01.09      Public Agency Leases**

A school district, local public agency, or other governmental agency can lease an airspace site for public use. Airspace should coordinate renewals and payment schedules with the agency's budget cycles to ensure lease payments are allocated in its budget. Airspace should contact the agency at least six months prior to the budget cycle date to determine if the lease will be renewed. If so, an appraisal should be requested with a due date prior to the date of the lessee's budget request. After the appraisal is approved, Airspace should begin discussions immediately with the lessee to ensure adequate time for the lessee to request additional funds if the lease rate increases.

**15.04.01.10      Film Industry Leases**

In accordance with GC 14998.7, the Department shall waive compensation and cooperate fully with the film industry for use of vacant airspace sites or for subletting leased sites.

**15.04.02.00      Oil and Gas Leases**

To generate revenue, oil and gas rights may be leased to any oil and gas company that will pay rates equal

to or greater than the rate being paid to individuals in the same geographical area.

To lease a site, the company will provide Airspace with its proposed lease agreement, the anticipated revenue, a vicinity and site map, and a written legal description. After Airspace review of the agreement (with assistance from HQ A/S and Legal as appropriate), the company must execute the agreement before the Department executes it. Generally, the lease agreement or the memorandum of the lease is recorded. Airspace should ensure that the Department's signature is authorized to execute recordable documents in the county where the site is located. The company must pay a fixed lease rate based on market data until the drilling operation begins.

When the company starts actual production, royalties become due (percentage of gross revenues). Airspace must change the account to reflect zero rent and schedule the lease for an annual payment (in arrears).

When the lease is terminated, a quitclaim must be recorded, with a copy to R/W Engineering to update their records.

#### **15.04.03.00      Utility Companies**

Airspace leases and procedures are not used to establish or to continue the placement of public utility lines in freeway rights of way. The Caltrans Encroachment Advisory Group (EAG) in Headquarters issues permits for the use and occupancy of such rights of way for a public utility purpose. In other words, under no circumstances will the Department grant an airspace lease in the right of way to a utility company. Exceptions are granted if a utility company proposes to lease an airspace site for parking or office space. The utility company must be referred to the Office of Permits, which will handle all requests for an encroachment permit, including requests for exceptions to the longitudinal encroachment policy.

Telecommunications Wireless Carriers are not treated as utility companies, even if some are regulated by the California Public Utilities Commission (PUC) as they do not provide a necessary service to the public, and they operate in a competitive arena. Sites for wireless facilities are handled exclusively as "site licenses" by Airspace and not by District Permits Office.

#### **15.04.04.00      Lease Agreements**

Standard lease agreements for all types of airspace leases are available in each district/region. Updates and changes to the provisions are submitted via a memorandum and/or electronic methods (E-mail, network, disks). Airspace should contact HQ A/S prior to entering into a new agreement to ensure it is the latest version.

HQ A/S must approve all modifications to the standard lease provisions, and the R/W Program Manager or a delegated representative must execute the agreement. One original executed copy of all long term leases must be sent to HQ A/S.

See Reference File for the most current standard lease agreements and delegations for execution.

#### **15.04.04.01      Terms and Conditions**

The standard terms and conditions of a lease agreement generally include:

- Use and improvements.
- Term of the agreement, including options and extensions.
- Lease rate per approved valuation report, if based on the FMV, and also the rate of return.
- If a bid, the lease rate must be based on the last bid or the previous lease rate.
- Reevaluation provisions and periodic adjustments to the lease rate.
- Default, liability, and termination provisions.
- Sublease, assignment, and transfer provisions.
- Retention and removal of improvements.
- Maintenance responsibilities of all parties.

The standard lease agreement provides for all the above and more, and HQ A/S must pre-approve any modifications to the clauses.

Requests for "CTC Approval of Terms and Conditions" of a lease agreement must provide detailed information about the above terms and conditions.

**Sample format:**

Use:	Improved parking
Term:	10 years, one 5-year extension
Lease Rate:	\$835 (rounded) per month
Fair Market Value:	\$100,000 as plottage
Rate of Return:	10%
Adjustments:	3.5% annually
Reevaluations:	After 10 years
Improvements:	Paving, striping, curbing
Termination:	Standard - either party after the first 5 years
Liability Coverage:	Standard \$5,000,000

**15.04.04.02 Insurance Requirements**

Each airspace site must be insured for \$5,000,000 in liability and, if the site is developed, 100% of replacement cost. The lessee must provide a current certificate of insurance each year. Airspace should review it to insure the fire coverage is sufficient considering increases in value. Each telecommunications wireless facility must be insured for \$5,000,000 liability. HQ A/S will monitor the insurance requirements for the Telecommunications licenses. Some existing leases only required \$2,000,000 or less at the time of execution, and these should be increased to the new minimum as the leases are amended or extended. Use Form RW 15-03.

**15.04.05.00 Option to Lease**

An option allows the proposed lessee to hold the site while obtaining all reviews and approvals necessary to construct (e.g., local permits and construction funding). The use of an option for long-term competitive bids does not require prior HQ A/S approval, but Airspace should consult with HQ A/S about the applicability of an option.

**15.04.05.01 Option Agreements**

HQ A/S will assist Airspace in preparing the Option Agreement. If the lease is through direct negotiations, the AAC must pre-approve all requests for "CTC Approval of Terms and Conditions." The standard option period is three to six months.

**15.04.05.02 Option Payments**

The Option Agreement will specify the amount of option payment that the proposed lessee (Optionee) must pay to hold the site pending all approvals and executing the lease agreement. The option payment should be based on the minimum bid and the potential rate if leased as is. The standard minimum option payment is one month's rent based on the successful bid.

**15.04.05.03 Exercising Option Rights**

The optionee/lessee must notify Airspace, in accordance with the notice provisions in the option agreement, whether or not optionee/lessee intends to exercise the option to execute the lease agreement. Extensions can be granted in rare circumstances, and provisions for such extensions should be addressed in the initial Option Agreement.

**15.04.06.00 Exercising Option to Extend an Existing Lease**

Not to be confused with the Option Agreement, some lease agreements provide for an option to extend the original term (e.g., 10-year lease with three 5-year options). The lessee must state in writing its intent to exercise the option and identify any anticipated changes to the use or the agreement. Airspace must review terms of the agreement to ensure conditions to extend have been met and determine if the lessor (Caltrans) has the right to deny the option. If so, Airspace must immediately conduct a DARC review of the site before formally acknowledging the request. Also, the lease agreement may provide for reevaluation prior to the extension, requiring Airspace to coordinate the reevaluation with the Appraisal Branch and the lessee. Airspace sends an acknowledgment letter to the lessee and sends copies of the letter and notice to HQ A/S.

If there is no change in the provisions of the lease, an amendment to exercise an option is not needed. If there is a change, it is handled in the same manner as amendments (see Section 15.06.12.05).

## 15.05.00.00 - LEASE RATES AND ADJUSTMENTS

### 15.05.01.00      Valuation of Lease Rate

The lease rate for an airspace site is established by the following methods:

- **Airspace Estimates** - used for preliminary discussions with potential users, for minimum value sites, or for uses of six months or less.  
  
The lease rate for the rental agreement may not require an airspace estimate if there is already a clear basis in the market for the lease rate.
- **Airspace Appraisals** - A market value airspace appraisal is required for any site that will be leased on a direct basis without competitive bids and for those situations not meeting the criteria for bid lease valuations. This format is used for all development leases or when there is a question as to the site's highest and best use. The appraisal is valid for one year.  
  
When direct negotiations for a development lease are entered into, the appraisal should not be requested until the potential lessee executes a Letter of Understanding (see Section 15.06.04.02) and makes a deposit that is sufficient to cover the cost of the appraisal. The potential lessee has the option of obtaining an independent appraisal report from a list of approved appraisers.  
  
A reevaluation of the current lease rate may be required prior to extending the term of a long-term lease agreement, requiring a new airspace appraisal.
- **Bid Lease Valuations** - A bid lease valuation is required to establish a range of value in determining minimum rental rates on the basis of competitive bids. The valuation is valid for one year.  
  
Both current use and lease rate should be considered when the airspace site is leased and the determination of the lease rate will be used to establish a new minimum bid.

When the valuation is complete, Airspace should summarize the report to use in discussions with the proposed lessee or to present the terms and conditions to the AAC (Form RW 15-02).

### 15.05.01.01      Lease Rate Appraisal

In lieu of a full appraisal report for any non-developmental uses on directly negotiated airspace leases, the Appraisal Branch can choose a simplified format to determine the value of sites used for parking, storage, or public parks. (See 7.15.05.00 for additional information.)

The appraisal will conclude a specific market lease rate as appropriate to the airspace site's attributes, limitations, benefits, and proposed use and terms.

This streamlined approach cannot be used if the highest and best use is in question or if the airspace site is considered as plottage to an adjoining property. (See 7.15.05.00 for additional information.)

### 15.05.01.02      Percentage Leases

In rare cases, the FMLR will be a percentage of the gross income the lessee will generate at the site. Airspace must determine the best percentage and establish the method for calculating same (e.g., five percent of gross revenues over a base rent). In addition, the lease agreement must provide for an audit by Airspace, usually on an annual basis, of the lessee's records to ensure the calculated amount is accurate.

The Office of Audits and Security shall pre-evaluate the lessee's method of keeping books, records, and accounts of financial transactions in connection with the lease. After the lease is executed, Airspace should request the Office of Audits and Security to audit the lessee's records every three years to validate annual audits conducted. Airspace can also request assistance to calculate the annual percentage rate if there is a question about the information the lessee provided.

See Section 07.15.00.00 for specific procedures.

**15.05.02.00**      **Plottage Value**

Airspace should advise the Appraisal Branch if the airspace site will be joined to an adjacent site for development. The airspace site may provide additional square footage/meters for parking that a local agency requires before the adjacent site can be developed, or the site may provide needed access to all or a portion of the adjacent site. An airspace site that increases the value of the adjacent site should generate a higher rate of return to the Department.

**15.05.03.00**      **Rate of Return**

A full appraisal report requires the property rights be valued as fee. A suggested rate of return based on market data should be included when the data is readily available. The rate of return will provide Airspace with a tight range of lease rates to use in negotiating all terms and conditions of the lease. If no data is available, Airspace must determine the comparable rates of return to use in establishing a lease rate from the FMV of fee; e.g., \$100,000 FMV x 10% rate = \$10,000 annual FMLR (monthly = \$835 rounded).

**15.05.04.00**      **Scheduling Valuation Requests**

Annually during the budget process, Airspace estimates the number and type of airspace site appraisals needed for the next fiscal year. The list identifies the lease areas to be valued and the dates by which the appraisals are needed. This list is then given to Appraisals, where it is used to prioritize preparation of airspace appraisals. Airspace should also request updates of appraisals over one year old.

Information about the site relevant to its valuation should be given to the appraiser. In cases of direct negotiation, the potential lessee's name and intended use are included in the appraisal request.

Effective communication between Airspace and Appraisals is essential. Changes to the schedule should be closely coordinated. The formal request for an estimate, valuation, or appraisal states the Airspace site number, the property rights to be appraised, and includes necessary appraisal maps, plans, and profiles of the freeway. It must include any restrictions that will be placed on use of property. Airspace should formally check on the status of its request well before the date the requested information is needed.

The appraiser and Airspace agent should discuss site use and restrictions before start of the appraisal and at

the rough draft stage. The appraiser should include in the appraisal, or otherwise convey to Airspace, any data useful in marketing the area to be leased.

**15.05.05.00**      **Lease Payments**

The lease rate is typically paid monthly; however, advance lump sum payments can be made on a semi-annual or annual basis (e.g., governmental entities that operate on a specific budgeting cycle or for minimum lease rates to save administration costs).

Prior notice to HQ A/S is required in cases of any payments less than the minimum amount.

**15.05.05.01**      **Minimum Lease Rate**

The minimum lease rate is the appraised FMLR, but not less than \$500 per month or \$6,000 per year, with exceptions:

- For Park and Ride (non-profit) and Marler Johnson lessees only, the lessee will provide a service to the Department (e.g., maintenance or security) or there is some other benefit.
- The legislature mandates lease rate (e.g., public agency use, homeless shelters).
- The FMLR supports a minimum rent of less than \$500, and the proposed use will benefit the local community or neighborhood.

Any other circumstances should prompt Airspace to consult with HQ A/S.

**15.05.05.02**      **Minimum Security Deposit**

The minimum security deposit for any airspace site is one month's rent for non-developed, short-term sites, but not less than \$500, and three months' rent for non-developed long term sites. The minimum security deposit for developed sites is three months rent, or more if the risk to the Department is great or the potential for damage and removal of improvements is high. Security deposits are required for all leases except Telecommunications Licenses and public agencies.

When the proposed use represents an extraordinary risk to the Department, Airspace will need to ensure the minimum security deposit is increased to reflect this additional risk or liability. Airspace should only allow high-risk uses when the benefits of the

proposed use outweigh any risks or liability to the Department.

**15.05.05.03**      **Periodic Adjustments**

The lease rate must be adjusted for all leases over two years. At a minimum, the rate will be equal to the Consumer Price Index (CPI) for the area and adjusted annually. Lease provisions establish a base rent and may not allow the adjusted rate to fall below the initial base rent (the lease rate when the lease was executed). Other lease provisions may not allow the adjusted rate to be less than the previous year's rate. It is imperative that Airspace reviews the lease provisions to determine if negative adjustments to the lease rate can be applied. Other proposals to adjust the rate can be based on a range (e.g., more than 2% but less than 7%) of the CPI, or adjusted at greater intervals than annually, but are compounded annually (e.g., adjusted every 5 years based on the annual CPI not to exceed 25%).

Reevaluations of the lease rate for long-term lease agreements should occur at least every 10 years.

Increases in the lease rate require periodic adjustments to the security deposit to ensure there are sufficient funds to cover potential damages or losses. Some basic lease types establish a mandatory rate increase.

**15.05.06.00**      **Rental Offsets**

Rental offsets may not be promised or offered to a lessee unless the offset is part of an approved lease. If a lease is already in effect, the Senior must approve the offset in writing. This includes Marler Johnson leases and Park and Ride lots.

Rental offsets should not be confused with rental adjustments to correct RWPS occupancy and billing errors or to process approved adjustments for certain maintenance activities and seismic retrofit credits.

**15.05.07.00**      **Seismic Retrofit Adjustments**

If the lease provides for such, adjustments may be made when the district/region needs temporary access to the Airspace site for seismic retrofitting. The temporary use must be less than six months, impact less than 50% of the site, and not impact any of the improvements.

HQ A/S must pre-approve Airspace's request for an adjustment. The request must be accompanied by the lessee's statement that no other form of compensation will be solicited.

The Department's long-term use of all or a portion of a leased airspace site may require the leasehold interest be acquired, depending on the specific provisions in the lease agreement.

Refer to appropriate Acquisition and Appraisal policy and procedural instructions for more details.

**NOTES:**

## 15.06.00.00 - AIRSPACE LEASES - PROCESSING

### **15.06.01.00**      **Rental Agreement**

The potential lessee must submit a letter to Airspace stating the proposed use, the proposed rate, and the rental period (not to exceed six months).

After DARC determines the appropriateness of the use and the lease rate is established, Airspace executes the standard rental agreement and opens an account in RWPS. HQ A/S and FHWA review, approval, and concurrence are not needed, and no copies need to be submitted to HQ A/S.

The tenant may be granted one six-month extension, for a total occupancy of one year, if no other parties have indicated an interest and if Airspace does not have plans to market the site for a higher use. If others are interested in the site, the competitive bid process must be initiated immediately.

### **15.06.02.00**      **Short-Term Leases - Competitive Bid**

Many sites in the inventory are not suitable for development or have not yet attained their highest and best use. In some cases, parking or open storage may be the highest and best use. These sites can generate substantial revenue if leased for uses with shorter terms, such as parking and open storage.

Short-term uses are for two to five years and are most commonly used for parking lots with private lessees. When a site is offered for bid, Airspace should attempt to contact all interested or potentially interested parties. Marketing efforts may include media advertising, signing of the property, personal contact with owners and tenants of abutting properties, and mailing notices to all parties on the inquiry list.

#### **15.06.02.01**      **Bid Auction**

A bid auction shall be held at least three months prior to expiration of any existing lease. The normal process is to hold an oral auction unless Airspace anticipates more interest and a higher rate of return by asking for sealed bids. The bid package should identify proposed use, term, conditions, minimum bid, proposed occupancy date, insurance requirements, and selection process (e.g., highest bid). It should also require a minimum deposit to participate in the bid and provisions for payment to secure the site. A copy of the standard lease agreement should be attached or made available to all interested parties. See Exhibit 15-EX-02 for a sample bid package and Exhibit 15-EX-03 for sample bid instructions. HQ A/S review and approval of a short-term bid package is not required.

#### **15.06.02.02**      **Minimum Bids**

The minimum bid for a short-term use is established by the following.

- **Site Has Never Been Bid Or Leased** - minimum bid is based on market data the Appraisal Branch establishes.
- **Site Has Been Previously Bid** - new minimum bid is based on the last minimum bid adjusted for current market conditions, but not less than 75% of the previous minimum bid.
- **Site Has Been Previously Leased** - new minimum bid is based on the most recent FMLR adjusted for current market conditions and annual adjustments (e.g., CPI percentage).

HQ A/S must approve reducing the minimum bid below 75% of the bid valuation, the previous minimum bid, or the previous lease rate if Airspace can substantiate the need to attract more interest in the bidding process.

The maximum return to the state should be obtained considering the reduction in costs to maintain a vacant site.

#### **15.06.02.03**      **Bid Deposit and Payment**

Each interested party in the competitive bid process must bring a cashier's check equal to three months of the minimum bid (Bid Deposit) to be allowed to participate in the auction. After completion of the bid or auction, Airspace shall immediately contact the successful bidder and request an **immediate** payment of the balance due, calculated by multiplying the successful bid by two months, adding the security deposit, and then subtracting the Bid Deposit. All other Bid Deposits are returned to the originators. The successful bidder, now the proposed lessee, must execute the standard lease agreement within 30 days of the bid, or Airspace will contact the second successful bidder in the process. Funds are not returned to the proposed lessee if the agreement is not executed.

#### **15.06.02.04**      **Renewals**

When the current lessee is the successful bidder in a competitive bid to lease the same property, a Lease Renewal (Form RW 15-4) may be used to identify any new provisions in the terms and conditions for continued use (such as storm water pollution prevention requirements), as well as the new rental rate. Extensive changes to the previous agreement would require a new lease agreement.

A renewal is different from an extension to an existing long-term lease agreement.

#### **15.06.03.00**      **Long-Term Leases - Competitive Bid**

Long-term bid leases are not commonly used and are rarely used for development. The process is generally the same for both non-development and development leases. Since there will be at least minimal construction (e.g., fences, landscaping, and paving) in most non-developmental leases, the requirements for plans may still apply. The plans should also show circuitry of traffic on the site and the ingress and egress routes.

Refer to Table 1, "Process - Long Term Bid Lease," on the following page.

<b>TABLE 1 PROCESS – LONG-TERM BID LEASE</b>			
<b>Step</b>	<b>Responsible Party</b>	<b>Action</b>	
1	Airspace	Identify site to be leased, either by an inquiry or as part of the marketing plan.	
2		If not in inventory, request maps from R/W Engineering.	
3		Submit to DARC indicating proposed use. Include Permits and SFM as appropriate.	
4	DARC	Review and approve/disapprove request.	
5	Airspace	If DARC does not approve, determine the problem and try to resolve any difficulty with the proposal. If the problem cannot be resolved and a short-term use cannot be identified, remove the proposal from the marketing plan and the inventory.	
6		If DARC approves the request, ensure all program restrictions and conditions are included in the bid package and the lease agreement (e.g., access limitations, column protection, and landscaping).	
7		Send DARC comments and a site map to HQ A/S for FHWA conceptual approval.	
8		Request bid lease valuation if not already scheduled.	
9		Send proposed marketing plan and bid package to HQ A/S for review and approval as appropriate. If the bid package suggests an option period, the proposed Option Agreement should be developed and included in the package. If not, the standard agreement should be included.	
10		Sign site, place media ads, and contact neighboring owners/tenants.	
11		Mail bid package to interested parties; conduct a site review as needed.	
12		Open Offer and Proposal bids. Analyze all bids received and send recommendation of the successful bidder to HQ A/S. HQ A/S will reconfirm FHWA's approval if the proposal differs slightly from the approved use.	
13		Lessee	Execute the standard option or lease agreement. Any modifications or changes require prior HQ A/S approval.
14			An Option Agreement requires payment when executed by Optionee.
15			The proposed use must have final approval before the lease can be executed. (See Final Approval - 15.06.11.03.)
16		Airspace	Submit Agreement to HQ Program Manager or delegated representative.
17	HQ A/S Delegated Rep	Sign Option and/or Agreement and return to Airspace, as appropriate.*	
18	Lessee	After final reviews/approvals are obtained, apply for an encroachment permit to construct.	
19	Airspace	Monitor lessee's move onto the site, including any construction, and begin property management activities.	

\*Note - required for development purposes only.

### **15.06.03.01**      **Offer and Proposal**

An airspace site that will be developed with a longer-term lease agreement requires a different method of selecting the successful bidder. While shorter-term parking or non-development leases are awarded based on the highest bid (lease rate), the preferred method for longer-term development leases is to evaluate the offers and proposals received from developers.

The bid package should specify exactly how the successful bidder will be selected, requiring an Offer and Proposal (O&P) from prospective bidders. The O&P describes in detail the type of development proposed (e.g., amusement park, office building, and major recycling center) and the proposed lease rate over a period of years (e.g., graduated payments and percentage of revenues). The airspace site should be awarded to the developer that proposes the best and highest return to the Department.

Selection of the successful bidder should involve evaluating the best development and use of the site, as well as the quality and certainty of the investment return (“income”) to the Department. The construction of an amusement park may be less intensive than an office building, but the Department may have little use for the amusement park after the lease has expired. A major recycling center may generate a higher return in the earlier years of the lease but not generate the highest return over the entire term of the lease. Also, there may be more risks associated with a major recycling center because of contaminants. An office building, however, may require a longer option period before all approvals to construct are obtained.

HQ A/S will work closely with Airspace in determining the best method to lease a site for development and, if a competitive bid is selected because of considerable interest in the site, provide assistance in developing the bid package for O&Ps.

### **15.06.04.00**      **Long-Term Leases - Directly Negotiated**

The CTC must approve directly negotiated leases for a long-term agreement (more than 5 years), with some exceptions. Direct negotiations are often approved when an airspace site’s potential revenue is increased if the site is “joined” with an adjacent site (whether privately or governmentally owned). Processing a directly negotiated lease is generally the same for development and non-development leases. In most non-development leases, there will be at least minimal construction (such as fences, landscaping, and paving), so the requirements for plans may still apply.

AAC concurrence is not needed to directly negotiate with a public agency or an owner adjoining a landlocked site. The terms and conditions for a directly negotiated landlocked site require CTC approval.

Refer to Table 2, “Process – Long-Term Negotiated Lease,” on the following page.

TABLE 2 PROCESS – LONG-TERM NEGOTIATED LEASE		
Step	Responsible Party	Action
1-7	Various	See Steps for Long Term Bid Lease.
8	Airspace	Send “Consent to Directly Negotiate from the AAC” (see Exhibit 15-EX-05) to HQ A/S 30 days prior to the next quarterly AAC meeting.
9	HQ A/S	The request should explain why it is in the Department’s best interest to negotiate directly with the proposed lessee, including any attempts or barriers to offering the site for competitive bid. For example: <ul style="list-style-type: none"> <li>• Return to the State would be much higher.</li> <li>• Site is landlocked with a single user.</li> <li>• Plottage value could be expected.</li> </ul>
10		The request should include a location map, site map, square footage of the usable and non-usable area, and the proposed use.
11		Submit the request to the AAC and arrange for Airspace to present the matter at the next quarterly meeting.
12	Airspace	If approved, Airspace may provide the proposed lessee with a Letter of Understanding (Exhibit 15-EX-04) detailing the anticipated lease agreement, with a copy to HQ A/S.
13	HQ A/S	Request an appraisal report for the proposed use, either through the Appraisal Branch or from the proposed lessee. HQ must approve the appraisal report.
14		After lessee is advised of the FMLR, negotiate all other terms and conditions of the lease, including time frame, term, and extensions. <i>No term is independent of another, so Airspace should negotiate the best terms for the Department, with the understanding that a favorable position for the Department in one area may require a less favorable term elsewhere.</i>
15		Secure preliminary plans and submit for DARC approval.
16		Request “CTC Approval of Terms and Conditions” through the AAC by sending a memorandum to HQ A/S.
17	HQ A/S	Submit the request to the AAC and arrange for Airspace to present the matter at the next quarterly meeting.
18	Airspace	If AAC recommends approval, request “CTC Approval of Terms and Conditions” at the next monthly meeting.
19		If CTC approves terms and conditions, request lessee to execute the lease agreement and forward it to HQ A/S for execution (unless delegated). All final approvals must be obtained PRIOR to execution (see Final Approval).
20-26	Various	Same as Long Term Bid Leases Steps 13-19.

#### **15.06.04.02      Letter of Understanding**

A Letter of Understanding (Letter) is sent to the proposed lessee after AAC consents to direct negotiations. The letter states the Department's intent to negotiate in good faith for the proposed lease. This will assist the proposed lessee in obtaining all local approvals and construction funding prior to executing the lease agreement, as the Department is agreeing to keep the site off the market pending successful negotiations.

The Letter requires a \$1,000 processing fee and states the AAC's consent to directly negotiate is valid for **one year**. The Letter will also request funds to pay for the district/region's appraisal of the airspace site, which must be received prior to the Appraisal Branch completing the report. The Letter should also outline the time frame for negotiations and satisfaction of any issues Airspace, FHWA, DARC, or AAC have identified.

If mutual agreement cannot be reached on the terms and conditions within one year, the AAC may grant an extension. If the proposed lessee wishes to continue negotiating, there is no additional processing fee. If negotiations will not continue beyond the first year due to AAC, lessee, or Airspace desiring to terminate discussions, Airspace must send written notice to the proposed lessee canceling the negotiations and any and all agreements stated in the Letter. No fees or funds are returned to the proposed lessee.

See Exhibit 15-EX-04.

#### **15.06.05.00      AAC and CTC Approval**

Before the Letter of Understanding, the AAC must consent to Airspace's recommendation that direct negotiations with a proposed lessee will result in a higher rate of return to the Department and that it is in the State's best interest to deal directly with one entity.

The negotiated terms and conditions, along with the appraisal summary, are presented to the AAC to recommend CTC approval.

After CTC approval of the terms and conditions, the R/W Program Manager or delegated representative can execute the standard lease agreement.

See Reference file for most current AAC guidelines.

#### **15.06.05.01      AAC Consent to Directly Negotiate**

The request for AAC to consent to direct negotiations must clearly state **why** it is in the State's best interest to lease directly to the proposed entity (e.g., plottage value, rate of return, and improvements to the site).

Each proposed lessee must pay a processing fee of \$1,000 if the AAC consents to direct negotiations.

AAC's consent to negotiate directly is only good for one year. Airspace must request an extension from the AAC to negotiate beyond that time. An additional processing fee is not required.

See Exhibit 15-EX-05.

**15.06.05.02**      **CTC Approval of Terms and Conditions**

The CTC must approve the negotiated terms and conditions before the lease agreement is executed. HQ A/S will submit a Request for Approval (Exhibit 15-EX-06) after Airspace presents the terms and conditions to the AAC (Exhibit 15-EX-7) and AAC recommends approval.

**15.06.06.00**      **Public Agency Leases**

Leases with public agencies do not require AAC consent to negotiate directly or CTC approval of the terms and conditions, as long as the lease rate is at or above FMLR. Prior to concluding negotiations, Airspace must advise HQ A/S of the proposed rate and the appraised value. The executed lease agreement must have the appraisal summary supporting the lease rate stating it is fair market.

**NOTE:** The site **must** be used for a “public” purpose.

**15.06.07.00**      **Processing Other Lease Agreements**

Three-Year Directly Negotiated Non-Development Leases, leases with non-profit organizations on park and ride lots, and leases with the motion picture industry should follow a process similar to the directly negotiated lease agreement. Airspace should document the file as to why direct negotiations are in the State’s best interest, the lease rate is based on market, and the standard lease agreement is being used.

It is important to note that “for profit” uses on a park and ride lot can be approved by following the normal lease process, and, although generally the lessee should be selected via a competitive bid, direct negotiations can be used if that method is in the best interest of the State.

Processing **Telecommunications Site License Agreements** is described in the Department’s Telecommunications’ Licensing Process and Siting Guidelines. See the flowcharts on the following two pages and R/W Form 15-5 (checklist) for a quick reference to processing the SLA.

If several carriers are interested in the same site for a wireless facility, then Airspace must offer the site through competitive bidding, using the pricing matrix in the MLA as the basis for the minimum bid. However, if the carriers can agree on a colocation (multiple carriers at the same site) or select other sites that are more feasible for their facility, Airspace can initiate the process to execute the SLA.

**15.06.08.00**      **Marler Johnson Park Lease**

Airspace shall specifically notify all appropriate local agencies of the availability of airspace for park and recreational uses that meet CTC criteria. Local agencies should be contacted about leasing potential sites.

Lease agreements under this statute shall be made on the standard lease format for the Marler Johnson Highway Park Act. Airspace shall ensure that development is made in accordance with approved plans and within the time limits set forth in the lease.

Local agencies should contact Airspace about leasing a site within non-operating rights of way (GC Section 14013). Airspace shall review the local agency's request and, if the site will not generate a higher return if leased for some other use, initiate the process to lease the site to the local agency.

After determining that a Marler Johnson park or recreational use is appropriate, the Department may offer a lease for a period of ten years with five year extensions at the Senior's discretion. FMLR is required, but the rate may be offset up to the amount the Department will save in landscaping and maintenance expenses. Special provisions to terminate the lease are included in the standard lease agreement. AAC and CTC approval is not required if the lease meets all other park lease requirements.

**15.06.09.00**      **Toll Bridge Authority Lease**

Special handling is required for revenue received from airspace sites created by construction of bridges under authority of the Toll Bridge Authority Act and from concession leases in Terminal Facilities. Because these facilities were financed by the Toll Bridge Authority Act and bond indentures were executed under such Act, the Department's accounting procedures provide for handling and distribution of funds through District 04. Although the revenue is treated differently, all sites identified as airspace on the toll bridges shall be controlled by the same procedures established for any airspace site, including processes and approvals.

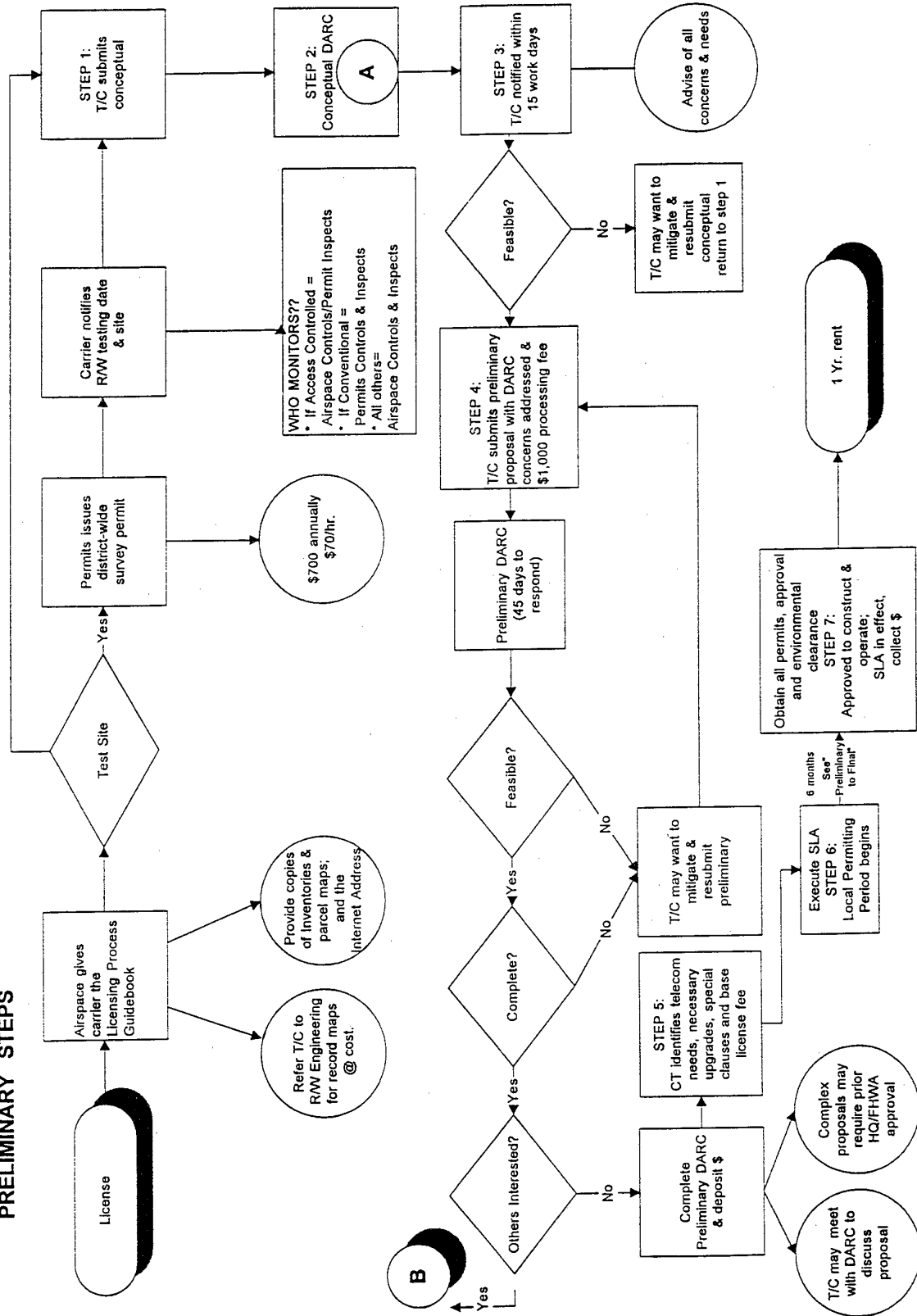
Property Management manages terminal facility leases under the same procedures as regular accounts are managed.

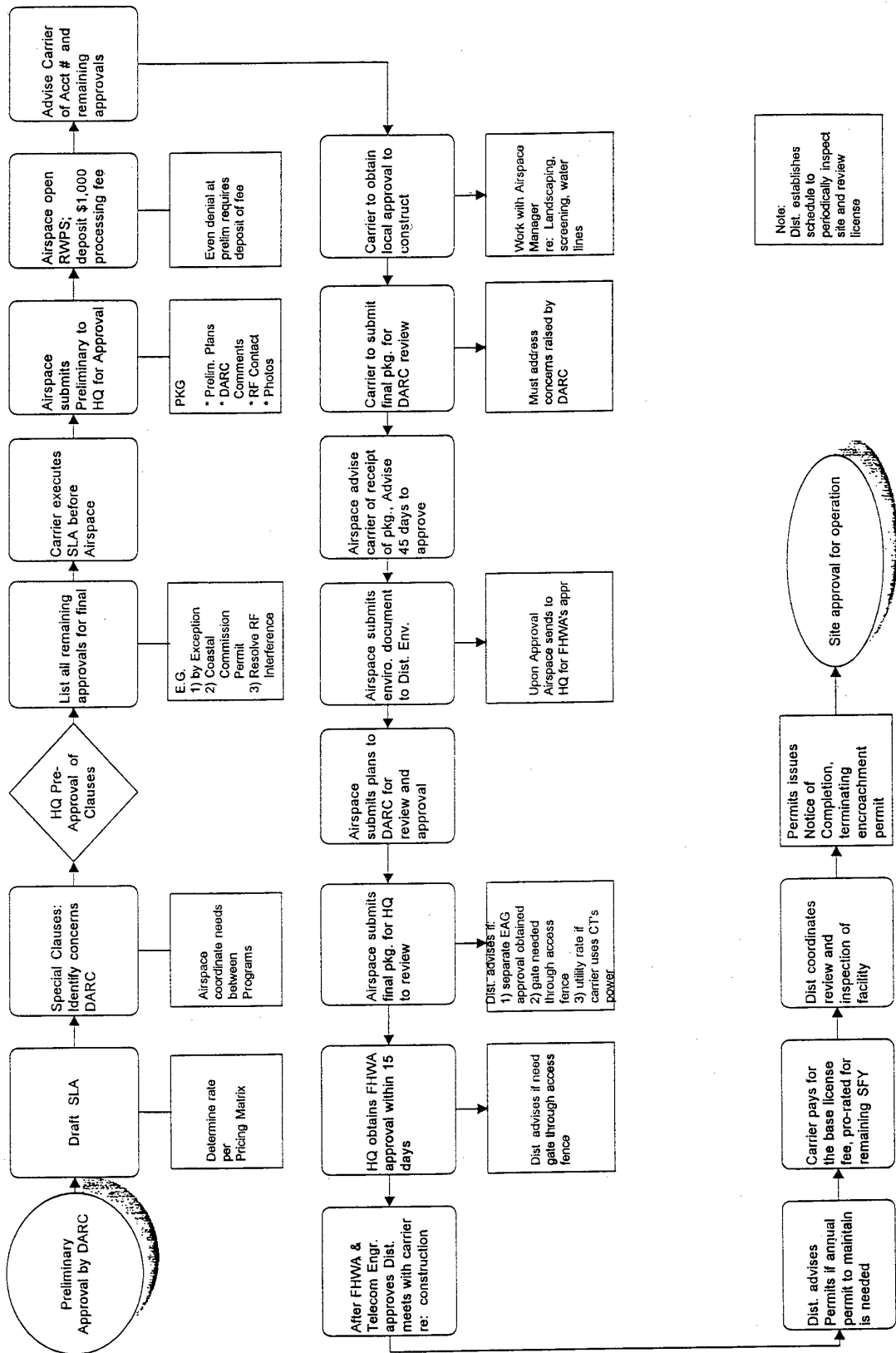
**15.06.10.00**      **Subsequent Lease Documents**

After a lease has been executed, the lessee may need additional formal consent from Airspace to construct or modify operations on the site.

The lessee should be charged a processing fee to obtain approval of most subsequent documents, primarily subleases, assignments, and encumbrances. The processing fee is based on time involved in the review and provisions in the lease agreement to charge fees. When Airspace has the latitude to determine the rate, a standard \$1,000 fee per action can be applied in most circumstances.

**PRELIMINARY STEPS**





**15.06.10.01**      **Estoppel Certificate**

Lenders and potential assignees may want assurances that the lessee is not in default prior to executing any agreements with the lessee. The lessee's financial institution may request Airspace provide the lease status prior to approving the lessee's construction loan. The Estoppel Certificate states there is a valid lease agreement, the lessee is in full compliance with the terms and conditions, and the lease payments are current.

See Exhibit 15-EX-8 for the **mandatory** format.

**15.06.10.02**      **Encumbrance**

The lessee may need to encumber the airspace site in order to secure a loan. Standard lease agreements may allow encumbrance with Airspace approval before the loan is secured. If granted, Airspace should ensure the financial institution will be responsible for all lease payments in the event lessee defaults on the airspace lease.

The lease agreement should be reviewed carefully regarding any special language or provisions for encumbering.

See Exhibit 15-EX-9.

**15.06.10.03**      **Memorandum of Lease**

When a lessee applies for a loan, the lending institution may require a Memorandum of Lease (MOL) signed by Airspace. If the MOL will be recorded, a district/region representative authorized to execute real estate documents for that geographical area must sign it.

Prior to executing the MOL, Airspace must recommend its execution, stating the lessee is not in default with any provisions of the lease agreement.

See Exhibit 15-EX-10.

**15.06.10.04**      **Sublease and Assignment**

Airspace must approve lessee's request to assign or sublease any or all interests in an Airspace lease. Each lease agreement provides for the notice and approval process, along with a fee and a sharing of any increase in the lease rate generated by the transfer.

Airspace will execute the Assignment of Lease (Forms RW 15-6 or RW 15-7) or Consent to Sublease (Form RW 15-8) after review of the:

- Lease agreement with the lessee.
- Proposed assignment or sublease between the parties.
- Statement detailing assignee's or sublessee's proposed use.
- Proposed assignee's or sublessee's financial statement (unless it is a bank or financial institution).
- Current lessee's status as a tenant.

In rare circumstances, Airspace may relieve the primary lessee of the responsibilities in the lease agreement should the assignee or sublessee default. In some cases, the primary lessee's bank or financial institution may become the new lessee due to defaults between the two parties.

FHWA concurrence with subleases or assignments is required only if there is a change in use or if the current use affects air quality.

#### **15.06.10.05      Amendments**

If an amendment to an executed lease is considered a **major** change, prior approval from AAC, CTC, and FHWA may be required. Airspace shall submit the request to HQ A/S for processing. Any change that affects the following is considered major:

- Term of lease (primary or option).
- Reduced rental rate or the return to the State for the remaining term.
- Use including the type and square footage of the development.
- Lease adjustments and reevaluations (e.g., frequency or rate).

Airspace must explain the effect of the amendment, justifying their recommendation of it. Any standard lease provisions that were not part of the existing agreement should also be included at this time.

#### **15.06.11.00      Reviews and Approvals**

Airspace must ensure that each airspace site is thoroughly reviewed and appropriately approved to reduce potential risks to the Department. All affected programs and those entities with authority over the process should review each use.

The Reference File provides current information on mandatory review and approval processes for the different leases and when Airspace has discretion or delegated authority to review and approve the use.

#### **15.06.11.01      Conceptual Approval**

Either Airspace or a proposed lessee may want to have an airspace site approved for a conceptual use. DARC must recommend the proposed use to FHWA through HQ A/S. Based on information provided by Airspace, FHWA approves the general concept of the proposal only and is in no way bound to accept the final proposal. FHWA does not need to conceptually approve the use if the same use was approved when entered into the inventory.

#### **15.06.11.02      Preliminary Approval**

Preliminary approval is only needed when the information at conceptual approval was insufficient to determine the major impacts on the property or when the proposed use differs. A site may have conceptual approval as unimproved parking, but at the preliminary phase the lessee wants to pave, light, and stripe (with some excavation). The DARC should review the proposal again to determine the effects on operations (e.g., drainage, column protection, ingress, and egress). Restrictions and conditions are provided to the proposed lessee so all requirements are identified on the final plans. FHWA preliminary approval is also required.

### **15.06.11.03      Final Approval**

Before the lease agreement is executed, the proposed use must receive final approval. Generally, formal approval for a lease over five years includes:

- DARC approval of the final construction plans of the proposal.
- Local agency concurrence that the proposal does not conflict with local zoning ordinances (as evidenced by issuing a building permit).
- Recommendation of lessee's environmental document by District Environmental.
- FHWA approval of the final construction plans, environmental document, and, if necessary, an air quality study.
- Evidence of insurance per the lease agreement.
- Execution of the lease agreement and payment of the lease rate per terms of the agreement.
- Application and issuance of an encroachment permit to construct from District Permits Office.

Sites offered for competitive bid must have conceptual approval for the proposed use. The bid package must state that final approval in accordance with these procedures must be obtained before the site is occupied.

Airspace sites for short-term unimproved parking and open storage, with no change in the approved use or improvements, may need less formal review for final approval.

See Reference File for the most current review and approval authority by phase and by office/program.

### **15.06.12.00      Environmental Status**

Every site must have an approved document for the proposed use that addresses environmental issues. Proposed lessee must obtain final approval of their plan from the local agency, which usually requires an environmental study. The study must be submitted to District Environmental for review and recommendation for approval to FHWA. The recommendation states the document meets applicable CEQA and NEPA requirements. A new lease for the same use will require an approved environmental document within the last 3 years.

Airspace should consult the Environmental Manual or the District Environmental Unit on specific questions.

### **15.06.13.00      FHWA Approval**

FHWA approval of airspace leases is required when the airspace site is located on a highway included in the National Highway System (NHS), or when the highway project received any federal funds for design, construction, or maintenance. All federal requirements in 23 CFR 713, .204, Subpart B, shall be followed. (See Exhibit 15-EX-13.)

If the proposal is considered a major environmental action, FHWA will require an appropriate Environmental Impact Statement (EIS) or Environmental Assessment (EA) in accordance with 23 CFR 771.

FHWA's final approval is required before the encroachment permit for construction can be issued. Airspace must submit, through HQ A/S, the final DARC comments, the environmental document, an air quality statement or study, the proposed use and terms, and the final construction plans.

All issues DARC and FHWA raise at the conceptual phase must be addressed in the final package.

See table below.

<b>FHWA APPROVAL REQUIRED FOR</b>	
<ul style="list-style-type: none"><li>• Conceptual use of an airspace site not in the current inventory. (Requires a narrative describing the use and a location map.)</li></ul>	
<ul style="list-style-type: none"><li>• A change in use (whether new lease, assignment, amendment, etc.).</li></ul>	
<ul style="list-style-type: none"><li>• Preliminary and final approval of the proposed use, including site plans, on any airspace site within the right of way (Includes telecom sites). <b>Note 1:</b> Preliminary approval <u>not</u> required if only minor improvements (paving, striping, lighting) will be made. <b>Note 2:</b> Final approval of an airspace or telecom site requires detailed mapping and plans of all impacts to the land (location of buildings, excavation, trenching, utilities). <b>Note 3:</b> DARC notes must be submitted with any request for conceptual, preliminary, or final approval.</li></ul>	
<ul style="list-style-type: none"><li>• Categorical Exemption or Environmental Impact Document of any new lease or a new lessee if the previous Categorical Exemption is over five years.</li></ul>	
<ul style="list-style-type: none"><li>• Air Quality Statement.</li></ul>	

**15.06.14.00**      **Air Quality**

An air quality study or statement is required for all Airspace sites when the use will involve vehicle traffic, especially short-term parking. The study or statement will consider the impact of the frequency of hot and cold starts of the vehicles.

The determination of whether an air quality statement or study is needed depends on the site's status. If the site has never been leased, an Air Quality Assessment from the local Air Quality Regional Board or the local Association of Governments (e.g., SCAG) is required. This assessment must address the impacts of the proposed use on air quality based on each Region's Air Quality Assessment Model.

If the proposed use is the same as the previous use, a statement from the local Metropolitan Transportation Commission (MTC) is needed. The statement should address the fact that the Airspace lease is not regionally significant and is not a transportation project. A blanket approval for all future Airspace leases (new and renewals) for a specified use only (e.g., parking lots with less than 250 parking spaces) may be obtained from the local MTC.

FHWA must approve the air quality study or statement prior to execution of the lease agreement.

The air quality requirement applies to all new leases, any lease with a change in use, or a renewal of a lease if it is a different lessee. All other leases are currently exempt from the process.

**15.06.15.00**      **Transmitting Documents**

HQ A/S involvement in the lease process varies depending on the level of review and approval for the different lease agreements and the degree of delegations to Airspace. To ensure the appropriate level of review and involvement by HQ A/S occurs on a timely basis, Airspace should use a transmittal checklist in routing documents for processing.

Use Form RW 15-9 to transmit documents to HQ A/S. (See Reference File for information on the most current review and approval authority and delegations.)

## **15.07.00.00 - INSPECTION AND USE REQUIREMENTS**

### **15.07.01.00      Inspections**

Airspace is responsible for security and maintenance of all leased airspace sites, so must regularly inspect sites to ensure lessees are maintaining sites properly. Inspections of all developed sites are required quarterly and inspections of all non-developed sites (e.g., parking lots) are required annually. Some uses may require more periodic inspections. Airspace should inspect and document all activities related to the lessee's property management activities.

When a leased site is not properly maintained, Airspace shall immediately inform the lessee of the violation and provide the lessee with a list of actions that must be taken and a time period within which to make corrections. If action is not taken, Airspace may initiate default proceedings to secure the site.

If a condition requires **immediate attention** (e.g., public safety and hazardous materials), the lessee should be given a formal 30-day notice to correct the problem and properly maintain the premises or to quit pursuant to lease provisions. If the condition is not corrected within that time, the lessee is declared in default and served a three-day notice. Violations requiring a 30-day notice shall be reported to HQ A/S.

Airspace may negotiate with District Maintenance to assist with periodic inspections of occupied sites, charging their time to the Airspace account. As maintenance crews are in the field on a more regular basis, their assistance is needed in ensuring that hazardous or unsightly conditions do not occur. If problems are found, Maintenance should notify Airspace in writing.

Storm water inspections of leased airspace are required under the Department's Storm Water Management Plan (see Section 15.07.10.00 and Exhibit 15-EX-14). Storm water inspections can be done at the same time as regularly scheduled airspace inspections, but should be done at least annually. Date of inspection must be entered into RWPS.

### **15.07.01.01      Inspections of Vacant Sites**

District Maintenance is responsible for inspection, security, and maintenance of all vacant airspace sites within operating and non-operating right of way.

Maintenance work on vacant sites is charged to the appropriate maintenance expenditure authorization. Airspace should not budget property management funds (Object x058) for sites that are or will be vacant. Airspace should also consider removing them from the Airspace inventory.

Airspace will advise Maintenance when a site has been vacated and there are no immediate plans to lease it. Maintenance will not automatically maintain vacant sites that appear to be leased (e.g., improved sites).

### **15.07.02.00      Column Protection**

Airspace sites underneath highway structures require special provisions to protect support columns. Two basic elements to consider in determining what type of protection is required is based on:

- Design of the columns.
- How the property will be used.

If the columns are made of steel and the use is anything other than passive (e.g., park or landscaping use), they must be protected as described in Exhibit 15-EX-11. Note that use of 0.109 galvanized steel pipe is not acceptable as a barrier protecting steel columns.

If the columns are concrete, the Structures Office will determine specific column protection. Protection may not be required for all parking leases as the types of vehicles and the specific parking area may not mandate barriers. Heavy usage, pattern of traffic, truck parking, and RV storage, however, require the maximum level of column protection. The required protection method ranges from nominal to sophisticated.

On all new leases, renewals, or extensions, column protection must be installed as part of the terms for renewing, extending, or leasing the site.

See Exhibit 15-EX-11 (multiple pages) for various methods of column and other structural protections, including backflushing.

#### **15.07.03.00**      **Backflushing**

Vertical drains are susceptible to clogging. On open systems, Structures Maintenance must backflush with air and water from the outlet end.

Backflushing is very difficult where enclosed columns and closed drainage systems have been installed. To make backflushing possible on closed systems, gate valves accessible from within the building are required on the outlet end of column drains.

#### **15.07.04.00**      **Highway Structures**

All proposed developments underneath a highway structure (e.g., buildings, multilevel parking structures, recreational areas) require the lessee to prepare a Project Study Report (PSR) addressing the safety and potential liability of leasing the site. Issues to address are number and frequency of people at the site, proposed use, hazardous or valuable materials to be stored, and current status of seismic retrofit work on the structure and its columns.

HQ A/S will review and approve the PSR.

At-grade parking and open storage proposals to use an airspace site underneath a highway structure will require less review than a parking structure or office building.

See Reference File for the most current exhibits to be attached to long term development lease agreements for airspace sites underneath structures.

#### **15.07.05.00**      **Mini-Warehouse Inspections**

Inspections of mini-warehouse structures should include reviewing the resident manager's restrictions on storage of high value or high risk personal property. The resident manager may be required to provide immediate access to individual storage units for Airspace or Fire Marshal inspection. Airspace should review the lease agreement for specific provisions on access and inspections. Airspace should review the lessee's standard sublease agreements to ensure the tenants are advised of all the Department's restrictions and rights.

**15.07.06.00**      **Groundwater Inspections**

Local agency or other mandate may require Airspace to inspect Airspace sites after a storm to ensure standing water does not collect contaminants before entering the storm water drainage system. Typical sites are paved parking and open storage sites that may have oil and gas residue.

**15.07.07.00**      **Encroachment Permits**

Encroachment permits are issued for all Airspace sites when construction occurs. This requirement applies to new paving, striping, lighting, electrical, and curbing, as well as all buildings. Modifications to an existing parking or storage area's traffic pattern may also require an encroachment permit. Minor modifications to the site will generally not require a permit.

Refer to the Encroachment Permits Manual for specifics.

**15.07.07.01**      **Encroachments by Exception**

Encroachments in access controlled right of way are handled by an exception process. The Program Manager for Design and Local Programs, with assistance from the Encroachment Advisory Group (EAG) in HQ, will review district/region recommendations to allow use of the operating right of way when safe and non-interfering. Typical requests are:

- Utility company installation of a pipeline parallel to the right of way line (not an Airspace use).
- Telecommunications carrier access to maintain the antenna and/or vault from the travelway (part of the site license agreement).
- Access from the travelway to adjoining private property (no exceptions granted).
- Access from adjoining property to landscape or otherwise improve the appearance of the private property (can be an Airspace use or handled by cooperative agreement through the Office of Landscape Architect).

Airspace should coordinate work with the Permits Office before transmitting the request to the EAG.

FHWA will need to concur with any approvals to allow private entities permanent access.

**15.07.07.02**      **Permits for Telecommunications Licenses**

The Telecommunications License Program may require three encroachment permits to perform work in the right of way. These are:

- |  |
|--|
| <ul style="list-style-type: none"><li>• <b>Survey Permit</b> - to test the radio frequency of proposed facility prior to submitting preliminary proposals to Airspace.</li><li>• <b>Encroachment Permit</b> - to construct if proposed use is approved.</li><li>• <b>Annual Permit</b> - to maintain the equipment if the proposal is within operating right of way.</li></ul> |
|--|

Refer to the Telecommunications License Process and Guidelines and the Encroachments Manual for more information.

### **15.07.07.03      Permits Office**

As required in the lease agreement, the lessee shall obtain an encroachment permit prior to construction. In no case shall an encroachment permit substitute for a lease.

Lessees may be required to obtain an encroachment permit prior to making any changes to the airspace site. The standard lease agreement requires Airspace to advise the Permits Office that all DARC concerns have been satisfactorily addressed and that DARC has reviewed and approved the final plans.

Airspace should formally advise the lessee of the encroachment permit process (e.g., application and required sets of plans). A copy of the letter to Permits will advise that all final approvals (e.g., environmental, local building permit, and DARC review) have been obtained and the lease agreement has been executed.

The lessee must obtain a performance bond and a payment bond, or a performance bond containing the provisions of the labor and material bond supplied by tenant's contractors, provided the bonds are issued jointly to tenant and Caltrans as obligees. An "Irrevocable Letter of Credit" is not acceptable as evidence for performance of a construction obligation.

**NOTE:** Permits Office does not accept dual obligee bonding. Caltrans must be the only agency on the bond.

### **15.07.07.04      Monitoring Construction**

Permits and Airspace shall carefully monitor construction of all developments on airspace sites. The permit shall provide that lessee will not occupy the improvements until all work is completed to the Department's satisfaction and a notice of completion has been issued to the lessee.

These permits shall specify that notice to the Bridge Structures Unit is required 48 hours prior to installing any attachments to a structure. If construction involves bridge structures, Airspace may request assistance from Structures Operations in monitoring the project.

Any changes in the plans shall require prior written approval of Airspace and Permits and revised plans covering these changes must be attached to the permit.

The local agency's planning department issues a Notice of Completion in accordance with their building permit. Permits issues an Encroachment Permit Completion Notice. The Permits Inspector does not ensure that building construction conforms to local standards; that is the responsibility of the local agency.

A copy of the final plans shall be forwarded to Structures Operations to ensure that a complete set of as-builts is on file for every structure in the State.

### **15.07.08.00      State Fire Marshal Inspections**

23 CFR 713, Subpart B, requires that the State Fire Marshal (SFM) concur with proposed airspace uses. SFM will inspect for fire safety, unapproved construction, illegal or dangerous storage practices, wiring, fire extinguishers, and sprinklers.

The Office of Structure Maintenance and Investigations (OSM&I) established general guidelines (Exhibit 15-EX-12) that satisfy FHWA requirements and that SFM uses to inspect all facilities. Airspace should advise potential developers of these standards.

The regional SFM supervisor, whose final approval is required for development leases, storage of higher risk items (e.g., recycling centers), and all uses underneath a structure, is a member of the DARC. At a minimum, separate copies of the preliminary and final plans for development should be submitted to the regional SFM office for review and comments.

The SFM will also make an initial inspection of telecommunications wireless facility pre-fabricated shelters.

HQ A/S is the Contract Manager for the SFM's annual contract.

#### **15.07.08.01      SFM Inspection Responsibilities**

All lease agreements require SFM have access to the property at any reasonable time for appropriate inspection of the site.

Annually, Airspace and the SFM will develop a list and schedule of required inspections, identifying those sites needing quarterly or annual inspections and any new sites that will be leased requiring an initial and periodic inspection.

The SFM will conduct quarterly internal and external inspections of all buildings, annual inspections of open storage areas, inspections by request, and proposals for construction of buildings.

#### **15.07.08.02      Conducting Inspections**

The SFM will conduct inspections per the established schedule, contacting Airspace when a problem is identified, when assistance is needed to gain access to the site, or when the inspection cannot occur as scheduled.

#### **15.07.08.03      Inspection Reports**

The SFM will submit an inspection report, identifying any areas needing immediate correction. Airspace will confirm the problem and give the lessee a 30-day notice to correct deficiencies. Airspace may initiate default proceedings if lessee does not correct the problem.

#### **15.07.08.04      Special Requests**

Airspace may request special assistance from the SFM for:

- Persistent problems with lessee's correction of noted deficiencies, especially if Airspace has instituted legal action.
- Situations involving extreme danger of fire or explosion requiring SFM and Airspace to take immediate action to prevent the lessee from continuing the practice.

The SFM must send a written report within one week. Airspace will forward a copy to HQ A/S.

#### **15.07.09.00      Hazardous Materials and Waste**

The Department's policy is to ensure that all airspace sites are, and continue to be, free of hazardous materials and waste. A material is hazardous if it poses a threat to human health or the environment. Hazardous materials are defined in the California Code of Regulations, Title 26, Division 4, Section 8-339.

Airspace must review all proposals to use or store hazardous materials on an Airspace site. The Hazardous Waste Coordinator (HWC) should be included in the DARC to ensure any approved use of hazardous material is under control and in accordance with applicable statutes and regulations. Of particular concern are materials that are flammable, reactive (subject to spontaneous explosion or flammability), corrosive, toxic, or radioactive.

Hazardous **waste** is any of the above materials that have escaped or been discarded or abandoned creating a potential liability for the Department. Airspace should closely monitor all approved uses of hazardous materials on an airspace site to ensure conformity with applicable laws, regulations, and local ordinances.

#### **15.07.09.01      Inspections**

Airspace sites should be inspected regularly for hazardous materials or waste that could contaminate the property. If Airspace discovers hazardous waste, the following action should be taken.

- **Hazardous Waste Exists** - If lessee's operation is causing the waste, notify lessee the action must cease or the lease will be terminated. Lessee is required to cleanup any hazardous waste or material. Cooperation with the HWC, Legal, and Project Development may be required. HQ A/S must specifically approve any new lease or lease renewal for a site confirmed to contain hazardous waste or materials.
- **Hazardous Materials Exist** - The risk of allowing the operation to continue with possible cleanup costs must be weighed against net rent, long-term liability, community impact and any positive factors. Document the justification for continuing the lease and retain in the file.

In each situation, the lease agreement should be reviewed to determine what is allowed and what remedial action is needed. Airspace should request amending the lease agreement to include the standard hazardous waste clause if the lessee will continue to occupy the site.

HWC can assist Airspace in all inspections and determinations of hazardous materials or waste.

#### **15.07.09.02      Hazardous Waste Coordinator**

If inspection of an Airspace site indicates a potential for a problem with hazardous waste, Airspace should formally request HWC to investigate and test the site immediately to determine if the site is actually or potentially contaminated.

The HWC will inspect the site and determine if:

- **Testing Is Not Necessary** - HWC provides a written statement that no hazardous waste is present.
- **Further Investigation Is Necessary** - HWC hires a consultant to determine if hazardous waste actually exists.
- **No Hazardous Waste Is Present** - Lessee is authorized to use hazardous materials but the use prompts the HWC to recommend future inspections and specific controls to reduce the Department's potential liability.
- **Hazardous Waste is Present** - Lessee is required to immediately and effectively remediate hazardous situations.

HWC's recommendation may require corrective action by the lessee, more frequent monitoring of the condition, or termination of the current use or the lease agreement.

**15.07.09.03**      **Inventory**

Airspace and HWC must ensure all vacant or occupied sites with any identified hazardous waste are included in the tracking system maintained by Project Development. This includes all Airspace sites with underground storage tanks.

**15.07.09.04**      **Potential Surface Contamination**

Certain developments may have a greater potential for hazardous waste contamination. Examples include service stations, paint companies, machine shops, light and heavy industrial manufacturing, fertilizer storage, junk and auto wrecking yards, and muffler shops. Proposals to use Airspace sites for these uses should not be allowed in most cases.

**15.07.09.05**      **Lease Clause**

Standard Airspace leases contain a hazardous materials clause stating the lessee is responsible for cleanup and mitigation of all hazardous material and waste deposits on the site, regardless of the source or cause.

Use of the hazardous waste clause and the lessee's proposed list of hazardous materials to be permitted should alert Airspace to potential problems. Before any lease is executed, Airspace must inquire into the specific type of use and consider the risk, with advice from the HWC as needed.

**15.07.10.00**      **Storm Water Management**

Airspace sites are within the Department's municipal separate storm sewer system (MS4) and are covered by the Department's Statewide Storm Water Permit and Storm Water Management Plan (SWMP). Airspace sites are therefore managed to prevent the discharge of pollutants to the storm water drainage system in compliance with the Department's Permit and SWMP. Airspace will use standardized lease language that conforms with the SWMP in new leases and in existing leases that come up for renewal. The lease language requires implementation of storm water best management practices (BMPs) that are activity specific and elimination of unauthorized illicit connections/illegal discharges to the storm drain system. Storm water education and outreach materials, including storm water pollution prevention fact sheets, will be provided to the lessee/tenant. The fact sheets contain the BMPs applicable to the lessee's activities.

District Airspace will maintain a list of leases with industrial activities that require coverage under the General Permit for Storm Water Discharges Associated with Industrial Activity (General Industrial Permit) issued by the State Water Resources Control Board (SWRCB). The list of leases requiring such coverage will be included in the Department's Annual Report to the SWRCB.

Lessees whose industrial activities on the lease premises require coverage under the General Industrial Permit will be required to provide the following:

- Copy of Notice of Intent (NOI) filed with SWRCB (or No Exposure Certification).
- Copy of Receipt letter from SWRCB with Waste Discharge Identification (WDID) number.
- Copy of Storm Water Pollution Prevention Plan (SWPPP) covering lessee's facility and activities.

In addition to obligations to maintain compliance with lease terms pertaining to storm water pollution prevention, lessees are required to comply with all federal, state and local storm water laws and ordinances.

Airspace will conduct annual inspections of leased property using the Airspace Storm Water Inspection Report (Exhibit 15-EX-14), to comply with the SWMP's measurable objectives and assess lessee's conformance with lease terms. The results of the inspections will be used to develop annual reports that document the Department's compliance with its SWMP.

Refer to the Right-of-Way Property Management and Airspace Storm Water Guidance Manual for storm water pollution prevention fact sheets, guidance materials and compliance procedures.

#### **15.07.11.00**      **Default**

The lessee is considered in default if any of the lease provisions are violated. Typical defaults are:

- Delinquent account.
- Insurance certificate not current.
- Failure to maintain site to current standards.
- Current use not authorized.
- Allowing others to use the site without Airspace's prior approval (e.g., assignment and sublease).

Airspace should monitor each Airspace lease to ensure any violations are found while there is still time to take corrective action (e.g., collect delinquent rent prior to lessee vacating, getting a current insurance certificate before a situation occurs, and preventing hazardous materials from becoming hazardous waste).

The lessee must correct violations in a timely manner. To ensure this, Airspace should issue formal written notice to make corrections within a specific time frame (usually 30 days, unless it is a safety issue, which may require a 3-day notice). If action is not taken, Airspace should initiate default proceedings (e.g., termination, eviction, lawsuit, and collections).

Prior to initiating action, Airspace should carefully review the lease agreement to determine the appropriate remedies available. HQ A/S and Legal should be contacted to determine if there are additional steps that can be implemented.

## **15.08.00.00 – MANAGING THE AIRSPACE PROGRAM - PROPERTY MANAGEMENT AND THE MARKETING PLAN**

### **15.08.01.00      General**

The Senior should ensure sufficient staff is assigned to and adequate time is spent on managing the district/region's Airspace program, which includes property management activities, marketing plan to lease sites, and program efficiency.

### **15.08.02.00      Property Management**

Property management activities are those actions taken after a site is leased and any developments are constructed. (See Section 15.07.00.00.) Airspace must ensure the lessee is complying with all terms and conditions of the lease agreement. As each site is developed differently, the degree of property management activities will differ with each lease. At a minimum, Airspace should review the current status of each lease to ensure:

- **Monthly** - The lease payment has been received and the account is not delinquent. If after proper notification, the lessee does not pay any arrears, default proceedings should be initiated.
- **Monthly** - Expiring rental agreements or lease agreements will be scheduled for renewal, extension, or termination.
- **Quarterly** - Future adjustments to the lease rate have been calculated and are scheduled to be billed per the percentage established in the lease agreement. The lessee must be advised in writing of the increase in the lease rate at least 30 days prior to the billing date.
- **Quarterly** - Lessee's insurance certificate provides the appropriate liability coverage and is current. Developed sites will also require fire insurance for all improvements. Failure to provide a current insurance certificate is cause to initiate default proceedings.
- **Quarterly** - SFM's inspection report has been received on all developed properties. Follow-up when necessary to ensure deficiencies are corrected.
- **Annually** - SFM's inspection report has been received on all non-developed properties

requiring inspection. Follow-up as necessary to ensure deficiencies are corrected.

- **Annually** - Lessees paying on a percentage of gross revenues have scheduled audits to calculate the next year's lease payments. Airspace and the lessee should initiate the review of gross receipts at least 60 days prior to the next billing cycle.

Field reviews are important in property management activities, and each site should be inspected on a regular basis to ensure the site is being used and maintained as authorized. The lessee should keep the site clean of debris and of **hazardous waste**. Upkeep should be consistent with or superior to neighborhood standards. At a minimum, Airspace should inspect each expiring lease prior to renewal, extension, or termination (monthly); each developed site (quarterly); and each non-developed and vacant site (annually).

All activities should be noted in the site diary with copies of all correspondence kept in the site file.

### **15.08.03.00      Lease File**

Each Airspace lease must have a file that includes a diary of all written and verbal communications, including all requests and approvals. The site file must contain written documentation (letters, memoranda, and attachments) on the leasing procedures (bid vs. direct negotiations), proposed use, DARC comments (all phases), development plans, environmental and air quality documents, marketing plan for the site, standardized lease agreement, bid package, RWPS set up, request to add to inventory, field inspections, deficiencies corrected by lessee, default actions initiated, and all other pertinent information.

### **15.08.04.00      Right of Way Property System**

The Airspace Inventory is maintained in the Right of Way Property System (RWPS), which generates reports on district/region property management workload, number and type of leases, potential and actual income, internal uses, high priority sites, telecommunications licenses, and due dates (e.g., expiration, inspections, and adjustments). Accounting

also uses RWPS to generate bills and to track account payments and adjustments.

Airspace should ensure the system is current by reviewing the data entries on a regular basis. The list of sites in the inventory should also be reviewed to determine if vacant sites should remain in the inventory or be removed.

IRWS must also be updated as the two systems are integrated. Airspace site numbers cannot be entered into RWPS unless the route and site are first entered into IRWS.

#### **15.08.05.00      Income**

RWPS and accounting programs track all revenues received through leasing sites. All funds are deposited into the State Highway Account (SHA), which is used for transportation purposes. As such, FHWA does not require a percentage of the income received but expenses are not eligible for federal reimbursement.

Since gross income (funds actually received) is reported to management and the legislature periodically, it is critical Airspace make all efforts to collect lease payments on a timely basis

#### **15.08.06.00      Marketing Plan**

The marketing plan to lease sites provides a working plan for Airspace on high priority sites, a marketing plan to lease vacant sites, and anticipated workload and schedule to lease all sites.

The Senior should review the marketing plan at least quarterly to ensure all ongoing negotiations and activities are on schedule and that appropriate reviews and approvals are being obtained as scheduled. Processing the documents and following up on their review and approval are critical (e.g., requests for appraisals, reviews of environmental documents, and FHWA's concurrence).

The success of the program depends greatly on Airspace's responsiveness to the proposed lessee and the reviewing and approving entities (e.g., FHWA, AAC, and DARC members). Resolving problems with or barriers to leasing the site should be a high priority.

Airspace should monitor the future expiration of rental agreements and leases and develop plans to lease the sites again through the bid or negotiation process.

The marketing plan for high priority sites (those that will generate the highest return if developed) should

be evaluated to ensure the best methods for marketing and advertising the sites are used. Additionally, interim uses should be considered pending full development of the sites.

Scheduling competitive bids for sites new to the inventory, recently vacant, or expiring should be part of the marketing plan. Each site should be evaluated to determine:

- Highest and best use (if different than the previous use).
- Fair market lease rate based on the term of the new lease (e.g., a five-year lease may generate a higher rate of return than a two-year lease).
- Best method for leasing the site.

#### **15.08.07.00      Program Efficiency**

The Senior is responsible for program efficiency. This requires monitoring the current year income and expenditures closely to ensure the income to expense ratio is within the norm for the district/region and the statewide program, based on past year results and new procedures in place.

PY usage should not exceed the budget allocation nor be less than the contracted usage for delivering the program. Modifications to the allocation and contract require HQ Program Manager approval.

HQ A/S prepares periodic reports to the AAC, CTC, and Legislature on income and expenses for the district/regions and the statewide program. The Senior should use the periodic reports to monitor gross revenues and operational expenses quarterly to evaluate possible changes in activities and to correct charging errors. HQ A/S will provide Airspace with special reports and assist in analyzing the data.

The targeted work load and actual work production (typically as shown in the R122 report) should be reviewed quarterly. The report assists the Senior with evaluating charging practices versus statewide average, monitoring staff production, and accomplishing Airspace's annual goals.

#### **15.08.08.00      Policy and Procedural Manuals**

The Senior should ensure each Airspace Agent has the current Airspace procedures outlined in the Airspace Chapter with Exhibits and Forms, the Reference File, district/region forms and exhibits, and other written guidance or instructions.

There should also be a plan to review the staff's work product to ensure it complies with all applicable laws and policies and that the work is being done on time and in accordance with the marketing plan.

#### **15.08.09.00      Training and Development**

Agents assigned to lease Airspace sites should be at the Associate level and have rotated through the major disciplines within Right of Way. A lesser degree of training and experience is acceptable for Agents who are assigned to property management activities only.

The Senior should ensure staff have adequate training and experience to accomplish assigned tasks in a professional manner. In addition to the Airspace chapter:

- Agents assigned property management activities should be familiar with property management requirements, RWPS procedures, TRAMS and RWPS reports, and rules on collecting funds.
- Agents assigned non-developmental leasing activities through competitive bid should be familiar with standard bidding and auctioning techniques, appropriate laws on contracting with the private sector, clauses in standard lease agreements, marketing techniques, and rules on collecting bid deposits.
- Agents assigned more complex leasing activities (developmental, direct negotiations, and local agencies) should be familiar with negotiation and conflict resolution techniques, development costs, rates of return, CPI trends, special lease language, provisions for assignments and subleases, and AAC/CTC procedures to obtain approval to execute lease agreements.
- Agents should expand their knowledge and skills by attending formal courses on leasing, development, auctioning, marketing, and negotiating offered by the California Department of Real Estate, IRWA, and other organizations.

Seniors should also encourage staff to expand their knowledge of Airspace practices by providing opportunities to:

- Conduct a bid or auction.
- Meet with and make presentations about the program to local agencies and the planning departments.
- Negotiate terms, including fair market lease rate and rate of return, or developmental uses.

- Evaluate the risks and benefits of potential uses and proposed modifications to standard leases.
- Develop site specific and overall program marketing plans, analyzing potential income to expenses.

#### **15.08.10.00      Reference Library**

Airspace should establish a reference library that contains appropriate manuals, guidebooks, information, and periodicals. At a minimum, it should contain:

- Airspace chapter with exhibits, forms, and reference file.
- Appropriate R/W policies and procedures from Appraisals, Property Management, Planning and Management, Encroachment Permits, Environmental, and Maintenance.
- All references in the Right of Way Airspace chapter, exhibits, forms, and reference file (e.g., 23 CFR, S&H codes, and CTC Resolution).
- Standard lease agreements.
- AAC agenda and minutes, CTC agenda and approvals, and reports to the AAC, CTC, and BTH.
- Airspace business plan.
- RWPS inventory.
- District/region's annual marketing plan.

**NOTES:**

## CHAPTER 15

### Airspace Table of Contents

#### FORMS

<u>Form No.</u>	<u>Title</u>
RW 15-1	Marketing Plan (District)
RW 15-2	Appraisal Summary
RW 15-3	Insurance Information
RW 15-4	Lease Renewal
RW 15-5	Telecommunications Checklist
RW 15-6	Consent of Assignment (No Relief)
RW 15-7	Consent of Assignment (Relief)
RW 15-8	Consent to Sublease
RW 15-9	Transmittal to HQ A/S

**DISTRICT ANNUAL MARKETING PLAN FOR FISCAL YEARS**

RW 15-1

The following information is this District/Region's anticipated workload for the Airspace program for the respective fiscal years. The detailed information by site for long term leases is attached.

<u>MSA CHARGE CODES</u>		<u>Upcoming SFY</u>	<u>+1</u>
<b>R641</b>	<b>Property Management</b> <i>(the number of occupied leases considering vacancies and new leases)</i>	_____	_____
<b>R642</b>	<b>Short Term Leases</b> <i>(the number of sites that will be leased for 5 years or less)</i>	_____	_____
<b>R645</b>	<b>Lease Service Documents</b> <i>(subleases, assignments, amendments)*</i>	_____	_____
<b>R643</b>	<b>Long-Term Leases</b> <i>(per attached worksheet)</i>		
	New Bid Leases - 5 years or more	_____	_____
	New Direct Negotiated Leases	_____	_____
	In Progress - Bid Leases - 5 years or more	_____	_____
	In Progress - Direct Negotiated Leases	_____	_____
<b>R649</b>	<b>Site License Agreements</b>		
<b>R350</b>	<b>Airspace Appraisals</b>	_____	_____
<b>R370</b>	<b>Airspace Fair Market Rent Determinations</b>	_____	_____
<b>R250</b>	<b>Airspace Maps (R/W Engineering)</b> <i>(includes maps/descriptions for lease agreements, appraisal and inventory)</i>	_____	_____

\* If an amendment to the existing lease agreement will involve a major change in the terms and conditions which requires returning to the AAC for approval, count it as a long-term lease in progress and complete worksheet.

**ANNUAL MARKETING PLAN WORKSHEET**  
**LONG-TERM LEASE PRODUCTION (MSA R643)**

DISTRICT/REGION \_\_\_\_\_

STATE FY - Upcoming	a	b	c	d	e	f
BID LEASES - longer than 5 years	APPROVAL: Marketing Plan & Bid Package	Approval: Offer and Proposal	FHWA Approval: Development Plans	Execution: Lease Agreement	Building: Notice of Completion	TOTAL UNITS
New Leases (parcel number) (lessee's name)	(date)	(date)	(date)	(date)	(date)	(# of entries)
<b>TOTAL</b>						

STATE FY +1	a	b	c	d	e	f
BID LEASES - longer than 5 years	APPROVAL: Marketing Plan & Bid Package	Approval: Offer and Proposal	FHWA Approval: Development Plans	Execution: Lease Agreement	Building: Notice of Completion	TOTAL UNITS
New Leases (parcel number) (lessee's name)	(date)	(date)	(date)	(date)	(date)	(# of entries)
<b>TOTAL</b>						

Remarks:

1. Identify and explain any leases or work units that:
  - a. may be complex and/or controversial
  - b. may require a lengthy process due to obtaining approvals
  - c. involve a major development
  - d. are with a governmental entity (i.e. Marler-Johnson)
2. Under "Leases in Progress," list any amendment documents that may:
  - a. be complex and/or controversial
  - b. require a lengthy process due to obtaining approvals
  - c. change the terms (rent, term, development)
3. Under "Leases in Progress," list those leases that will have to be returned to the AAC for extension of their approval.

**APPRAISAL SUMMARY**

RW 15-2

FLA NO. \_\_\_\_\_

NAME \_\_\_\_\_

APPRAISAL SUMMARY

Parcel Description:

Location - \_\_\_\_\_

Area - \_\_\_\_\_

Zoning - \_\_\_\_\_

Valuation:

Highest and best use - \_\_\_\_\_

Appraised value - \_\_\_\_\_

Date of appraisal - \_\_\_\_\_

Proposal:

Use - \_\_\_\_\_

Option price - \_\_\_\_\_

Option period - \_\_\_\_\_

Term - \_\_\_\_\_

Rent:

Minimum guaranteed - \_\_\_\_\_

Percentage - No \_\_\_\_\_ Yes (see attached sheet) \_\_\_\_\_

Rent adjustment:

CPI - \_\_\_\_\_

Reevaluation - \_\_\_\_\_

Evaluation:

Rate of return - \_\_\_\_\_

APPROVAL RECOMMENDED

\_\_\_\_\_  
District Right of Way Airspace Unit

APPRAISAL SUMMARY  
PAGE 2

FLA NO. \_\_\_\_\_  
NAME \_\_\_\_\_

Percentage Lease

Developer's Project Plan:

Gross square feet - \_\_\_\_\_

Net rentable - \_\_\_\_\_

Rent per square foot - \_\_\_\_\_

Anticipated:

Gross income - \_\_\_\_\_

Vacancy - \_\_\_\_\_

Expenses - \_\_\_\_\_

Net income - \_\_\_\_\_

Debt service:

T.D. - \_\_\_\_\_

Term - \_\_\_\_\_

Interest - \_\_\_\_\_

Payments - \_\_\_\_\_

Tax benefits - \_\_\_\_\_

Developer's equity - \_\_\_\_\_

Evaluation:

Internal rate of return (IRR) - \_\_\_\_\_

Net present value (NPV) - \_\_\_\_\_

**INSURANCE INFORMATION**RW 15-3

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**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION****INSURANCE INFORMATION SHEET****PLEASE GIVE THIS FORM TO YOUR AGENT OR BROKER**

The lease with the State of California, Department of Transportation requires evidence of satisfactory liability and/or fire insurance. This evidence of insurance must be provided by completing the Department's **Certificate of Insurance Form** (enclosed) and returning it to the Department (District Address). In completing this form, the following requirements must be met:

- A. The lessee must be shown as **Named Insured**.
- B. The State of California, its officers, agents, and employees must be included as **Additional Insured's**, but only insofar as operations under the lease are concerned.
- C. The Minimum Limits of Liability are \$5,000,000 per occurrence (CSL) for bodily injury and property damage liability combined.
- D. The insurer will not cancel or reduce the insured's coverage without 30 days prior written notice to the State.
- E. The State will not be responsible for the payment of any premiums or assessments.
- F. If the policy contains any clause excluding coverage as to property in the care, custody, or control of the insured, such clause shall not apply with regard to any liability of the State of California, its officers, agents, or employees.
- G. The minimum limits of fire insurance coverage must be 100 percent of replacement value.

**CERTIFICATE OF INSURANCE**

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This Certificate does not amend, extend, or alter the coverage afforded by the policies listed below.

Name and Address of Insured	COMPANIES AFFORDING COVERAGE
	Company Letter A
	Company Letter B

This is to certify that policies of insurance listed below have been issued to the insured named above and are in force at this time. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies.

Company Letter	Type of Insurance	Policy Number	Policy Expiration Date	Limits of Liability in Thousands (000) Each Occurrence
<b>GENERAL LIABILITY</b>				
	<input type="checkbox"/> Comprehensive form		Bodily injury	\$ _____
	<input type="checkbox"/> Premises - Operations		Property damage	\$ _____
			Bodily injury and property damage combined	\$ _____
			Personal injury	\$ _____
<b>EXCESS LIABILITY</b>				
	<input type="checkbox"/> Umbrella form		Bodily injury and property damage combined	\$ _____
	<input type="checkbox"/> Other than umbrella form			
	<input type="checkbox"/> Fire insurance		Amount of coverage	\$ _____

**Description of Operations/Locations**

1. State of California, its officers, agents, and employees are included as additional insured but only insofar as operations under this lease are concerned.
2. The insurer will not cancel or reduce the insured's coverage without 30 days prior written notice to the State.
3. The State will not be responsible for the payment of any premiums or assessments on the policy.
4. If the policy contains any clause excluding coverage as to property in the care, custody, or control of the insured, such clause shall not apply with regard to any liability of the State of California, its officers, agents, or employees.
5. The minimum limit of fire coverage must be 90 percent of replacement value.

**Name and Address of Certificate Holder**

State of California  
Department of Transportation

Date Issued: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Authorized Representative

**LEASE RENEWAL**

RW 15-4

**BID LEASE RENEWAL**

Acct. \_\_\_\_\_

**THIS LEASE RENEWAL** made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, at \_\_\_\_\_, California, by and between the State of California, Department of Transportation, Lessor, and \_\_\_\_\_, Lessee \_\_\_\_\_.

**WHEREAS**, on \_\_\_\_\_, 19\_\_\_\_\_, by public auction \_\_\_\_\_ (State's Present Lessee) was the successful bidder.

**WHEREAS**, Lessor and Lessee did, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, enter into that certain lease agreement identified as Account No. \_\_\_\_\_, covering land in the County of \_\_\_\_\_, State of California, commonly known as \_\_\_\_\_, and more particularly described in said lease, the term of which lease expires on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, and

**WHEREAS**, it is mutually desired and agreed to extend the lease for a further period of time.

**NOW, THEREFORE**, it is hereby mutually agreed to extend the term of said lease for a period of \_\_\_\_\_ months/years commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, under the same terms, covenants, and conditions contained in said lease, except as modified by this instrument which said terms, covenants, and conditions are, by this reference, incorporated herein as follows:

All other terms and conditions remain unchanged.

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease Renewal the day and year first above written.

\_\_\_\_\_  
\_\_\_\_\_

**Recommended for Approval:**

By \_\_\_\_\_  
Right of Way Agent

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

By \_\_\_\_\_  
District/Region Airspace

By \_\_\_\_\_

**DISTRICT CHECKLIST FOR TELECOMMUNICATIONS PROPOSALS**RW 15-5

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**District Checklist for Telecommunications Proposals**

- STEP 1: Receive request from carrier to build a site on Caltrans property. Should include a narrative or form describing:
  1. Size of pole, number of antennas, perimeter dimensions (fenced area).
  2. Type of facility (PCS, cellular, other).
  3. Expected time schedule (building permits by when, construction by when).
  4. Colocatees, if any.
  5. Sketch or drawing of the area (site) needed on Caltrans facility (premise).
  6. Optional: Depiction of the equipment (photo rendition, sketch, etc.).
  
- STEP 2: Meet with the core DARC team (Traffic Operations, Environmental, and Telecommunication Engineering) to review the proposal.
  1. Add (as appropriate) Landscape Architect and the operator of the facility (e.g. park and ride, maintenance superintendent, or facilities manager).
  2. If facility is within the operating right of way, add Project Development.
  3. If facility is on a structure within the operating right of way, add Structures.
  4. If facility is underneath a structure, add Hydraulics and Fire Marshal.
  5. If facility is on a bridge, determine if it will be impacted by seismic retrofit.
  
- STEP 3: Advise carrier of Conceptual Review response.
  1. Send letter back to carrier, stating either A or B:
    - A. Conceptually their proposal is OK and to please submit their preliminary proposal within 30 days or the site will be available for other carriers to submit proposals.
      1. Response to the carrier is due within 15 working days of receipt of their conceptual proposal.
      2. Inform the carrier that a full DARC review will be held once the preliminary package is submitted and include the preliminary package checklist.
      3. If this is a new carrier (no MLA, no conceptualls, etc.), send them the “Guidelines to License Sites” so they can become familiar with the program.
      4. Ensure the carrier understands Caltrans' right to occupy the tower with a whip antenna (per the MLA) and carrier must provide conduit from a pad to the tower.
    - B. If the answer is NO, tell them why (e.g. completing 2 year seismic retrofit project – “come back then,” widening off-ramp, or consolidating maintenance station).
  2. Additionally, you may want to:
    - A. Offer to help them find a more suitable location.
    - B. Provide them with inventories, data bases, maps, and the Internet address.
  
- STEP 4: Preliminary proposal submitted by carrier.
  1. Review it to ensure the proposal:
    - A. Meets the requirements of the checklist.
    - B. Is basically the same as the conceptual proposal.
  2. Hold the preliminary DARC, making sure the right programs are represented (not too many or too few).
  3. Set a time frame within which to review the proposal. You can:
    - A. Send carrier copies of plans with a form to use to respond with comments.
    - B. Set a formal meeting time for complex issues or proposals.
    - C. Keep the blueprints in a common room for one week for carrier to review at their discretion.
    - D. Tell carrier that if no comments are received back by a certain reasonable time, then “approved” is assumed. (This does NOT apply to Telecom Engineering; a non-response needs to be elevated to HQ/AS).
  4. If HQ must be involved in the preliminary review, allow additional time:
    - A. The Permit by Exception Committee, Structures Review or Seismic Retrofit coordination will require at least 15 working days to review/approve and get back to districts.
    - B. FHWA (and sometimes Telecommunications Engineering) review/approval is obtained after the preliminary DARC is completed.

**(Cont.)**RW 15-5

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5. Advise carrier of review/approval of their preliminary proposal.
  - A. Advise carrier that the final plans must address any issues raised during the DARC.
  - B. The carrier may want to address any major concerns directly with the DARC.
  - C. If possible, send them the SLA to execute (see Step 5).
6. Deposit the \$1,000 processing fee.
  - A. If the proposal is for more than one carrier, but the plans show all the facilities (thus only one review needed), only one fee is required.
  - B. Open an account in RWPS for each carrier, depositing the processing fee in the primary carrier's account.

 **STEP 5: Execute the Site License Agreement.**

1. Establish the base license fee per the matrix (HQ R/W must pre-approve any rates outside the matrix).
2. Determine the "special clauses" for the SLA that cover:
  - A. Licensor's use of the facility (reserved space, additional antennas at cost, mounting of surveillance cameras, elimination of interference).
  - B. Access to and from the facility including notification, maintenance, gates.
  - C. Maintenance responsibilities of the carrier.
  - D. Identify if the carrier will be responsible for obtaining a maintenance permit as the facilities and access are within the operating right of way. (Note: this special clause does not apply to the need for an encroachment permit or a building permit as this is covered in the MLA.)
  - E. Other users at the site (colocation), stating that agreement has been reached between the parties and that a separate SLA will be needed for the other carrier and which carrier will be paying the base license fees.
  - F. The known and unknown hazardous substances at the site.
  - G. Identify any "upgrades" or "modifications" to the site that the carrier will be required to do prior to constructing, i.e. protecting the slope, building a gate, protecting trees.
  - H. Any other special clauses, provisions, or agreements needed to protect the Department's interests.
3. HQ R/W will need to pre-approve any "new" special clauses. (see list).
4. Request FHWA's preliminary approval of the proposal. Submit:
  - A. Plans, photos, sketches.
  - B. DARC notes.
  - C. Carrier's narrative description of proposal.
5. District executes SLA granting a six-month period (Local Permitting Period).

 **STEP 6: Local Permitting Period.**

1. Work with the carrier to obtain final reviews and approvals.
2. Submit environmental document prepared by carrier for review by the Environmental Branch.
3. Submit final plans, final DARC notes and carrier's response to FHWA (via HQ) for final approval, including original Categorical Exclusion/Categorical Exemption executed by District Environmental Branch.
4. Submission of final plans, final DARC notes and carrier's response to HQ Telecommunications Engineering for final approval is required. (May have been provided to the district directly during the preliminary and/or final DARC meeting.)
5. Pend for final approvals, including the local building permit.

 **STEP 7: Approval to construct.**

1. Obtain final approvals as evidenced by:
    - A. Local building permit.
    - B. Environmental approval.
    - C. Final DARC.
    - D. Final approval of plans.
  2. Annual Base License Fee payment (enter into RWPS as a Telecommunications License account).
-

**CONSENT OF ASSIGNMENT (No Relief)**

RW 15-6

**ASSIGNMENT OF LEASE**

For value received, Assignor, \_\_\_\_\_, assigns and transfers to Assignee, \_\_\_\_\_, that certain lease number \_\_\_\_\_ dated \_\_\_\_\_, executed by Assignor as Lessee and the State of California, Department of Transportation, as Lessor of that certain real property located at \_\_\_\_\_ in the city of \_\_\_\_\_, county of \_\_\_\_\_, State of California, together with all its right, title, and interest in and to the lease and the leased premises, subject to all the conditions and terms contained in the lease, to have and to hold from \_\_\_\_\_ until the present term of the lease expires on \_\_\_\_\_. A copy of the lease is attached hereto and made a part hereof.

Assignor covenants that it has performed all duties and obligations and made all payments required under the terms and conditions of the lease.

Assignor understands and agrees that this Assignment shall not release it from any of the duties and obligations imposed on it under the terms, covenants, and conditions of the lease, and Assignor shall remain liable to perform all such duties and obligations separately and apart from the assumption made herein by Assignee.

Assignee agrees to pay all rents due after the effective date of this Assignment, \_\_\_\_\_, and to assume and perform all duties and obligations required by the terms, covenants and conditions of the lease.

DATED: \_\_\_\_\_

\_\_\_\_\_  
ASSIGNOR

\_\_\_\_\_  
ASSIGNEE

**CONSENT OF LESSOR**

The State of California, Department of Transportation, Lessor named in the above Assignment of that certain lease number \_\_\_\_\_, executed by Lessor on \_\_\_\_\_, consents to that Assignment.

Lessor further consents to the agreement by Assignee to assume after \_\_\_\_\_ the payment of rent and performance of all duties and obligations set forth in the lease. Lessor does not by this consent release \_\_\_\_\_, Lessee and Assignor from any of its duties and obligations under the lease, including the payment of rent, and this consent is given only on the express condition that Lessee and Assignor nor be so released.

DATED: \_\_\_\_\_

LESSOR  
STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

By \_\_\_\_\_

**CONSENT OF ASSIGNMENT (Relief)**

RW 15-7

**ASSIGNMENT OF LEASE**

For value received, Assignor, \_\_\_\_\_, assigns and transfers to Assignee, \_\_\_\_\_, that certain lease number \_\_\_\_\_ dated \_\_\_\_\_, executed by Assignor as Lessee and the State of California, Department of Transportation, as Lessor of that certain real property located at \_\_\_\_\_ in the city of \_\_\_\_\_, county of \_\_\_\_\_, State of California, together with all its rights, title, and interest in and to the lease and the leased premises, subject to all the conditions and terms contained in the lease, to have and to hold from \_\_\_\_\_ until the present term of the lease expires on \_\_\_\_\_. A copy of the lease is attached hereto and made a part hereof.

Assignor covenants that it has performed all duties and obligations and made all payments required under the terms and conditions of the lease.

Assignee agrees to pay all rents due after the effective date of this Assignment, \_\_\_\_\_, and to assume and perform all duties and obligations required by the terms, covenants and conditions of the lease.

DATED: \_\_\_\_\_

\_\_\_\_\_  
ASSIGNOR

\_\_\_\_\_  
ASSIGNEE

**CONSENT OF LESSOR**

The State of California, Department of Transportation, Lessor named in the above Assignment of that certain lease number \_\_\_\_\_, executed by Lessor on \_\_\_\_\_, consents to that Assignment.

Lessor further consents to the agreement by Assignee to assume after \_\_\_\_\_ the payment of rent and performance of all duties and obligations set forth in the lease, and releases \_\_\_\_\_, Lessee and Assignor, from all duties and obligations under the lease, including the payment of rent, after \_\_\_\_\_, and accepts Assignee as Lessee in place of \_\_\_\_\_, Lessee and Assignor.

DATED: \_\_\_\_\_

LESSOR  
STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

By \_\_\_\_\_

**CONSENT TO SUBLEASE**

RW 15-8

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**CONSENT TO SUBLEASE**

The State of California, Department of Transportation, hereby consents to the Sublease of Airspace Site No. \_\_\_\_\_ dated \_\_\_\_\_, 19 \_\_\_\_\_, by and between \_\_\_\_\_ as Sublessor, and \_\_\_\_\_ as Sublessee.

DATED \_\_\_\_\_

LESSOR  
STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

By \_\_\_\_\_

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**TRANSMITTAL TO HQ A/S**

RW 15-9 (New 12/97)

**TRANSMITTAL FORM**

From: District \_\_ Airspace Manager

To: HQ Airspace, Attention: \_\_\_\_\_

Date:

Re: Review and Approval of Proposed Lease

Attached are documents for processing (**circle one**).

Requests / Conceptual approval / Preliminary approval / Final approval

Please process and advise of approval status.

Check one:

\_\_\_ Request for consent to directly negotiate.  
 Attached narrative, vicinity map, and draft site map  
 States why it's in the best interest of the State to negotiate directly  
 Site isn't landlocked  
 Proposed lessee isn't local agency

\_\_\_ Request recommendation to approve terms and conditions.  
 Attached narrative, vicinity map and site map (usable square footage)  
 Summary of terms and conditions (see \_\_\_\_\_)  
 Appraisal summary (see \_\_\_\_\_)  
 Will site be used as plottage for the adjacent property?  
 What is FMV and rate of return?  
 Is site landlocked?  
 Proposed lessee isn't local agency  
 If so, lease rate is less than fair market. Justification attached.

\_\_\_ Request approval of terms and conditions to CTC.  
 Attached narrative, vicinity map, and site map (usable square footage)  
 Why is it in the best interest of the State to enter into this lease?  
 AAC's recommendation  
 Summary of terms and conditions (see \_\_\_\_\_)

Note: HQ A/S will prepare Request for Approval of Terms and Conditions to CTC for all sites except leases with public entities that will pay a lease rate based on fair market data.

\_\_\_ Request permission to use 3-Year Directly Negotiated Non-Development Agreement.  
 A. Site cannot be bid because \_\_\_\_\_  
 OR  
 B. Site was bid but unsuccessfully  
 Discuss attempts to bid  
 C. Site is landlocked with only one adjacent owner  
 Proposed use is \_\_\_\_\_  
 DARC comments

\_\_\_\_\_ Transmittal of Telecommunications Site License Agreement.

Narrative describing carrier's proposed facility  
Photo renditions  
Vicinity and site map  
Preliminary DARC comments

Note: If Telecommunications Engineering has already approved at the DARC level,  
Draft SLA with special clauses.

Will Caltrans share the facility, and, if so, identify equipment and method of installation.

Colocatees at the site?

Recommendation of non-standard clauses

Construction schedule

Maintenance schedule

Preliminary plans (two 8x11 sets)

Access (and if from the travelway, EAG's approval)

Utilities (and if from Caltrans line, EAG's approval)

Also requires special clause on paying for services.

\_\_\_\_\_ Request final approval of Telecommunications Site License Agreement.

Environmental Branch's recommendation of Environmental document

Final construction plans (showing excavation and trenching) (two 8x11 sets)

Final DARC comments stating how all concerns/issues are addressed

\_\_\_\_\_ Transmittal of lease agreement.

Originally executed copy of a lease over 5 years

Amendment of a lease agreement

Consent to Encumber

MOL

Estoppel Certificate

Consent to Assign (with copy of assignment agreement)

Consent to Sublease (with copy of sublease agreement)

Prior to leasing any site through direct negotiations or bidding, Airspace must obtain conceptual approval:

\_\_\_\_\_ Request conceptual approval:

Vicinity map (location)

Proposed use

Improvements

DARC comments

FLA number for inventory

Proposed leasing method and agreement

Prior to leasing any site for a development purpose through direct negotiations, Airspace must obtain preliminary approval:

\_\_\_\_\_ Request for preliminary approval.

Vicinity map and site map (usable square footage)

DARC comments

Preliminary plans

- Show size and location of the proposed development, access and parking, location of columns and other existing structures, and existing and proposed landscaping
- Proposed development, photo rendition, and construction schedule

If developed underneath a structure:

- PSR.
- Proposed column protection.  
(Will require Structures Design approval.)

Copy of AAC's consent to directly negotiate.

Proposed schedule to obtain approval of terms and conditions.

Airspace must obtain final approval for:

All developed leases (direct or bid).

All leases over 5 years (direct or bid).

Marler Johnson lease.

\_\_\_\_\_ Request for final approval of:

Vicinity map and site map.

Local agency approval (zoning ordinance and building permit).

Final construction plans (including all excavation and trenching).

Identify access, circuitry of traffic, utilities, improvements.

Environmental Branch's recommendation of Environmental Document.

Air Quality Statement or Study.

Final DARC review stating how all concerns/issues are addressed.

Copy of CTC's approval of terms and conditions, **OR**

The official request if not already obtained.

Modifications to the standard lease agreement to be used.

District is responsible for final approval for:

All sites that are bid for less than 5 years, as long as the use is as before.

Three Year Directly Negotiated Non-Development Lease.

Park and Ride lease to a non-profit agency.

Rental agreements.

HQ A/S and FHWA do not need to be involved as long as:

Use is as approved at conceptual phase.

No hazardous materials are involved.

Lease rate is based on an approved valuation and is determined to be fair market.

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## CHAPTER 15

### Airspace Table of Contents

#### EXHIBITS

<u>Exhibit No.</u>	<u>Title</u>
15-EX-1	Site Marketing Plan
15-EX-2	Bid Package
15-EX-3	Bid Instructions
15-EX-4	Letter of Understanding
15-EX-5	Request for Consent to Directly Negotiate (AAC)
15-EX-6	Request for Approval of Terms and Conditions (CTC)
15-EX-7	Request for Recommendation of Terms and Conditions (AAC)
15-EX-8	Estoppel Certificate
15-EX-9	Consent to Encumber
15-EX-10	Memorandum of Lease
15-EX-11	Column Protection
15-EX-12	OSM&I Guidelines
15-EX-13	23 CFR 713
15-EX-14	Storm Water Inspection Report

**SITE MARKETING PLAN**

(Form #)

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**SITE MARKETING PLAN**

Site \_\_\_\_\_

**APPRAISAL:**

Amount  
Date  
H&B Use  
Zoning  
Size of Parcel

**RENT:** Minimum monthly rent to be bid (Rationale for minimum bid when lower range of value used)  
Percent of Gross Income (if applicable) (Rationale for percent used)

**RENT ADJUSTMENT:**

Method to be used (CPI, CPI with lid, percent of Gross Income, etc.)  
Frequency

**OPTION PRICE:**

Rationale as to how price was chosen and advantages to single option price or series of option payments)

**TERM OF OPTION:**

Special rent considerations during term of option or any incentive to developer to exercise option before completion of option term

**TERM OF OPTION:**

(Rationale)

**UNIQUE FEATURES OF SITE:**

Who would be primarily interested in site?

**ADVERTISING:**

Where  
When  
Cost

**LEASE:**

Use standard form and "Z" out clauses not needed.  
Cite special clauses drafted or needed due to unique conditions.

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**BID PACKAGE**

(Form #)

**STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION**

NOTICE OF INVITATION TO BID  
 FOR LEASING STATE OWNED PROPERTY (Freeway Lease Area)  
 FOR THE PURPOSE OF: (state proposed use or development)

Paragraph 1:

Sealed bids will be opened by the State of California, Department of Transportation, Right of Way's Airspace Development Office, located at (address). The opening will occur at (time) on (day/date) in Room (#)\_\_\_\_\_ for the purpose of leasing property shown on the attached map(s). The sealed bid must be submitted in writing and placed in an envelope clearly marked with the words "Airspace Sealed Bid Proposal" and the appropriate FLA site number (see example). The sealed bids may be hand delivered or mailed but must be received at the above address before (time/day/date). No sealed bids will be accepted after this time and date.

OPTION: Oral bids will be held immediately after the sealed bids are opened IF more than one sealed bid is received. If an oral bid is necessary the opening bid will be 5% above the highest sealed bid.

OR

Paragraph 1:

Oral bids will be accepted by the State of California, Department of Transportation, Right of Way's Airspace Development Department for the purpose of leasing property shown on the attached map(s). Those wishing to participate in the auction must be personally present or have an authorized representative at (location) at (time) on (day/date).

Paragraph 2:

All sealed bids must include (or all oral bidders must have in their possession):

1. A cashier's or certified check for the amount of bid plus \$ (bid deposit) (*amount determined as appropriate*).

NO PERSONAL CHECKS ACCEPTED.

2. A completed proposal for lease of freeway lease area(s) (page #).
3. A completed application for the local agency's Planning Department approval of the proposed use (page #).
4. A certificate of insurance for liability and/or fire (page #), to be completed by your insurance agent.

Paragraph 3:

The bid amount shall be expressed as a flat monthly rate which is not dependent on the revenue or expenses generated by the lot.

Paragraph 4:

For additional information, please contact:

(Insert agent's name, phone number, hours available, District Right of Way office address.)

**SEALED BID (or) ORAL BID AUCTION**

Identify site(s) to be bid.

FLA #	Location (Address)	Square Feet	Minimum Bid \$	Date Available	Proposed Use	Notes (if any)
1.						
2.						
3.						
etc.						

# BID PACKAGE

(Form #)

EXHIBIT

15-EX-02

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(Notes can include any specific restrictions, required improvements, and special clauses (i.e. required paving, lighting, fencing); local agency permits/approvals subject to termination of lease with current lessee; current site improved with "chip & seal" which will need to be removed or improved, etc. Proposed use will determine the type of paving required (listing specifics).

## I. BID REVIEWS (Acceptance - Rejections - Defaults)

The Department reserves the right to reject any or all bids, or to accept such bids which are in the best interest of the STATE, and to withhold such acceptance or rejection until fifteen (15) days (*or other appropriate time*) after the bid opening date (*longer if HQ A/S and/or FHWA approvals will have to be obtained*).

- \* No bid shall be accepted which is less than the minimum monthly bid.
- \* Bids not in accordance with the provisions of this notice will be subject to rejection.

The bid deposit of the successful bidder will be applied as a security deposit as required by the Lease Agreement. Bid deposits of unsuccessful bidders will be returned within 3 business days of the bid auction.

If the successful bidder fails to perform as required, the State has the option of awarding the site to the second highest bidder.

In the event of a default or non-execution of a lease on a site, 25% of the bid deposit will be retained as liquidated damages.

## II. EXECUTION OF LEASE

As a condition for offering a bid, the successful bidder (hereinafter called LESSEE) agrees to enter into a standard Lease Agreement (hereinafter called AGREEMENT) within fifteen (15) days of receiving verbal or written notice of acceptance by the State of California, Department of Transportation (hereinafter called LESSOR).

STANDARD LEASE AGREEMENT: Copy available for review at \_\_\_(address)\_\_\_, during the hours of Monday - Friday, 8:30 - 4:00, or by mail, upon request.

## III. LEASE AGREEMENT will contain at a minimum the following terms, conditions and special provisions:

1. AGREEMENT shall be for a period of two (2) years (unless HQ A/S approval for additional period is obtained prior to bid package - Section 805.002D.)
2. A security deposit of \$\_\_\_ will be held from LESSEE during the time of occupancy.
3. LESSEE agrees to provide satisfactory liability and/or fire insurance prior to execution of the AGREEMENT and on the anniversary of the AGREEMENT until such AGREEMENT is terminated. Non-compliance with this requirement is grounds for termination of the AGREEMENT. See ATTACHMENT 4.
4. Either party shall have the right to cancel the AGREEMENT upon ninety (90) days written notice. The AGREEMENT will include a cancellation clause allowing LESSOR to enter the property and take possession in case of national or other emergency in order to prevent sabotage or to maintain and protect the structures. LESSOR reserves a Right of Entry for necessary protection, maintenance, reconstruction, and operation of the freeway structures and appurtenances.
5. The leased premises shall be used exclusively for (describe use, e.g. "...the parking of operable wheeled vehicles. Wrecked or inoperable wheeled vehicles shall not be permitted on the leased premises. No vehicle, structure, or enclosure shall be used for human habitation.")
6. The LESSEE's use of the premises shall comply with all Federal, State and local law, and the LESSEE shall be responsible for obtaining all necessary permits for the operation.

7. The leased premises shall not be used for (describe restrictions, e.g. "...vending operations", and/or "...the operation of facilities for a gasoline supply station. Vehicles used for gasoline or petroleum transportation shall not be permitted on the premises. No bulk storage of gasoline or petroleum shall be authorized" and/or "...the storage of combustibles, including wood pallets.")
8. Any bidder desiring to use the property for any other use must receive permission for the Department of Transportation, Airspace Development Department and from the Federal Highway Administration (FHWA). If the successful bidder has not received said approval by the date of the effective date of the AGREEMENT, the property can only be used for parking of wheeled vehicles as described above, until approval or denial of other use is received.
9. The LESSEE will be required to provide freeway column protection according the LESSOR's specifications. (As required.)

OPTION: If column protection is required, the LESSEE may be allowed a rental offset equal to one-half the cost of installation, provided that amount is less than or equal to the rent to be collected by the LESSOR for the term of the AGREEMENT.

10. LESSEE agrees that any construction work required under this bid does not confer upon that party any option or renewal rights in and to the leased area. Said improvements shall be installed at LESSEE's sole expense with no offset granted by the LESSOR. In the event LESSEE wishes to make voluntary improvements on the premises, prior approval from the LESSOR is required. After approval, LESSEE shall secure an Encroachment Permit from the Caltrans Permit Section before commencing any work. At the termination of the AGREEMENT, LESSOR may require LESSEE to remove and dispose of improvements at LESSEE's own expense.
11. The LESSOR reserves the right to advertise any leased area for the purpose of a long term developmental lease.
12. LESSEE agrees to pay all taxes and assessments that may legally be assessed on LESSEE's possessory interest or on any improvements or equipment placed by LESSEE on said premises during the continuance of the tenancy. Payment for all utilities is the responsibility of the LESSEE.
13. LESSOR makes no warranty as to the accuracy of maps used to illustrate the areas contained in the sites available for lease. Each prospective bidder is advised to personally inspect each site prior to making a bid.
14. LESSEE must get prior approval from LESSOR for all assignments, subleases, transfers or encumbrances. LESSEE cannot assign or sublease the property until 6 months pass from the date the AGREEMENT goes into effect. A \$1,000 (amount as appropriate) processing fee, paid in advance, will be charged for all requests for approval. LESSOR will receive 50% of the gross proceeds of any amount collected from the sublessee that exceeds the master lease rate.
15. LESSEE agrees that LESSOR may be required to perform seismic retrofit work on all or a part of any freeway structures situated on, above or near the premises. LESSOR shall have the right to impose such restrictions on LESSEE's right to use, occupy, or enter the premises and to construct improvements as LESSOR deems necessary.
16. Any LESSEE that submits a 90-day notice to terminate the AGREEMENT giving up the right to occupy the site will not be permitted to bid on that same property during the next auction.
17. LESSEE shall pay the monthly rent as determined by the minimum bid by the 5th day of every month until the AGREEMENT is terminated. Monthly rent will be adjusted annually (describe method and percentage). (Note: CPI adjustments and a range of adjustments is discouraged; annual 5% increases are preferred).

**BID PACKAGE**

(Form #)

EXHIBIT

15-EX-02

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- 18. A maximum of two signs which are not greater than 30 square feet each of surface area may be erected on the premises (or other requirements as appropriate).
- 19. Add appropriate restrictions as to Hazardous Waste/Materials.
- 20. The maintenance of the premises, including all driveways, fences and guardrails, shall be the responsibility of the LESSEE, at LESSEE's own expense. The LESSEE shall be responsible for the repair of piers and columns of any freeway structure which is damaged incident to the LESSEE's use of the premises.
- 21. LESSEE agrees to comply with the Federal Civil Rights Act of 1964. (As appropriate.)

NOTE: *Check for other appropriate terms, conditions, and provisions by reviewing standard agreements (short term) (i.e. no relocation benefits, or D11's statement that parking facilities are required to have more stringent insurance limitations (see attachment).*

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IV. BID ENVELOPE: Bid envelopes not properly marked shall be disqualified.

"SAMPLE ENVELOPE" for sealed bid auctions:

Return Address	Stamp
State of California - DEPARTMENT OF TRANSPORTATION Airspace Development Department Street Address City, State, Zip Code	

AIRSPACE SEALED BID PROPOSAL: # 1-AAA-111-01-01//Bid Opening January 1, 2001.

Include Cashier's Check for the amount of the bid and deposit, made payable to the Department of Transportation.

Ensure the correct return address is on the envelope and on the bid proposal since unsuccessful bidders will receive their cashier's check back within 3 business days.

Include the completed Proposal for lease of freeway lease area and any other required documents (Item 3, 4, etc.) per the Notice of Invitation to Bid.

Non-compliance with these requirements is grounds for rejecting the bid.

- Attach:
- 1. Local Agency's application for proposed use.
  - 2. Insurance Certificate form.
  - 3. Vicinity map and site map (maps are for reference only - the areas shown are approximate and calculated as gross areas unless otherwise indicated).

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**BID INSTRUCTIONS**

Airspace should determine the following before preparing a bid package:

1. What sites should be included in an upcoming competitive bid. Look at:
  - a. Vacant sites and existing leases that will expire soon.
  - b. Current conditions and any remedial cleanup.
  - c. Changes in the current market (demand, values, trends).
2. The highest and best use as is and if improved by a potential lessee.
3. Any changes in the approved use and improvements requires a DARC. Look at:
  - a. Seismic retrofit, completed and scheduled.
  - b. Necessary upgrades to improve the site and reduce impacts on the site.
  - c. Future needs for all or part of the site for transportation purposes.
  - d. Historical use and problems at the site.
4. Minimum bid value for each site based on the projected term (e.g. a 5-year term may generate a higher lease rate than a 2-year term would generate).
5. Offering multiple sites in one bid package may increase interest and reduce costs. Look at:
  - a. Grouping sites by area or use.
  - b. Time frame between notice and the bid opening.
6. Method of bidding and marketing tools. Look at:
  - a. Sealed bid or open auction.
  - b. Advertising and flyers.
  - c. Bid package should be attractive.
  - d. Mailing list of potential lessees.
  - e. Personally advise current lessees of the upcoming bid.
  - f. Auction area or room and the auctioneer.

Prepare a bid package listing the minimum requirements, the proposed use, the bidding process, critical terms and conditions, special provisions, minimum bid, and required bid deposit.

1. Cashier's checks are the only form of deposit that should be accepted.
2. Each check should be clearly marked with the bidder's name and site.

On the day of the auction:

1. Set up a registration table to collect bidder information.
2. Prepare to collect deposits (one cashier's check from each potential bidder for each site that will be bid on).
3. Provide each bidder with a "bid number."
4. Introduce staff to bidders and explain their respective roles during the bid (e.g. auctioneer, assistant, registrant, leasing agent).
5. auctioneer should proceed down the list of sites, starting with the minimum bid and increasing amounts by at least \$100.00.
6. Assistant should help auctioneer identify bidders and keep track of who bid what amount on which site.
7. After all sites have been bid and awarded, deposits of the non-awarded bidders should be returned.
8. Awarded bidders should meet with the respective leasing agent to increase the deposit to the amount of the winning bid, and to receive a lease agreement ready to be executed.

OR

## **BID INSTRUCTIONS**

(Form #)

EXHIBIT

15-EX-03

PAGE 2 OF 2

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On the day of the sealed bid:

1. Set up an area to review sealed bids.
  2. Prepare to collect deposits (one cashier's check from each potential bidder for each site that will be bid on).
  3. Document each bidder's "bid" by site.
  4. After all sealed bids have been opened and documented, determine the winning bidder for each site.
  5. After all sites have been bid and awarded, deposits of the non-awarded bidders should be returned.
  6. Awarded bidders should be contacted by the respective leasing agent to increase the deposit to the amount of the winning bid, and to receive a lease agreement ready to be executed.
  7. Prepare an auction summary detailing the results of the bid by site, minimum bid, number of bidders, awarded bid, and the new lessee.
- 
-

**LETTER OF UNDERSTANDING**

(Form #)

**LETTER OF UNDERSTANDING**

**WHEREAS**, \_\_\_\_\_, hereinafter called "Developer," has presented to the State of California a preliminary development concept for the Airspace site referred to as \_\_\_\_\_, and

**WHEREAS**, that preliminary concept appears to meet State criteria for Airspace development, and

**WHEREAS**, the Airspace Advisory Committee (AAC) has concurred with Airspace's recommendation to directly negotiate with "Developer."

**THEREFORE**, it is mutually agreed and understood that:

1. The developer will prepare sufficient detail plans and have conducted adequate studies to comply with the requirements of the District Airspace Review Committee.
2. The State agrees to allow developer one year to complete negotiations of the terms and conditions of a long term airspace lease. During said period the State agrees to neither solicit nor accept any other proposals on the subject property
3. The effective date of this "Letter of Understanding" is the day of the AAC's concurrence, which is \_\_\_\_\_.
4. The "Letter of Understanding," "Offer and Proposal," and any subsequent lease, as well as any required maps, plans, drawings, etc., will be subject to review and approval by the State and, where appropriate, by the Federal Highway Administration.
5. The developer is responsible for the following:
  - a. Securing and submitting any required Environmental Impact Study.
  - b. Any clearances or permits required by virtue of the California Coastal Zone Conservation Act, 1972.
  - c. Any zoning, use and/or building permits required by local agencies.
6. The developer undertakes the above at his/her own time and expense and that under no circumstance is the State liable beyond the specific conditions agreed to in this document.
7. Developer must deposit \$\_\_\_\_\_ to cover the cost of the State's four market appraisal reports. Such funds must be received within 45 days of this letter in order to receive an approved appraisal in time to successfully complete negotiations.
8. If developer chooses to hire an independent appraiser off of the State's certified list of appraisers, the subsequent appraisal report must meet all State requirements for the valuation of an airspace site. The report must be submitted for review and approval within six months in order to successfully complete negotiations.

\_\_\_\_\_  
(Developer)

**STATE OF CALIFORNIA  
DEPARTMENT OF  
TRANSPORTATION**

\_\_\_\_\_  
(Date)

By \_\_\_\_\_

Date \_\_\_\_\_

# REQUEST FOR CONSENT TO DIRECTLY NEGOTIATE - SAMPLE

EXHIBIT  
15-EX-05

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State of California

Business, Transportation and Housing Agency

## Memorandum

To: CHAIR AND MEMBERS  
Airspace Advisory Committee

Date:

File:

From: **DEPARTMENT OF TRANSPORTATION**  
**DISTRICT AIRSPACE**

Subject: Request for Consent to Directly Negotiate

### RECOMMENDATION:

It is requested that the Airspace Advisory Committee (AAC) consider and approve a request to directly negotiate a 20-year lease with this proposed lessee. It is in the State's best interest to lease this site by direct negotiations and not bid this site publicly because this site is only developable by the proposed lessee.

### BACKGROUND:

Said lessee currently owns a medical facility located in the State of California. The proposed lessee plans to develop an additional 6,000 s.m. medical facility to be located on their existing parking lot adjacent to their currently developed 38,000 s.m. facility. The airspace site would provide the additional parking needed for this development.

The subject airspace site contains approximately 16,000 s.m. and is located at the top of slope of the connector ramp from the freeway. Due to access limitations and irregular shape, this site could not support independent development and, for this reason, has never been offered for bid. Said lessee is the only property owner directly adjacent to this site.

### SUMMARY:

The optimum return for this site will be realized through a direct lease with said lessee for parking purposes, which is the highest and best use. As medical facility parking, the subject site adds revenue to the State, relieves Caltrans from continuing maintenance problems, and does not detract from the safety and aesthetics of the adjoining connector ramp. The developer proposes to grade, pave, curb, stripe and landscape the site. The negotiated rental rate will be based upon a Fair Market Appraisal and Highest and Best Use Study.

It is requested that the Airspace Advisory Committee grant permission to directly negotiate a 20-year lease with this proposed lessee as it would be in the best interest of the State.

AIRSPACE DISTRICT MANAGER

Attachment (site map)

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**REQUEST FOR APPROVAL OF TERMS AND CONDITIONS  
(CTC) - SAMPLE**  
(Form #)

EXHIBIT  
15-EX-06

State of California  
Business, Transportation  
And Housing Agency  
Department of Transportation

HIGHWAY RIGHT OF WAY MATTERS  
Airspace Leases  
FLA #  
CTC Meeting:

Agenda Item:

\_\_\_\_\_  
, Deputy Director  
Finance

AIRSPACE LEASES - PROPOSED LESSEE

It is recommended that the California Transportation Commission (CTC) authorize the execution of a lease between the State of California, Department of Transportation and the proposed lessee.

The lease area is located in the (describe its location and identify site location boundaries).

Lessee has leased this property shown on the attached map for automobile sales, service, and storage since 1975. The current lease is scheduled to expire in 2 years and the lease rate is \_\_\_\_\_ per month. The lessee has requested that the lease be renegotiated at this time in order to accommodate his/her plans, and to avoid the uncertainty of a public bid when the lease expires. Since the current rent is below market value, it is in the State's best interest to lease the property the lessee needs for the facility at market value.

Lessee has agreed to a lease under the following terms and conditions:

Term: Ten (10) years beginning \_\_\_\_\_, plus one (1) ten (10) year option.

Use: Automobile sales, service, and storage. The lease will not allow the use or storage of flammable, combustible, or hazardous materials.

Rent: \_\_\_\_\_ per month (based on the State's appraisal), representing a 10% return.

Adjustment: Yearly, based on the Consumer Price Index, with a 2% minimum and 6% maximum.

Reevaluation: Occurs at the end of the initial ten (10) year term, and would apply to the ten (10) year option period.

This agreement is felt to be in the best interest of the State. It allows the sites that have the most marketability and have elicited interest from other parties to be put to public bid, and the remainder leased to lessee for the operation at a significantly higher rental rate than is currently being paid. We, therefore, request approval of a directly negotiated lease to lessee under the terms and conditions outlined above.

The proposed terms and conditions have been reviewed and are recommended for approval by the CTC's Airspace Advisory Committee.

Attachments (vicinity and site maps)

**REQUEST FOR RECOMMENDATION OF TERMS AND  
CONDITIONS (AAC) - SAMPLE**

EXHIBIT  
15-EX-07  
PAGE 1 OF 3

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State of California

Business, Transportation and Housing Agency

M e m o r a n d u m

To: CHAIR AND MEMBERS  
Airspace Advisory Committee

Date:

From: **DEPARTMENT OF TRANSPORTATION  
RIGHT OF WAY PROGRAM  
Mail Station 37**

File:

Subject: Approval of Lease Terms and Conditions

RECOMMENDATION

It is requested that the Airspace Advisory Committee (AAC) recommend to the California Transportation Commission (CTC) that it approve the terms of a lease on the above referenced site to lessee. It is in the best interest of the State to lease by direct negotiations and not bid this site publicly because it is landlocked and is only usable by the proposed lessee.

BACKGROUND

Lessee approached District Right of Way to explore ways of increasing the size of their parking lot. Being constrained by a local street on two sides and a fully developed property on the other, Lessee realized that Caltrans held the only property possibly available for expansion. This proposal was not previously brought to the AAC for approval of direct negotiations because the site is landlocked and Caltrans' procedures allow negotiations with the adjoining owner as long as the terms and conditions are presented to the AAC.

The proposed lease area is 26 by 800 meters and below grade with the surrounding land. The lessee plans to fill and pave the leased site for the purpose of increasing the area to display its automobiles for a total of 61 new parking spaces.

The District Airspace Review Committee has approved the conceptual and preliminary proposal and has recently obtained the Federal Highway Administration's approval. In addition, the City's Planning Division has granted the appropriate permits for the planned development.

TERMS AND CONDITIONS

Term:	25 years plus five 5-year options.
Area:	20,800 square meters, of which 3,200 square meters is unusable due to the slope, for a total of 17,600 usable square meters.
Use:	New car storage.
Consideration:	\$1540 per month, based on a fair market appraisal, resulting in a 12% return.

**REQUEST FOR RECOMMENDATION OF TERMS AND  
CONDITIONS (AAC) - SAMPLE**

EXHIBIT  
15-EX-07  
PAGE 2 OF 3

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Airspace Advisory Committee  
Page 2

- Adjustments: Standard Annual Consumer Price Index adjustments.
- Reevaluation: Every fifth year.
- Cancellation: This lease may be terminated by either party with 90 days' notice. Cancellation by either party will compel lessee to return the property to its previous condition. If the area is needed for a future widening project, the State can cancel the lease and the lessee will return the area to its original condition.

ANALYSIS

This lease represents an excellent use of the state's right of way while providing a stable source of income.

Approval is hereby recommended.

DISTRICT AIRSPACE MANAGER  
Right of Way Program

Attachments

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AIRSPACE APPRAISAL SUMMARY

LOCATION OF SITE AND BRIEF AREA DESCRIPTION

The airspace site is located within the right of way for the \_\_\_\_\_  
\_\_\_\_\_ offramp from eastbound Interstate 80. It is adjacent  
to the \_\_\_\_\_ car dealership at \_\_\_\_\_  
\_\_\_\_\_ in \_\_\_\_\_, California. This is a newer  
retail/commercial region of the city of \_\_\_\_\_ which  
services tourists and the residents who live on the south side of Interstate 80. The services include motels,  
restaurants, retail, banks, movie theaters, etc.

BRIEF PROPERTY DESCRIPTION

The subject is rectangularly shaped and contains a net usable area of 17,600 square meters. It is level but  
below grade in relation to the offramp and the adjoining private property. The only access to the subject is across  
the adjacent property, which is improved with a car dealership.

ZONING

The subject is currently not zoned because it is within the State's right of way. The surrounding private  
property is within the City of \_\_\_\_\_'s Planned Development Commercial (PDC)  
designation.

HIGHEST AND BEST USE

There is only one use of the property physically possible, financially feasible, and legally permissible  
which returns the greatest value to the land: plottage to the adjoining property for additional parking and inventory  
storage for the car dealership. The dealership could use extra area but is not required to have this area.

BASIS FOR ESTIMATING LAND VALUE

The sales comparison approach was used to establish a value for commercial/retail land which could  
support car dealerships. The value of the subject is its contributory value to the site it is being plotted to. This  
value was established using the sales comparison approach to valuation. The subject has the same unit land value  
as the adjacent property after the importation of fill material to elevate the subject to a level which is nearly at  
grade with the adjacent property. To fill the site, 3,600 cubic meters of fill are required; this cost must be  
subtracted from the indicated land value. The cost of fill is estimated at \$36,000.

ESTIMATED VALUE

The estimated value of ready-to-develop, level, commercial/retail land in the subject area is \$5.10 per  
square meter. The value of subject as of February 21, 1996, if ready to develop, is \$90,000. The value of the  
subject as is is \$54,000 (\$90,000 - 36,000). Long term land leases should return between 8% and 12%, therefore,  
the fair market rent is between \$4,320 and \$6,480 per year, or between \$360 and \$540 per month.

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**ESTOPPEL CERTIFICATE**

(Form #)

CONSENT AND ESTOPPEL AGREEMENT

This CONSENT AND ESTOPPEL AGREEMENT (this "Agreement") is made and entered into as of this \_\_\_\_\_ (date), by and among the STATE OF CALIFORNIA, acting through its Department of Transportation (Lessor), \_\_\_\_\_ (Lessee), and \_\_\_\_\_ (Lender).

RECITALS

A. Pursuant to an Airspace Ground Lease (Lease) which was made and entered into by and between the state and \_\_\_\_\_ (Lessee), the state leased to the Lessee certain real property in \_\_\_\_\_ (location) commonly known as Airspace Lease Area No. \_\_\_\_\_ (file #).

B. As a condition to the Lender's entering into the \_\_\_\_\_ (describe documents between Lessee and Lender) encumbering the Lessee's interest in the site under the lease, which has been duly executed and delivered to the Lender by the Lessee, shall remain in full force and effect and evidence a first priority lien upon the site, and this Landlord Consent and Estoppel Agreement relating to such Leasehold shall have been duly executed and delivered to the Lender.

NOW, THEREFORE, the parties agree as follows:

1. Definitions. All capitalized terms not defined in the Agreement shall have the meanings given to them in the Lender's document.

2. Representations and Agreements of the Lender. Pursuant to Section 16.5 of the Master Lease, the Lender hereby makes the following representations and agreements:

- a. The Lender is licensed by the \_\_\_\_\_ to conduct the business of a representative office at \_\_\_\_\_ (location) in the City of \_\_\_\_\_ and County of \_\_\_\_\_, California;
- b. Should the Lender become an Assignee or successor to the interests of the Lessee, the Lender agrees to limit the use of the Site to those uses permitted by the \_\_\_\_\_ (lease agreements) and
- c. Should the Lender become an Assignee or successor to the interests of the Lessee, the Lender agrees to be bound by all of the terms, covenants and conditions of the \_\_\_\_\_ (lease agreements).

3. Consent. Pursuant to Section 16.4 of the Lease, the State and the Lessee, respectively, hereby certify and agree as follows:

- a. The execution by \_\_\_\_\_ (Lessee) of the Leasehold Deed of Trust in favor of the Lender covering all of the Lessee's interest in the Site was not and shall not be deemed by the State to be in violation of, or a default under, the Lease;
- b. The State and the Lessee each consent to (i) the granting of the lien of the Leasehold Deed of Trust by the Lessee in favor of the Lender, (ii) the entering onto the Site by the Lender, its successors or assigns in order to cure any defaults under lease, and (iii) any assignment or transfer of the Leasehold to the Lender or to any other person or entity pursuant to the Leasehold Deed of Trust by way of a judicial or nonjudicial foreclosure, a deed-in-lieu of foreclosure, or otherwise in accordance with law;
- c. As of the date hereof, the Lessee is not in default under the Lease.

**ESTOPPEL CERTIFICATE**

(Form #)

EXHIBIT

15-EX-08

PAGE 2 OF 2

4. Notice. The State agrees to give the Lender written notice of any default by the Lessee under the Lease, which notice shall be delivered to the following addresses:

(list addresses)

Section 18.13 of the Lease shall govern notices delivered hereunder.

5. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by the law of the State of California. The parties hereby waive, to the fullest extent permitted by law, any rights they may have to a jury trial.

6. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

7. Headings. The section headings used in this Agreement are intended principally for convenience and shall not by themselves determine the rights and obligations of the parties of this Agreement.

8. Severability. Any provision of this Agreement which is prohibited, unenforceable, or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability, or nonauthorization without invalidating the remaining provision hereof or affecting the validity, enforceability, or legality of such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized offices as of the day and year first above written.

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Name:  
Title: District Airspace Manager

\_\_\_\_\_ (Lessee)

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_ (Lender)

By: \_\_\_\_\_  
Name:  
Title:

Attachments (legal description of property)

**CONSENT TO ENCUMBER**

(Form #)

**CONSENT TO ENCUMBER**

WHEREAS, on \_\_\_\_\_ (date) the State of California, acting by and through its Department of Transportation, leased Airspace Lease Area \_\_\_\_\_ (Site No.) (FLA) located in the City of \_\_\_\_\_, County of \_\_\_\_\_, (Lessee) for a term of \_\_\_\_\_ years, and, to \_\_\_\_\_

1. (Optional Clause)

WHEREAS, said lease was amended on \_\_\_\_\_, 19\_\_\_\_; and

2. (Optional Clause)

WHEREAS, the interest of \_\_\_\_\_ (original Lessee) as Lessee under the referenced lease was assigned to \_\_\_\_\_ (Assignee) by an Assignment of Lease dated \_\_\_\_\_ (date) , 19\_\_\_\_; and

WHEREAS, said lease and all its provisions are, by this reference, incorporated herein; and,

WHEREAS, \_\_\_\_\_ (Lessee) wishes to borrow, and \_\_\_\_\_ (Lender) wishes to loan \_\_\_\_\_ (Lessee) \$\_\_\_\_\_, to be secured by a deed of trust, in the form attached hereto, from \_\_\_\_\_ (Lessee) as Trustor to \_\_\_\_\_ (Lender) as Beneficiary, against \_\_\_\_\_ (Lessee) 's interest in the referenced leasehold estate; and,

WHEREAS, Paragraph \_\_\_\_\_ of the referenced lease from the state of California requires the prior written consent of the State to such an encumbrance; and,

WHEREAS, \_\_\_\_\_ (Lessee) is not in default under said lease, and the lease remains in full force and effect and the Lessor is not aware of any facts which, with notice or the passage of time, would constitute a default by any of the parties to said lease;

NOW, THEREFORE, the attached deed of trust between \_\_\_\_\_ (Lessee) as Trustor, \_\_\_\_\_ (escrow) , as Trustee, and \_\_\_\_\_ (Lender) as Beneficiary, and the attached promissory note in the principal amount of \$\_\_\_\_\_ (the lien of the trust being security for said note) are hereby approved as an encumbrance against the leasehold estate under the \_\_\_\_\_, 19\_\_ lease, which approval is required by Paragraph \_\_\_\_\_ of said lease; providing,

BY virtue of countersigning this Consent to Encumbrance, \_\_\_\_\_ (Lender) hereby agrees and warrants that it will provide the State of California, through the Department of Transportation, with thirty (30) days written notice in the event of any default on its loan to \_\_\_\_\_ (Lessee) , which agreement is required by Paragraph \_\_\_\_\_ of the above-referenced lease.

IN the event Lessee defaults under the Ground Lease giving Lessor the right to terminate it:

Lessor shall give \_\_\_\_\_ (Beneficiary) written notice of default and Intention to Terminate Ground Lease, and the right to cure as stated in Paragraph \_\_\_\_\_ of said lease.

IN WITNESS WHEREOF, this agreement is executed on the day and year first above mentioned.

\_\_\_\_\_

Lessor  
State of California  
Department of Transportation

By \_\_\_\_\_

(Name of signer)  
(Title)  
(Address)

\_\_\_\_\_

District Right of Way, Airspace

**MEMORANDUM OF LEASE**

(Form #)

MEMORANDUM OF LEASE

This Memorandum of Lease is made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between the State of California, acting by and through its Department of Transportation, hereinafter called "Lessor," and \_\_\_\_\_, hereinafter called "Lessee," who agree as follows:

1. *Premises.* Lessor leases to Lessee, and Lessee leases from Lessor, for the term hereinafter set forth, those certain premises known as Airspace Lease Area No. \_\_\_\_\_, situated in the City of \_\_\_\_\_, County of \_\_\_\_\_, said land or interest therein being shown on the map or plate marked "Exhibit A," attached hereto and by this reference made a part hereof and more particularly described as follows:

(Insert legal description together with exceptions from the master lease)

2. *Term.* The term of this lease is for \_\_\_\_\_ (years) , commencing \_\_\_\_\_ (date) , and expiring \_\_\_\_\_ (date) .

3. *Other Terms and Conditions.* This lease is upon the covenants, conditions and provisions set forth in that certain unrecorded Airspace Ground Lease between Lessor and Lessee dated \_\_\_\_\_, 19\_\_\_\_. These covenants, conditions, and provisions are incorporated into this Memorandum of Lease by reference.

4. *Purpose of Memorandum of Lease.* This Memorandum of Lease is prepared for the purpose of recordation, and it in no way modifies the provisions of the lease referred to herein.

LESSOR:  
State of California

LESSEE:

By: \_\_\_\_\_

By: \_\_\_\_\_

**COLUMN PROTECTION SYSTEMS**

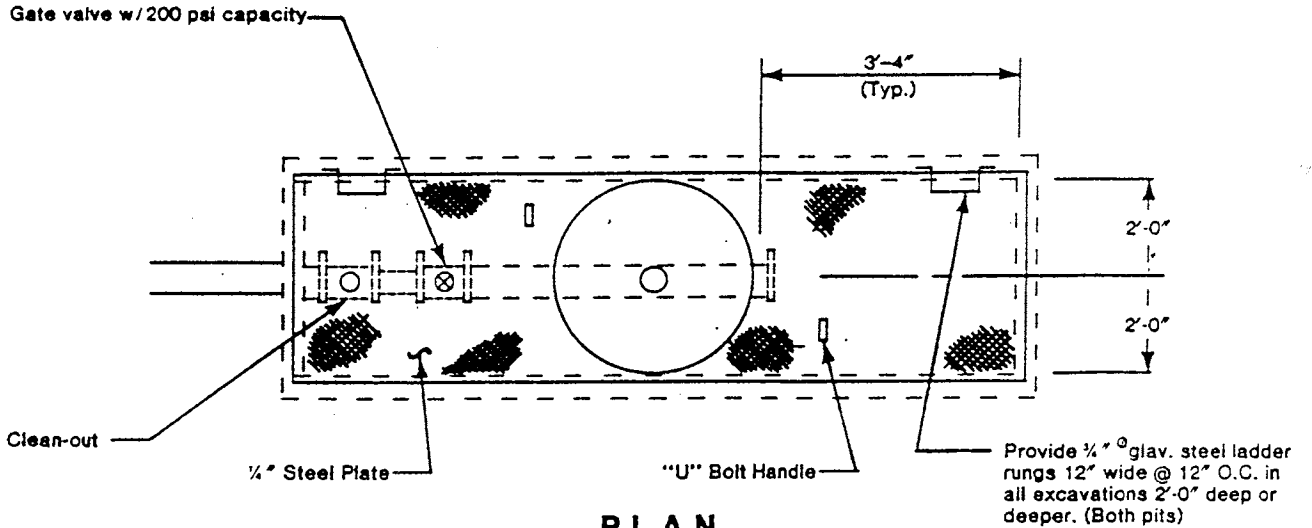
Airspace Leases require a column protection system in areas where columns are exposed to vehicular traffic. Protection systems using material capable of shrinking with age, such as wood, must have the ability to adjust for shrinkage. Systems using adhesive bonding will not be permitted. Areas exposed to pedestrian traffic will have the additional requirement of presenting smooth surfaces to the passersby.\*

The following illustrations are examples of different types of column protection that can be used. They are not intended to be all encompassing, nor are they mandatory. If the samples provided are not suitable for a particular project, the applicant may submit an independent design of column protection for review. However, the system used shall provide an equivalent amount of protection to the structure columns and public as the examples shown.

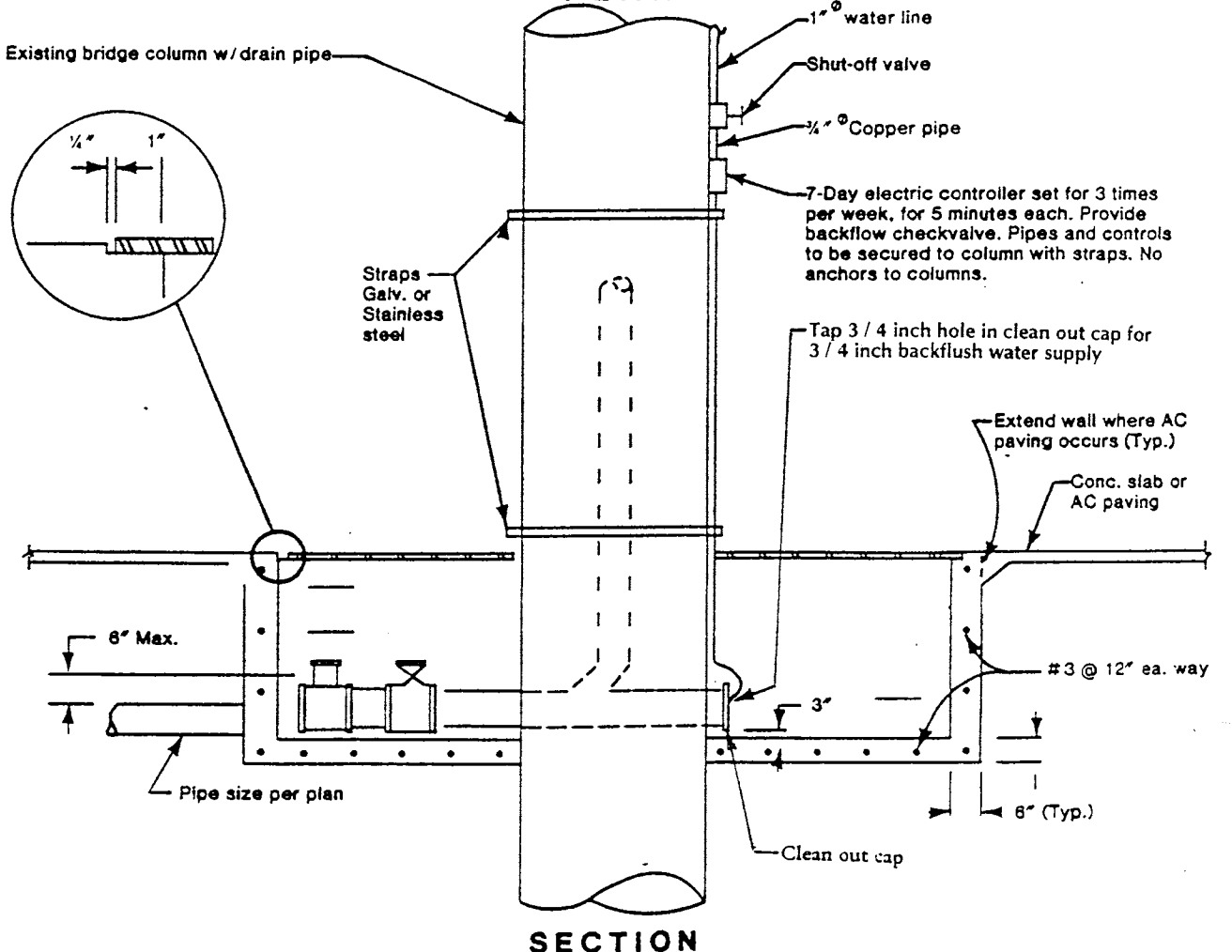
\* A column protection system as shown in the example utilizing straps and turnbuckle satisfies the smoothness requirement for pedestrians.



### BACKFLUSHING ENCLOSED VERTICAL DRAIN SYSTEM

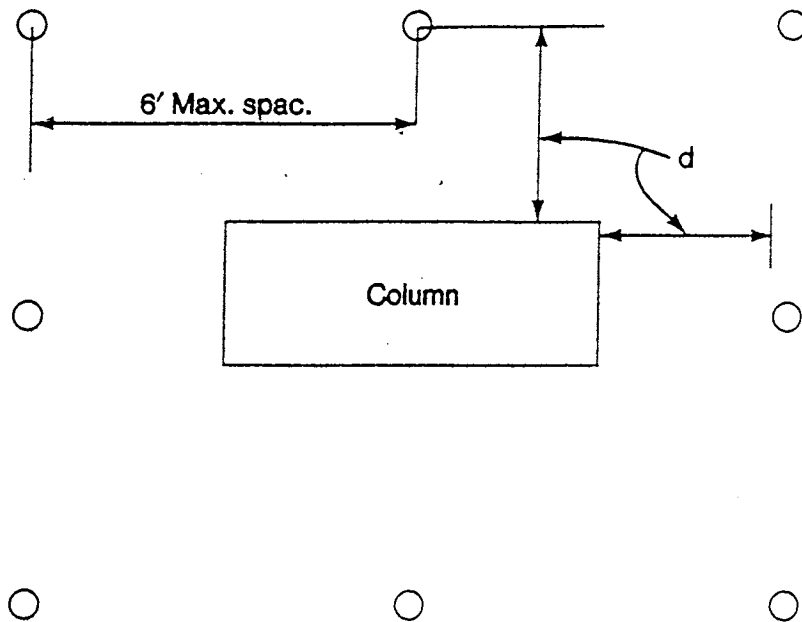


### PLAN

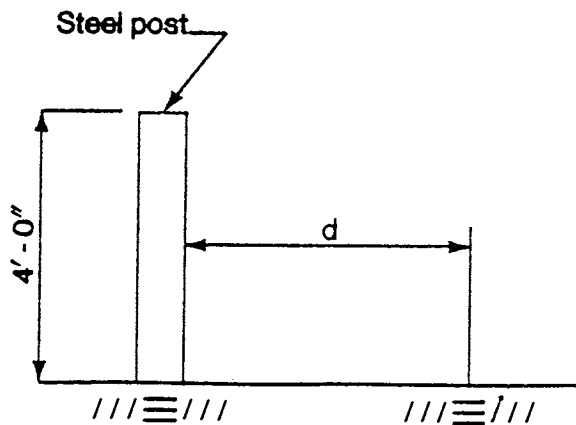


### SECTION

COLUMN PROTECTION IN PARKING LOTS



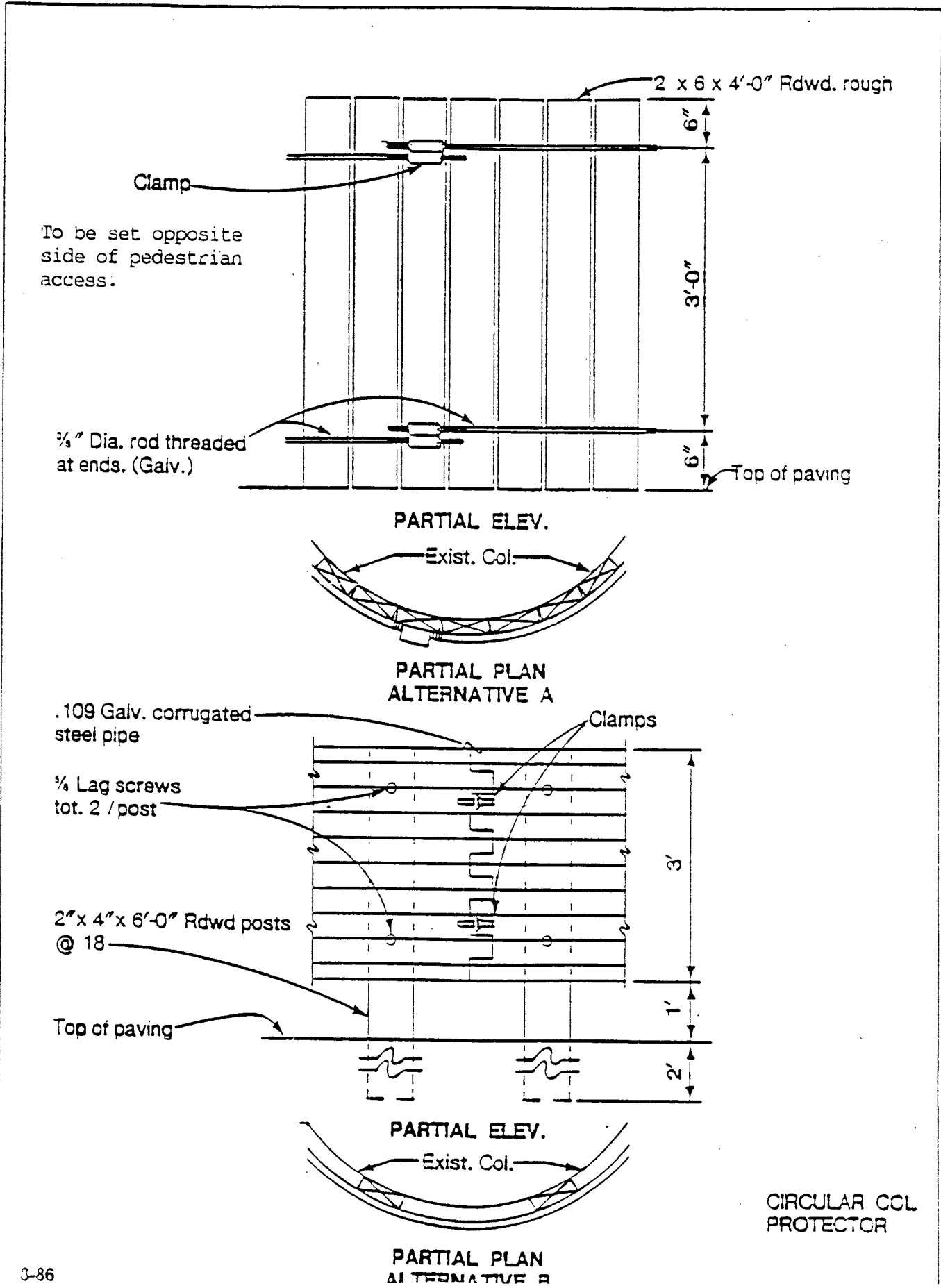
LAYOUT



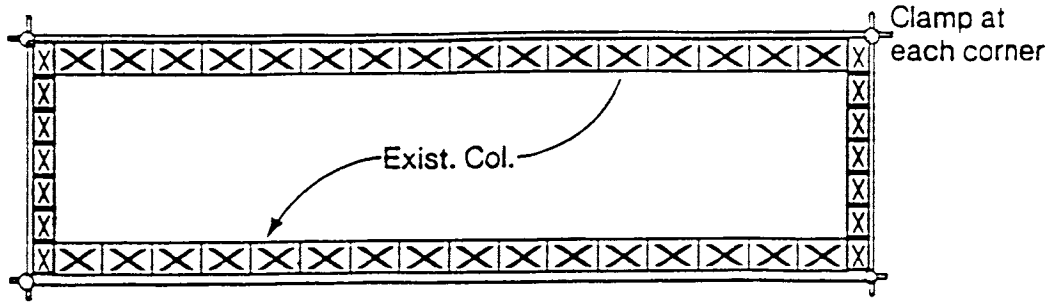
$d = 3$  feet for autos and pickups

$d = 4$  feet for buses and trucks

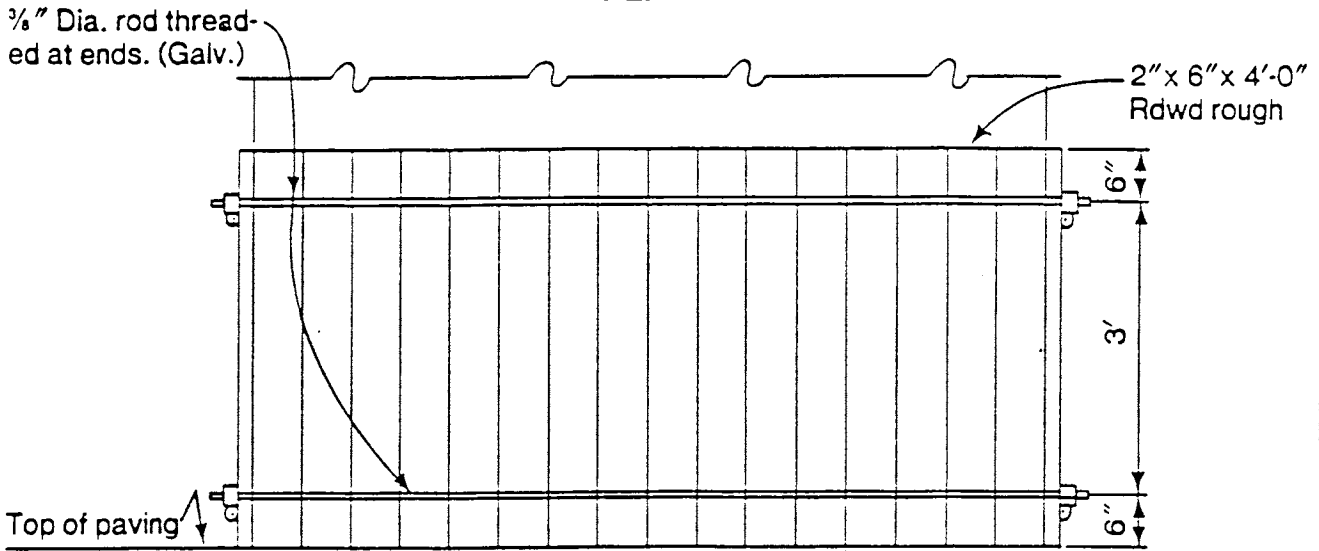
Require 4 inch diameter standard steel pipe post set in and filled with concrete. Depth of post hole will vary dependent on soil conditions. Hole depth must be deep enough for post to bend on impact before overturning.



CIRCULAR COL  
PROTECTOR

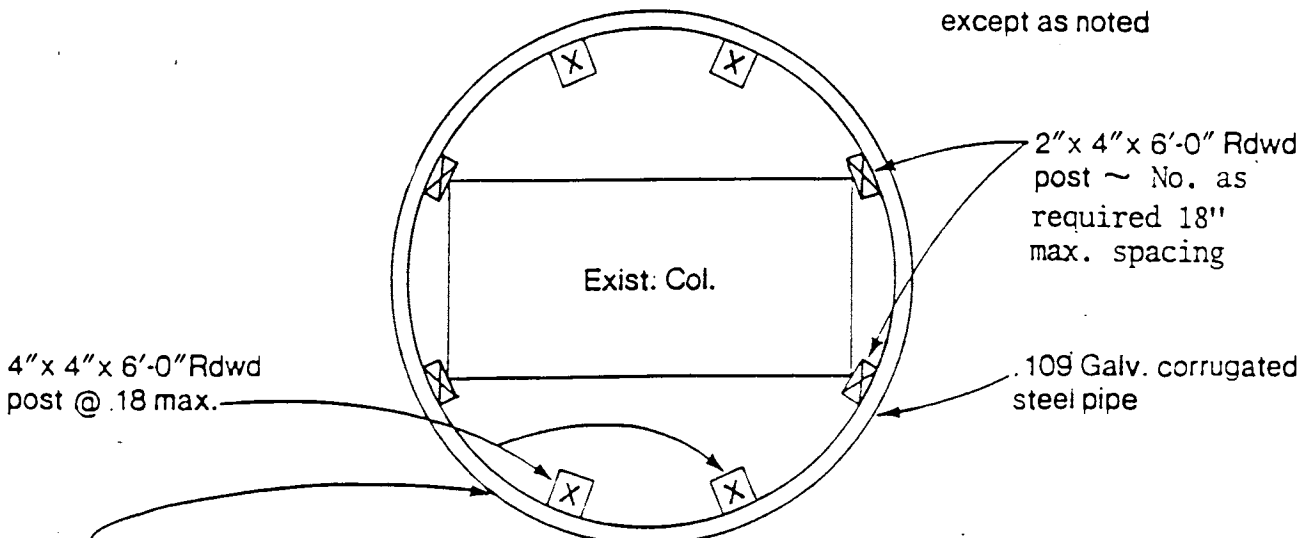


PLAN



ELEVATION

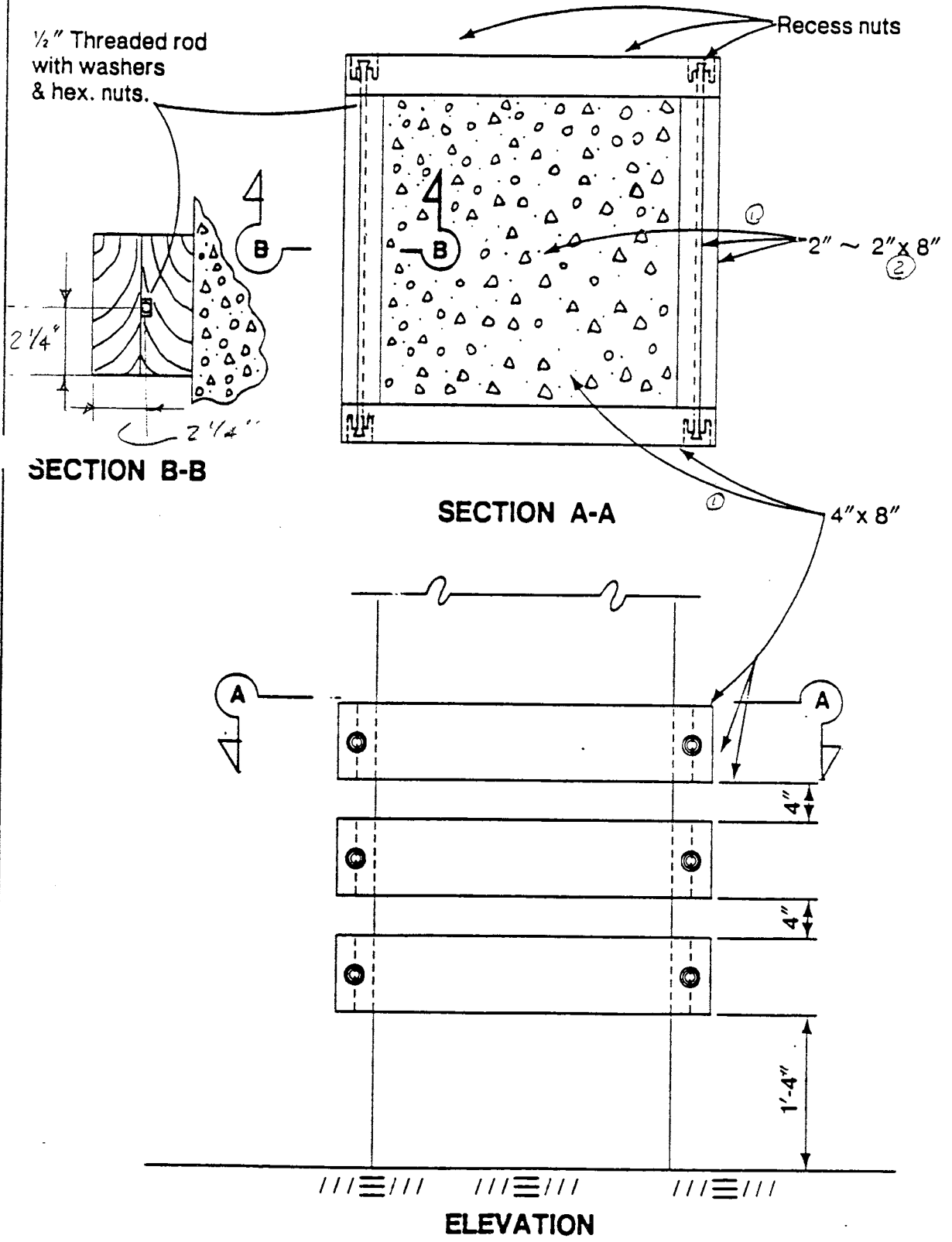
Similar to Alternative A except as noted

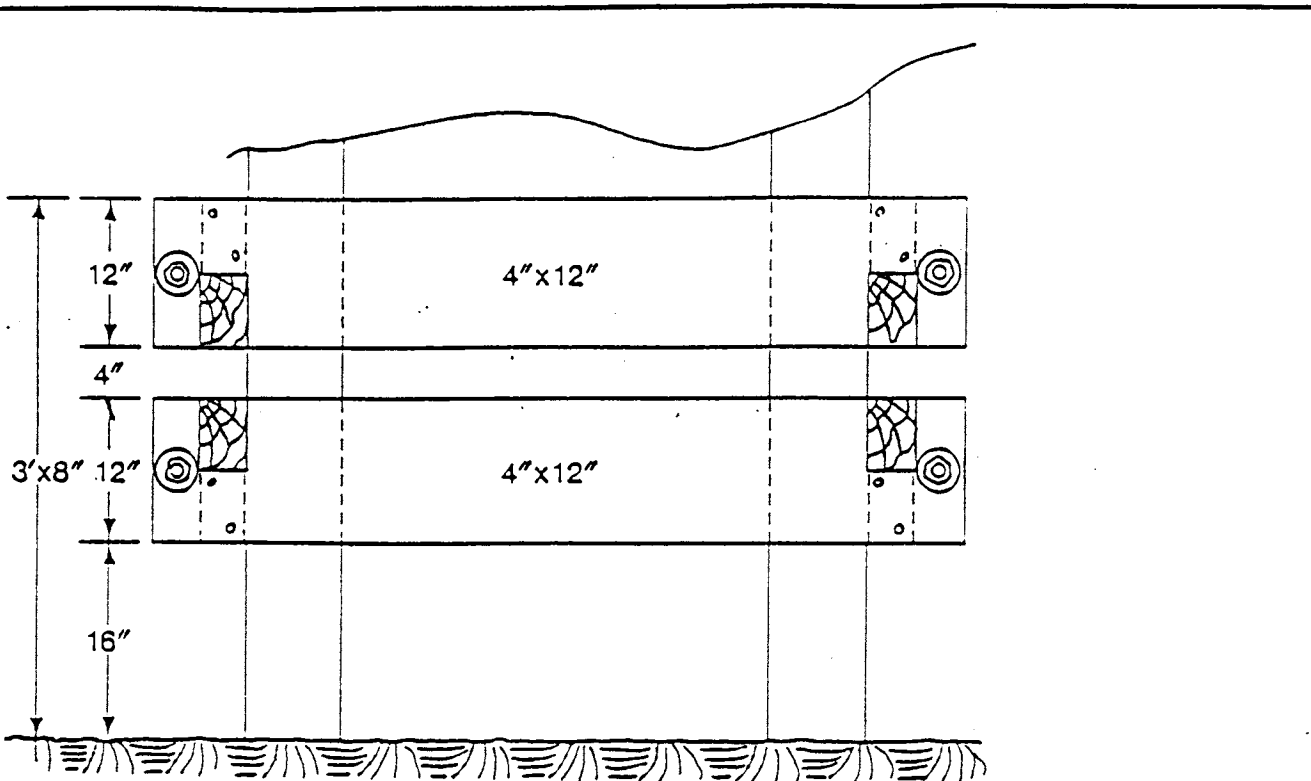


PLAN

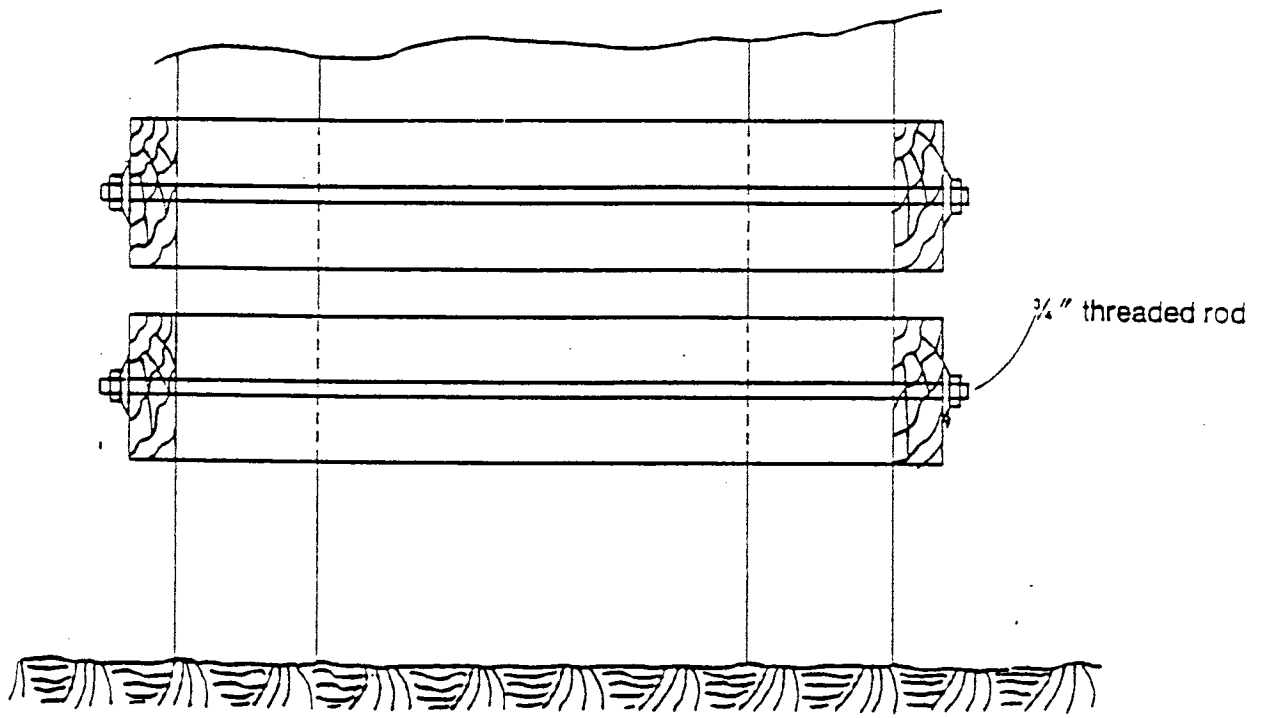
For details not shown see Partial Elev. Alternative B

RECTANGULAR COL. PROTECTOR



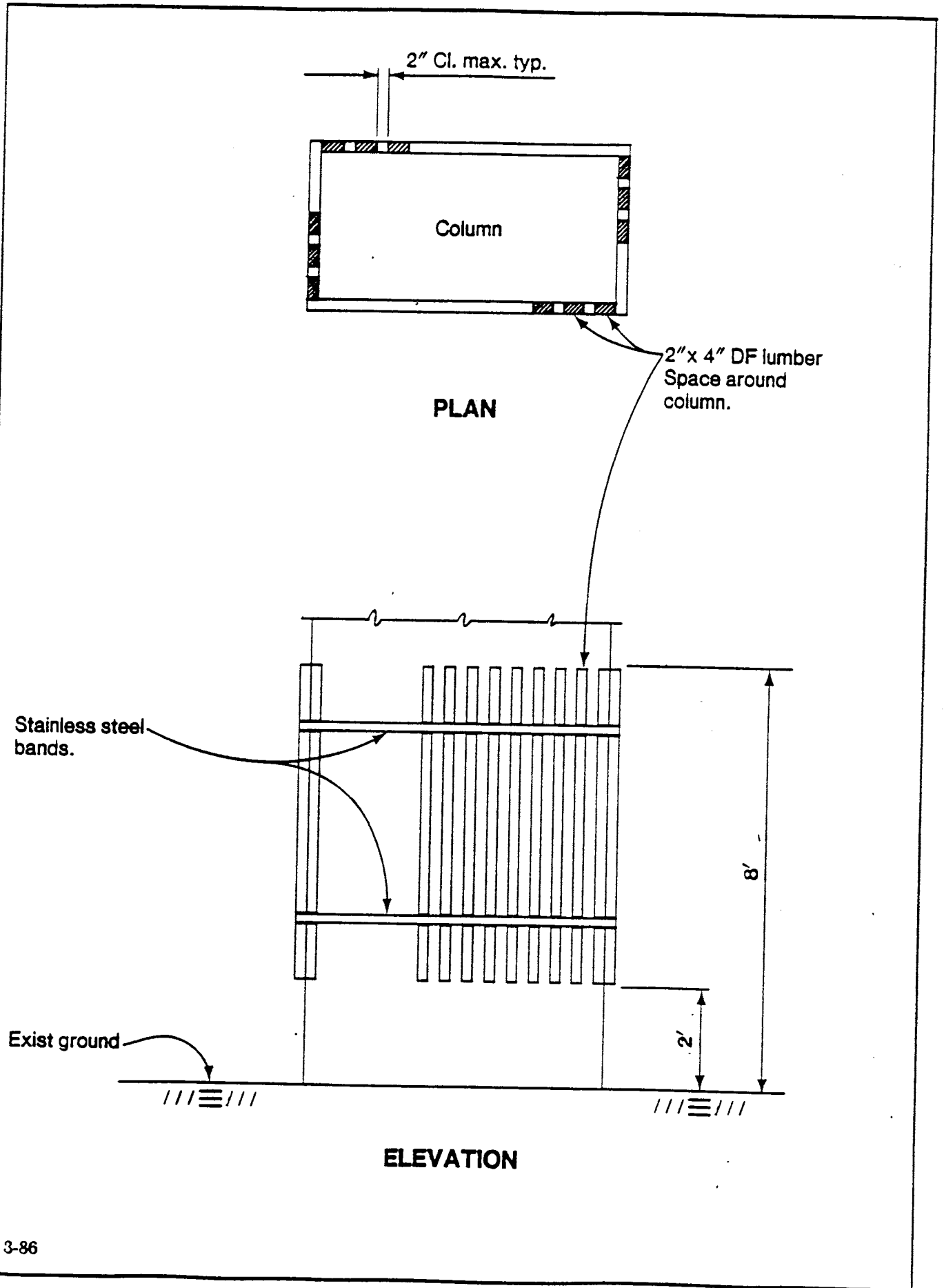


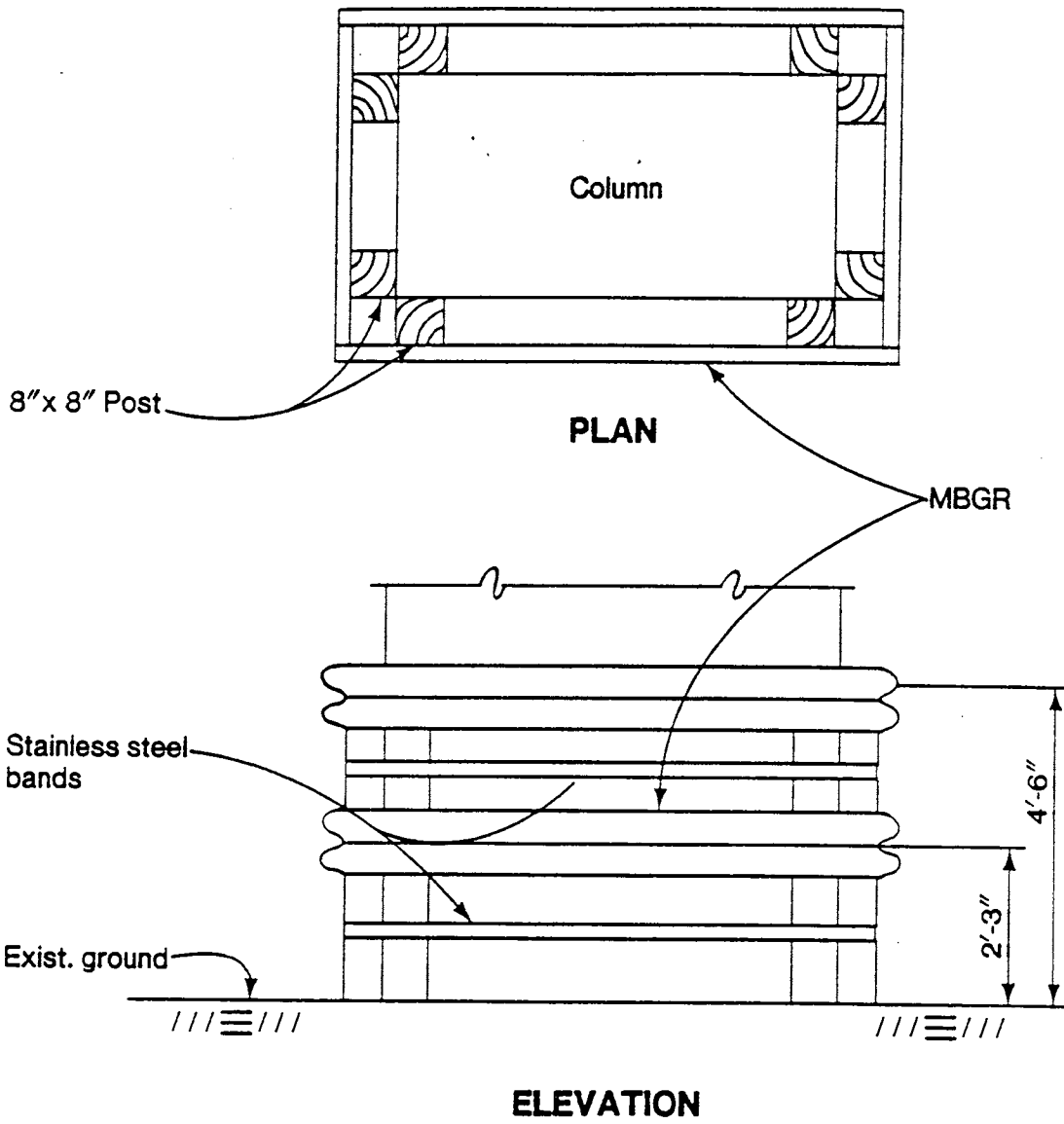
EAST ELEVATION



SOUTH ELEVATION

Nuts to fit flush where pedestrians have access.





State of California

Business, Transportation and Housing Agency

**M e m o r a n d u m**

To: DENNY SHIELDS, Program Manager  
Right of Way  
Date: October 16, 1995  
Attention: Gene Mattocks  
Acquisition  
File: 413.3

From: DEPARTMENT OF TRANSPORTATION  
OFFICE OF STRUCTURES MAINTENANCE  
AND INVESTIGATIONS

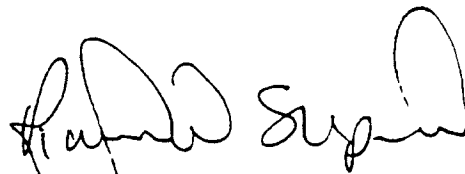
Subject: OSM&I's Guidelines on Air Space Facilities

As a result of our meeting on October 12, 1995 I would like to present the guideline that are being used by the Office of Structure Maintenance and Investigations. Although there may be instances where larger setbacks will be required, adequate access and working room for the vast majority of our structures will be provided by using the following guidelines for permanent and semi-permanent air space facilities:

1. With 24 hour notification access to each column footing, pile cap or column shaft must be provided to allow mobilization of equipment and vehicles for repair. The access must be a minimum of 12 feet wide and must extend from a public street to the columns.
2. The facility must maintain a minimum setback of 10 feet from the perimeter of a column footing or pile cap and maintain a minimum setback of 20 feet from the face of column shafts.
3. Access to hinges must be provided to allow moving vehicles and equipment to the hinge. The access must be 12 feet wide and extend from a public street to the hinge.
4. At hinges the facility must maintain a minimum setback of 30 feet centered under the hinge to allow installation of temporary supporting falsework or perform other future work on the hinge. The setback must extend from edge of deck to edge of deck. In lieu of providing the 30 foot hinge access, jacking points may be constructed in the air space facility capable of supporting the hinge and a working platform to perform future work on the hinge.

Also discussed at the meeting was the need to have bridge numbers added to the Airspace Database. If possible please modify your database to include the official eight digit Bridge Number so that Airspace parcels can be related to bridges.

If you have any questions or comments please contact Harold Herr at 916-227-8277 Calnet 498-8277 or Richard Shepard at 916-227-8266, Calnet 498-8266.



FOR CARROLL D. HARRIS, Chief  
Office of Structures Maintenance  
& Investigations.

cc: PAskelson

Rev. 2/93

GENERAL REQUIREMENTS  
FOR  
USE OF AIRSPACE WITH CALTRANS STRUCTURES

Any deviation from the following conditions must be approved in advance by the Office of Structures Maintenance Airspace Coordinator - Reviewer.

1. The use of parcels under and adjacent to Caltrans structures is subject to approval by the Division of Structures Airspace Coordinator/Engineer prior to any agreements that may be binding on the use of the parcel.
2. Long-term Building Development Leases should not be granted in an area where the foreseeable future expansion or maintenance of the transportation facility can be expected.
3. The Division of Structures reserves the right of immediate access to all areas of the structure in the event of a seismic occurrence and/or structure retrofit activities. This right of access includes but is not limited to all activities associated with any inspection needs, and any activities associated with the maintenance, rehabilitation or retrofit of the structure.
4. Airspace facilities shall not be used for the manufacture or storage of flammable, explosive, or hazardous materials, such as fuel tanks, pumps and vents.
5. Access for bridge inspection must be maintained. For secured areas, the Lessee shall provide the following information to the Office of Structure Maintenance and Investigations:
  - a. Responsible party to contact.
  - b. Alternate contact in case of emergency.
  - c. Routine access must be available within 24 hours. Emergency access must be available within one hour.

The above information shall also be clearly posted at the entrance(s) to the secured area and will be kept current at all times.

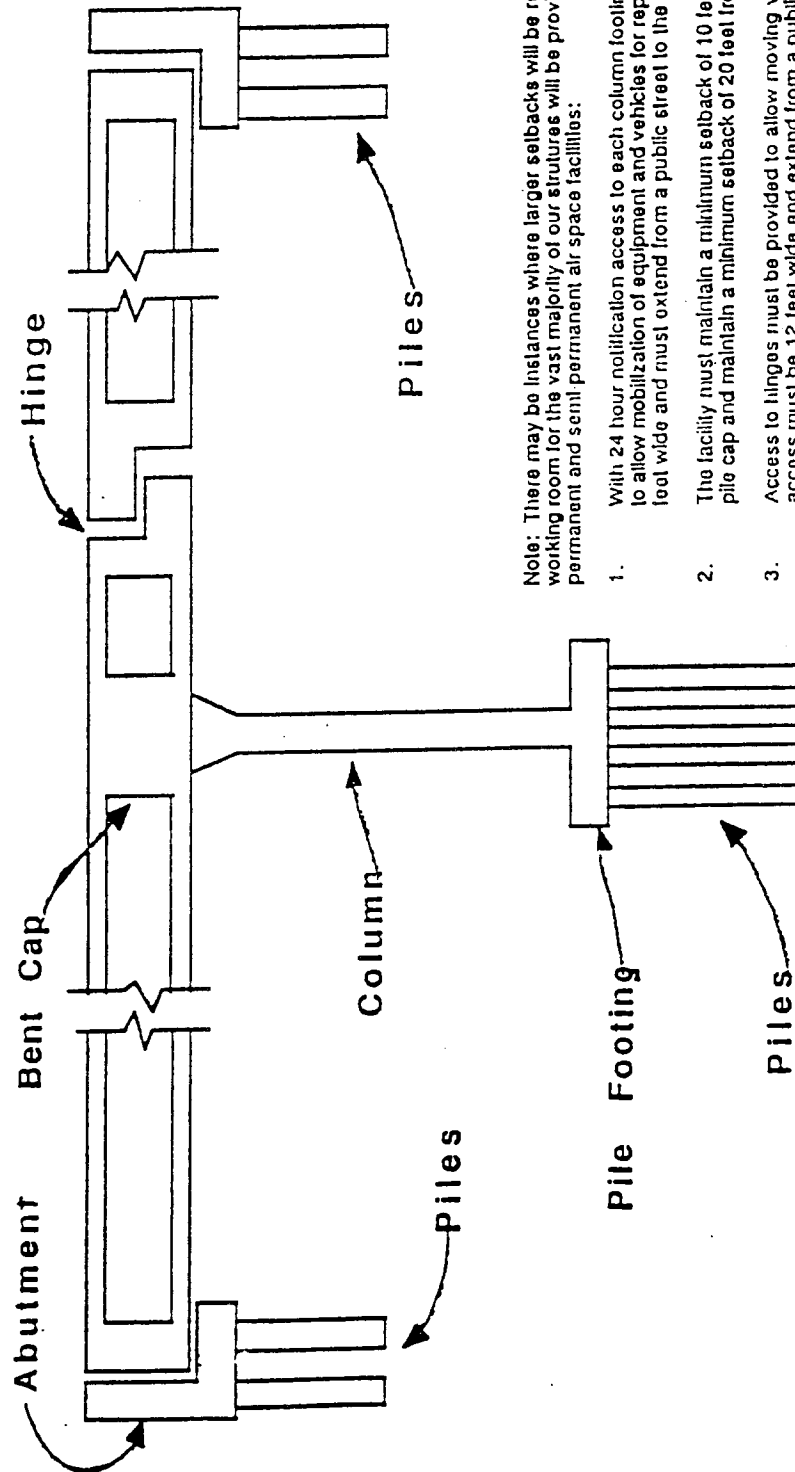
6. Certain minimum vertical and lateral clearances will be required. The specific minimums will be determined upon review of the preliminary plans. As a guideline, buildings will have the following clearances:
  - a. Buildings, having an independent roof, constructed under a concrete or steel box bridge shall have a minimum of three (3) feet vertical clearance for inspection. If the building is to be built under a hinge in the bridge, see (c) below.
  - b. Buildings, having an independent roof, constructed under a concrete or steel open girder bridge require a minimum of five (5) feet vertical clearance to the underside of the girders. The building roof shall be constructed to support painters and their equipment.
  - c. Improvements under highway structure (with hinges) will provide one of the following:
    - 1) Adequate clearance in the vicinity of the structure's hinge to allow for construction of falsework to support the hinge if required for maintenance repairs.
    - 2) A structural support wall shall be built as a part of the airspace use to directly carry the dead and live load occurring at the hinge from the highway structure.

## General Airspace Requirements

Sheet 2 of 2

- d. The use of airspace above the existing bridge deck plane is prohibited within an area 15 feet horizontally from the edge of bridge and a horizontal plane at least 16'- 4" (or a minimum vertical and horizontal clearance established by the state) above the bridge deck.
  - e. Buildings located within 20' from the edge of the concrete bridge shall be of one-hour fire resistive construction and fully sprinklerized.
  - f. Buildings located within 20' from the edge of the steel bridge shall be of noncombustible construction.
  - g. Buildings lower than the bridge deck but higher than the bottom (soffit) of the bridge shall not be located closer than 5 feet from the edge of the bridge.
7. Earthwork or superimposed loads from the airspace use, must not jeopardize bridge foundations. If earthwork (including excavations) or additional loadings are a part of the work, a preliminary plan (with appropriate geology or foundation report) is required for review prior to proceeding with the final design.
  8. Nothing shall be fastened to the bridge proper without prior approval.
  9. The bridge drainage system must not be obstructed. Airspace facilities shall have a minimum clearance of 3' from all drain outlets near the base of the columns and provisions for backflushing column drains must be provided.
  10. The Lessee will be responsible for the repair of any damage to the bridge caused by the construction, operation and maintenance of the airspace facility, and vehicle parking.
  11. All construction must meet the fire codes of local building and fire departments and the State Fire Marshall.
  12. Minimum Fire Code Guidelines (additional requirements may apply)
    - a. Buildings constructed under concrete bridges:
      - (1) Single and multi-level buildings having an independent roof shall be one-hour fire resistive construction.
      - (2) Single level buildings using the soffit of the bridge as a roof shall be of noncombustible construction.
      - (3) Multi-level buildings using the soffit of the bridge as a roof shall be of noncombustible construction. Rooms on the lower levels including the floor of the upper level may be of one-hour resistive construction. A one-hour separation shall be required between noncombustible construction and one-hour fire resistive construction.
    - b. Buildings constructed under steel girder bridges:
      - (1) All buildings shall have an independent roof and shall be of noncombustible construction.
    - c. All buildings shall be equipped with sprinklers.
  13. The State shall not be held responsible for any leakage from bridge joints, soffit vents, access openings or cracks. Should the Lessee elect to intercept, collect and dispose of said leakage, he may do so at his expense subject to the approval of the State.
  14. All Engineering plans, specifications, calculations or other Engineering documents shall be provided with the submittal and shall be stamped and signed by the California Registered Engineer(s) in responsible charge of the documents. A submittal shall consist of three sets of the forgoing documents.

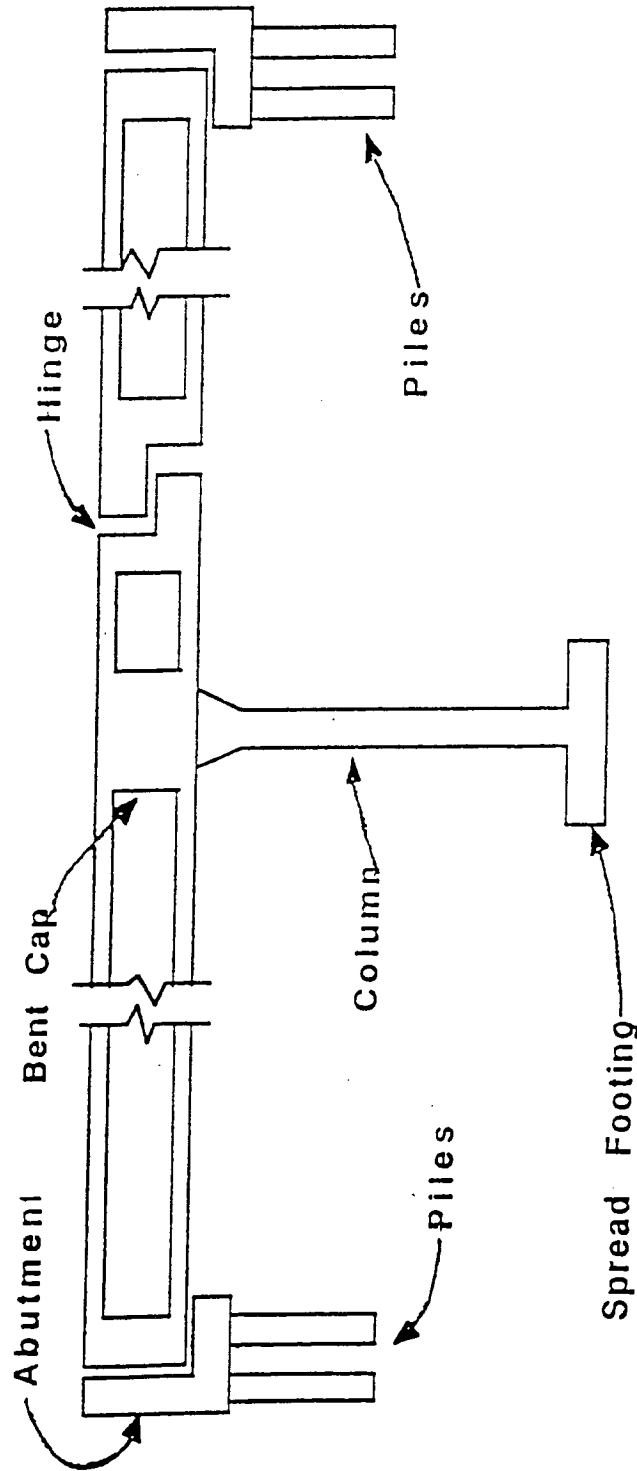
AIRSPACE SETBACK GUIDELINES



Note: There may be instances where larger setbacks will be required, however, adequate access and working room for the vast majority of our structures will be provided by using the following guidelines for permanent and semi-permanent air space facilities:

1. With 24 hour notification access to each column footing, pile cap or column shaft must be provided to allow mobilization of equipment and vehicles for repair. The access must be a minimum of 12 feet wide and must extend from a public street to the columns.
2. The facility must maintain a minimum setback of 10 feet from the perimeter of a column footing or pile cap and maintain a minimum setback of 20 feet from the face of column shafts.
3. Access to hinges must be provided to allow moving vehicles and equipment to the hinge. The access must be 12 feet wide and extend from a public street to the hinge.
4. At hinges the facility must maintain a minimum setback of 30 feet centered under the hinge to allow installation of temporary supporting falsework or perform other future work on the hinge. The setback must extend from edge of deck to edge of deck. In lieu of providing the 30 foot hinge access, jacking points may be constructed in the air space facility capable of supporting the hinge and a working platform to perform future work on the hinge.

AIRSPACE SETBACK GUIDELINES



Note: Abutment is the term for the supports at the ends of the bridge. Bent is the term for a support between the abutments. The parts of a support are: the cap, column or wall, and spread footing (without piles) or pile footing (with piles).  
The pile footing is sometimes referred to as a pile cap.

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## 23 CODE OF FEDERAL REGULATIONS 713

### Subpart B - Management of Airspace

- 713.201 Purpose: to prescribe FHWA policies relating to the management of airspace on Federal aid highway systems for non-highway purposes.
- 713.202 Applicability:
- (a) The provisions of this subpart apply to the use of airspace on the Federal aid highway systems except as provided in paragraph (b) of this section.
  - (b) This subpart does not apply to railroads and public utilities which cross or otherwise occupy Federal aid highway rights of way nor to relocations of railroads or utilities for which reimbursement is claimed under subparts H and E of part 140 of this chapter; joint development and multiple use of highway rights of way as covered in volume 7, chapter 7, section 8 of the Federal Aid Highway Program Manual {3} {3} - the Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration, 400 7<sup>th</sup> Street SW, Washington, D.C., 20590; and bikeways and pedestrian walkways as covered in part 652 of this chapter.
- 713.203 Definition: airspace, as used in this subpart, is that space located above, at, or below the highway's established gradeline, lying within the approved right-of-way limits.
- 713.204 Policies:
- (a) Where a SHD has acquired sufficient legal right, title, and interest in the ROW of a highway on a Federal aid system to permit the use of certain airspace for non-highway purposes and when such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility, the right to temporary or permanent occupancy or use of such airspace may be granted by the SHD subject to prior FHWA approval.
  - (b) The airspace required to accommodate foreseeable future expansion of the highway facility may not be used for non-highway purposes, except under the provisions of subpart A of this part, relating to property management.
  - (c) In any case where sufficient land exists within the publicly acquired rights of way of any Federal aid highway system to accommodate needed rail or non-highway public mass transit facilities and where this can be accomplished without impairing automotive safety or future highway improvements, the FHWA may authorize a SHD to make such lands and rights of way available without charge to a publicly owned mass transit authority for such purposes whenever it may deem that the public interest will be served thereby.
  - (d) If found to be consistent with highway designs, any portion of ROW may be used for green strips, small parks, play areas, parking or other highway related public use, or for any other public or quasi-public use which would assist in integrating the highway into the local environment and enhancing other publicly supported programs. Normally, the SHD should retain supervision and jurisdiction over such lands, but could enter into agreements with local political subdivisions relative thereto.
  - (e) An individual company, organization, or public agency desiring to use airspace as defined herein shall submit an application therefor to the SHD in a manner and form deemed appropriate by the SHD. Applications, including a proposed airspace agreement, shall be forwarded to the FHWA, together with SHD recommendations for approval and any necessary supplemental information. The submission shall affirmatively provide for adherence to all policy requirements contained in this subpart where such are appropriate to the intended use.
  - (f) All non-highway use of airspace shall be covered by a properly executed airspace agreement; the agreement shall contain the following:

- (1) The party responsible for developing and operating the airspace.
  - (2) A general statement of the proposed use.
  - (3) The general design for the use of the space, including any facilities to be constructed, and such maps, plans, or sketches as are necessary to set out pertinent features in relation to the highway facility.
  - (4) A detailed 3-dimensional description of the space to be used, except when the surface area beneath an elevated highway structure or adjacent to a highway roadway is to be used for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, and other similar uses. In such cases, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits, may be furnished in lieu of a 3-dimensional description.
  - (5) Provision that any significant revision in the design or construction of a facility described in subsection 5f(3) above shall receive prior approval by the SHD, subject to concurrence by the FHWA.
  - (6) Provision that any change in the authorized use of airspace shall receive prior approval by the SHD, subject to concurrent by the FHWA.
  - (7) Provision that such airspace shall not be transferred, assigned, or conveyed to another party without prior SHD approval subject to concurrence by the FHWA.
  - (8) Provision that the agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.
  - (9) Provision for the agreement to be revoked if the agreement is violated and such violation is not corrected within a reasonable length of time after written notice of non-compliance has been given. Further, that in the event the agreement is revoked and the SHD deems it necessary to request the removal of the facility occupying the airspace, the removal shall be accomplished by the responsible party in a manner prescribed by the SHD at no cost to the FHWA. An exception to this provision is permitted when the improvements revert to the state upon termination of the agreement.
  - (10) When deemed necessary by the SHD or the FHWA, provision for adequate insurance by the responsible party for the payment of any damages which may occur during or after construction of the airspace facilities, to hold the State harmless. Exception to this requirement may be made where the proposal is for the use by a public or quasi-public agency when such agency is assigned the specific responsibility for payment of any related damages occurring to the highway facility and to the public for personal injury, loss of life, and property damage.
  - (11) Provision for the SHD and authorized FHWA representatives to enter the airspace facility for the purpose of inspection, maintenance, or reconstruction of the highway facility when necessary.
  - (12) Provision that the facility to occupy the airspace will be maintained so as to assure that the structures and the area within the highway ROW boundaries will be kept in good condition both as to safety and appearance and that such maintenance will be accomplished in a manner so as to cause no unreasonable interference with highway use. In the event the responsible party fails in its maintenance obligations, there will be provision for the SHD to enter the premises to perform such work.
  - (13) Appropriate provisions of Appendix "C" of the State's Civil Rights Assurances {4} with respect to title VI of the Civil Rights Act of 1964 and 49 CFR part 21. {4} - Appendix "C" of the State's Civil Rights Assurances may be examined at any office of the SHD or at the FHWA, 400 7<sup>th</sup> Street S.W., Washington, D.C., 20590.
- (g) Use of airspace beneath the established gradeline of the highway shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation, and safety of the highway facility.
- (h) The proposed use of airspace above the established gradeline of the highway shall not at any point between 2 points established 15 feet beyond the 2 outer edges of the geometric section (highway prism) of the highway extend below a horizontal plane which is at least 16 feet, 4 inches above the gradeline of

- the highway or the minimum vertical clearance plus 4 inches as approved by the State, except as necessary for columns, foundations, or other support structures. Where control and directional signs are to be installed beneath an overhead structure, vertical clearance will be at least 20 feet from the gradeline of the highway to the lowest point of the soffit of the overhead structure. Exceptions to the lateral limits set forth above when justified by the SHD may be considered on an individual basis by the FHWA.
- (i) Piers, columns, or any other portion of the airspace structure shall not be erected in a location which will interfere with visibility or reduce sight distance or in any other way interfere materially with the safety and free flow of traffic on the highway facility.
  - (j) The structural supports for the airspace facility shall be located to clear all horizontal and vertical dimensions established by the SHD. Supports shall be clear of the shoulder or safety walks of the outer roadway. However, supports may be located in the median or outer separation when the SHD determines and the FHWA concurs that such medians and outer separations are of sufficient width. All supports are to be back of or flush with the face of any wall at the same location. Supports shall be adequately protected by means acceptable to the SHD and the FHWA. No supports shall be located in the ramp gores or in a position so as to interfere with the signing necessary for the proper use of the ramp.
  - (k) The use of airspace shall not result in either highway or non-highway users being unduly exposed to hazardous conditions because of highway location, design, maintenance, and operation features.
  - (l) Appropriate safety precautions and features necessary to minimize the possibility of injury to users of either the highway facility or airspace due to traffic accidents occurring on the highway or accidents resulting from non-highway uses shall be provided. Airspace facilities shall not be approved for construction over or under the highways unless the plans therefor contain adequate provisions acceptable to the SHD and the FHWA for evacuation of the structures or facilities in case of a major accident endangering the occupants of such structures or facilities.
  - (m) Any airspace facility shall be fire resistant in accordance with the provisions of the local applicable building codes found to be acceptable by the SHD and the FHWA. Such airspace facility shall not be used for the manufacture or storage of flammable, explosive, or hazardous material or for any occupation which is deemed by the SHD or the FHWA to be a hazard to highway or non-highway users. Proposals involving the construction of improvements in airspace should be approved by the State authority responsible for fire protection standards. In cases where the SHD or the FHWA questions the acceptability of the existing code, conformance with a nationally accepted model building code will be required.
  - (n) No structure or structures built over a highway facility shall occupy more length of the highway than will permit adequate natural ventilation of the enclosed section of the highway for the conditions at the location assuming a volume of traffic equal to capacity. Each such covered length shall be preceded and followed by uncovered lengths of highway that will safely effect natural ventilation. The SHD shall determine such lengths for each particular case, subject to FHWA concurrence. Exceptions may be considered when complete tunnel ventilation is provided. Unless tunnel ventilation is provided, structures over highways shall be so designed and constructed as to facilitate natural ventilation of the highway. To this end the underside and any supports for such structures shall have smooth and easily cleanable surfaces. Supports for such structures shall leave as much open space on the sides of the highway as feasible. Such space shall be appropriately graded where deemed necessary or desirable by the SHD.
  - (o) The design, occupancy, and use of any structure over or under a highway facility shall be such that neither the use, safety, appearance, nor the enjoyment of the highway will be adversely affected by fumes, vapors, odors, drippings, droppings, or discharges of any kind therefrom.
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- (p) On-premise signs, displays, or devices may be erected on structures occupying highway airspace, but shall be restricted to those indicating ownership and type of on-premise activities and shall be subject to regulation by the SHD and the FHWA with respect to number, size, location, and design.
  - (q) construction of any structure above or below a highway facility shall not require any temporary or permanent change in alignment or profile of an existing highway without prior approval by the SHD and the FHWA.
  - (r) Where either the SHD or the FHWA is of the opinion that the proposed use of airspace requires changes in or additions to existing highway facilities for the proper operation and maintenance of highways, such facilities shall be provided without cost to Federal funds. There may be exceptions to this policy when the proposed use is for highway related or other public or quasi-public use which would assist in integrating the highway into the local environment and enhance other publicly supported programs. This provision is not intended to expand existing limitations upon expenditures from the highway trust fund nor is it intended to conflict with the provisions of volume 7, chapter 7, section 8, of the Federal-Aid Highway Program Manual {5} relating to joint development of highway corridors and multiple use of roadway properties. {5} - the Federal-Aid Highway Program Manual may be examined at the FHWA, 400 7<sup>th</sup> Street S.W., Washington, D.C., 20590.
  - (s) Proposed airspace facilities shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and reconstruction when necessary.
  - (t) Permission shall not be granted for any use of airspace which does not conform with the provisions of current, appropriate Federal Aviation Administration regulations.
  - (u) Approval for the use and occupancy of highway ROW for the parking of motor vehicles shall be granted only if proper consideration has been given to the need for the following:
    - (1) Parking design or arrangement to assure orderly and functional parking.
    - (2) Plantings or other screening measures to improve the esthetics and appearance of the area.
    - (3) Surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection devices, etc.
    - (4) Access for fire protection and fire fighting equipment.
  - (v) Disposition of income received from the authorized use of airspace shall be the SHD's responsibility and credit to Federal funds is not required.

#### 713.205 Inventory:

The SHD shall maintain an inventory of all authorized uses of airspace. This inventory, which shall be available for review by appropriate Federal and State agencies, shall include, but not be limited to, the following items for each authorized use of airspace:

- (a) Location by project, survey station, or other appropriate method.
- (b) Identification of the authorized user of the airspace.
- (c) A 3-dimensional description or a metes and bounds description.
- (d) As-built construction plans of the highway facility at the location where the use of airspace was authorized.
- (e) Pertinent construction plans of the facility authorized to occupy the airspace.
- (f) A copy of the executed airspace agreement.

**STORM WATER INSPECTION REPORT**

(Form #)

**CONFIDENTIAL**

This document contains personal information and pursuant to Civil Code 1798.21, it shall be kept confidential in order to protect against unauthorized disclosure.

EXHIBIT

15-EX-14 (NEW 7/2007)

Page 1 of 4

**I. FACILITY INFORMATION**

1. TENANT / FACILITY NAME		2. TENANCY NO.		3. AREA SF FT <input type="checkbox"/> ACRE <input type="checkbox"/>	
4. ADDRESS / LOCATION OF PROPERTY		5. CITY		STATE CA	6. ZIP CODE
7. TENANT CONTACT (NAME)		8. MAILING ADDRESS (if different)		9. CONTACT PHONE NO.	
10. LEASE START DATE		11. LEASE EXPIRATION DATE _____; or MONTH-TO-MONTH			
12. PROPERTY TYPE - <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> INDUSTRIAL <input type="checkbox"/> TELECOMMUNICATIONS <input type="checkbox"/> PARKING <input type="checkbox"/> OTHER:					
13. STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE _____					
14. SIC CODE DESCRIPTION _____					
15. FACILITY COVERED UNDER GENERAL INDUSTRIAL STORM WATER PERMIT? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A					
15a. FACILITY'S INDUSTRIAL WASTE DISCHARGE IDENTIFICATION (WDID) NO. _____ <input type="checkbox"/> N/A					
15b. DOES FACILITY HAVE A CURRENT SWPPP ON-SITE? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A					
16. FACILITY COVERED UNDER OTHER STORM WATER / WASTE WATER PERMIT? <input type="checkbox"/> YES <input type="checkbox"/> NO					
17. PERMIT TYPE _____					
18. PERMIT NUMBER _____					
19. ENTITY RESPONSIBLE FOR STORM WATER DRAINAGE SYSTEM (e.g., County of / City of / Caltrans) _____					

**IA. IS THE PROPERTY BEING UTILIZED ACCORDING TO THE LEASE?**  YES  NO

**II. ACTIVITY / BMP ASSESSMENT:** Note outdoor activities conducted and BMPs implemented.

Photos  Yes  No Number of Photos \_\_\_\_\_

				Implementation Effectiveness*	
					Needs Improvement
<input type="checkbox"/> <b>Parking Lots.</b>					
1. Are parking areas adequately maintained (significant cracking, deterioration)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2. Are parking areas kept free of trash and litter?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3. Are parking areas swept or vacuumed regularly and is wash down prohibited unless wash water is contained?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4. Are parking areas kept relatively free of staining (oil, grease, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

**STORM WATER INSPECTION REPORT (Cont.)**

(Form #)

EXHIBIT

15-EX-14 (NEW 7/2007)

Page 2 of 4

				Implementation Effectiveness*	
					Needs Improvement
<input type="checkbox"/> <b>Building and Grounds Maintenance.</b> 1. Are pesticides and fertilizers used and stored properly? 2. Are areas swept regularly and is wash down by hosing prohibited unless wash water is contained? 3. Are contained wash water, sweepings and sediments disposed of properly? 4. Are materials used in repair and minor remodeling (paints, etc.) stored properly? 5. Are paved surfaces adequately maintained (minimal crumbling asphalt or concrete)? 6. Are safer alternative products used whenever possible?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/> <b>Park and Landscape Maintenance.</b> 1. Are non-vegetated surfaces covered to prevent erosion? 2. Are pesticides and fertilizers used only as needed and stored properly? 3. Are areas swept regularly and is wash down by hosing prohibited unless wash water is contained? 4. Are landscape clippings collected and disposed of properly? 5. Are irrigation systems designed to prevent runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/> <b>Outdoor Loading/Unloading of Materials.</b> 1. Are delivery vehicles parked so spills and leaks can be contained? 2. Is the loading/unloading area covered to reduce exposure of materials to rain? 3. Is loading/unloading area designed to prevent storm water run-on? 4. Are storm drain inlets covered during transfer of materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/> <b>Outdoor Storage of Materials/Products/Equipment.</b> 1. Are covers used to protect all raw materials, by-products, finished products items stored outside? (Circle covering type used) Plastic Roof Canopy Other 2. Are chemicals, drums, or bagged materials on pallets or similar method that keep them off the ground? 3. Are hazardous materials (if permitted in lease) stored in properly designed secondary containment areas? 4. Are drip pans and containers used in areas where drips or leaks may occur? 5. Are berms, curbs, or other structures in place to minimize pollutants from entering the storm water system?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/> <b>Waste Handling and Disposal.</b> 1. Are materials recycled whenever possible? 2. Are wastes segregated and separated? 3. Is storage area designed to prevent storm water runoff? 4. Are waste dumpsters covered?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/> <b>Erodible Surface Areas.</b> 1. Are areas of exposed/disturbed soil properly managed? 2. Do any landscaped areas require re-vegetation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/> <b>Illicit Connections/Illegal Discharges.</b> 1. Are any illicit connections present? 2. Is illegal dumping or uncontrolled spillage/discharge occurring?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

\* SATISFACTORY: BMPs (including source control BMPs) are used and are effective.  
 NEEDS IMPROVEMENT: No BMPs used and storm water pollution likely/Some BMPs used but not effective/Structural BMPs necessary to improve pollution prevention. *Provide Comments Below*



**STORM WATER INSPECTION REPORT (Cont.)**

(Form #)

EXHIBIT

15-EX-14 (NEW 7/2007)

Page 4 of 4

26. CORRECTIVE ACTIONS

NONE     CORRECT DEFICIENCIES NOTED ABOVE IN TIME FRAME INDICATED.

FACILITY BMP INFORMATION PROVIDED

FOLLOW-UP INSPECTION REQUIRED?     NO     YES

YES, WITHIN 30 DAYS AFTER \_\_\_\_\_     YES, TO BE SCHEDULED WITHIN NORMAL FREQUENCY

**VII. INSPECTION INFORMATION**

27. INSPECTOR NAME (Printed)	28. DATE OF INSPECTION	29. TIME OF INSPECTION
INSPECTOR SIGNATURE		
30. REASON FOR INSPECTION: <input type="checkbox"/> Initial <input type="checkbox"/> Scheduled <input type="checkbox"/> Follow-up <input type="checkbox"/> Response to Complaint		
NAME OF TENANT(S) ACCOMPANYING INSPECTOR 1. _____ 2. _____	SIGNATURE(S) - TENANT RECEIVED FORM 1. _____ 2. _____	
NAME(S) OF OTHERS ACCOMPANYING INSPECTOR (IF ANY) 1. _____ 2. _____		

Ref: Caltrans NPDES Permit No. CAS000003 issued by California State Water Resources Control Board.

# STORM WATER INSPECTION REPORT (HELPFUL HINTS)

(Form #)

EXHIBIT

15-EX-14 (NEW 7/2007)

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## FIELD OBSERVATIONS HELPFUL HINTS FOR STORM WATER INSPECTIONS

### AREAS AND ACTIVITIES WITH POTENTIAL TO SPILL HAZARDOUS FLUIDS

- SPILL KITS AVAILABLE IF NEEDED
- SPILL RESPONSE AGENCY PHONE NUMBERS CLEARLY POSTED
- MATERIAL SAFETY DATA SHEETS AVAILABLE FOR PRODUCTS

### PARKING LOTS

- PAVED AREAS SWEEPED DOWN AND NOT HOSED OFF
- TRASH RECEPTACLES AVAILABLE TO PREVENT LITTER
- SPILLS OR LEAKS SPOT CLEANED AS NEEDED

### BUILDING AND GROUNDS MAINTENANCE

- VEGETATION LEFT IN PLACE WHERE POSSIBLE
- SOIL EROSION NOT OBSERVED
- GROUNDS FREE OF LITTER
- PAVED AREAS SWEEPED DOWN AND NOT HOSED OFF
- SAFER ALTERNATIVE PRODUCTS IN USE
- TRASH RECEPTACLES AVAILABLE TO PREVENT LITTER
- MINIMAL USE OF PESTICIDES AND FERTILIZERS

### PARK AND LANDSCAPE MAINTENANCE

- SOIL EROSION NOT OBSERVED
- GROUNDS FREE OF LITTER
- PAVED AREAS SWEEPED DOWN AND NOT HOSED OFF
- IRRIGATION SYSTEMS DESIGNED TO PREVENT RUNOFF
- USE OF PESTICIDES AND FERTILIZERS ONLY AS NEEDED

### OUTDOOR LOADING/UNLOADING OF MATERIALS

- MATERIAL LOADING/UNLOADING AREAS ENCLOSED OR COVERED
- LOADING AND UNLOADING CONDUCTED IN DRY WEATHER IF NOT COVERED
- LOADING AND UNLOADING AREA BERMED OR SLOPED TO CONTAIN SPILLAGE
- NO DISCHARGE TO STORM DRAIN
- DRIP PANS AVAILABLE TO CAPTURE LIQUID LEAKS

### OUTDOOR STORAGE OF MATERIALS/PRODUCTS/EQUIPMENT

- HAZARDOUS MATERIALS LABELED, COVERED, AND CONTAINED
- STOCKPILED MATERIALS COVERED
- NO SIGNS OF EXCESSIVE LEAKING FROM STORED EQUIPMENT
- DRIP PANS AVAILABLE TO CAPTURE EQUIPMENT LEAKS
- STORAGE AREA FREE OF LITTER
- GENERAL GOOD HOUSEKEEPING OBSERVED

### WASTE HANDLING AND DISPOSAL

- RECYCLABLE MATERIALS BEING RECYCLED
- WASTE CONTAINERS COVERED TO PREVENT STORM WATER RUNOFF/RUN-ON
- DRIP PANS AVAILABLE TO CAPTURE GREASE WHEN TRANSFERRED
- AREA SWEEPED DOWN ON REGULAR BASIS
- AREA FREE OF STAINS OR OTHER SIGNS OF POLLUTANTS GOING INTO STORM DRAIN SYSTEM
- WASTE CONTAINERS IN GOOD CONDITION FREE FROM LEAKS
- GENERAL GOOD HOUSEKEEPING OBSERVED
- NO LITTERING SIGNS POSTED

### ERODIBLE SURFACE AREAS

- PRESERVE NATURAL VEGETATION
- VEGETATION LEFT IN PLACE WHERE POSSIBLE
- SOIL EROSION NOT OBSERVED
- CHEMICAL STABILIZATION OR GEOSYNTHETICS IN USE ON BARE GROUND
- PAVED AREAS SWEEPED REGULARLY

### ILLICIT CONNECTIONS/ILLEGAL DISCHARGES

- SIGNS OF ILLICIT CONNECTIONS TO STORM WATER CONVEYANCE SYSTEM(S)
  - SIGNS OF ILLEGAL/UNKNOWN DISCHARGE OBSERVED GOING FROM THE LEASE PREMISES ONTO ADJACENT PROPERTY OR INTO THE STREET
  - SIGNS OF ILLEGAL/OR UNKNOWN DISCHARGE OBSERVED COMING FROM ADJACENT PROPERTY ONTO THE LEASE PREMISES
  - STAINED PAVEMENT IN AREAS NEAR OR SURROUNDING CATCH BASIN OR STORM WATER OUTFALL
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