

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

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POLICY MATTERS
Leases of Airspace to Public Entities
for Mass Transit Facilities
Information Item

CTC Meeting: February 21-22, 2001

Agenda Item: 4.5

Original Signed by _____

W. J. EVANS, Deputy Director

Finance

February 1, 2001

**AGREEMENTS WITH PUBLIC ENTITIES TO USE AIRSPACE
FOR MASS TRANSIT FACILITIES**

The purpose of this item is to request approval from the California Transportation Commission (CTC) of the Department of Transportation's (Department) intentions to implement Streets and Highways Code Section 104.12(b), which would make airspace available to public entities for new mass transit facilities. The Airspace Advisory Committee (AAC) reviewed the attached CTC resolution at its January 9, 2001 meeting, and recommends to the CTC approval of said attached resolution.

Background

Chapter 513 of the 1992 Statutes, effective January 1, 1993, added Section 104.12(b) to the Streets and Highways Code:

"Notwithstanding subdivision (a), in any case where sufficient land or airspace exists within the right-of-way of any highway, constructed in whole or in part with federal-aid highway funds, to accommodate needed passenger, commuter, or high-speed rail, magnetic levitation systems, and highway and nonhighway public mass transit facilities, the department may make the land or airspace available, with or without charge, to public entities for those purposes, subject to any reservations, restrictions, or conditions that it determines necessary to ensure adequate protection to the safety and adequacy of highway facilities and to abutting or adjacent land uses"

Historically, the Department has allowed public mass transit agencies to place fixed guideways within state highway rights of way under encroachment permit (or cooperative agreement), but has charged fair market rent for the lease of airspace for other mass transit facilities such as parking lots for transit patrons and the storage of buses. The above state statute however, gives the Department broad discretion regarding charging rent for transit related uses. The Department, at the December 5-6, 2000 meeting of the CTC, presented a two-tiered proposal for rent related to new congestion relief public mass transit projects. This is in keeping with the Department's continuing and growing efforts to relieve congestion and improve mobility on the State Highway System, and to encourage new congestion relief projects.

For the mass transit facilities that result in direct and positive congestion relief, the lease rate will be a nominal annual amount sufficient to cover the Department's administration costs. A new fixed

guideway, a new bus route, a new or expanded park and ride lot for patrons of mass transit, or a downtown commuter bus parking facility are examples of such transit facilities.

The lease rate may be less than appraised fair market rent for those proposed mass transit facilities which will result in indirect congestion relief but are a necessary part of the mass transit agency's overall operations.

The Department has established an Advisory Team to fully implement the process to enable a public entity to apply to use airspace for a specific mass transit purpose. The Advisory Team is comprised of transit operators, Regional Transportation Planning Agency (RTPA) members, CTC staff, and District Transit Representatives. Public entities that own or operate a bus or bus-related facility or a fixed guideway system are technically eligible to apply for use of the available land and space within the Department's right of way.

Generally, public entities will submit their applications for the use of airspace to the District/Region Airspace Office. The District Airspace Review Committee (DARC) will review the applications to determine whether the application has any obvious conflicts with existing restrictions on the use of airspace and if the entity is requesting the airspace at fair market rent or less than fair market rate. If the public entity indicates they are requesting the airspace at less than fair market rate, copies of the application will be sent immediately to the District Transit Representative, Headquarters Right of Way Headquarters Office of Airspace, and the Mass Transportation Program (MTP) for further review and comment. The MTP will provide a constructive analysis of the proposed usage and data based on any analysis of the respective District Transit Representative.

Each application will require the approval by the Department and the Federal Highway Administration (FHWA). Leases or other written agreements for the use of airspace to a public entity for a mass transit facility, for less than fair market rent, will be submitted by the Department to the AAC for their recommendation and to the CTC for review and approval.

The CTC, at its December 5-6, 2000 meeting, reviewed this proposal and requested the Department obtain AAC approval of a proposed CTC resolution implementing this process. The draft resolution is attached which amends and replaces CTC Resolution G-6, which provides for Procedures for Leasing Airspace to Public Entities. The new wording to be added to the resolution is shown in bold. The amendment provides that all leases or other written agreements with public entities for mass transit facilities, for less than market rent, will require specific CTC approval.

It is requested the CTC approve this amendment to Resolution G-6.

CALIFORNIA TRANSPORTATION COMMISSION

Procedure for Leasing Airspace to Public Entities

**Resolution G-00-_____
Amending and Replacing Resolution G-6**

- 1.1 WHEREAS, Section 104.12(a) of the Streets and Highways Code authorizes the Department of Transportation to lease the use of airspace above and below State highways to public entities in accordance with procedures to be prescribed by the California Transportation Commission; and
- 1.2 **WHEREAS, Section 104.12(b) of the Streets and Highways Code authorized the Department of Transportation to make airspace available, with or without charge, to public entities for mass transit facilities; and**
- 1.3 WHEREAS, Section 14013 of the Government Code provides that the Director may lease airspace to local agencies for public purposes and may contribute toward the costs of developing local parks and other such recreation facilities on such areas;
- 2.1 NOW THEREFORE BE IT RESOLVED that the California Transportation Commission hereby authorizes the Department to enter into leases with public agencies without specific California Transportation Commission approval for each airspace lease whenever the Department finds:
 - That the lessee is a public entity as defined in the **Public Contracts Code**.
 - That the lease will fulfill a public purpose.
 - That the Department will receive fair market rent for the property.
- 2.2 **BE IT FURTHER RESOLVED that all leases or other written agreements with public entities for mass transit facilities, for less than market rent, will require specific California Transportation Commission approval;**
- 2.3 BE IT FURTHER RESOLVED that when it is determined that park or recreational use is appropriate, the Department may use as all or part of the consideration for a lease for park or recreational purposes any substantial benefits the Department derives from the local agency's maintenance or landscaping costs which would otherwise be the obligation of the Department whenever the Department finds:
 - That the lessee is a municipality or other local agency as defined in the Government Code.
 - That the use is for park or recreational purposes only
 - That the lessee agrees that whenever the leased land is needed for transportation purposes the lease shall terminate.
- 2.4 **BE IT FURTHER RESOLVED that Resolution G-6 is hereby replaced.**