CHAPTER 15

AIRSPACE

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15.01.00.00 - GENERAL

15.01.01.00 Function

The Airspace function is responsible for leasing real property within the boundaries of a federally-aided facility where the use is permitted by Federal regulation and such use is consistent with the continued operation, maintenance, and safety of the facility. Per 23 CFR 710.403 (b), the Department must assure that all real property within the boundaries of a federally-aided facility is devoted exclusively to the purposes of that facility and is preserved free of all other public or private alternative uses, unless such alternative uses are permitted by Federal law (including regulations) or the FHWA. An alternative use, whether temporary or permanent, must be in the public interest, consistent with the continued safety, operation and maintenance of the facility, and such use must not impair the highway or interfere with the free and safe flow of traffic.

Airspace does not include the leasing of property held for future transportation projects.

15.01.01.01 Definition

The definition of “Airspace” within 23 CFR 710.105 (b) was deleted per the August 23, 2016 Federal Register. The term “Airspace” was replaced by the all-encompassing term “Right of Way.” “Right of Way” is defined as “real property and rights therein obtained for the construction, operation, maintenance, or mitigation of a transportation or related facility under Title 23, United States Code.” For purposes of this section and California State Statutes, Airspace is analogous to Operating Right of Way being the area between the right of way limits, including area above and below, utilized for the purpose and protection of public travel. An “airspace site” is a site within the right of way that is capable of development in a manner that ensures adequate protection to safety and adequacy of highway facilities and to abutting or adjacent land uses. An airspace site 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.

15.01.01.02 Airspace Policy

Streets and Highways (S&H) Code 104.12, “Leasing of Airspace,” authorizes the Department of Transportation (Department) to lease airspace above, below and adjacent to State highways to public agencies and private entities in accordance with prescribed CTC procedures.

Airspace leasing activities by a Right of Way Use Agreement are conducted pursuant to CTC Resolutions, 23 CFR 710, and policy and procedures established in this chapter. While this chapter may refer to a “lease agreement” (as this continues to be described in history, statute and CTC resolution), it is noted that there is no “leasehold interest” being conveyed. All agreements are revocable, should the Department of Transportation need the property.

In general, the Airspace Program is limited to access controlled freeways and highways (interstates and/or federally funded transportation facilities). However, in certain circumstances, Right of Way Use Agreements can be utilized on non-access controlled conventional highways under the same guidelines.

Parcels outside the operating right of way (non-operating right of way) may also be leased using airspace procedures. These include space within a maintenance station, traffic management centers, office buildings, or other facilities. Conventional highways can also be considered Airspace if area exists for secondary uses. Often telecommunications facilities and cell towers can safely be accommodated (e.g., access and utilities are from outside the traveled way).

Established policies and procedures provide guidelines on leasing airspace sites to maximize use of property acquired for transportation purposes in allowing a dual use.

See Reference File for the most current CTC Resolution.
15.01.01.03 **Statutory Provisions Related to Leased Rights of Way**

- Streets and Highways Code 225.5(a): no person shall display, sell, offer for sale, or otherwise vend or attempt to vend any merchandise, foodstuff, or service within any vista point or safety roadside rest area. However, S&H Code Section 220.5 allows vending machines in safety roadside rest areas.

- Vehicle Code Section 22518:
  (a) Fringe and transportation corridor parking facilities constructed, maintained, or operated by the Department of Transportation pursuant to Section 146.5 of the Streets and Highways Code shall be used only by persons using a bicycle or public transit, or engaged in ridesharing, including, but not limited to, carpools or vanpools. No person shall park any vehicle 30 feet or more in length or engage in loitering or camping, or vending or any other commercial activity, on any fringe or transportation corridor parking facility.
  (b) This section does not apply to alternatively fueled infrastructure programs in park-and-ride lots owned and operated by the Department of Transportation.

- Public Resources Code 25722.9(b) specifically authorizes the Department to develop incentive programs for EV charging stations within park and ride lots 50 spaces or more.

- 23 USC 137(f)(2) specifically allows EV charging stations within fringe or corridor parking facilities on the Interstate. Any fees charged for the use of any such facility in connection with the purpose of this subsection shall not be in excess of the amount required for operation and maintenance, including compensation to any person for operating the facility.

15.01.02.00 **Responsibilities of Headquarters Airspace**

Headquarters Airspace (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 operating right of way of a conventional highway with the exception of Department owned property adjacent to a conventional highway (non-operating right of way e.g., maintenance station, park and ride lots).
• Establishing delegation levels for review and approval of airspace uses and Right of Way Use Agreements (previously known as lease agreements).

• Preparing periodic reports on statewide and region/district 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 region/district performance.

• Liaison with region/district Airspace Seniors, CTC, FHWA, other programs, and external agencies on Airspace matters.

• Coordinating budget requests for region/district PY allocation and workload projections.

• Resolving complex technical issues with potential statewide impacts through research and subsequent written guidance.

• Monitoring region/district activities to ensure the most effective and streamlined procedures are in place and working with regions/districts to make necessary changes to region/district activities or statewide procedures.

• Holding meetings, functional councils, training seminars, and workshops.

• Developing standardized Right of Way Use Agreement (templates) and language to protect the Department from potential liabilities and claims from the lessee, sub-lessees, and adjoining owners.

• Management of the Right of Way Real Property Services Airspace section of the Caltrans intranet and internet websites.

15.01.02.01 Annual Reports

HQ A/S prepares two reports:

• Report to the CTC - regions/districts provide information on inventory, income, and leasing activity for the previous fiscal year with specifics on Marler Johnson Right of Way Use Agreements, Park and Ride Joint Development, Park and Ride Demonstration Program, internal uses, building development, seismic retrofit, and other major programs.
• **Business Plan** - a component of the Annual Report, containing a statewide plan for the Airspace program that establishes next year's objectives and goals. This report must be presented to the CTC each State Fiscal Year.

Caltrans Executive Management, the Transportation Agency or the California Legislature may also require special reports or information.

### 15.01.02.02 HQ Liaison Region/District Visits

HQ A/S staff will visit the Region/District Airspace (R/D A/S) Staff at least once every 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 that may be discussed are the effectiveness of:

• Airspace efforts to maximize public and private use of the 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 region/district 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 region/district 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  Region/District Airspace Review

R/D A/S is responsible for conducting a region/district review of all proposals to lease an airspace site. A District Airspace Review Committee (DARC) consisting of representatives from Right of Way, Design, 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). For telecommunications reviews, HQ telecommunication coordinator must be included.

Prior to submitting the proposal to DARC, R/D A/S 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.

R/D A/S 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.

R/D A/S 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, noncomplex 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 Right of Way Use Agreement.

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 R/D A/S’s discretion considering the proposal’s complexity and the level of review that was performed at the conceptual phase.

Functional branches involved in the review of airspace Right of Way Use Agreement proposals shall charge their time to their own program overhead Project ID (Encroachment Permits Manual Section 500.3).
### REGION/DISTRICT AIRSPACE REVIEW PHASES

<table>
<thead>
<tr>
<th>Stage</th>
<th>Review</th>
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| Conceptual| 1. Does the proposal make sense?  
2. Any program objectives?  
3. Identify upgrades or modifications to site (e.g., slope or column protection).  
4. Other interest parties?  
5. Highest and best use.  
6. Advise proposed lessee of DARC comments.  
7. Does the lessee understand the requirement to pay a fair market lease rate? |
| Preliminary| 1. Preliminary plan review: effect on operations.  
• access, utilities.  
• highway structures.  
• lessee’s improvements.  
2. Potential risks and liabilities compared to benefits and revenue.  
3. Advise proposed lessee of DARC comments. |
| Final     | 1. All DARC comments addressed in final plans.  
2. Local and environmental approvals obtained.  
3. Construction and maintenance schedule.  
4. Final plans showing excavation and trenching.  
5. Advise proposed lessee and Permits Office of status. |
15.02.00.00 - INVENTORY OF AIRSPACE LEASES AND INTERNAL USES

15.02.01.00 Inventory Requirements

Each airspace site shall be entered into Right of Way Property Management System (RWPM). Refer to the most current RWPM User’s Manual for inventory procedures.

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

15.02.01.01 Identification Number

Each site is assigned a freeway lease area (FLA) number using region/district 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 sequential site numbering system using 9XXX (e.g., 04-SF-101-9001-01 is the first site on the route and the first carrier; 04-SF-101-9002-01 is the second site on the route and/or the collocatee on the site).

Temporary or one-time leased sites such as those for tower cranes, tie-backs or sidewalks are identified with a site numbering system using 5XXX. These Right of Way Use Agreements are for construction purposes on parcels adjacent to the State route. The numbers are specific to the agreement. Once the agreement is expired, that number will not be re-used.

15.02.01.02 New Sites in Inventory

New sites identified as potential Right of Way Use Agreements 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.

### 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 (except for temporary sites). Temporary sites are mapped from the construction maps on the adjacent parcel.

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 feet of leasable area, usable area, and the area restricted from use (e.g., footprint of the columns).

Refer to [Plans Preparation Manual](#), Division of Design, Section 4-15.

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 feet. (Dual notations on maps of the area to be leased are allowed for local agency and lessee purposes, e.g., square footage, acreage.)

### 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 District Director (DD) approves such requests after Region/District Airspace (R/D A/S) 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 Right of Way Use Agreement, 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 Right of Way Use Agreement 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 Delivery 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 RWPM) to track potential savings to the Department by using its own real estate assets.

To ensure the Department is using its land assets properly, R/D A/S 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. R/D A/S may discontinue the internal use if it is a significant underutilization. However, R/D A/S 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

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Package. If not, the site may be leased to the successful construction contractor prior to the start of the project.

**15.02.02.02 Existing Internal Uses and Potential Airspace Right of Way Use Agreement**

If a site currently held for Caltrans use can generate a higher return if leased, R/D A/S 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 underutilization of the site and an adequate replacement site is available, R/D A/S 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 R/D A/S 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. R/D A/S must coordinate termination of the use with the vacating program to ensure the site is ready to lease to a private entity.
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. Region/District Airspace (R/D A/S) should use additional methods to achieve the widest distribution of leasing information for specialized property, such as advertising in technical magazines, developing a home page on the Internet, or hiring a leasing agent or broker.

15.03.02.00 Planning

R/D A/S 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, R/D A/S 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 R/D A/S proposals are necessary for successful planning and marketing activities.

15.03.03.00 Marketing

Prior to preparation of the annual budget, R/D A/S 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 R/D A/S intends to market, by quarter, and the lessee selection process (direct negotiation or bid). 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, Right of Way Use Agreement and construction).
Although sites in the plan are usually in the R/D A/S inventory, new sites (not yet approved conceptually) can be included if external interest is high.

As part of the plan, R/D A/S should review the economic viability of airspace sites in the inventory. If there is little or no interest in a site, R/D A/S should either change the proposed use (requires prior FHWA approval if on the Interstate) or remove the site from the inventory. All site mapping and preliminary work should be retained in a Region/District 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.

R/D A/S should maintain an adequate supply of signs.
15.03.03.03 Promotion

There are several ways to make the public more aware of the R/D A/S 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.

15.03.04.04 Adjoining Owners

When a site becomes available, R/D A/S 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.

15.04.00 Broker Commissions

Although not currently a common practice, the Department is authorized, per CTC Resolution G-02-14, to contract for the services of a real estate broker to assist in developing a long-term Right of Way Use Agreement. 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. R/D A/S should work closely with local planning agencies to prevent general plan and zoning proposals that adversely affect existing or potential Airspace properties. R/D A/S 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 Government Code Sections 65854, et seq. Although formal notices are usually required, Government Code Section 65858 provides authority for local agencies to adopt certain interim zoning ordinances as urgency measures without the above notice requirements.

R/D A/S shall immediately notify the DDC-R/W, who will advise the District Director (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 R/D A/S 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 of Project Delivery.

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 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 RIGHT OF WAY USE AGREEMENTS

15.04.01.00 Types of Right of Way Use Agreements

23 CFR 710.105 states: “ROW use agreement means real property interests, defined by an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23). These rights may be granted only for a specified period of time because the real property interest may be needed in the future for highway purposes or other purposes eligible for funding under title 23.”

The typical Right of Way Use Agreements (formerly known as airspace leases) are:

- **Rental Agreement** – noncomplex, nondevelopmental use for six months with one six-month extension.
- **Parking and Open Storage Agreement** - short term, nondevelopmental use for up to five years with no options or extension. Usually the result of an open bid process.
- **Nondevelopmental Agreement** - longer term nondevelopmental use for more than five 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 five 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 nonprofit organization to use the park and ride facility in exchange for maintenance and security services.
- **Three-Year Directly Negotiated Nondevelopmental 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 an initial ten-year term with three consecutive 5-year extension options. Carrier must have
executed a HQ A/S Master License Agreement, which defines the specific terms and conditions for all sites.

See Section 15.06.00.00 for processing these leases.

Lease templates may be found in the Exhibits and the Real Property Services (internal Caltrans link) websites.

Current delegations for approvals are found at the end of this Airspace chapter in Manual section 15.09.

Other Right of Way Use Agreement 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 without HQ approval. At no time will the use be extended beyond 12 months.

Although a rental agreement can be used when a site is pending approval of the terms and conditions of a directly negotiated Right of Way Use Agreement, 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 Right of Way Use Agreements are used when the proposed lessee will make improvements limited to paving, curbs, lighting, landscaping and fencing to the site. The improvement to the site could be as minimal as grading and gravel. The term should be a period long enough 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 nondevelopmental uses that will not exceed five years as long as all other provisions in the agreement remain the same. HQ A/S shall be contacted for approval prior to modifying any standard provisions or clauses.
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 or when in the best interest of the State).

**15.04.01.03 Nondevelopmental 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, landscaping 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 CTC (see Section 15.06.05.00). HQ A/S must concur with the Region/District Airspace (R/D A/S) recommendation prior to submitting the request to the CTC.

**15.04.01.04 Developmental Agreement**

The Department is not actively pursuing developments on airspace sites, particularly those proposals underneath a highway structure however will consider such leases on an individual basis. Should R/D A/S be approached with a developmental use (e.g., office building, mini-warehouse, renewable energy development, or parking structure), the DARC must thoroughly review the proposal before requesting approval to negotiate directly with the proposed lessee. Since competitive bids are rarely used for developmental Right of Way Use Agreement, there is no standard format. If R/D A/S 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 Right of Way Use Agreement 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 R/D A/S determines direct negotiations will result in a higher return to the Department, it must submit a request to the CTC for approval to directly negotiate (see Section 15.06.05.00).

15.04.01.05  Marler Johnson Agreement

Pursuant to the Marler Johnson Highway Park Act of 1969 (reference Government Code Section 14013) 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.

Example 1:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>FMLR</td>
<td>$825/mo</td>
</tr>
<tr>
<td>Security costs from previous Fiscal Year (FY)</td>
<td>-$212/mo</td>
</tr>
<tr>
<td>Maintenance costs (debris, weeds, fire abatement) from previous FY</td>
<td>-$372/mo</td>
</tr>
<tr>
<td>Actual rate</td>
<td>$241/mo</td>
</tr>
</tbody>
</table>

R/D A/S should ensure all safety procedures for safe and healthy human exposure are followed. Local agency proposals should not propose children’s play areas underneath the highway structure as this could create an unsafe condition from fumes, dust and/or falling debris.

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 R/D A/S in locating a nonprofit 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 nonprofit 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:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>FMLR</td>
<td>$400/mo</td>
</tr>
<tr>
<td>Minimum Lease Rate</td>
<td>$500/mo</td>
</tr>
<tr>
<td>Maintenance Offset</td>
<td>$600/mo</td>
</tr>
<tr>
<td></td>
<td>$499/mo (maximum offset)</td>
</tr>
<tr>
<td>Lease Rate</td>
<td>$1/mo (minimum lease rate)</td>
</tr>
</tbody>
</table>

R/D A/S 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 Right of Way Use Agreements shall contain clauses that state the agreement 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 Nondevelopment Agreement**

R/D A/S 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 three years, even with extensions, and the use cannot require any major site improvements. The following guidelines apply.

- The use is nondevelopmental, with limited improvements (e.g., paving, curbs and lighting).
- Lease rate is based on an estimate of the Fair Market Lease Rate (FMLR).
- FMLR is escalated each year by an appropriate negotiated percentage or by the area’s Consumer Price Index (CPI).
- There is only one potential lessee.
• DARC and FHWA must approve the use.

• The use complies with local zoning and is considered noncontroversial.

• No hazardous materials can be produced, stored, or transported.

This process was developed to streamline R/D A/S 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 CTC approval.

The CTC is advised annually on the status of these Right of Way Use Agreements and can terminate this practice if the agreements are not being used successfully.

15.04.01.08 Telecommunications Licenses

A statewide Master License Agreement (MLA) for Wireless Communications Services 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 R/D A/S.

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 nonoperating right of way) where it is in the public’s best interests and does not interfere with the free and safe flow of traffic.

The MLA generally applies only to controlled access freeways and highways. Proposals to install wireless facilities on non-access controlled conventional highways is usually only through the Encroachment Permits Office.

Refer to the current Telecommunications Licensing Process and Guidelines for further details.

15.04.01.09 Public Agency Right of Way Use Agreements

A school district, local public agency, or other governmental agency can lease an airspace site at the Fair Market Lease Rate (FMLR) for public use (refer to CTC resolution G-19-43 [revised from G-03-03] or the most recent resolution). R/D A/S should coordinate renewals and payment schedules with the agency’s budget cycles to ensure lease payments are allocated in its budget. R/D A/S 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, R/D A/S 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 Filming on State Right of Way

In accordance with Government Code 14998.8, all applications for Film Industry use of State Owned Property are processed through the California Film Commission. The Film Commission then contacts the Department of Transportation. The Encroachment Permit Office in Los Angeles (District 7) is the Caltrans Statewide Film Coordinator (CSFC) and acts as the film liaison to approve or deny all applications for film activities under Caltrans’ jurisdiction. The CSFC coordinates with Encroachment Permit staff in the other Districts where the film activity is proposed. Fees collected by the Film Commission are deposited into the Film Transfer Account, not in transportation accounts. The Department shall waive compensation and cooperate fully with the film industry for use of vacant airspace sites or for subletting leased sites to be compliant with GC 14998.8. Encroachment Permits staff is responsible for coordinating all necessary internal and external approvals, and activities, related to this use. Please refer to Encroachment Permit Manual Section 503 for more information. There are no Right of Way Use agreements signed for filming in the Right of Way.

15.04.01.11 Statute Directed Use – Emergency Shelter and Feeding Program

Occasionally the State Legislature will pass legislation authorizing certain uses, either at or below fair market rent, for Department-owned property. The State Legislature, in response to the housing crisis in California, has passed numerous pieces of legislation authorizing the use of Department-owned property for temporary emergency shelters or feeding programs. The Department is not mandated to allow such uses on Department-owned property. Currently, the various statutes authorizing the use of Department-owned property for temporary emergency shelters or feeding programs include the following:

- Streets and Highways Code 104.16: San Francisco
- Streets and Highways Code 104.17: Stockton and Santa Barbara
- Streets and Highways Code 104.18: San Diego
- Streets and Highways Code 104.21: Stockton
- Streets and Highways Code 104.24: Oakland
- Streets and Highways Code 104.25: San Diego
- Streets and Highways Code 104.26: Los Angeles and San Jose
- Streets and Highways Code 104.30: Statewide
Streets and Highways Code 104.30 (SHC 104.30) was included in Senate Bill 211 during the 2019-2020 Legislative Session. SHC 104.30 authorizes the Department to make airspace or other real properties available to other gov’t agencies for temporary emergency shelters or feeding programs.

If Local Public Agencies that implement their own transportation projects are subject to similar legislation. Local Public Agencies should follow guidelines outlined in sections below.

For statutes directing the use of an airspace property for park and recreation use, please follow the Marler Johnson Park Act provisions (15.04.01.05).

15.04.01.12 Site Identification for Statute Directed Use-Emergency Shelter and Feeding Program

Due to the complexities and potential environmental impacts of developing a site for temporary emergency shelter or feeding program, site suitability and allowable uses of the site shall be determined through a Region/District DARC review process, which shall include, at a minimum, the Region's/District's External/Public Affairs Office, Division of Environmental Analysis, Planning, Design, Encroachment Permits, and Maintenance. It is highly encouraged that the Region/District engage their local State Fire Marshal representative since the State Fire Marshal will be tasked with approving plans and issuing building permits and certificates of occupancy for any improvements developed on the site. Considerations of a suitable site must include access, geography, seismic activity, traffic patterns, etc. Local agencies must be encouraged to engage the community for possible solutions, needs, and wants.

15.04.01.13 Rental Rate for Statute Directed Use-Emergency Shelter and Feeding Program

The rental rates for the use of Department-owned property is specified in the various statutes. At this time, all of the aforementioned Streets and Highways Codes called out in Section 15.04.01.11 have a specified rental rate of $1.00 per month.

In addition to the rental rates, the various statutes also specify the administrative fees that the Department may charge local agencies to cover the support costs expended by the Department in developing and administering the lease.
The administrative fee specified in the various statutes range from $500.00 per year to $5,000.00 per year, unless the Department determines that a higher administrative fee is necessary to cover the Department’s costs. Of all the Streets and Highways Codes identified in Section 15.04.01.11, only SHC 104.30 caps the annual administrative fee (stating that it is not to exceed $15,000.00), irrespective of the Department’s determination of an administrative fee necessary to cover the Department’s costs.

Until sufficient resource expenditure data has been collected for this lease type, the Department’s policy is to charge the local agency a flat rate for administrative fees while tracking actual administrative resource expenditures with a unique reporting code. This reporting code is established to accurately track actual support costs and may be used to establish future administrative fees charged for leases of this type. The flat rate for administrative fees shall be $5,000.00 for leases pursuant to SHC 104.30, and $500.00 for all other leases identified in Section 15.04.01.11.

In order to closely monitor and track the Department’s actual expenses associated with developing and maintaining these types of leases, charging for all work associated with these leases must include a unique “Reporting Code as instructed below.

**Requesting a Reporting Code:** Complete form FA-1036 (REV 06/2018) and email the completed form. Reporting Codes must be assigned for each separate homeless lease account. For the following three sections, please complete the form in the following manner:

- **Reporting (10 characters maximum):** The reporting code should be constructed as “HOMEL”, followed by the two-digit District number, followed by a unique 3-digit number the District assigns (it is imperative that this number does not conflict with any Airspace tenancy numbers). For example – “HOMEL04001” would be a potential reporting code for a District 4 homeless lease.
- **Short name (15 characters maximum):** Short name should be the complete tenancy number.
- **Reporting Code Name (60 characters maximum):** This name should be “Homeless Lease”, including the space between the two words, and the full tenancy number including the pertinent dashes. For example – “HOMELESS LEASE 04-ALA880-0001-01” would be a potential reporting code for a District 4 homeless lease.
15.04.01.14  **FHWA Approval for Statute Directed Use-Emergency Shelter and Feeding Program**

If the site identified was acquired with title 23, United States Code, funding, FHWA approval must be obtained for leasing the site at less than fair market value. As discussed in Manual Section 15.04.01.11, the Region/District shall submit a written Public Interest Finding (PIF) to HQ R/W for submission to FHWA for the approval of the statutory less than fair market rental rate.

15.04.01.15  **Rental Agreement for Statute Directed Use-Emergency Shelter and Feeding Program**

Please refer to the specific lease template on the [Real Property Services Airspace website](#) (internal Caltrans link). Local Public Agencies, that implement their own transportation projects who are subject to be a lessor for any such homeless support use, requiring access to the Lease template on the Division of Right of Way and Land Surveys, Real Property Services intranet website should contact an HQ R/W liaison for further assistance. The HQ R/W liaison contact information may be found at the internal [Real Property Services Airspace website](#) (internal Caltrans link). Any changes to the templates, excluding information pertaining to site specific developments, must be approved by HQ and the District’s legal office.

15.04.01.16  **Term for Statute Directed Use-Emergency Shelter and Feeding Program**

Temporary homeless support leases shall be for a maximum of three years, unless the lease is pursuant to a statute that specifically dictates the term of the lease agreement. Additionally, the Region/District shall not execute any leases after the sunset date specified in the specific statute. Furthermore, the Region/District shall not allow the term of any lease to extend beyond the sunset date specified in the specific statute. The intent of such statutes authorizing the use of Department-owned properties for homeless support sites is not to permanently shelter people but to erect these facilities as an emergency measure. Should a local agency wish to extend a lease term beyond three years, or renew the lease after three years, the Region/District shall obtain approval by HQ R/W. Please send all requests for extended terms or renewals to your HQ liaison.
Construction Staging Leases

Section 5-1.32, “Areas for Use”, of the Department’s Standard Specifications allows the Department’s contractor to occupy the highway only for purposes necessary to perform the work. The areas for use available to the Department’s construction contractor must be within the project limits and must be within the environmentally approved project footprint.

It is preferable for the construction staging areas to be incorporated into the Construction Bid Package. This may be achieved by the Plans, Specifications, and Estimates (PS&E) package including designated temporary construction easements or the contract’s standard specifications allowing the use of Airspace Freeway Lease Areas (FLAs) within the project’s limits. If the standard specifications allow the use of any Airspace Freeway Lease Area to the Department’s construction contractor within the project’s limits, prior approval must be obtained from R/W. In this case, a separate Right of Way Use Agreement is not required, please refer to the Project Manager for property use requirements. It is imperative for R/W to closely review all iterations of the PS&E package and provide comments regarding the FLAs and the disposition of those FLAs.

In the instances in which the Department’s construction contractor requires a construction staging area not included within the Construction Bid Package, Airspace properties may be used for construction staging if the following conditions are met:

- If the site is not within the project’s limits, the rental rate must be at Fair Market Value (FMV). If federal funds were used to purchase the real property interest, and rent is less than FMV, FHWA must approve a Public Interest Finding (PIF). A less than FMV rental situation would arise when the Department is required to compensate the construction contractor a certain percentage markup for costs incurred, e.g. force account due to a Director’s Order.
- Rental terms can only be for the length of the construction project (with allowances for short periods before and after the project for preparations and clean up).
- All Airspace processes and procedures must be followed for the staging use (DARC, environmental document approval, FHWA approval, and in certain cases CTC approval).
- Rental conditions will include environmental protections appropriate for the proposed use (non-permeable barrier, etc.).
- The construction company is responsible for obtaining all local permitting.
• The property must be returned to the original condition after the construction staging use is completed.

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 R/D A/S with its proposed Right of Way Use Agreement, the anticipated revenue, a vicinity and site map, and a written legal description. After R/D A/S 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 Right of Way Use Agreement or the memorandum of the lease is recorded. R/D A/S 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). R/D A/S must change the account to reflect zero rent and schedule the lease for an annual payment (in arrears). When the Right of Way Use Agreement is terminated, a quitclaim must be recorded, with a copy to R/W Engineering to update their records.

Oil and Gas leases are numbered using the same method of numbering for regular airspace properties, but use the 8000 number for sequence (e.g. 03-YOL113-8001-01).

15.04.03.00 Utility Companies

R/D A/S Right of Way Use Agreements 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 a Right of Way Use Agreement to a utility company. Exceptions are granted if a utility company proposes to lease an airspace site for parking, office space or a staging area. 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 part of their functioning is 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” (see 15.04.01.08) by Airspace.

15.04.04.00 Right of Way Use Agreement

Standard agreements for all types of airspace leases are available in each region/district. Right of Way Use Agreement templates may also be found in the Exhibits and the Real Property Services Airspace (internal Caltrans link) websites.

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.

15.04.04.01 Terms and Conditions

The standard terms and conditions of a Right of Way Use Agreement generally include (23 CFR 710.405(b):

- Use and improvements.
- Term of the agreement, including options and extensions.
- Lease rate per approved valuation report, if not prescribed by legislation, 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.
- Insurance and indemnification requirements.
- Default, liability, and termination provisions.
- Sublease, assignment, and transfer provisions.
- Retention and removal of improvements.
• Maintenance responsibilities of all parties.
The standard Right of Way Use Agreement provides for all the above and
more, and HQ A/S must preapprove any modifications to the clauses.

Requests for “CTC Approval of Terms and Conditions” of a Right of Way Use
Agreement must provide detailed information about the above terms and
conditions.

Sample format:

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

15.04.04.02   Insurance Requirements

Each airspace site must be insured for a minimum of $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. R/D A/S should review it to ensure
the fire coverage is sufficient considering increases in value. Each
telecommunications wireless facility must be insured for $5,000,000 liability.
R/D A/S shall monitor the insurance requirements for the Telecommunications
licenses. Some prior or previous 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 enter the option periods. Use Form RW 15-3.

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 R/D A/S should consult with
HQ A/S about the applicability of an option.
15.04.05.01  Option Agreements

HQ A/S will assist R/D A/S in preparing the Option Agreement. If the Right of Way Use Agreement is through direct negotiations, the CTC must approve terms and conditions (Exhibit 15-EX-06, for internal Caltrans use), “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 Right of Way Use Agreement. The option cost shall be the prorated monthly as determined from an Airspace estimate (based on the minimum bid and the potential rate if leased). 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 R/D A/S, in accordance with the notice provisions in the option agreement, whether or not optionee/lessee intends to exercise the option to execute the Right of Way Use 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 Right of Way Use Agreements provide for an option to extend the original term (e.g., 10-year initial term with three consecutive 5-year extension options). The lessee must state in writing 60 days before the end of the initial term its intent to exercise the option to extend the use or the agreement. R/D A/S must review terms of the agreement to ensure conditions to extend have been met and determine if the lessor (Department) agrees to or denies the option. If so, R/D A/S must immediately conduct a DARC review of the site before formally acknowledging the request. Also, the Right of Way Use Agreement may provide for reevaluation prior to the extension, requiring R/D A/S to coordinate the reevaluation with the Appraisal Branch and the lessee. R/D A/S 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 Right of Way Use Agreement, an amendment to exercise an option is not needed. If there is a change, it is handled in the same manner as amendments.
15.05.00.00 - LEASE RATES AND ADJUSTMENTS

15.05.01.00 Valuation of Lease Rate

The lease rate for airspace sites is the Fair Market Lease Rate (FMLR). Any rate below the FMLR is subject to the conditions set by the 23 CFR 710, the State Statutes and the CTC resolutions. The FMLR 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 and may be used to establish value for these agreements.

  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 15.06.05.02) 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 Right of Way Use 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.

- **Annual Base License Fee Matrix**: A statewide wireless comparable site fee review is made by Airspace or Appraisal functional staff every five (5) years. Annual fees for comparable urban and rural sites are made for all categories of cell towers and small cell sites. A matrix is compiled denoting appropriate annual rates for Prime Urban, Urban and Rural sites to equipment categories. This matrix is reviewed and approved by the CTC.
The approved fee matrix is considered to be the FMLR for wireless sites statewide.

For all valuations other than Annual Base License, 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.

Please see the Right of Way Manual 07.15.00; Airspace Estimates, Bid Lease Valuations, and Appraisals.

See Section 7.15.00.00 for specific procedures.

When the valuation is complete, R/D A/S should summarize the report to use in discussions with the proposed lessee or to present the terms and conditions to the CTC.

15.05.01.01 Lease Rate Appraisal

In lieu of a full appraisal report for any nondevelopmental uses on directly negotiated airspace leases, the R/D Airspace Manager can directly request a simplified format to determine the lease rate (rental rate) of sites used for parking, storage, or public parks. (Please see the Right of Way Manual 07.15.05.00; Rental Rate Appraisals 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.

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. R/D A/S 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 Right of Way Use Agreement must provide for an audit by R/D A/S, usually on an annual basis, of the lessee’s records to ensure the calculated amount is accurate. R/D A/S can also request assistance to calculate the annual percentage rate if there is a question about the information the lessee provided.
**15.05.02.00  Plotage Value**

R/D A/S 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 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 R/D A/S with a tight range of lease rates to use in negotiating all terms and conditions of the Right of Way Use Agreement. If no data is available, R/D A/S 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, R/D A/S 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. R/D A/S 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 R/D A/S 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. R/D A/S should formally check on the status of its request well before the date the requested information is needed.
The appraiser and R/D A/S 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 R/D A/S, any data useful in marketing the area to be leased.

15.05.05.00 Lease Payments

The lease rate is typically paid monthly (except for Wireless sites which are always annual payments). Advance lump sum payments can be made on a semiannual or annual basis (e.g., governmental entities that operate on a specific budgeting cycle or for minimum lease rates to save administration costs). As an informational item, if advanced payments are made for greater than a year, Accounting might ask that a refund be paid to the lessee. At that time HQ will notify Accounting as to why the account is paid into the future.

Prior notice or approval 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 (nonprofit) 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 approved FMLR appraisal supports a minimum rent of less than $500 per month, and the proposed use will benefit the local community or neighborhood. Where there is a question of the FMLR being below $500 per month a full appraisal must be requested by the R/D A/S Senior.

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

Note: Below FMLR leases might conflict with the 23 CFR 701.403(e) requirement for FMLR and may require a public interest finding to be sent to FHWA, if on the interstate.
15.05.05.02 Minimum Security Deposit

The minimum security deposit for any airspace site is one month’s rent for nondeveloped, short-term sites, but not less than $500, and three months’ rent for nondeveloped 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 Right of Way Use Agreements except Telecommunications Licenses and agreements with public agencies.

When the proposed use represents an extraordinary risk to the Department, R/D A/S will need to ensure the minimum security deposit is increased to reflect this additional risk or liability. R/D A/S should only allow high-risk uses in special circumstances with legislation or after legal consultation 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 Right of Way Use Agreements every two years. At a minimum, the rate will be equal to the Consumer Price Index (CPI) for the area and adjusted annually. Right of Way Use Agreement provisions establish a base rent and may not allow the adjusted rate to fall below the initial base rent (the lease rate when the Right of Way Use Agreement was executed). Other Right of Way Use Agreement provisions may not allow the adjusted rate to be less than the previous year’s rate. It is imperative that R/D A/S review the Right of Way Use Agreement 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 year based on the annual CPI not to exceed 25%).

Reevaluations of the lease rate for long-term Right of Way Use Agreements should occur at least every ten years (preferable every five years) unless otherwise called out in the Right of Way Use Agreement. 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 Right of Way Use Agreement 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 Right of Way Use Agreement. If a Right of Way Use Agreement is already in effect, the Senior must approve the offset in writing. This includes Marler Johnson leases and Park and Ride lots. Offsets are for materials only. Receipts for all materials in the offset must be provided by the lessee, copied and sent to Caltrans Accounting with the Senior approved adjustment.

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 Right of Way Use Agreement provides for such, adjustments may be made when the region/district 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 preapprove R/D A/S’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 Right of Way Use Agreement.

Refer to appropriate Acquisition and Appraisal policy and procedural instructions for more details.
15.06.00.00 - AIRSPACE LEASES - PROCESSING

15.06.01.00 Rental Agreement (Private Entities)

The potential lessee must submit a letter to Region/District Airspace (R/D A/S) stating the proposed use, the proposed rate, and the rental period (not to exceed six months).

After the DARC determines the appropriateness of the use and the lease rate is established, R/D A/S 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 R/D A/S does not have plans to market the site for a higher use. While non-bid, nondevelopmental six month Right of Way Use Agreements at fair market are permitted, if other parties express interest in the site, the competitive bid process must be initiated immediately.

Please see CTC Resolution G-02-14 Item 2.4 or the most current resolution.

15.06.02.00 Short-Term Leases (Private Entities) - 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, R/D A/S 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 Right of Way Use Agreement. The normal process is to hold an oral auction unless R/D A/S 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 Right of Way Use 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 R/D A/S can substantiate the need to attract more interest in the bidding process.

The maximum return to the State should be obtained.

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, R/D A/S 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 Right of Way
Use Agreement within 30 days of the bid, or R/D A/S 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 Right of Way Use Agreement.

A renewal is different from an extension to an existing long-term Right of Way Use Agreement.

15.06.03.00 Long-Term Leases - Competitive Bid

Long-term bid Right of Way Use Agreements are not commonly used for nondevelopment. The lease process is generally the same for both nondevelopment and development Right of Way Use Agreements. Since there will be at least minimal construction (e.g., fences, landscaping, curbing, lighting, and paving) in most nondevelopmental Right of Way Use Agreements, the requirements for plans may still apply. The plans should also show circuitry of traffic on the site and the ingress and egress routes. Lessees may require longer term leases to cost out and amortize even minor improvements. Please note that competitive bid leases with terms 4 years and over must be approved by the CTC.

Refer to Table 1, “Process - Long Term Bid Lease,” on the following pages.
<table>
<thead>
<tr>
<th>Step</th>
<th>Responsible Party</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>R/D A/S</td>
<td>Identify site to be leased, either by an inquiry or as part of the marketing plan.</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>If not in inventory, request maps from R/W Engineering.</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>Request DARC conceptual approval of proposed use. Include Permits and State Fire Marshal approvals as appropriate.</td>
</tr>
<tr>
<td>4</td>
<td>DARC</td>
<td>Review and approve/disapprove request. Comments to disapprove should accompany the review.</td>
</tr>
<tr>
<td>5</td>
<td>R/D A/S</td>
<td>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.</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>If DARC approves the request, collect airspace review fee and ensure all program restrictions and conditions are included in the bid package and the Right of Way Use Agreement (e.g., access limitations, column protection, and landscaping).</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>If possibly controversial and on the Interstate, send proposal, DARC comments and a site map to HQ A/S for FHWA conceptual approval.</td>
</tr>
<tr>
<td>8</td>
<td></td>
<td>Request bid lease valuation if not already scheduled.</td>
</tr>
<tr>
<td>9</td>
<td></td>
<td>Send proposed marketing plan and bid package to HQ A/S for review and approval. 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.</td>
</tr>
<tr>
<td>10</td>
<td></td>
<td>Sign site, place media ads, and contact neighboring owners/tenants.</td>
</tr>
<tr>
<td>11</td>
<td></td>
<td>Mail bid package to interested parties; conduct a site review as needed.</td>
</tr>
<tr>
<td>Step</td>
<td>Responsible Party</td>
<td>Action</td>
</tr>
<tr>
<td>------</td>
<td>-------------------</td>
<td>--------</td>
</tr>
<tr>
<td>12</td>
<td>R/D A/S</td>
<td>Open Offer and Proposal bids. Analyze all bids received and send recommendation of the successful bidder to HQ A/S. Prepare memo requesting FHWA approval if the proposal differs slightly from the approved use, and submit through HQ A/S. Obtain DARC preliminary review if proposal differs slightly from conceptual plans.</td>
</tr>
<tr>
<td>13*</td>
<td>Lessee</td>
<td>Any modifications or changes require prior HQ A/S approval. An Option Agreement requires payment when executed by Optionee.</td>
</tr>
<tr>
<td>14</td>
<td></td>
<td>Obtain local agency concurrence and evidence of insurance.</td>
</tr>
<tr>
<td>15</td>
<td>R/D A/S</td>
<td>Obtain District Environmental approval of lessee’s environmental document.</td>
</tr>
<tr>
<td>16</td>
<td></td>
<td>Obtain DARC approval of final construction plans.</td>
</tr>
<tr>
<td>17</td>
<td></td>
<td>Send to HQ A/S to obtain FHWA approval of final construction plans (including maps), NEPA document, and air quality study if required for the project on the Interstate.</td>
</tr>
<tr>
<td>18</td>
<td>Lessee</td>
<td>Execute Right of Way Use Agreement and pay lease rate per terms of the Agreement.</td>
</tr>
<tr>
<td>19</td>
<td>R/D A/S</td>
<td>Submit Agreement to HQ Program Manager or delegated representative for approval if developmental Right of Way Use Agreement.</td>
</tr>
<tr>
<td>20</td>
<td>HQ A/S Delegated Rep</td>
<td>Developmental lease only: Sign Option and/or Agreement and return to Airspace.</td>
</tr>
<tr>
<td>21</td>
<td>Lessee</td>
<td>After final reviews/approvals are obtained, apply for an encroachment permit to construct.</td>
</tr>
<tr>
<td>22</td>
<td>R/D A/S</td>
<td>Monitor lessee’s move onto the site, including any construction, and begin property management activities.</td>
</tr>
</tbody>
</table>

*Note - required for development purposes only.*
**15.06.03.01 Offer and Proposal**

An airspace site with a developmental Right of Way Use Agreement and a longer-term Right of Way Use Agreement requires a different method of selecting the successful bidder. While shorter-term parking or nondevelopment Right of Way Use Agreements are awarded based on the highest bid (lease rate), the preferred method for longer-term development Right of Way Use Agreements 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 Right of Way Use Agreement 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 R/D A/S 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 Right of Way Use Agreements for all long-term agreements (more than three 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 Right of Way Use Agreement is generally the same for development and nondevelopment Right of Way Use Agreements. In most nondevelopment
Right of Way Use Agreements, there will be at least minimal construction (such as fences, landscaping, curbing, lighting and paving), so the requirements for plans may still apply.

Per CTC Resolution G-19-43 (revised from G-03-03), CTC concurrence is not needed to directly negotiate with a public agency if certain conditions are met. The terms and conditions for a directly negotiated landlocked site require CTC approval.

Refer to Table 2, “Process – Long-Term Directly Negotiated Right of Way Use Agreement,” on the following pages.
<table>
<thead>
<tr>
<th>Step</th>
<th>Responsible Party</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-7</td>
<td>Various</td>
<td>See Steps for Long Term Bid Right of Way Use Agreement</td>
</tr>
<tr>
<td>8</td>
<td>R/D A/S</td>
<td>Send “Consent to Directly Negotiate from the CTC” (see Exhibit 15-EX-05, for internal Caltrans use) to HQ A/S.</td>
</tr>
<tr>
<td>9</td>
<td>HQ A/S</td>
<td>Submit the Request to Directly Negotiate to CTC for approval.</td>
</tr>
<tr>
<td>10</td>
<td>R/D A/S</td>
<td>If approved by the CTC, R/D A/S may provide the proposed lessee with a Letter of Understanding (Exhibit 15-EX-04) detailing the anticipated Right of Way Use Agreement, with a copy to HQ A/S.</td>
</tr>
<tr>
<td>11</td>
<td></td>
<td>Request an appraisal report for the proposed use, either through the Appraisal Branch or from the proposed lessee. HQ must approve the appraisal report.</td>
</tr>
<tr>
<td>12</td>
<td></td>
<td>After lessee is advised of the FMLR, negotiate all other terms and conditions of the Right of Way Use Agreement, including time frame, term, and extensions. <em>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.</em></td>
</tr>
<tr>
<td>13</td>
<td></td>
<td>Secure preliminary plans and submit for preliminary DARC approval.</td>
</tr>
<tr>
<td>14</td>
<td></td>
<td>Send to HQ A/S to obtain FHWA approval of final construction plans (including maps), NEPA document, and air quality study if required for the project on the Interstate</td>
</tr>
<tr>
<td>15</td>
<td></td>
<td>Request “CTC Approval of Terms and Conditions” by sending a memorandum to HQ A/S.</td>
</tr>
</tbody>
</table>
TABLE 2   PROCESS – LONG-TERM DIRECTLY NEGOTIATED RIGHT OF WAY USE AGREEMENT (Continued)

<table>
<thead>
<tr>
<th>Step</th>
<th>Responsible Party</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>HQ A/S</td>
<td>Request “CTC Approval of Terms and Conditions” at the next monthly meeting.</td>
</tr>
<tr>
<td>17</td>
<td>R/D A/S</td>
<td>If CTC approves terms and conditions, request lessee to execute the Right of Way Use Agreement, and forward it to HQ A/S for execution (unless delegated). All final approvals must be obtained PRIOR to execution (see 15.06.11.03).</td>
</tr>
</tbody>
</table>

15.06.05.00   CTC Approval

The CTC 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. After CTC approval of the initial request, the Letter of Understanding is sent to the Lessee.

Once negotiated, the terms and conditions, along with the appraisal summary, are presented to the CTC for final approval.

After CTC approval of the terms and conditions, the R/W Program Manager or delegated representative can execute the standard Right of Way Use Agreement.

Please see CTC Resolution G-02-14 or the most current resolution.

15.06.05.01   CTC Consent to Directly Negotiate

The request for CTC approval 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). It is best to state direct benefits in terms of financial return. Indirect terms, such as a general benefit to the local community is difficult to quantify. Each proposed lessee must pay a processing fee of $1,000 (or, depending on the complexity of the issues, an appropriate amount required to negotiate the Right of Way Use Agreement) if the CTC consents to direct negotiations.
CTC’s consent to negotiate directly is only good for one year. Airspace must request an extension from the CTC to negotiate beyond that time. An additional processing fee is not required.

See Exhibit 15-EX-05 (for internal Caltrans use).

15.06.05.02 Letter of Understanding

A Letter of Understanding (Letter) (Exhibit 15-EX-04) is sent to the proposed lessee after CTC consents to direct negotiations. The letter states the Department’s intent to negotiate in good faith for the proposed Right of Way Use Agreement. This will assist the proposed lessee in obtaining all local approvals and construction funding prior to executing the Right of Way Use Agreement, as the Department is agreeing to keep the site off the market pending successful negotiations.

The Letter states the CTC consent to directly negotiate is valid for one year. The Letter will also request funds to pay for the region/district’s appraisal of the airspace site, which must be received prior to the Appraisal Branch completing the report (see 15.06.07.00). The Letter should also outline the time frame for negotiations and satisfaction of any issues Airspace, FHWA, DARC, or CTC have identified.

If mutual agreement cannot be reached on the terms and conditions within one year, the CTC 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 CTC, lessee, or R/D A/S desiring to terminate discussions, R/D A/S 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.

15.06.05.03 CTC Approval of Terms and Conditions

R/D A/S must submit final negotiated terms and conditions via HQ A/S to the CTC. CTC must approve terms and conditions before the Right of Way Use Agreement is executed.

15.06.06.00 Public Agency Leases

Right of Way Use Agreements with public agencies do not require CTC consent to negotiate directly or approval of the terms and conditions. The lessee must be a public entity as defined in the Public Contracts Code, the lease rate must be at or above FMLR, and the use must be for a public
purpose. Prior to concluding negotiations, R/D A/S must advise HQ A/S of the proposed rate and the appraised value. The executed Right of Way Use Agreement must have the appraisal summary supporting the lease rate stating it is fair market.

Please see CTC Resolution G-19-43 (revised from G-03-03) or the most current resolution.

NOTE: Uses for Agricultural Inspection Stations (with the Department of Food and Agriculture) and Weigh Stations (with the California Highway Patrol) are addressed through state-wide interagency agreements or MOU's coordinated through the Division of Maintenance and Operations.

15.06.07.00 Processing Other Right of Way Use Agreements

Three-Year Directly Negotiated Nondevelopment Right of Way Use Agreements, leases with nonprofit organizations on park and ride lots, and leases with the motion picture industry should follow a process similar to the directly negotiated Right of Way Use Agreement. R/D A/S 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 Right of Way Use 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 (SLAs) is described in the Department’s Telecommunications’ Licensing Process and Siting Guidelines.

If several carriers are interested in the same site for a wireless facility, then Airspace must offer the site through competitive bidding, using the Annual Base Fee Matrix in the Master License Agreement (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 Act Park Lease**

R/D A/S 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.

Right of Way Use Agreements under this statute shall be made on the standard Right of Way Use Agreement format for the Marler - Johnson Highway Park Act. R/D A/S shall ensure that development is made in accordance with approved plans and within the time limits set forth in the Right of Way Use Agreement.

Local agencies should contact R/D A/S about leasing a site within nonoperating rights of way (Government Code Section 14013). R/D A/S 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. Note: Government Code Section 14013 calls out leasing “nonoperating” right of way which by definition is not considered Airspace. Historically the Department has interpreted the Government Code’s section intent to reference Airspace.

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 Right of Way Use Agreement whenever the leased land is needed for transportation purposes are included in the standard Right of Way Use Agreement. CTC approval is not required if the Right of Way Use Agreement meets all other Marler-Johnson Right of Way Use Agreement requirements. Please see CTC Resolution G-19-43 (revised from G-03-03) Items 1.3 and 2.3 or the most current resolution.

**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 4. 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 Right of Way Use Agreement Documents**

After a Right of Way Use Agreement has been executed, the lessee may need additional formal consent from R/D A/S 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 Right of Way Use Agreement to charge fees:

- **Assignment:** $1,000
- **Renewal:** $0
- **Change in use:** Consistent with Right of Way Use Agreement type
- **Encumbrance:** $1,000
- **Estopple:** $1,000
- **Substitution:** $1,000
- **Amendments:**
  - Minor changes: $0
  - Major change (tantamount to new Right of Way Use Agreement, requiring DARC review, CTC and/or FHWA approvals): $2,500 to $5,000 at district’s discretion. Amount charged over $2,500 requires file documentation as to why the fee is in excess to the minimum $2,500 amount.
- Major change (tantamount to new Right of Way Use Agreement, DARC review, CTC approval, FHWA approvals): $2,500-$5,000 at district’s discretion; amount charged over $2,500 requires file documentation to support the excess fee.

**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 Right of Way Use Agreement, the lessee is in full compliance with the terms and conditions, and the lease payments are current.
See Exhibit 15-EX-08 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 Right of Way Use Agreement may allow encumbrance with R/D A/S approval before the loan is secured. If granted, R/D A/S should ensure the financial institution will be responsible for all lease payments in the event lessee defaults on the airspace Right of Way Use Agreement.

The Right of Way Use Agreement should be reviewed carefully regarding any special language or provisions for encumbering.

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 R/D A/S. If the MOL will be recorded, a region/district representative authorized to execute real estate documents for that geographical area must sign it.

Prior to executing the MOL, R/D A/S must recommend its execution, stating the lessee is not in default with any provisions of the Right of Way Use Agreement.

15.06.10.04  Sublease and Assignment

R/D A/S must approve lessee’s request to assign or sublease any or all interests in an Airspace Right of Way Use Agreement. Each Right of Way Use 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. R/D A/S 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:

- Right of Way Use 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, R/D A/S may relieve the primary lessee of the responsibilities in the Right of Way Use 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 on the Interstate and 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 Right of Way Use Agreement is considered a major change, prior approval from CTC and FHWA (when on the Interstate) may be required. R/D A/S 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).
- Change in use.

R/D A/S must explain the effect of the amendment, justifying their recommendation of it. Any standard Right of Way Use Agreement provisions that were not part of the existing agreement should also be included at this time.

**15.06.11.00 Reviews and Approvals**

R/D A/S 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. R/D A/S review fees are collected when district has obtained DARC and FHWA conceptual approval (if proposal is controversial and if on the Interstate) or for subsequent Right of Way Use Agreement documents, at the time of the request.
Fees for Airspace review are as follows:

- Short-term rental agreements up to six months with one 6-month extension: $0
- Directly negotiated short-term Right of Way Use Agreements (two to five years): $2,500
- Competitively bid short-term Right of Way Use Agreements: $0 (Winning bidder pays Liquidated Damages or Forfeiture of Deposit)
- Long-term nondevelopment Right of Way Use Agreements: $2,500-$5,000; amounts above minimum at district’s discretion, file documentation is required in support of amount over minimum (e.g., proposed development includes new technology requiring extraordinary time and consultation with DARC)
- Long-term developmental Right of Way Use Agreements: $10,000.

Note: Some projects may require a Project ID to cover work not captured in the standard review fee.

Review fees may be waived by district with Senior approval and supporting reasoning (e.g., hardship to small agency) and documentation to file with an informational copy to HQ.

15.06.11.01 Conceptual Approval

Either R/D A/S 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 for parcels located on the Interstate. Based on information provided by R/D A/S, 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 for parcels on the Interstate.
15.06.11.03 Final Approval

Before the Right of Way Use 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.
- Sites on the Interstate require FHWA approval of the final construction plans, environmental document, and, if necessary, an air quality study.
- Evidence of insurance per the Right of Way Use Agreement.

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.

When formal approval has been obtained, the Right of Way Use Agreement may be executed, and the tenant may make application for an encroachment permit to construct from the District Permits Office.

15.06.12.00 Environmental Status

Every site must have a NEPA/CEQA, including a “6010 metal study” report written by the lessee and the document approved by Caltrans Environmental Division for the proposed use that addresses environmental issues. Proposed lessee might also need to obtain final approval of their plan from the local agency. The study must be submitted to Caltrans District Environmental for review and approval. The recommendation states the document meets applicable CEQA and NEPA requirements.

Airspace should consult the Environmental Manual or the District Environmental Unit on specific questions.
15.06.12.01  **Aerially Deposited Lead**

Within the NEPA/CEQA report, the contents must address Aerially Deposited Lead (ADL) levels and other heavy metals. Results of the “6010 metal study” must demonstrate results of ADL to be less than 320 parts per million for all commercial and industrial uses. If an airspace property is being used for parks and recreation or statute directed shelter use, ADL levels must be below 80 parts per million. Testing must be to the depth of excavation. It is the tenant’s responsibility to bring a proposed airspace site to acceptable use levels. Remediation plans must be approved by Caltrans District Environmental.

15.06.13.00  **FHWA Approval**

FHWA approval of airspace Right of Way Use Agreements is required only when the airspace site is located on an Interstate. All federal requirements in 23 CFR 710 shall be followed.

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. R/D A/S must submit, through HQ A/S, the final approved DARC comments, the proposed Right of Way Use Agreement document, the environmental document, an air quality statement or study, the proposed use and terms, and the final construction plans.

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

See below.

**FHWA APPROVAL OF AIRSPACE SITES ON THE INTERSTATE REQUIRED FOR:**
- Conceptual use of an airspace site not in the current inventory. (Requires a narrative describing the use and a location map.). This is sent only if the proposed use is controversial.
- A change in use (whether new Right of Way Use Agreement, assignment, amendment, etc.).
- Preliminary and final approval of the proposed use, including site plans (including 3D plans) and NEPA findings, on any airspace site within the right of way (Includes telecom sites).

**Note 1:** Preliminary approval not required if only minor improvements (paving, striping, lighting) will be made.
Note 2: 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).

Note 3: DARC notes must be submitted with any request for conceptual, preliminary, or final approval.

- Categorical Exemption or Environmental Impact Document of any new Right of Way Use Agreement or a new lessee if the previous Categorical Exemption is over five years.
- Air Quality Statement.

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 Right of Way Use Agreement is not regionally significant and is not a transportation project. A blanket approval for all future Airspace Right of Way Use Agreements (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 Right of Way Use 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.
15.07.01.00 Inspections

Region/District Airspace (R/D A/S) 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 nondeveloped 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. All documentation of the site inspections and lessee notifications shall be maintained in the parcel file diary notes with yearly site pictures taken. RWPM shall be updated immediately for the dates on which the inspections occurred.

When a leased site is not properly maintained, R/D A/S shall immediately inform the lessee by written letter sent by certified mail 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, R/D A/S may initiate default proceedings to secure the site. A copy of the letter shall be kept in the parcel file.

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 Right of Way Use Agreement 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.

R/D A/S 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 and trespassing does not occur. If problems are found, Maintenance should notify R/D A/S 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 RWPM.
**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 nonoperating right of way.

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

R/D A/S 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**

R/D A/S 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. 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 Right of Way Use Agreements, renewals, or extensions, column protection must be installed as part of the terms for renewing, extending, or leasing the site.

There are 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

Development underneath structures is rarely permitted. If considered, 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.

15.07.05.00 Mini-Warehouse Inspections

New mini-warehouse structures construction is not permitted. Inspections of existing (grandfathered in) mini-warehouse structures should include reviewing the resident manager’s restrictions on storage of high value or high risk personal property. The resident manager shall be required to provide immediate access to individual storage units for Airspace or Fire Marshal inspection. R/D A/S should review the Right of Way Use Agreement for specific provisions on access and inspections. R/D A/S 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 Storm Water Inspections

Local agency or other mandate may require R/D A/S 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, with assistance from the Encroachment Advisory Group (EAG) in HQ, will review region/district recommendations to allow use of the operating right of way when safe and noninterfering. 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).

R/D A/S should coordinate work with the Permits Office before transmitting the request to the EAG.

FHWA concurrence is required to allow private entities permanent access for encroachments on Interstate highways.
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:

- **Survey Permit** - to test the radio frequency of proposed facility prior to submitting preliminary proposals to Airspace.
- **Encroachment Permit** - to construct if proposed use is approved.
- **Annual Permit** - to maintain the equipment if the proposal is within operating right of way.

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 Right of Way Use Agreement, the lessee shall obtain an encroachment permit prior to construction. In no case shall an encroachment permit substitute for a Right of Way Use Agreement.

Lessees may be required to obtain an encroachment permit prior to making any changes to the airspace site. The standard Right of Way Use Agreement requires R/D A/S to advise the Permits Office that all DARC concerns have been satisfactorily addressed and that DARC has reviewed and approved the final plans.

R/D A/S 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 Right of Way Use 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 R/D A/S 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, R/D A/S may request assistance from Structures Operations in monitoring the project.

Any changes in the plans shall require prior written approval of R/D A/S 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

State Fire Marshal (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) the SFM uses to inspect all facilities. R/D A/S should advise potential developers of these standards.

Health and Safety Code, Section 13108, specifies that the State Fire Marshal (SFM) prepare and adopt building standards relating to fire protection in the design and construction of the means of egress and the adequacy of exits from, and the installation and maintenance of fire alarm and fire extinguishment equipment or systems in, any state institution or other state-owned building or in any state-occupied building and submit those building standards to the State Building Standards Commission for approval pursuant to the provisions of Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of the Streets and Highways Code. Right of Way’s policy is that the
SFM is required to review and approve plans, prior to the execution of any Right of Way Use Agreement, when the Department of Transportation (the Department) is locating into an existing building and there will be tenant improvements prior to occupation. District Property Managers are responsible for ensuring that appropriate SFM review of plans and/or inspections are accomplished prior to execution of all Right of Way Use Agreements.

The regional SFM supervisor, whose final approval is required for all uses underneath a structure, is a member of the DARC. At a minimum, separate copies of the preliminary and final plans for all uses should be submitted to the regional SFM office for review and comments.

The SFM will also make an initial inspection of telecommunications wireless facility prefabricated shelters.

**15.07.08.01 SFM Inspection Responsibilities**

All Right of Way Use Agreements require SFM have access to the property at any reasonable time for appropriate inspection of the site.

Annually, R/D A/S 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 all new uses.

**15.07.08.02 Conducting Inspections**

The SFM shall conduct inspections per the established schedule, contacting R/D A/S 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 shall submit an inspection report, identifying any areas needing immediate correction. R/D A/S will confirm the problem and give the lessee a 30-day notice to correct deficiencies. R/D A/S may initiate default proceedings if lessee does not correct the problem.
**15.07.08.04 Special Requests**

R/D A/S may request special assistance from the SFM for:

- Persistent problems with lessee’s correction of noted deficiencies, especially if R/D A/S has instituted legal action.
- Situations involving extreme danger of fire or explosion requiring SFM and R/D A/S to take immediate action to remedy the problem and to prevent the lessee from continuing the practice.

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

**15.07.08.05 Reporting of Fire**

All fires on all properties must be reported to the State Fire Marshal immediately following the knowledge of a fire. You need to have the following information:

1. Type of incident (fire or explosion, etc.)
2. Location of incident
3. Time of incident
4. If Fire/Police Department was dispatched
5. Information on any injury or fatality
6. Name and number for a call back.

**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. R/D A/S must review all proposals to use or store hazardous materials on an airspace site.

Environmental 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. R/D A/S 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 R/D A/S discovers hazardous waste, the following action should be taken.

- **Hazardous Waste Exists** - If lessee’s operation is causing the waste, immediately notify lessee the action must cease or the Right of Way Use Agreement will be terminated. Lessee is required to clean up any hazardous waste or material. Cooperation with Environmental, Legal, and Project Development may be required. HQ A/S must specifically approve any new Right of Way Use Agreement or Right of Way Use Agreement renewal for a site confirmed to contain hazardous waste or materials.

- **Hazardous Materials Exist** - The risk to the roadway and the public safety of allowing the operation to continue with possible cleanup costs must be weighed against long-term liability, community safety/impact and external positive factors. Documentation to justify continuing the Right of Way Use Agreement shall be retained in the file.

In each situation, the Right of Way Use Agreement should be reviewed to determine what is allowed and what remedial action is needed. R/D A/S should request amending the Right of Way Use Agreement to include the standard hazardous waste clause if the lessee will continue to occupy the site.

Environmental can assist R/D A/S in all inspections and determinations of hazardous materials or waste.

15.07.09.02 Hazardous Waste

If inspection of an airspace site indicates a potential for a problem with hazardous waste, R/D A/S should formally request the District Environmental Office with coordination of the HQ Environmental Division to investigate and test the site immediately to determine if the site is actually or potentially contaminated.
Environmental will inspect the site and determine if:

- **Testing Is Not Necessary** - Environmental provides a written statement that no hazardous waste is present.
- **Further Investigation Is Necessary** – Environmental 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.

Environmental’s recommendation may require corrective action by the lessee, more frequent monitoring of the condition, or termination of the current use or the Right of Way Use Agreement.

### 15.07.09.03 Inventory

R/D A/S and Environmental 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.

On a semi-annual basis, the R/D A/S must report to HQ A/S confirmation of any and all items being stored within all airspace areas. A statewide report is provided to Caltrans Structures and the State Fire Marshal as requested.

### 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 Right of Way Use Agreements kept on the RPS intranet website 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 R/D A/S to potential problems. Before any Right of Way Use Agreement is executed, R/D A/S must inquire into the specific type of use and consider the risk.

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. R/D A/S will use standardized Right of Way Use Agreement language that conforms with the SWMP in new Right of Way Use Agreements and in existing leases that come up for renewal. The Right of Way Use Agreement 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.

R/D A/S will maintain a list of Right of Way Use Agreements 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.
R/D A/S 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 kept in the parcel file and will be used to develop annual reports that document the Department’s compliance with its SWMP.


15.07.11.00 Default

The lessee is considered in default if any of the Right of Way Use Agreement 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).

R/D A/S should monitor each Airspace Right of Way Use Agreement 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, R/D A/S 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 three-day notice). If action is not taken, R/D A/S should initiate default proceedings (e.g., termination, eviction, lawsuit, and collections).

Prior to initiating action, R/D A/S should carefully review the Right of Way Use 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 R/D Senior should ensure sufficient staff is assigned to and adequate time is spent on managing the region/district’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 developments (if any) are constructed. (See Section 15.07.00.00.) Airspace must ensure the lessee is complying with all terms and conditions of the Right of Way Use Agreement. As each site is developed differently, the degree of property management activities will differ with each Right of Way Use Agreement. At a minimum, R/D A/S should review the current status of each Right of Way Use Agreement to ensure:

Monthly –

1) 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.

2) Expiring rental agreements or Right of Way Use Agreement will be scheduled for renewal, extension, or termination.

Quarterly –

1) Future adjustments to the lease rate have been calculated and are scheduled to be billed per the percentage established in the Right of Way Use Agreement. The lessee must be advised in writing of the increase in the lease rate at least 30 days prior to the billing date.

2) 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.
3) SFM’s inspection report has been received on all developed properties. Follow up when necessary to ensure deficiencies are corrected.

**Annually –**

1) SFM’s inspection report has been received on all nondeveloped properties requiring inspection. Follow up as necessary to ensure deficiencies are corrected.

2) 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 Right of Way Use Agreement prior to renewal, extension, or termination (monthly); each developed site (quarterly); and each nondeveloped 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 Right of Way Use Agreement File**

Each Airspace Right of Way Use Agreement 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 Right of Way Use Agreement, bid package, RWPS setup, 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 Management System

The Airspace Inventory is maintained in the Right of Way Property Management System (RWPM), which generates reports on region/district property management workload, number and type of Right of Way Use Agreements, potential and actual income, internal uses, high priority sites, telecommunications licenses, and due dates (e.g., expiration, inspections, and adjustments). Accounting also uses RWPM to generate bills and to track account payments and adjustments. All Airspace Right of Way Agents shall be proficient in using RWPM.

R/D A/S shall ensure the system is current and all relevant data is input 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 could be marketed.

IRWS, if used, must also be updated as the two systems are integrated. Airspace site numbers cannot be entered into RWPM unless the route and site are first entered into IRWS. In the rare case where IRWS is used, please contact HQ Right of Way Airspace.

NOTE: ROWMIS cannot be used to input an airspace property into RWPM, as airspace properties are Alpha-Numeric (county-route) as part of the numbering system. ROWMIS does not accept letters in the numbering system.

15.08.05.00 Income

RWPM and Caltrans Accounting 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.
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 R/D 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 R/D A/S’s responsiveness to the proposed lessee and the reviewing and approving entities (e.g., CTC, FHWA, and DARC members). Resolving problematic leasing issues shall be a high priority.

R/D A/S shall monitor the future expiration of rental agreements and Right of Way Use Agreements and develop plans to lease the sites before the current Right of Way Use Agreement expires through the bid or negotiation process.

The marketing plan for high priority sites (those that will generate the highest return if leased) should be evaluated to ensure the best methods for marketing and advertising the sites are used. Additionally, any interim uses shall be considered pending longer-term site Right of Way Use Agreements. 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 Right of Way Use Agreement may generate a higher rate of return than a two-year Right of Way Use Agreement).
- Best method for leasing the site.
15.08.07.00  Program Efficiency

The R/D 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 region/district and the statewide program, based on past year results and new procedures in place, taking into consideration any HQ Program Manager should be informed of any significant fluctuations from year to year.

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 CTC and the Legislature on income and expenses for the region/districts and the statewide program. The R/D 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 R/D A/S with special reports and assist in analyzing the data.

The targeted workload and actual work production should be reviewed quarterly. The report assists the Senior with evaluating charging practices versus statewide average, monitoring staff production, and accomplishing R/D A/S’s annual goals.

15.08.08.00  Policy and Procedural Manuals

The R/D Senior should ensure each Airspace Agent has the current Airspace procedures outlined in the Airspace Chapter with Exhibits and Forms, the Reference File, region/district 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 R/D Senior shall ensure staff have adequate training and experience to accomplish assigned tasks to manage the R/D Airspace program in an efficient and compliant manner.

In addition to the Airspace Chapter:

Agents assigned property management activities should be familiar with property management requirements, RWPM procedures, TRAMS and RWPM reports, and rules on collecting funds.

Agents assigned nondevelopmental 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 Right of Way Use Agreement, 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 Right of Way Use Agreement language, provisions for assignments and subleases, and CTC procedures to obtain approval to execute Right of Way Use Agreement.

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.

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

1) Conduct sealed bids and auctions.

2) Meet with and make presentations to local agencies and the planning departments and the program or areas of concern to the local agencies and cities.

3) Negotiate terms, including fair market lease rate and rate of return, for all Airspace developmental uses.

4) Evaluate the risks and benefits of potential uses and proposed non-standard clauses to standard Right of Way Use Agreements.

5) Develop site specific and overall program marketing plans.
15.08.10.00 Reference Library

R/D A/S should establish a reference library that contains appropriate manuals, guidebooks, information, and periodicals. At a minimum, it should contain:

1) Airspace Chapter with exhibits, forms, and reference file.

2) Appropriate R/W policies and procedures from Appraisals, Property Management, Planning and Management, Encroachment Permits, Environmental, and Maintenance.

3) All references in the Right of Way Airspace Chapter, exhibits, forms, and reference file (e.g., 23 CFR, S&H codes, and CTC Resolutions).

4) Standard Right of Way Use Agreement (kept on the RPS intranet website).

5) CTC agenda and minutes, CTC agenda, minutes and approvals, and reports to the CTC and CalSTA.

6) Airspace business plan.

7) RWPM inventory.

8) Region/District’s annual marketing plan.
15.09.00.00 – DELEGATIONS

15.09.01.00  Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Airspace is noted below. The delegation matrix reflects the associated policy and RW Manual reference for each delegated item. The matrix also distinguishes whether an item is delegated to the District or Headquarters (HQ) level, along with the lowest level of sub-delegation authorized.

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Exhibits are located online:

- [External Exhibits site](#)
- [Internal Exhibits site (internal Caltrans link)](#)

(REV 1/2020)
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Forms are located online:
- [External Forms site](#)
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