

permits. These permits should be obtained by the proposed tenant. A copy of these permits will be kept in the file. If the proposed tenant cannot produce these permits, then the use will not be allowed on the property. A written plan should be established prior to use for how material disposal occurs. This written plan should be added to the signed Right of Way Use Agreement as well as the expectation that the property will be returned to its prior condition. Other major considerations include safe access to and from the site. The expectation is that a clause in the rental agreement will be added for the property to be reverted back to its condition prior to its use as a batch plant.

The property should be regularly inspected including pictures taken at each inspection. Pictures will be kept in the Airspace file documenting the property prior to use as a batch plant and at every inspection. The District Stormwater contact should inspect with District Right of Way agent as often as required to protect the NPDES Stormwater Permit Caltrans uses for overall Stormwater requirements. This required inspection ensures the tenant is complying with these Stormwater requirements. An initial walk-thru must occur with the District Stormwater contact as well as a final inspection when the agreement is terminated. The Districts Airspace will also receive and retain these required inspection reports.

15.04.01.20 Tie Back and Tower Crane Agreements

Per the interdivisional memos dated December 28, 2016 on Tower Crane Agreements ([Exhibit 15-EX-10](#)) and dated July 26, 2017 on Tiebacks Agreements ([Exhibit 15-EX-09](#)), the Encroachment Permit office will circulate for all divisional clearances, although Right of Way is still responsible for the Right of Way Use Agreement. The agreements are only applicable for temporary tiebacks which are de-tensioned when no longer needed for structural support and for Tower Cranes under specific conditions. Permanently tensioned tiebacks are not permitted within the state highway rights-of-way. For further information on requirements, refer to the Memos.

The Encroachment Permit office has a maximum time constraint of 60-days to issue an encroachment permit. Due to this constraint, any Right of Way Use Agreements should be worked on and executed diligently.

The Headquarters Division of Design, Office of Project Support, will facilitate the FHWA review and approval.

Fair market value (FMV) must be paid for both tie back and tower crane agreements. The FMV for tiebacks is the cost to remove the remaining rods in case of a future project conflict. For Tower Cranes, the FMV is nominal.

15.04.01.21 Parklets

A parklet is a small, temporary, publicly accessible constructed seating or community gathering area sited over an on-street parking space or on an extension of the sidewalk into the highway right of way. The local public entity representing the area in which the parklet is proposed is responsible for its proposal, application, installation, maintenance, and removal. An Encroachment Permit and parklet design and plans which adhere to section 500.3I of the [Caltrans Encroachment Permit Manual](#) are required. A temporary barrier may be required to separate the parklet from the traveled way. Pedestrian and State highway safety and the ongoing transportation use of the highway facility must be maintained.

The Marler-Johnson Agreement (reference 15.04.01.05 and [Government Code Section 14013](#)) is used pursuant to terms and conditions established by [CTC Resolution G-19-43](#). The normal DARC process is followed and a FMLR is established. Lease term for a parklet is up to one year and additional one-year periods may be considered.

15.04.01.22 Pocket Parks

A pocket park is a small open space and/or community gathering area located on a small portion of right of way which is not serving a transportation purpose and is safely accessible by the public for recreation purposes. Pocket parks may be located behind sound walls and outside of the right of way fence, are generally larger than parklets and not typically sited on converted parking spots. An Encroachment Permit is required for pocket parks. The lessee is responsible for its proposal, application, installation, maintenance, and removal at termination of the lease. The proposed pocket park location and use will be reviewed to ensure it will not risk public safety or interfere with the State highway's primary transportation use. A permanent barrier from the traveled way is required for safety. Pedestrian and State highway safety and the ongoing transportation use of the highway facility must be maintained. The normal DARC process is followed and a FMLR is established. The Marler Johnson Park Agreement (see 15.04.01.05) is used for leasing to a local public entity and the Nondevelopmental Agreement (see 15.04.01.03) is used for leasing to a private entity. CTC requirements for direct negotiations must be fulfilled. All pocket parks are to be accessible by the general public.

R/D A/S should ensure all safety procedures for safe and healthy human exposure are followed. HQ Environmental (Hazardous Waste, Air, Noise & Paleontology Office) may need to be involved to review the Aerial Lead Deposit for areas proposed adjacent to highway structures.

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 for utility distribution or service lines. 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 \(CPUC\)](#), 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 via "site licenses" subject to the Master License Agreement (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 (more than 5 years) 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 must 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.
- FHWA 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:

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

15.04.04.02 Insurance Requirements

Each airspace site must be insured for 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 15-03](#).

15.04.05.00 Option to Lease and Processes

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](#) [internal Caltrans link], 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 and identify any anticipated changes to 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 of the lease rate prior to the extension, requiring R/D A/S to coordinate the reevaluation with the Appraisal Branch and the lessee (see 15.05.05.03). 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.

15.04.07.00 Renewals of Long-Term Developmental Leases

Caltrans has a number of long-term developmental leases with terms of up to 50 or more years that will soon be expiring. It is preferred that renewals be negotiated with the current tenants to avoid Caltrans ownership of various buildings throughout the state. However, there are a number of factors to consider prior to renewing the lease and despite not wanting ownership from these long-term leases, negotiations to the satisfaction of both Caltrans and the tenant may not be possible.

The renewal process should be initiated a minimum of 18-months prior to the expiration of the lease.

The necessary considerations will be detailed in the sections below.

15.04.07.01 Current Lease Terms and Current Standing of the Tenant

Current lease terms should be evaluated to determine if the ownership of the improvements revert to Caltrans (this will likely be the case for most leases). If the lease allows for an alternate solution, such as demolition, the district should consider whether this alternate path or renewal is best for the district and the public.

If the district decides that a renewal is the best course forward, the district should review the tenants file to determine whether the tenant has been a good tenant, paying their rent in a timely manner, and abiding by the lease terms for maintenance and other issues prior to initiating a renewal.

Current use of the property must also be analyzed. A use that is incompatible with proximity to the transportation system should not be renewed. Such uses include the storage or sale of hazardous materials, daycare centers, and schools. Exceptions for these uses must be obtained from HQ Airspace concurrently with the DARC.

15.04.07.02 DARC and External Reviews for Long-Term Renewals

The typical DARC members must be included in the DARC for renewal, including maintenance, traffic operations, design, environmental, project development, hydraulics, and landscape architecture as applicable. The Structure, Maintenance, and Investigation group must also be forwarded the request to allow renewal. The Structure, Maintenance, and Investigation group will perform an inspection of any building within the airspace site to determine if the building will interrupt or endanger the transportation system by its continued proximity or due to build quality, lack of code updates, or other concerns.

If the airspace site contains a building, the State Fire Marshall must perform an inspection of the building and also support renewing the lease. A certificate of occupancy must be on file with the State Fire Marshall before approval for renewal can be granted.

The Structure, Maintenance, and Investigation group and the State Fire Marshall will likely identify items that need to be addressed prior to renewing the lease.

15.04.07.03 CTC Approval and FHWA Approval for Long-Term Developmental Renewals

Because the lease will be with a private entity and will not go to competitive bid, it will be necessary to approach CTC twice during the transaction. The first time will be for permission to negotiate directly with the tenant. A limited DARC review will be required prior to seeking CTC Approval for permission to directly negotiate.

The second time CTC is approached will be to approve the terms of the agreement.

FHWA approval will be necessary if the use has changed and the improvement is on an interstate. If the use has not changed and FHWA approval was originally obtained during the first lease, then FHWA will not need to provide approval for the renewal. If there is no documentation within the file that FHWA approval was obtained during the first lease, then FHWA approval must be sought and obtained again in writing. Approval must be kept in the file permanently.

15.04.07.04 Long-Term Developmental Renewal Agreements

The renewal must be at fair market value with all currently approved legal language. Clauses should include, but are not limited to, Stormwater clauses, indemnification clauses, fire codes, condemnation clauses, use of property for transportation purposes, and insurance clauses. The lease should not be for longer than a 20-year period, not to exceed the functional obsolescence of the building, with CPI adjustments and periodic re-evaluations built into the lease. The security deposit may need to be updated to reflect an increase in rent (if one occurred). Per 15.05.05.03, CPI adjustments should occur annually and periodic lease rate evaluations will preferably occur every 5 years, but at least every 10 years. Periodic adjustments to the lease rate will also trigger increases in the security deposit.

The District Legal Division should review all Long-term Developmental Renewal Agreements.

Under no circumstances will the site be leased for longer than the usable life of the improvements.

15.04.07.05 Encroachment Permit for Renewals

Before a tenant is able to start any construction, even as a result of deficiencies identified by the SFM or Structures, an Encroachment Permit must be obtained. This should be done through the Administrative Permit process for Right of Way Airspace Leases described in Section 500.3.

15.04.08.00 Requirements for Continued Occupancy and/or Use of the Improvements Subject to Long-Term Renewals

Prior to the tenant's continued occupancy or continued use of any of the improvements on the site, the tenant must receive final building approval and a renewed Certificate of Occupancy from the State Fire Marshal should the State Fire Marshal deem it necessary. The Tenant shall provide a copy of the Certificate of Occupancy to the Agent for the tenancy file prior to occupying the property or a written record that State Fire Marshall is not requiring renewal of the Certificate of Occupancy.

All costs incurred with securing the Certificate of Occupancy are the responsibility of the tenant. However, the State Fire Marshal will bill the

Department of Transportation for securing this document. Districts shall expect to bill the tenant for the amount incurred.

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. This will be delivered to the airspace agent on [RW 07-19](#) along with the vicinity and parcel map.

Refer to Right of Way Manual Chapter 7, Appraisal section 7.15.02.00 for more information on this form of valuation.

- **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 an appraiser certified and licensed in the state of California (see Right of Way Manual 7.01.18.00; Criteria for Use of Contracted or Independent Fee Appraisers).

A reevaluation of the current lease rate is required prior to extending the term of a long-term Right of Way Use Agreement, requiring a new airspace appraisal.

Further information can be found in 7.15.03.00 of the appraisal chapter of the Right of Way Manual.

- **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.

Further information can be found in 7.15.04.00 of the appraisal chapter of the Right of Way Manual.

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 or a set annual escalator based on the average CPI of the last 3 years. 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. Rental offsets are reimbursements for expenses paid by the tenant to maintain or clean-up the property for initial use. Rental offsets come out of the property management 058 fund. 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.

The R/D A/S section should discuss a rental offset with their R/W Budget section to determine that there are sufficient funds to cover a rental offset from the Operating Budget. Should insufficient funds be available, a rental adjustment should be explored as a potential solution.

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, unless the site is on an interstate, and no copies need to be submitted to HQ A/S. If the site is within the operating right of way of an interstate, then the site must be submitted to FHWA for review. See 15.06.13.00 to determine what documents should be submitted to obtain approval.

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](#) (internal Caltrans link) 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](#) (internal Caltrans link) 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.

Failure to complete a bid auction and engaging in direct negotiation may result in conflict with CTC regulation and jeopardize the Department's authorization to enter into other agreements without CTC approval.

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 15-04](#)) 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 5 years and over must be approved by the CTC.

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

TABLE 1 PROCESS – LONG-TERM BID LEASE

Step	Responsible Party	Action
1	R/D A/S	Identify site to be leased, either by an inquiry or as part of the marketing plan.
2		If not in inventory, request maps from R/W Engineering.
3		Request DARC conceptual approval of proposed use. Include Permits and State Fire Marshal approvals as appropriate.
4	DARC	Review and approve/disapprove request. Comments to disapprove should accompany the review.
5	R/D A/S	If DARC does not approve, determine the problem and try to resolve any difficulty with the proposal. If the problem cannot be resolved and a short-term use cannot be identified, remove the proposal from the marketing plan and the inventory.
6		If DARC approves the request, 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).
7		If possibly controversial and on the Interstate, send proposal, DARC comments and a site map to HQ A/S for FHWA conceptual approval.
8		Request bid lease valuation if not already scheduled.
9		Send proposed marketing plan and bid package to HQ A/S for review and approval. If the bid package suggests an option period, the proposed Option Agreement should be developed and included in the package. If not, the standard agreement should be included.
10		Sign site, place media ads, and contact neighboring owners/tenants.
11		Mail bid package to interested parties; conduct a site review as needed.

TABLE 1 PROCESS – LONG-TERM BID LEASE (Continued)

Step	Responsible Party	Action
12	R/D A/S	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.
13*	Lessee	Any modifications or changes require prior HQ A/S approval. An Option Agreement requires payment when executed by Optionee.
14		Obtain local agency concurrence and evidence of insurance.
15	R/D A/S	Obtain District Environmental approval of lessee's environmental document.
16		Obtain DARC approval of final construction plans.
17		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. (FHWA approval is required before any execution of agreement.)
18	Lessee	Execute Right of Way Use Agreement and pay lease rate per terms of the Agreement.
19	R/D A/S	Submit Agreement to HQ Program Manager or delegated representative for approval if Developmental Right of Way Use Agreement.
20	HQ A/S Delegated Rep	Developmental lease only: Sign Option and/or Agreement and return to Airspace.
21	Lessee	After final reviews/approvals are obtained, apply for an encroachment permit to construct.
22	R/D A/S	Monitor lessee's move onto the site, including any construction, and begin property management activities.

*Note – required for development purposes only.

15.06.03.01 Offer and Proposal

An airspace site 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, which may conflict with Caltrans Stormwater Permit. 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 2 PROCESS – LONG-TERM DIRECTLY NEGOTIATED
RIGHT OF WAY USE AGREEMENT**

Step	Responsible Party	Action
1-7	Various	See Steps for Long Term Bid Right of Way Use Agreement
8	R/D A/S	Send "Consent to Directly Negotiate from the CTC" (see Exhibit 15-EX-05 [internal Caltrans link]) to HQ A/S.
9	HQ A/S	Submit the Request to Directly Negotiate to CTC for approval.
10	R/D A/S	If approved by the CTC, R/D A/S may provide the proposed lessee with a Letter of Understanding (Exhibit 15-EX-04 [internal Caltrans link]) detailing the anticipated Right of Way Use Agreement, with a copy to HQ A/S.
11		Request an appraisal report for the proposed use, either through the Appraisal Branch or from the proposed lessee. HQ must approve the appraisal report.
12		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. <i>No term is independent of another, so Airspace should negotiate the best terms for the Department, with the understanding that a favorable position for the Department in one area may require a less favorable term elsewhere.</i>
13		Secure preliminary plans and submit for preliminary DARC approval.
14		Send to HQ A/S to obtain FHWA approval of final agreement, construction plans (including maps), NEPA document, and air quality study if required for the project on the Interstate. (FHWA approval is required prior to any execution of agreement.)
15		Request "CTC Approval of Terms and Conditions" by sending a memorandum to HQ A/S.

**TABLE 2 PROCESS – LONG-TERM DIRECTLY NEGOTIATED
RIGHT OF WAY USE AGREEMENT (Continued)**

Step	Responsible Party	Action
16	HQ A/S	Request “CTC Approval of Terms and Conditions” at the next monthly meeting.
17	R/D A/S	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).

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 (Exhibit 15-EX-04) 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](#) (internal Caltrans link) 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 for the State of California. Indirect terms, such as a general benefit to the local community is difficult to quantify, but should be included nonetheless.

Each proposed lessee must pay a minimum 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. The Right of Way Manager is responsible for determining the appropriate processing fee for complex parcels.

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](#) [internal Caltrans link]) 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 a minimum 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.

Although no maximum term is set by CTC Resolution or statute for leasing to a public agency at fair market value or a public transportation agency at 80% of fair market value, the negotiated term should be a maximum of 20 years to ensure that clauses regarding liability and safety are adequately updated. If the public agency requires a term longer than 20 years, the District would need to have sufficient documentation to justify the longer term.

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, and month-to-month rental leases with nonprofit organizations on park and ride lots 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. Fees charged should be per the Right of Way Use Agreement or, if not in the contract, as follows:

- Assignment: \$2,500
- Renewal: \$0
- Change in use: Consistent with Right of Way Use Agreement type
- Encumbrance: \$1,000
- Estoppel: \$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](#) (internal Caltrans link) 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 15-06 or RW 15-07](#) [internal Caltrans link]) or Consent to Sublease ([Form RW 15-08](#) [internal Caltrans link]) 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 is required only if on the Interstate or is leased at less than fair market value on federally funded routes. FHWA concurrence is not required for assignment when use and agreement terms remain the same.

Public Agencies are barred from subleasing or assigning lease. Public Agencies are granted leases at preferable terms and should not benefit from this arrangement.

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 may be required. All amendments to an executed Right of Way Use Agreement require FHWA approval when on the Interstate or at less than FMV on federally funded routes. 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 R/D A/S. R/D A/S will contact 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 with controversial uses.

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 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.

15.06.11.04 Renewal DARC

Long-term leases, wireless site license agreements, and other renewals will go through a Renewal DARC. Renewal DARCs are to check-in with the other DARC members to verify that the proposed timeline for the renewal will not interfere with Caltrans plans or the transportation system. Typically, new improvements are not being added to the site, which allows for a much quicker review. If no new improvements are being added, then no plans need to be provided for the DARC to occur, although DARC members may ask for the as-builts for the improvements currently on site.

Should the lessee desire to add new improvements or renovate the items on-site, this will require following the normal DARC process of a Conceptual DARC, Preliminary DARC, and Final DARC.

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 approval memo must state that 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 for Use and PIF

FHWA approval of airspace Right of Way Use Agreements is required only when the airspace site is located on an Interstate or on non-federal routes that have federal funding when the site is being leased at less than FMV. All federal requirements in [23 CFR 710](#) shall be followed.

All FHWA Approvals must be kept in the file for duration of that particular use.

FHWA APPROVAL OF AIRSPACE SITES ON THE INTERSTATE ARE REQUIRED FOR:

- Conceptual use of an airspace site not in the current inventory for proposed controversial uses.
- A change in use (whether new Right of Way Use Agreement, assignment, amendment, etc.).
- Preliminary and final approval of the new proposed use.
- 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.

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](#).

15.06.13.01 FHWA Approval for Use

When a new use is proposed for a site on a federal route, a letter requesting approval of use must be submitted to FHWA.

Conceptual approval requires a narrative describing the use and a location map. This is sent only if the proposed use is controversial.

Preliminary and final approval of proposed use must include 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.

15.06.13.02 FHWA Approval for Less Than FMV (PIF)

When the site is on a federal route, or the non-federal route has federal funding, and is being leased at less than FMV, then a Public Interest Finding (PIF) must be submitted to FHWA for approval. In addition, maps of the proposed lease area, and the NEPA document must be sent to FHWA for approval.

15.06.13.03 Final FHWA Approval Process

FHWA's final approval, and final execution of the Right of Way Use Agreement post-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 (if applicable), the proposed use and terms, the final construction plans, and a PIF if the property will be leased at less than FMV. A proposed Right of Way Use Agreement may be signed by the proposed tenant, but shall not include signatures from Caltrans until after FHWA approval.

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

15.06.13.04 Park and Ride Lot Development

FHWA released a letter on March 19, 2021 titled [Alternative Uses of the Highway](#) that focuses on shelter placement within the Right of Way, but also includes FHWA expectations in regards to development of alternative uses within Park and Rides. Within the letter, development within Park and Rides are allowable under certain circumstances as described below.

When any kind of development is being considered on a Park and Ride, the District should engage HQ early to verify that the proposed development is likely to be approved by FHWA. It may be necessary to obtain a Conceptual Approval by FHWA.

Districts should refer to the letter released on March 19, 2021 titled [Alternative Uses of the Highway](#) or the most recently released letter or policy regarding Park and Rides.

Language from the letter is as follows:

There are three statutory provisions in [Title 23, United States Code](#), that states use to construct and operate Park and Ride lots: [23 U.S.C. 137 \(Fringe and corridor parking facilities\)](#), [142 \(Public transportation\)](#), and [149 \(Congestion mitigation and air quality improvement \[CMAQ\] program\)](#).

Those statutes authorize the use of Federal-aid funds for those activities and impose certain restrictions on the use of the lots. When considering potential use of a Park and Ride lot for purposes not expressly allowed under [23 U.S.C. 137](#) or [142](#), FHWA evaluates whether the original purpose of the lot will be adversely affected. For example, if CMAQ program funds were used to construct the Park and Ride lot, any proposed use that would result in a reduction of the congestion or air quality benefits stemming from the lot, would not be an acceptable alternative use of the lot. The FHWA Division Office will make this determination for any proposal involving Park and Ride lots that were constructed pursuant to [23 U.S.C. 137](#) or [142](#), and those lots involving the use of CMAQ funding ([23 U.S.C. 149](#)).

When making this determination, the FHWA Division Office will consider:

- 1) the past, current, and foreseeable future parking and transit-related occupancy rates of the Park and Ride lot;
- 2) the number of parking spaces that would remain if the proposed use will result in any temporary reduction in parking capacity;
- 3) impacts on any transit-related activities on the lot;
- 4) the impacts on safety and operation of the Park and Ride lot; and
- 5) any additional State and local commitments related to the original use of funds, including those commitments made through the National Environmental Policy Act (NEPA) review.

If the FHWA Division Office determines that the proposed alternative use of the Park and Ride lot will not conflict or otherwise adversely impact the transportation functions at the site, the alternative use may be approved provided that adequate measures are in place to protect the continued operation, maintenance, and safety of the facility.

In addition, Park and Ride lots in the Interstate ROW are subject to [23 U.S.C. 111\(a\)](#) provisions prohibiting States from permitting automotive service stations or other commercial establishments for serving motor vehicle users.

15.06.13.05 NEPA Delegation to Caltrans

On May 24, 2021, the Federal Highway Administration (FHWA) and Caltrans entered into a Programmatic Agreement for Categorical Exclusions (CE) covering actions that are subject to the National Environmental Policy Act (NEPA) and are classified as non-highway projects, such as Right of Way Use Agreements under the Airspace and Encroachment Permit Offices. This agreement includes NEPA actions for non-highway projects and will be in effect until the Division of Environmental Analysis can address this issue as part of the 326 Memorandum of Understanding (MOU) renewal process, which is currently underway. It is anticipated that this agreement will be in effect until the 326 MOU is renewed in April 2022.

When submitting packets for FHWA approval for use and/or public interest findings, the expectation is that the packet include the Caltrans' approved NEPA document.

The only exceptions are when "significant impacts" or "unusual circumstances" might occur from the use of the airspace. In those cases, FHWA may still be the lead for NEPA. FHWA regulation [23 CFR 771.117\(b\)](#) provides that any action which normally would be classified as a Categorical Exclusion (CE) but could involve unusual circumstances requires Caltrans to conduct appropriate environmental studies to determine whether a CE is proper. Unusual circumstances include actions that involve:

1. Significant environmental impacts;
2. Substantial controversy on environmental grounds;
3. Significant impact to properties protected under 4(f) of the USDOT Act or section 106 National Historic Preservation Act;
4. Inconsistencies with any Federal, State or local law relating to environmental impacts.

A determination of significant impact or unusual circumstance should be made by the District Environmental team in conjunction with the District Airspace team, with the Environmental team being lead.

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. Like all other environmental documents, the air quality support needs to be provided by the lessee. 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.

15.06.15.00 Requirements for Occupancy and/or Use of the Improvements

Prior to the tenant occupying or using any of the improvements on the site, the tenant must receive final building approval and a Certificate of Occupancy from the State Fire Marshal. The Tenant shall provide a copy of the Certificate of Occupancy to the Agent for the tenancy file prior to occupying the property.

All costs incurred with securing the Certificate of Occupancy are the responsibility of the tenant. However, the State Fire Marshal will bill the Department of Transportation for securing this document. Districts shall expect to bill the tenant for the amount incurred.

15.07.00.00 – INSPECTION AND USE REQUIREMENTS

15.07.01.00 Inspections

Region/District Airspace (R/D A/S) is responsible for security and maintenance of all leased airspace sites, so the R/D A/S agent 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 by using [Exhibits 15-EX-15 or 15-EX-16](#) (internal Caltrans link) and 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, unless otherwise directed by the agreement, 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 to vacate. Violations requiring a 30-day notice shall be reported to HQ A/S. Further information on defaults can be found in Section 15.07.11.00.

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](#) [internal Caltrans link]). 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 because Airspace is not allotted x058 funds. R/D A/S should also consider removing them from the Airspace inventory and move them back into maintenance control.

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. The SMI Guidelines are [Exhibit 15-EX-11](#).

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 structure 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 when requested through a formal letter.

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 Fire Marshal inspection. The resident manager shall be required to provide immediate access, or per the time period required by the lease, to individual storage units. 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**

A determination should be made on the kind of Right of Way Use Agreement that needs to be implemented for a lease within operating right of way. Some uses may go through the Encroachment Permit Office only. Other uses will require both a Right of Way Use Agreement through R/D A/S in addition to an Encroachment Permit through the Permits Office. Lastly, there will be uses that only require a Right of Way Airspace Agreement.

Uses on access-controlled right of way of a duration of 30 days or less may be processed solely by the Encroachment Permits Office unless the use is of a recurring nature (e.g. pumpkin farms or Christmas tree lots that occur annually). A further breakdown of the different uses covered by the Encroachment Permit Office versus Right of Way can be found by looking at the Right of Way Use Agreement [Exhibit 15-EX-17](#).

A Right of Way Use Agreement through R/D A/S and an Encroachment permit must be obtained 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.

An encroachment permit should not be issued prior to the DARC approval, FHWA approval, and execution of the lease. Construction must not occur prior to obtaining the Encroachment 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 traveled way (part of the site license agreement).
- Access from the traveled way 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 approval is required if a design exception is required and the location is on an interstate corridor.

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.

To make a determination on what requires a Right of Way Use Agreement, please refer to [Exhibit 15-EX-17](#) which delineates what uses require a Right of Way Use Agreement through the R/D A/S instead of only an encroachment permit through the Encroachment Permits Office.

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. R/D A/S staff 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.

Prior to a tenant occupying an Airspace property improved with a structure, the State Fire Marshal must perform an inspection of the property and provide a Certificate of Occupancy.

All costs incurred with securing the Certificate of Occupancy are the responsibility of the tenant. However, the State Fire Marshal will bill the Department of Transportation for securing this document. Districts shall expect to bill the tenant for the amount incurred.

For SFM Inspections for temporary emergency shelters, please see section 15.04.01.12 under Site Identification for Statute Directed Use-Emergency Shelter and Feeding Program.

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 annual inspections and any new sites that will be leased requiring initial and periodic inspection.

The SFM will conduct internal and external inspections of all buildings, and all other airspace inventory based on their determination. The SFM will establish a schedule based on the risk to the State depending on the airspace use and whether the site is developed or not.

The SFM will also inspect sites by request as well. See Section 15.07.08.04.

The SFM inspection is independent of the inspection that the R/D A/S agents must perform. For the inspections done by R/D A/S agents, please refer to Section 15.07.00.00, *Inspection and Use Requirements*.

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

[Section 13107 of the Health and Safety Code](#) requires that all fires or explosions in or on all State-owned properties be investigated by the State Fire Marshal. All fires and explosions must be reported to the State Fire Marshal immediately following the knowledge of a fire. The number to contact the State Fire Marshal Duty Officer is (916) 323-7390. The Duty Officer will answer this number on a 24/7 basis. You need to have the following information:

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

Rebuilding or repairing damage caused by the fire may begin without delay whether or not an investigation is made.

Note: Local Agencies do not report to the State Fire Marshal. Local Agencies report to their local fire jurisdiction for investigation.

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 for Hazardous Material and Waste

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 Hazardous Waste Coordinator (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 of Hazardous Waste Sites

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 machine shops and light and heavy industrial manufacturing. Proposals to use airspace sites for these uses should not be allowed in most cases.

15.07.09.05 Lease Clause for Hazardous Materials and Waste

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 (e.g. a batch plant) 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](#) [internal Caltrans link]), 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.

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

15.07.11.00 Defaults

The lessee is considered in default if any of the Right of Way Use Agreement provisions are violated, and the tenant has been properly noticed with an opportunity to cure, per the terms of their lease. 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 as specified by the agreement. To ensure this, R/D A/S should issue formal written notice to make corrections within a specific time frame (usually 10 day, 30 days, or, if it is a safety issue, 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.

15.07.12.00 Vacated Delinquent Accounts

When a delinquent tenant vacates and does not leave a forwarding address, the Region/District has 15 calendar days to conduct an investigation to locate the former tenant before further collection efforts proceed. The Region/District/Local Agency does not, however, have to wait until the end of the 15 days to submit the account to the Division of Accounting, R/W Accounts Receivable (or appropriate local agency accounting division). The following are sources of information that may lead to the former tenant's whereabouts:

- Certified mail with return receipt requested sent to the tenant's last address.
- Utility companies that show transfer of service.
- Banks, places of employment, or other references that may be listed on the tenant's rental application.
- Labor union affiliations, depending upon the tenant's profession.
- Department of Motor Vehicles, using driver's license number, California ID number, or car license number from the application.

As soon as a delinquent tenant vacates, the Region/District should process the vacated tenancy through the RWPM Adjustment Screen. Within 15 days, the district should refer the account to Accounting for write-off or for referral to the collection agency for further collection efforts.

15.07.12.01 Amounts \$250 or Less

If the delinquent amount is \$250 or less, the Region/District forwards a completed [Form RW 11-25, Authorization to Write Off or Adjust Accounts Receivable Bill](#) (internal Caltrans link), to Accounting and requests write-off of the account through the RWPM Adjustment Screen. The write-off request should include a brief justification (e.g., collection efforts are not cost effective based on Board of Control guidelines). Accounting will immediately write off the account. If the delinquent amount is over \$100 and the delinquent tenant's Social Security Number is known, Accounting will submit the account to the Franchise Tax Board (FTB) for two successive years only. However, the Intercept Program is for intercepting refunds of Personal Income Tax accounts only and cannot be used for corporations or partnerships. If all or a portion of the delinquent amount is collected, either through the FTB Intercept Program or from the vacated tenant, Accounting will reestablish the receivable account.

15.07.12.02 Amounts Greater Than \$250

If the delinquent amount is greater than \$250, the Region/District prepares an [Exhibit 15-EX-18, Collection Agency Transmittal](#) (internal Caltrans link), and forwards it to Accounting with the required documentation listed below. The vacancy date and amount due will be of critical importance if the collection agency pursues legal action against the debtor, and the Region/District is responsible for ensuring the accuracy of this information. In addition, the Region/District must enter the date the collection package is forwarded to Accounting on the Delinquent Tenancy Screen (TPR521M) in RWPM.

- Copy of first and last pages of rental agreement
- Copy of rental application
- New address documentation
- Copies of diary notes regarding efforts to collect
- Copy of judgment
- Copy of driver's license or California identification card

Accounting will verify the amount owed and forward the collection package to the collection agency under contract to the Department. In addition, Accounting will submit accounts with Social Security Numbers to FTB under terms of its Intercept Program.

15.07.12.03 Collection Agency Procedures

The collection agency receives 3.5% commission on whatever they collect. If the collection agency collects 100% of the debt, the Department receives 96.5%. It is in the contract that the collection agency can settle the debt with the debtor at 80%. Any percentage lower than that needs to be approved by the Department's Accounts Receivable/Management. The collection agency will still receive 3.5% of the amount collected based upon the settlement.

Once an account is referred to the collection agency, Accounting takes on all responsibility for the account and makes all further contact with the collection agency. Any calls or letters from the delinquent tenant should be referred to the collection agency for response. **Under no circumstances should the Region/District enter into a repayment plan with the delinquent tenant once the account has been referred to the collection agency.**

In accordance with terms of the contract, the collection agency will submit a monthly report to Accounting showing the status of all accounts referred to

them for collection. Accounting will forward a copy of the report to HQ R/W to be shared with the Regions/Districts.

Under terms agreed to among the collection agency, Accounting and HQ R/W, Accounting will write off accounts that are deemed to be uncollectable. If all or a portion of the delinquent amount is subsequently collected, Accounting will reestablish the receivable account.

A collection packet should be submitted within 15 days of vacancy. **Do not delay in submitting your collections packet to accounting.** The State only has four years to collect payments.

On rare occasions, a Region/District may engage in a payment plan with a vacating tenant that will prevent a file from going to collections. As long as the tenant is paying according to the plan, this is permissible. However, if the tenant begins to miss payments, immediately send to collections. **Do not keep renegotiating the terms of a payment plan.** Always keep in mind of the statute of limitations to collect funds is 4 years after vacate date.

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 (see 15.07.00.00). 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 until such time as a new database system is implemented. When the new system is implemented, all Airspace Right of Way Agents shall be proficient in the new system.

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.

Integrated Right of Way System (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. Once a new database system is adopted, both IRWS and RWPMS will be retired.

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.

15.08.06.00 Marketing Plan

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

The 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 direct 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 any new procedures in place. HQ Program Managers 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 Materials

The following reference materials can be found on the Caltrans intranet site and can be helpful in leasing airspace property:

- 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](#), [Streets and Highways Code](#), 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) RWPM inventory.

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.

Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	RW Manual Section	Responsibility	Delegation	Lowest Level of Sub-Delegation
CTC G-02-04	15.02.01.02	Establish Inventory (Subject to FHWA Approval)	District	Senior RW Agent
	15.08.04.00	Maintain Inventory	District	Senior RW Agent
	15.08.04.00	Deletions from Inventory	District	Senior RW Agent
	15.02.02.01	Approval of Internal Uses of Airspace by Department	District	RW Manager
	15.03.03.00	Approval of Annual Marketing Plan	District	Supervising RW Agent
CTC G-02-14 (internal Caltrans link)	15.03.04.00	Execution of Standard Broker's Commission Agreements	District	RW Manager
CTC G-02-14 (internal Caltrans link)	15.06.05.02	Letters of Understanding	District	RW Manager
CTC G-02-14 2.3 (internal Caltrans link)	15.04.01.07	Three-Year Directly Negotiated Non-Development Agreement	District	Supervising RW Agent
23 CFR §710	15.06.01.00	Approval/Execution of Standard Rental Agreements	District	Senior RW Agent

Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	RW Manual Section	Responsibility	Delegation	Lowest Level of Sub-Delegation
CTC G-02-14 (internal Caltrans link) 23 CFR §710	15.06.02.00	Approval/Execution of Standard Short-Term Bid Leases (5 Years)	District	Senior RW Agent
CTC G-02-14 (internal Caltrans link) 23 CFR §710	15.06.03.00 15.06.04.00	Approval/Execution of Standard Long-Term Airspace Ground Leases - Nonbuilding	District	Supervising RW Agent
	15.04.04.00	Approval of Nonstandard Leases and Agreements	HQ	Supervising RW Agent
	15.06.10.01	Estoppel Certificate	District	Supervising RW Agent
	15.04.01.08	Execution of Wireless Telecommunication Master License Agreements	HQ	Supervising RW Agent
CTC G-02-04	15.04.01.04 15.06.04.00	Approval/Execution of Any Long-Term Building Development Leases	HQ	Supervising RW Agent
CTC G-19-43 GOV §14013	15.04.01.05 15.06.08.00	Approval of Standard Park (Marler-Johnson) Leases	District	Supervising RW Agent
	15.05.07.00	Approval of Seismic Retrofit Rental Adjustments	District	Supervising RW Agent
	15.06.02.02	Reducing the Minimum Bid Below 75% of Bid Valuation, the Previous Minimum Bid, or the Previous Lease Rate	HQ	Supervising RW Agent
	15.06.10.04	Approval of Subleases and Assignments	District	Supervising RW Agent

Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	RW Manual Section	Responsibility	Delegation	Lowest Level of Sub-Delegation
	15.06.10.05	Approval of Amendments to Terms and Conditions of Leases After CTC Approval	HQ	Supervising RW Agent
23 CFR §271	15.04.01.03 15.04.01.04 15.06.13.00	Requests for Approval From the FHWA, CTC, and Other External Agencies	HQ	Supervising RW Agent
	15.07.09.00	Approval of a Lease or Renewal of a Site Confirmed to Contain Hazardous Waste or Materials with Prior Approval of the DARC and the District Hazardous Waste Coordinator	HQ	Supervising RW Agent
CTC G-02-14 (internal Caltrans link)	15.04.01.08 15.06.07.00	Execution of Wireless Site License Agreement (SLA)	District	Supervising RW Agent
	15.07.04.00	Approval of the PSR Addressing Safety Issues of Developing Underneath a Highway Structure	HQ	Supervising RW Agent

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EXHIBITS

<u>Exhibit No.</u>	<u>Title</u>
15-EX-01	District Airspace Review Committee (DARC) Checklist (for internal Caltrans use)
15-EX-02	Bid Package (for internal Caltrans use)
15-EX-03	Bid Instructions
15-EX-04	Letter of Understanding (for internal Caltrans use)
15-EX-05	Request for Consent to Directly Negotiate (AAC) (for internal Caltrans use)
15-EX-06	Request for Approval of Terms and Conditions (CTC) (for internal Caltrans use)
15-EX-07	District Airspace Review Committee (DARC) Approval Memo (for internal Caltrans use)
15-EX-08	Estoppel Certificate (for internal Caltrans use)
15-EX-09	Temporary Ground Anchor (Tieback) Encroachments (Interdivisional Memo)
15-EX-10	Tower Cranes Encroaching Over State Highway Right-of-Way (Interdivisional Memo)
15-EX-11	Column Protection Systems
15-EX-12	SM&I Guidelines
15-EX-13	23 CFR 713
15-EX-14	Storm Water Inspection Report (for internal Caltrans use)
15-EX-15	Developmental Inspection Report (for internal Caltrans use)
15-EX-16	Non-Developmental Inspection Report (for internal Caltrans use)
15-EX-17	FHWA/Caltrans Approval Matrix – Right of Way Use Agreement
15-EX-18	Collection Agency Transmittal (for internal Caltrans use)
15-EX-19	Airspace Lease Application

Exhibits are located online:

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

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FORMS

<u>Form No.</u>	<u>Title</u>
RW 15-01	District Annual Marketing Plan for Fiscal Years (for internal Caltrans use)
RW 15-02	Appraisal Summary (for internal Caltrans use)
RW 15-03	Insurance Information
RW 15-04	Lease Renewal
RW 15-05	District Checklist for Telecommunications Proposals (for internal Caltrans use)
RW 15-06	Consent of Assignment (No Relief)
RW 15-07	Consent of Assignment (Relief)
RW 15-08	Consent to Sublease (for internal Caltrans use)
RW 15-09	Transmittal to HQ A/S (for internal Caltrans use)

Forms are located online:

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

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