

# 15.00.00.00 – AIRSPACE

# CHAPTER 15

## AIRSPACE TABLE OF CONTENTS

<b>15.01.00.00</b>	<b>GENERAL</b>
01.00	Function
01.01	Definition
01.02	Airspace Policy
01.03	Statutory Provisions Related to Leased Rights of Way
02.00	Responsibilities of Headquarters Airspace
02.01	Annual Reports
02.02	HQ Liaison Region/District Visits
03.00	Responsibilities of Region and District Airspace Development Units
04.00	Region/District Airspace Review
<b>15.02.00.00</b>	<b>INVENTORY OF AIRSPACE LEASES AND INTERNAL USES</b>
01.00	Inventory Requirements
01.01	Identification Number
01.02	New Sites in Inventory
01.03	Mapping
02.00	Department Use of Airspace Sites
02.01	Future Transportation Project Use
02.02	Department Uses for Non-Project Purposes
02.03	Existing Internal Uses and Potential Airspace Right of Way Use Agreement
<b>15.03.00.00</b>	<b>PLANNING AND MARKETING</b>
01.00	General
02.00	Planning
03.00	Marketing
03.01	Advertising
03.02	Signs for Advertising Site Prior to Auction
03.03	Promotion
03.04	Adjoining Owners

(REV 7/2024)

**15.03.00.00 PLANNING AND MARKETING (Continued)**

- 04.00 Broker Commissions
- 05.00 Discriminatory Rezoning

**15.04.00.00 AIRSPACE RIGHT OF WAY USE AGREEMENTS**

- 01.00 Types of Right of Way Use Agreements
  - 01.01 Rental Agreement
  - 01.02 Parking Agreement
  - 01.03 Open Storage
  - 01.04 Non-Developmental Agreement
  - 01.05 Developmental Agreement
  - 01.06 Marler Johnson Agreement
  - 01.07 Park and Ride Agreement
  - 01.08 Three-Year Directly Negotiated Nondevelopment Agreement
  - 01.09 Telecommunications Licenses
  - 01.10 Public Agency Right of Way Use Agreements
  - 01.11 Filming on State Right of Way
  - 01.12 Statute Directed Use – Emergency Shelter and Feeding Program
  - 01.13 Site Identification for Statute Directed Use – Emergency Shelter and Feeding Program
  - 01.14 Rental Rate for Statute Directed Use – Emergency Shelter and Feeding Program
  - 01.15 FHWA Approval for Statute Directed Use – Emergency Shelter and Feeding Program
  - 01.16 Park and Ride Lots as Shelter Sites
  - 01.17 Rental Agreement for Statute Directed Use – Emergency Shelter and Feeding Program
  - 01.18 Term for Statute Directed Use – Emergency Shelter and Feeding Program
  - 01.19 Construction Staging Leases for Caltrans Projects
  - 01.20 Batch Plants
  - 01.21 Tie Back and Tower Crane Agreements
  - 01.22 Parklets
  - 01.23 Pocket Parks
- 02.00 Oil and Gas Leases
- 03.00 Utility Companies
- 04.00 Right of Way Use Agreement
  - 04.01 Terms and Conditions
  - 04.02 Insurance Requirements
- 05.00 Option to Lease and Processes
  - 05.01 Option Agreements

(REV 7/2024)

## **15.04.00.00 AIRSPACE RIGHT OF WAY USE AGREEMENTS (Continued)**

- 05.02 Option Payments
- 05.03 Exercising Option Rights
- 06.00 Exercising Option to Extend an Existing Lease
- 07.00 Renewals of Long-Term Developmental Leases
  - 07.01 Current Lease Terms and Current Standing of the Tenant
  - 07.02 DARC and External Reviews for Long-Term Renewals
  - 07.03 CTC Approval and FHWA Approval for Long-Term Developmental Renewals
  - 07.04 Long-Term Developmental Renewal Agreements
  - 07.05 Encroachment Permit for Renewals
  - 08.00 Requirements for Continued Occupancy and/or Use of the Improvements Subject to Long-Term Renewals

## **15.05.00.00 LEASE RATES AND ADJUSTMENTS**

- 01.00 Valuation of Lease Rate
  - 01.01 Lease Rate Appraisal
  - 01.02 Percentage Leases
- 02.00 Plottage Value
- 03.00 Rate of Return
- 04.00 Scheduling Valuation Requests
- 05.00 Lease Payments
  - 05.01 Minimum Lease Rate
  - 05.02 Minimum Security Deposit
  - 05.03 Periodic Adjustments
- 06.00 Rental Offsets
- 07.00 Seismic Retrofit Adjustments

## **15.06.00.00 AIRSPACE LEASES – PROCESSING**

- 01.00 Application & Credit Checks
  - 01.01 Rental Agreement (Private Entities)
- 02.00 Short-Term Leases (Private Entities) – Competitive Bid
  - 02.01 Bid Auction
  - 02.02 Minimum Bids
  - 02.03 Bid Deposit and Payment
  - 02.04 Renewals
- 03.00 Long-Term Leases – Competitive Bid
  - 03.01 Offer and Proposal
- 04.00 Long-Term Leases – Directly Negotiated
- 05.00 CTC Approval
  - 05.01 CTC Consent to Directly Negotiate

(REV 7/2024)

**15.06.00.00 AIRSPACE LEASES – PROCESSING (Continued)**

- 05.02 Letter of Understanding
- 05.03 CTC Approval of Terms and Conditions
- 06.00 Public Agency Leases
- 07.00 Processing Other Right of Way Use Agreements
- 08.00 Marler-Johnson Act Park Lease
- 09.00 Toll Bridge Authority Lease
- 10.00 Subsequent Right of Way Use Agreement Documents
- 10.01 Estoppel Certificate
- 10.02 Encumbrance
- 10.03 Memorandum of Lease
- 10.04 Sublease and Assignment
- 10.05 Amendments
- 11.00 Reviews and Approvals
- 11.01 Conceptual Approval
- 11.02 Preliminary Approval
- 11.03 Final Approval
- 11.04 Renewal DARC
- 12.00 Environmental Status
- 12.01 Aerially Deposited Lead
- 13.00 FHWA Approval for Use and PIF
- 13.01 FHWA Approval for Use
- 13.02 FHWA Approval for Less Than FMV (PIF)
- 13.03 Final FHWA Approval Process
- 13.04 Park and Ride Lot Development
- 13.05 NEPA Delegation to Caltrans
- 14.00 Air Quality
- 15.00 Requirements for Occupancy and/or Use of the Improvements

**15.07.00.00 INSPECTION AND USE REQUIREMENTS**

- 01.00 Inspections
- 01.01 Notices
- 01.02 Inspections of Vacant Sites
- 02.00 Column Protection
- 03.00 Backflushing
- 04.00 Highway Structures
- 05.00 Mini-Warehouse Inspections
- 06.00 Stormwater Inspections
- 07.00 Encroachment Permits
- 07.01 Encroachments by Exception
- 07.02 Permits for Telecommunications Licenses
- 07.03 Permits Office

(REV 7/2024)

**15.07.00.00 INSPECTION AND USE REQUIREMENTS  
(Continued)**

- 07.04 Monitoring Construction
- 08.00 State Fire Marshal Inspections
- 08.01 SFM Inspection Responsibilities
- 08.02 Conducting Inspections
- 08.03 Inspection Reports
- 08.04 Special Requests
- 08.05 Reporting of Fire
- 09.00 Hazardous Materials and Waste
- 09.01 Inspections for Hazardous Material and Waste
- 09.02 Hazardous Waste
- 09.03 Prohibited Items within Airspace Sites
- 09.04 Inventory of Hazardous Waste Sites
- 09.05 Potential Surface Contamination
- 09.06 Lease Clause for Hazardous Materials and Waste
- 10.00 Storm Water Management
- 11.00 Defaults
- 11.01 Unlawful Detainers
- 12.00 Vacated Delinquent Accounts
- 12.01 Amounts \$250 or Less
- 12.02 Amounts Greater Than \$250
- 12.03 Collection Agency Procedures

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

- 01.00 General
- 02.00 Property Management
- 03.00 Right of Way Use Agreement File
- 04.00 Right of Way Property Management System
- 05.00 Income
- 06.00 Marketing Plan
- 07.00 Program Efficiency
- 08.00 Policy and Procedural Manuals
- 09.00 Training and Development
- 10.00 Reference Library

**15.09.00.00 DELEGATIONS**

- 01.00 Delegations of Authority

(REV 7/2024)

# 15.01.00.00 – GENERAL

## **15.01.01.00    Function**

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

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

## **15.01.01.01    Definition**

The definition of “Airspace” within [23 CFR 710.105 \(b\)](#) was deleted per the [August 23, 2016 Federal Register](#). The term “Airspace” was replaced by the all-encompassing term “Right of Way.” “Right of Way” is defined as “real property and rights therein obtained for the construction, operation, maintenance, or mitigation of a transportation or related facility under Title 23, United States Code (USC).” There are different types of right of way use agreement documents, such as Airspace Leases, JUMA, Encroachment Permits, Consent Letters, or other agreements within the right of way. For purposes of this section and California State Statutes, Airspace is analogous to Operating Right of Way being the area between the access control lines, including area above and below, utilized for the purpose and protection of public travel. An “airspace site” is a site within the right of way that is capable of development in a manner that ensures adequate protection to safety and adequacy of highway facilities and to abutting or adjacent land uses. Typically, a valid secondary use within the Right of Way Airspace Program will

not be within the traveled way or its immediate shoulder. An airspace site may consist of:

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

## **15.01.01.02     Airspace Policy**

[Streets and Highways Code \(SHC\) 104.12](#), "Leasing of Airspace," authorizes the Department of Transportation (Department) to lease airspace above, below and adjacent to State highways to public agencies and private entities in accordance with prescribed CTC procedures.

Airspace leasing activities by a Right of Way Use Agreement are conducted pursuant to CTC Resolutions, [23 CFR 710.403](#), [23 CFR 710.405](#), and policy and procedures established in this chapter. While this chapter may refer to a "lease agreement" (as this continues to be described in history, statute and CTC resolution), it is noted that there is no "leasehold interest" being conveyed. All agreements must be revocable, should the Department of Transportation need the property. ROW Use Agreement means real property interests, and allocate property interests, defined through an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic (see also [23 CFR 1.23](#)). These rights may be granted only for a specified period of time because the real property interest may be needed in the future for highway purposes or other purposes eligible for funding under [Title 23](#).

In general, the Airspace Program is limited to access controlled freeways and highways (interstates and/or federally funded transportation facilities). However, in certain, rare circumstances, Right of Way Use Agreements can be utilized on non-access controlled conventional highways under the same guidelines. (For example, a permanent sign erected within the right of way of a conventional highway by an adjacent owner or a scaffolding lease on the State sidewalk for temporary construction.)



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

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

See CTC Resolutions [G-02-14](#) (internal Caltrans link) and [G-19-43](#).

### **15.01.01.03     Statutory Provisions Related to Leased Rights of Way**

- [Streets and Highways Code 225.5\(a\)](#): no person shall display, sell, offer for sale, or otherwise vend or attempt to vend any merchandise, foodstuff, or service within any vista point or safety roadside rest area. However, [SHC Section 220.5\(a\)](#) allows vending machines in safety roadside rest areas.
- [Vehicle Code Section 22518](#):
  - (a) Fringe and transportation corridor parking facilities constructed, maintained, or operated by the Department of Transportation pursuant to Section 146.5 of the Streets and Highways Code shall be used only by persons using a bicycle or public transit, or engaged in ridesharing, including, but not limited to, carpools or vanpools. No person shall park any vehicle 30 feet or more in length or engage in loitering or camping, or vending or any other commercial activity, on any fringe or transportation corridor parking facility.
  - (b) This section does not apply to alternatively fueled infrastructure programs in park-and-ride lots owned and operated by the Department of Transportation.
- [Public Resources Code 25722.9\(b\)](#) specifically authorizes the Department to develop incentive programs for EV charging stations within park and ride lots of 50 spaces or more.
- [23 USC 111](#) specifically allows the Department to use airspace on interstate for non-transportation uses, so long as it meets all the necessary requirements of this section.
- [23 USC 137\(f\)\(2\)](#) specifically allows EV charging stations within fringe or corridor parking facilities on the Interstate. Any fees charged for the use of

any such facility in connection with the purpose of this subsection shall not be in excess of the amount required for operation and maintenance, including compensation to any person for operating the facility.

## **15.01.02.00    Responsibilities of Headquarters Airspace**

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

- Developing all policies and procedures governing all aspects of airspace leasing and management. Note: Encroachment Permits Office handles all proposals to use property within the operating right of way of a conventional highway with the exception of Department owned property adjacent to a conventional highway (non-operating right of way e.g., maintenance station, park and ride lots). Uses within operating right of way of a duration of 30 days or less may also be processed by the Encroachment Permits office unless the use is of a recurring nature. 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](#).
- Establishing delegation levels for review and approval of airspace uses and Right of Way Use Agreements (previously known as lease agreements).
- Review the Airspace Inventory twice annually to ensure the district is adequately enforcing airspace right of way use agreements.
- Complete a data pull of the airspace inventory every quarter and report findings to the districts by the last day of the month.
- Review right of way use agreement accounts for compliance with inspections, insurance certifications, notice provisions, lease terms, etc.
- Preparing periodic reports on statewide and region/district income, expenses, inventory, production, and goals.
- Establishing standards to measure Airspace activity (i.e., expenses like independent appraisals, advertising, and remedies to breaches in contracts; production; and workload) in accordance with current and future contracts for region/district performance.
- Liaison with region/district Airspace Seniors, CTC, FHWA, other programs, and external agencies on Airspace matters.

- Coordinating budget requests for region/district Personnel Year (PY) allocation and workload projections.
- Resolving complex technical issues with potential statewide impacts through research and subsequent written guidance.
- Holding meetings, functional councils, training seminars, and workshops.
- Developing standardized Right of Way Use Agreement (templates) and language to protect the Department from potential liabilities and claims from the lessee, sub-lessees, and adjoining owners.
- Management of the [Right of Way Real Property Services Airspace section of the Caltrans intranet](#) (internal Caltrans link) and [internet websites](#).

## **15.01.02.01    Annual Reports**

HQ A/S prepares three reports:

- **Report to the CTC** – on the number of executed leases pursuant to [Streets and Highways Code 104.30](#) or other statutes that allow for temporary homeless shelters for \$1. The CTC may require further information be reported to them as necessary.
- **Report to the CTC** – regions/districts provide information on inventory, income, and leasing activity for the previous fiscal year with the specifics on Marler Johnson Right of Way Use Agreements, Park and Ride Joint Development, Park and Ride Demonstration Program, internal uses, building development, seismic retrofit, and other major programs.
- **Business Plan** – a component of the Annual Report, containing a statewide plan for the Airspace program that establishes next year's objectives and goals. This report must be presented to the CTC each State Fiscal Year.

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

## **15.01.02.02    HQ Liaison Region/District Visits**

HQ A/S staff will visit the Region/District Airspace (R/D A/S) Staff at least every other year, often in conjunction with the Quality Enhancement Joint Review (QEJR), to review current operations, and ensure accurate instructions are in place to assist Region and District Airspace Units (Airspace) with the work products and goals. Some of the items that may be discussed are the effectiveness of:

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

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

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

- Administer and manage all airspace agreement areas.
- Identify potential airspace sites and maintain a current and accurate database in the inventory.
- Implement multiple use concepts during the project planning and design processes if possible and practical.
- Collaborate with private industry to develop suitable sites.
- Develop sites where appropriate in partnership with both private and public end users.
- Coordinate with the Environmental Branch and developers to identify project environmental implications or determinations and to provide developers with requirements for environmental clearances, storm water pollution prevention, and air quality studies or statements.
- Coordinate with region/district Maintenance and Landscape units for the joint use of roadside rest areas and park and ride lots as applicable to

provide better services to the traveling public while decreasing the Department's maintenance expenses on the sites.

- Protect airspace sites against adverse economic impacts, such as inappropriate utility encroachments and discriminatory down zoning.
- Develop a positive marketing program to maximize revenue when this is not in conflict with the safety or use of the transportation system.

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

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

Prior to submitting the proposal to DARC, R/D A/S should review the proposal and develop a plan for leasing the site, including:

- Best method to lease the site (bid or directly negotiated).
- Adjacent property management and excess sites that could be joined to the site and leased together.
- History of prior leases (including term and use). If this is a renewal of the lease or use, it may be subject to the shorter Renewal DARC process described in 15.06.11.04.

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

R/D A/S shall provide relevant information to DARC members, such as:

- Proposed use and term.
- Site improvements (proposed and existing) – paving, striping, curbing, lighting, etc.
- Access – ingress and egress.

- Utilities, including water.
- Major developments – buildings, storage tanks.

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

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

DARC reviews are held at the conceptual, preliminary, and final phases to ensure previous concerns have been addressed and the proposal has not dramatically changed since conceptual approval. R/D A/S should use discretion when forming a DARC review for a proposed use. Only those members that can provide valuable input on the impact to their program should be included in the review. A legal, low-value, noncomplex proposal with no improvements may require a less intensive review than a parking structure underneath a highway structure. Additionally, many of these types of proposals may not require extensive review at the conceptual phase. This can be done at the preliminary and final stages after the potential lessee provides more detailed information on the proposed Right of Way Use Agreement.

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

Although Encroachment Permits is typically not involved in the DARC as a reviewer, RW should meet and confer with the District Encroachment Permit Engineer to confirm the requirements between the permit's General and Special Provisions and the Airspace Lease Agreement.

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

## REGION/DISTRICT AIRSPACE REVIEW PHASES

Stage	Review
Conceptual	<ol style="list-style-type: none"> <li>1. Does the proposal make sense?</li> <li>2. Any program objectives?</li> <li>3. Identify upgrades or modifications to site (e.g., slope or column protection).</li> <li>4. Other interested parties?</li> <li>5. Highest and best use.</li> <li>6. Advise proposed lessee of DARC comments.</li> <li>7. Does the lessee understand the requirement to pay a fair market lease rate?</li> <li>8. Can an agreement be directly negotiated or must a public process be used?</li> </ol>
Preliminary	<ol style="list-style-type: none"> <li>1. Preliminary plan review: effect on operations. <ul style="list-style-type: none"> <li>• access, utilities.</li> <li>• highway structures.</li> <li>• lessee's improvements.</li> </ul> </li> <li>2. Potential risks and liabilities compared to benefits and revenue.</li> <li>3. Advise proposed lessee of DARC comments.</li> </ol>
Final	<ol style="list-style-type: none"> <li>1. All DARC comments addressed in final plans.</li> <li>2. Local and environmental approvals obtained.</li> <li>3. Construction and maintenance schedule.</li> <li>4. Final plans showing excavation and trenching.</li> <li>5. Advise proposed lessee and Permits Office of status.</li> </ol>

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

## **15.02.01.00    Inventory Requirements**

Each airspace site shall be entered into Right of Way Property Management System (RWPM) until such time as a new inventory system Statewide goes into effect; at which point, all parcels shall be input into the new system. Refer to the most current RWPM User's Manual for inventory procedures.

The inventory data is used to obtain site-specific information, track maintenance, renewals, delinquencies and other important information on some or all parcels within the Region/District or Statewide.

## **15.02.01.01    Identification Number**

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

Telecommunications sites are identified with a sequential site numbering system using 9XXX (e.g., 04-SF-101-9001-01 is the first site on the route and the first carrier; 04-SF-101-9002-01 is the second site on the route and/or the collocatee on the site).

Temporary or one-time leased sites such as those for tower cranes, tie-backs or sidewalks are identified with a site numbering system using 5XXX (e.g. 04-SF-101-5001-01). These Right of Way Use Agreements are for construction purposes on parcels adjacent to the State route. The numbers are specific to the agreement. Once the agreement is expired, that number will not be re-used.



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

New sites should be added to the inventory when money is accepted on the account or when the lease is executed. Examples of when money may be deposited prior to execution of a lease include, but are not limited to, when the Conceptual or Preliminary DARC review requires a deposit for support costs or when accepting deposits from successful bidders after an auction once it is determined a tenancy will in fact proceed.

### **15.02.01.03    Mapping**

Maps shall be prepared for each airspace site in accordance with R/W Engineering Section 6.01.05.00 (except for temporary sites). Temporary sites are mapped from the construction maps on the adjacent parcel.

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

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

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

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

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

### **15.02.02.01    Future Transportation Project Use**

Future transportation Project Uses include new construction or modifying an existing highway facility. Internal construction staging leases are considered a temporary internal use and are discussed in 15.02.02.02.

The date the requesting program needs the site for proposed construction or modification to an existing facility should be provided to the DARC for their approval.

Transportation projects take precedence over any airspace lease. If the site is currently leased, probable cost to cancel the Right of Way Use Agreement should be calculated if the requesting program's need is immediate. The cost of buying out the lease should be covered through the project.

An expiring lease should not be renewed if a future transportation project is imminent.

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

### **15.02.02.02    Department Uses for Non-Project Purposes**

A Department program may need an airspace site for a permanent or temporary internal use. Examples of permanent uses are maintenance operations (e.g., vehicle storage), landscaping projects, employee parking, and park and ride lots. Examples of temporary uses are sites for relocated businesses due to seismic retrofit, internal construction staging areas, holding areas for historic buildings pending sale, and other immediate needs of the Department.

The District Director (DD) approves such requests after Region/District Airspace (R/D A/S) analyzes the economic and local factors of removing the sites from the list of "available" sites. The analysis should include:

- Estimated fair market lease rate (FMLR) is based on the fair market value (FMV) of the site considering the highest and best use, the potential length of a Right of Way Use Agreement, and the present worth of the income stream.
- Potential loss of possessory interest tax revenue to the local agency.

- If the site is currently leased, probable cost to cancel the Right of Way Use Agreement if the requesting program's need is immediate.
- Environmental considerations of the proposed internal use, including potential neighborhood and community impact.

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

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

To help ensure the Department is using its land assets properly, it is recommended that the R/D A/S annually review all sites held for Caltrans use to verify the need still exists for the current usage and the current usage is still the best use of the property, considering other potential uses and net return. R/D A/S may discontinue the internal use if it is a significant underutilization. However, R/D A/S should consider Caltrans needs as a high priority and recognize that there may not be an alternative site that will adequately serve the Department's needs. If the Department intends to provide Caltrans' project contractors with an airspace site for a construction staging area, this should be announced in the Construction Bid Package. If not, the site may be leased to the successful construction contractor prior to the start of the project.

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

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

If the internal use is an underutilization of the site and an adequate replacement site is available, R/D A/S and the user program may consider terminating the existing use and making the property available for lease. A Project Report is required, and the cost to relocate and reestablish the internal use at the new site should be considered. The analysis should consider the potential revenue against the cost to relocate the impacted facility and program, factoring in the probability of leasing the site and any risks the proposed lessee may encounter, thus reducing the probability of a

successful lease. Relocation should occur only when the program using the site funds the cost.

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

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

## **15.03.00.00 – PLANNING AND MARKETING**

### **15.03.01.00    General**

Properties offered for lease must attract the widest possible market to achieve the maximum return. Standard real estate marketing techniques should be used to ensure adequate exposure of the property for lease. Region/District Airspace (R/D A/S) should use additional methods to achieve the widest distribution of leasing information for **specialized** property, such as advertising in technical magazines, developing a home page on the Internet, or hiring a leasing agent or broker.

### **15.03.02.00    Planning**

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

Pursuant to [SHC Section 104.12\(c\)](#), R/D A/S shall take necessary action to implement multiple use concepts developed in the project planning and design stage; therefore, staff should provide necessary technical information, including DARC recommendations.

Good working relationships with local agencies responsible for approval of R/D A/S proposals are necessary for successful planning and marketing activities.

### **15.03.03.00    Marketing**

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

In addition, each vacant site should have a specific marketing plan identifying and scheduling the leasing activities (e.g., appraisals, CTC approval, Right of Way Use Agreement and construction).

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

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

### **15.03.03.01    Advertising**

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

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

The method in which a site was advertised should be documented in the parcel file.

### **15.03.03.02    Signs for Advertising Site Prior to Auction**

Advertising signs can be placed on airspace sites in accordance with the marketing plan, per District discretion, and as follows:

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

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

### **15.03.03.03    Promotion**

There are several ways to make the public more aware of the R/D A/S Program, such as:

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

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

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

#### **15.03.03.04    Adjoining Owners**

When a site becomes available, R/D A/S may contact adjoining owners and occupants to give them pertinent information about upcoming bid auctions to lease the site. Note all discussions in the site diary.

#### **15.03.04.00    Broker Commissions**

Although not currently a common practice, the Department is authorized, per [CTC Resolution G-02-14](#) (internal Caltrans link), to contract for the services of a real estate broker to assist in developing a long-term Right of Way Use Agreement. If approved by DDC-R/W, the standard agreement must state:

- Commission is paid after the first lease payment is received.
- Installment payments will be made if the commission exceeds the monthly lease rate (e.g., broker receives half the rent paid until the commission is satisfied).
- Commission will not exceed three percent of FMV appraisal.
- The proposed lessee's offer and proposal are submitted with the broker's agreement.
- The proposed lessee's option period does not exceed six months.
- The broker's agreement is site specific and limited to five sites per year.

#### **15.03.05.00    Discriminatory Rezoning**

The Department is concerned about local agency proposals to change the zoning of potential airspace sites that adversely affect their marketability. R/D A/S should work closely with local planning agencies to prevent general plan and zoning proposals that adversely affect existing or potential Airspace properties. R/D A/S may be notified of a planning action by direct correspondence from the local agency or by formal notice in a newspaper of general circulation pursuant to [Government Code Sections 65854, et seq.](#) Although formal notices are usually required, [Government Code](#)

[Section 65858](#) provides authority for local agencies to adopt certain interim zoning ordinances as urgency measures without the above notice requirements.

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

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

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



# 15.04.00.00 – AIRSPACE RIGHT OF WAY USE AGREEMENTS

## 15.04.01.00    Types of Right of Way Use Agreements

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

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

- **Rental Agreement** – noncomplex, non-developmental use for six months with one six-month extension.
- **Parking Agreement** – short term, non-developmental use for up to five years with no options or extension. Usually the result of an open bid process.
- **Non-Developmental Agreement** – longer term non-developmental use for more than five years (including options), which may involve minor improvements to the site. Usually the result of direct negotiations.
- **Developmental Agreement** – long term developmental use for more than five years (including options) involving major construction. Usually the result of direct negotiations.
- **Marler Johnson Park Agreement** – Local public agency’s use of a site for a park or recreational facilities.
- **Park and Ride Agreement** – month-to-month agreement with a nonprofit organization to use the park and ride facility in exchange for maintenance and security services.
- **Three-Year Directly Negotiated Non-Developmental Agreement** – three-year lease with no right of extension, resulting from direct negotiations for sites that are not good candidates for bidding, or have been offered for competitive bid but no bids were received.

- **Telecommunications Wireless License (Site License Agreement)** – specific site agreement for a wireless facility for an initial ten-year term with three consecutive 5-year extension options. Carrier must have executed a HQ A/S Master License Agreement, which defines the specific terms and conditions for all sites.
- **Tieback Agreement** – agreement for tiebacks to be inserted into Caltrans operating right of way. Tensioning must be removed from the tiebacks prior to expiration of the lease. The Right of Way Use Agreement is handled through R/D A/S, but the clearances and other activities will be handled through the Design and Encroachment Permit Office.
- **Tower Crane Agreement** – agreement to allow tower cranes over operating right of way. As in tiebacks, the Right of Way Use Agreement will be done through Right of Way and all other parts of the process, including clearances, will be done through Design and Encroachment Permits.

See Section 15.06.00.00 for processing these leases.

Lease templates may be found on the [Exhibits](#) and [the Real Property Services webpage](#) (internal Caltrans link).

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

Other Right of Way Use Agreement agreements may be entered into with public agencies (e.g., local public agencies, school districts, and government agencies).

### **15.04.01.01    Rental Agreement**

Rental agreements are for interim uses (e.g., Christmas tree sales, radio frequency testing, and construction staging areas). The term is limited to six months with one consecutive six-month extension and cannot go beyond one year. At no time will the use be extended beyond a consecutive 12 months with the same tenant for the same purpose. In situations that require longer than 12-months, CTC approval must be obtained per [CTC Resolution G-02-14, Section 2.4](#) (internal Caltrans link).

Although a rental agreement can be used when a site is pending approval of the terms and conditions of a directly negotiated Right of Way Use Agreement, the preferred method is to use a Letter of Understanding or

Option Agreement. A rental agreement does not imply any approval to lease the site for development purposes.

### **15.04.01.02     Parking Agreement**

Short-term parking Right of Way Use Agreements, which are parking of operable vehicles, are used when the airspace site is already improved to support the intended use or the proposed lessee intends to make improvements limited to paving, curbs, lighting, landscaping, and fencing to the site. The improvement to the site could be as minimal as grading and gravel. The term should be a period long enough to amortize the cost of improvements. The term is normally two years but can be for five years, depending on the need of the lessee and the potential rate of return that may result from a longer-term agreement.

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

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

### **15.04.01.03     Open Storage**

Open Storage under structures or adjacent to structures is currently a prohibited use and any future agreements for this use will not be approved or allowed. Existing open storage, under structures or adjacent to structure, leases will not be renewed.

Any airspace open storage site shall not contain any items contained in the prohibited items list. See Section 15.07.09.03 for prohibited items.

(Please contact HQ A/S for the most up to date policy).

### **15.04.01.04     Non-Developmental Agreement**

This agreement is very similar to the Parking Agreement, except the lease term is beyond five years but usually no more than 15 years, including all options and extensions. The longer lease time is needed to generate a higher rate of return, or the lessee needs the site as plottage for an adjoining development or to amortize the minor improvements needed at the site

(e.g., paving, striping, lighting, landscaping and curbing). Also, local school districts or governmental agencies may require longer terms.

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

If Airspace determines direct negotiations will result in a higher return to the Department, the request must be submitted to the CTC (see Section 15.06.05.00). HQ A/S must concur with the Region/District Airspace (R/D A/S) recommendation prior to submitting the request to the CTC.

### **15.04.01.05    Developmental Agreement**

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

Uses involving flammable and explosive materials will not be allowed. Buildings, storage units, or other improvements will be inspected by State Fire Marshal to ensure that no flammable or explosive materials are stored on the property.

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

If R/D A/S determines direct negotiations will result in a higher return to the Department, it must submit a request to the CTC for approval to directly negotiate (see Section 15.06.05.00).

## **15.04.01.06    Marler Johnson Agreement**

Pursuant to the Marler Johnson Highway Park Act of 1969 (reference [Government Code Section 14013](#)) and the terms and conditions established by the [CTC Resolution G-19-43](#), a local agency can request use of an airspace site for public park or recreational purposes. The normal DARC process is followed and a FMLR is established. Rental offsets for anticipated savings to the Department can be deducted from the FMLR to determine the actual rate.

### **Example 1:**

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

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 underneath or adjacent to highway structures.

## **15.04.01.07    Park and Ride Agreement**

These types of agreements allow month-to-month tenancies on park and ride lots to enhance lot occupancy by providing security and maintenance.

Leasing a portion of the lot provides on-site management of the facility to assist with maintenance and security, which should improve facility usage. In some cases, longer-term leases with other entities may be considered. Consult with HQ A/S on specific proposals.

The FMLR for the area to be leased is offset against the savings to the Department from not having to provide security and maintenance. The nonprofit organization's use cannot reduce the number of parking spaces available. The minimum lease rate is \$1 per month, calculated by subtracting the savings to the Department from an approved FMLR or \$500 (minimum lease rate), whichever is greater. Despite the exceptions to the minimum \$500 FMLR discussed in 15.05.05.01, Park and Ride agreements are not

allowed to go below the \$500/month minimum lease rate unless allowed per statute or offset by maintenance costs as shown below.

**Example 2:**

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

R/D A/S should review leases annually to ensure usage at the site has improved with on-site management, and that continuing the month-to-month arrangement is in the Department’s best interest. All Right of Way Use Agreements shall contain clauses that state the agreement can be terminated with 30-day notice if the Department needs the entire area, if on-site management has not improved usage, or if the lessee is not providing the required level of security and maintenance.

**15.04.01.08    Three-Year Directly Negotiated Nondevelopment Agreement**

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

- The use is non-developmental, with limited improvements (e.g., paving, curbs and lighting).
- Lease rate is based on an estimate of the Fair Market Lease Rate (FMLR).
- FMLR is escalated each year by an appropriate negotiated percentage or by the area’s Consumer Price Index (CPI).
- There is only one potential lessee.
- DARC must approve the use.
- FHWA approval may be required, see 15.06.13.00.

- The use complies with local zoning and is considered noncontroversial.
- No hazardous materials can be produced, stored, or transported.

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

The CTC is advised annually on the status of these Right of Way Use Agreements and can terminate this practice if the agreements are not being used in accordance with the manual and/or CTC Resolutions.

### **15.04.01.09    Telecommunications Licenses**

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

The MLA allows the carrier to install a facility on any Caltrans owned property (maintenance facility, park and ride lot, office building, and within operating and nonoperating right of way) where it is in the public's best interests and does not interfere with the free and safe flow of traffic.

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

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

### **15.04.01.10    Public Agency Right of Way Use Agreements**

A school district, local public agency, or other governmental agency can lease an airspace site at the Fair Market Lease Rate (FMLR) for public use (refer to [CTC resolution G-19-43](#) [revised from G-03-03] or the most recent resolution). R/D A/S should coordinate renewals and payment schedules with the agency's budget cycles to ensure lease payments are allocated in its budget. R/D A/S should contact the agency at least six months prior to the budget cycle date to determine if the lease will be renewed. If so, an appraisal should be requested with a due date prior to the date of the lessee's budget request. After the appraisal is approved, R/D A/S should

begin discussions immediately with the lessee to ensure adequate time for the lessee to request additional funds if the lease rate increases.

### **15.04.01.11     Filming on State Right of Way**

In accordance with [Government Code 14998.8](#), all applications for Film Industry use of State-owned property are processed through the [California Film Commission](#). The Film Commission then contacts the Department of Transportation. The Encroachment Permit Office in Los Angeles (District 7) is the Caltrans Statewide Film Coordinator (CSFC) and acts as the film liaison to approve or deny all applications for film activities under Caltrans' jurisdiction. The CSFC coordinates with Encroachment Permit staff in the other Districts where the film activity is proposed. Fees collected by the Film Commission are deposited into the State Highway Account. The Department shall charge compensation in accordance with Federal and State requirements. Encroachment Permits staff is responsible for coordinating all necessary internal and external approvals, and activities, related to this use. This includes all filming and special event encroachment requests that involve interstate right-of-way, which must be submitted to FHWA for approval. The timelines for a filming application are as follows:

- COMPLEX Filming requests (including Freeway closures or Ramp Closures with major detours)– 8 business days.
  - For Complex Filming requests that involve full freeway closures, stunts, pyrotechnics etc. within interstate right-of-way, Caltrans statewide film coordinator will invite the FHWA engineer to pre-permit meetings to explore impacts and feasibility of the proposal.
- NONCOMPLEX Filming requests (including simple Ramp Closures) – 3 business days.
- All other ROUTINE Filming requests (filming with flow of traffic, camera on overcrossing, filming with rolling traffic breaks etc.) – 2 business days.

Please refer to [Encroachment Permit Manual](#) Section 503 for more information.



## **15.04.01.12     Statute Directed Use – Emergency Shelter and Feeding Program**

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

- [Streets and Highways Code 104.16](#): San Francisco
- [Streets and Highways Code 104.17](#): Stockton and Santa Barbara
- [Streets and Highways Code 104.18](#): San Diego
- [Streets and Highways Code 104.21](#): Stockton
- [Streets and Highways Code 104.24](#): Oakland
- [Streets and Highways Code 104.25](#): San Diego
- [Streets and Highways Code 104.26](#): Los Angeles and San Jose
- [Streets and Highways Code 104.30](#): Statewide

[Streets and Highways Code 104.30 \(SHC 104.30\)](#) was included in [Senate Bill 211](#) during the 2019-2020 Legislative Session. [SHC 104.30](#) authorizes the Department to make airspace or other real properties available to other gov't agencies for temporary emergency shelters or feeding programs.

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

For statutes directing the use of an airspace property for park and recreation use, please follow the Marler Johnson Park Act provisions (15.04.01.06).

### **15.04.01.13**     **Site Identification for Statute Directed Use – Emergency Shelter and Feeding Program**

Due to the complexities and potential environmental impacts of developing a site for temporary emergency shelter or feeding program, site suitability and allowable uses of the site shall be determined through a Region/District DARC review process, which shall include, at a minimum, the Region's/District's External/Public Affairs Office, Division of Environmental Analysis, Planning, Design, Encroachment Permits, and Maintenance. Pursuant to [SHC 104.30\(d\)](#), temporary emergency shelters and feeding programs are under local fire authority for the approval of plans, issuance of building permits, and certificates of occupancy for any improvements developed on the site. Considerations of a suitable site must include access, geography, seismic activity, traffic patterns, etc. Local agencies must be encouraged to engage the community for possible solutions, needs, and wants.

### **15.04.01.14**     **Rental Rate for Statute Directed Use – Emergency Shelter and Feeding Program**

The rental rates for the use of Department-owned property is specified in the various statutes. At this time, all of the aforementioned Streets and Highways Codes called out in Section 15.04.01.12 have a specified rental rate of \$1.00 per month.

In addition to the rental rates, the various statutes also specify the administrative fees that the Department may charge local agencies to cover the support costs expended by the Department in developing and administering the lease.

The administrative fee specified in the various statutes range from \$500.00 per year to \$5,000.00 per year, unless the Department determines that a higher administrative fee is necessary to cover the Department's costs. Of all the Streets and Highways Codes identified in Section 15.04.01.12, only [SHC 104.30](#) caps the annual administrative fee (stating that it is not to exceed \$15,000.00), irrespective of the Department's determination of an administrative fee necessary to cover the Department's costs.

Until sufficient resource expenditure data has been collected for this lease type, the Department's policy is to charge the local agency a flat rate for administrative fees while tracking actual administrative resource expenditures with a unique reporting code. This reporting code is established to accurately track actual support costs and may be used to establish future administrative fees charged for leases of this type. The flat rate for administrative fees shall be \$5,000.00 for leases pursuant to [SHC 104.30](#), and \$500.00 for all other leases identified in Section 15.04.01.12.

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

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

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

## **15.04.01.15      FHWA Approval for Statute Directed Use – Emergency Shelter and Feeding Program**

If the site identified was acquired with [Title 23, United States Code](#), funding, FHWA approval must be obtained for leasing the site at less than fair market value. As discussed in Manual Section 15.04.01.12, the Region/District shall submit a written Public Interest Finding (PIF) to HQ R/W for submission to FHWA for the approval of the statutory less than fair market rental rate.

The site must also be submitted for FHWA approval if the airspace lease is within the operating right of way of an interstate. Further information on what documents are required and the approval process can be found under Airspace Manual Sections 15.06.13.00 through 15.06.13.03.

## **15.04.01.16     Park and Ride Lots as Shelter Sites**

FHWA released a letter on March 19, 2021 titled “Alternative Uses of the Highway” that focuses on shelter placement within the Right of Way. Within the letter, placement of the shelters within Park and Rides are allowable under certain circumstances as described below. FHWA has determined that *temporary* alternate uses of the ROW for shelter and other facilities that provide services to people experiencing homelessness provide urgently needed social benefits to impacted individuals and the public at large. 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 Park and Ride activities and impose certain restrictions on the use of the lots. When considering potential use of a Park and Ride lots 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.

### **15.04.01.17**      **Rental Agreement for Statute Directed Use – Emergency Shelter and Feeding Program**

Please refer to the specific lease template on the [Real Property Services Airspace website](#) (internal Caltrans link). Local Public Agencies, that implement their own transportation projects who are subject to be a lessor for any such homeless support use, requiring access to the Lease template on the Division of Right of Way and Land Surveys, Real Property Services intranet website should contact an HQ R/W liaison for further assistance.

The HQ R/W liaison contact information may be found at the internal [Real Property Services Airspace website](#) (internal Caltrans link). Any changes to the templates, excluding information pertaining to site specific developments, must be approved by HQ and the District's legal office.

### **15.04.01.18**      **Term for Statute Directed Use – Emergency Shelter and Feeding Program**

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

## **15.04.01.19     Construction Staging Leases for Caltrans Projects**

Section 5-1.32, "Areas for Use," of the Department's [Standard Specifications](#) allows the Department's contractor to occupy the highway only for purposes necessary to perform the work. The areas for use available to the Department's construction contractor must be within the project limits and must be within the environmentally approved project footprint.

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

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

- Be approved by the HQ Division Chief of RWLS so long as it meets the requirement stated in the FHWA memo dated 11/15/2023, "absent a showing that such uses would provide for the safe and secure operation and maintenance of the highway facility." See [Exhibit 15-EX-20](#).
- If the site is not within the project's **scope**, the rental rate must be at Fair Market Value (FMV). If federal funds were used to purchase the real property interest, and rent is less than FMV, FHWA must approve a Public Interest Finding (PIF). A less than FMV rental situation would arise when the Department is required to compensate the construction contractor a certain percentage markup for costs incurred, e.g., force account due to a Director's Order.
- Rental terms can only be for the length of the construction project (with allowances for short periods before and after the project for preparations and clean up).

- All Airspace processes and procedures must be followed for the staging use (DARC, environmental document approval, FHWA approval, and in certain cases CTC approval).
- Rental conditions will include environmental protections appropriate for the proposed use (non-permeable barrier, etc.).
- The construction company is responsible for obtaining all local permitting.
- The property must be returned to the original condition after the construction staging use is completed.

### **15.04.01.20    Batch Plants**

Batch plants as defined by the Standard Identification Code (SIC) can be established on Caltrans property as described. The SIC defines batch plants as establishments primarily engaged in manufacturing portland cement, and concrete manufactured and delivered to a purchaser in a plastic and unhardened state. This industry includes production and sale of central-mixed concrete, shrink-mixed concrete, and truck-mixed concrete.

Batch plants should only be allowed when the batch plant has been reviewed by the DARC. The Caltrans Stormwater contact approval for such uses as batch plants will also be required. If this is within an active Caltrans construction zone or project, construction policies apply. For specific questions, Right of Way should contact the Division of Construction.

For properties that are not related to Caltrans projects or construction, under no circumstances should a batch plant be allowed in or within close proximity to a Residential neighborhood due to dust and noise concerns. The batch plant also requires the pertinent County, Air Quality, and Water Quality 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.

### **15.04.01.21    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.

### **15.04.01.22    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 15.04.01.06 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.

### **15.04.01.23    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 15.04.01.06) is used for leasing to a local public entity and the Non-developmental Agreement (see 15.04.01.04) 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 15.04.01.09) 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 on interstates. FHWA approval will be necessary for every renewal of leases on the interstates. 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.

- **Rental Rate Appraisals** – Valuation method for qualifying, nondevelopmental uses on directly negotiated airspace leases. Meant to be used for noncomplex, noncontroversial airspace parcels. Further explanation below in 15.05.01.01 and Section 7.15.05.00 of the Appraisal Chapter of the Right of Way Manual.
- **Annual Base License Fee Matrix** – A statewide wireless comparable site fee review is made by Airspace or Appraisal functional staff every five (5) years. Annual fees for comparable urban and rural sites are made for all categories of cell towers and small cell sites. A matrix is compiled denoting appropriate annual rates for Prime Urban, Urban and Rural sites to equipment categories. This matrix is reviewed and approved by the CTC. The approved fee matrix is considered to be the FMLR for wireless sites statewide.

For all valuations other than Annual Base License, both current use and lease rate should be considered when the airspace site is leased and the determination of the lease rate will be used to establish a new minimum bid.

See Section 7.15.00.00 for specific procedures.

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

### **15.05.01.01     Rental Rate Appraisal**

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

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

This streamlined approach cannot be used if the highest and best use is in question or if the airspace site is considered as plottage to an adjoining property.

### **15.05.01.02    Percentage Leases**

In rare cases, the FMLR will be a percentage of the gross income the lessee will generate at the site. R/D A/S must determine the best percentage and establish the method for calculating same (e.g., five percent of gross revenues over a base rent). In addition, the Right of Way Use Agreement must provide for an audit by R/D A/S, usually on an annual basis, of the lessee's records to ensure the calculated amount is accurate. R/D A/S can also request assistance to calculate the annual percentage rate if there is a question about the information the lessee provided.

### **15.05.02.00    Plottage Value**

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

### **15.05.03.00    Rate of Return**

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

### **15.05.04.00    Scheduling Valuation Requests**

Annually during the budget process, R/D A/S estimates the number and type of airspace site appraisals needed for the next fiscal year. This will include such factors as approximate dates when the appraisal/valuation will be needed, what kind of valuation or appraisal will be required, and expected uses of the property. The list should be provided to the Appraisal Branch by June 1. The list identifies the lease areas to be valued and the dates by which the appraisals are needed. This list is then given to Appraisals, where it is used to prioritize preparation of airspace appraisals. R/D A/S should also request

updates of appraisals over one year old. Any other updates to this list should be provided to the Appraisal Branch well in advance of the need in writing.

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

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

The appraiser and R/D A/S agent should discuss site use and restrictions before start of the appraisal and at the rough draft stage. The appraiser should include in the appraisal, or otherwise convey to R/D A/S, any data useful in marketing the area to be leased.

### **15.05.05.00    Lease Payments**

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

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

### **15.05.05.01     Minimum Lease Rate**

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

- For Park and Ride (nonprofit) and Marler Johnson lessees only, the lessee will provide a service to the Department (e.g., maintenance or security) or there is some other benefit.
- The legislature mandates lease rate (e.g., public agency use, homeless shelters).
- The approved FMLR appraisal supports a minimum rent of less than \$500 per month, and the proposed use will benefit the local community or neighborhood. Where there is a question of the FMLR being below \$500 per month, the R/D A/S Senior should consult with the Appraisal Branch to determine what the proper valuation is for the site.

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

Note: Below FMLR leases might conflict with [23 CFR 701.403\(e\)](#) requirement for FMLR and will require a public interest finding to be sent to FHWA for all federally funded properties. Any below market valuation, except as prescribed in the CTC Resolutions, will also require CTC Approval.

### **15.05.05.02     Minimum Security Deposit**

The minimum security deposit for any airspace site is one month's rent for nondeveloped, short-term sites, but not less than \$500, and three months' rent for nondeveloped long-term sites. The minimum security deposit for developed sites is three months' rent, or more if the risk to the Department is great or the potential for damage and removal of improvements is high. Any renewals of agreements may necessitate an increase in the security deposit collected per this section. Security deposits are required for all Right of Way Use Agreements except Telecommunications Licenses and agreements with public agencies.

The Security deposit should be collected when the lease is signed for direct negotiations and within 30-days following the auction if it's leased through public auction to the highest bidder.

When the proposed use represents an extraordinary risk to the Department, R/D A/S will need to ensure the minimum security deposit is increased to

reflect this additional risk or liability. R/D A/S should only allow high-risk uses in special circumstances with legislation or after legal consultation when the benefits of the proposed use outweigh any risks or liability to the Department.

### **15.05.05.03    Periodic Adjustments**

The lease rate must be adjusted for all Right of Way Use Agreements every two years. At a minimum, the rate will be equal to the Consumer Price Index (CPI) for the area and adjusted annually 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      Applications & Credit Checks**

All prospective non-public agency airspace lessees will be required to complete an application ([15- EX-19 Airspace Lease Application](#)) and submit a copy of their credit report, no older than 60 days from date of application, before doing business with the Department. An application is required for all bidders. [15-EX-19, the Airspace Lease Application](#), has language that requires a potential lessee to attest to having no unlawful detainers (UDs) and no bankruptcies within the last 10 years. All applicants must get a credit report from a major credit bureau at their own expense and will not be reimbursed. An applicant must not have any negative marks, i.e., unlawful detainers, or bankruptcies. The applicant will be rejected for any unlawful detainers or bankruptcies in the past 10 years. A copy of the prospective lessee's credit report must be attached to the application to prove compliance. Corporate Business Reports should only be requested for Corporations and Limited Liability Companies (LLCs) that have been in existence for at least one year. The Articles of Incorporation will indicate the date of Incorporation. The reporting credit bureau will not have any information on newly formed corporations or LLCs until financial history is established.

## **15.06.01.01      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, non-developmental 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 may be the highest and best use. These sites can generate substantial revenue if leased for uses with shorter terms, such as parking.

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 non-developmental 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 2 3	R/D A/S	Identify site to be leased, either by an inquiry or as part of the marketing plan. If not in inventory, request maps from R/W Engineering. 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 6 7 8 9 10 11	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. 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). If possibly controversial and on the Interstate, send proposal, DARC comments and a site map to HQ A/S for FHWA <b>conceptual</b> approval. Request bid lease valuation if not already scheduled. 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. Sign site, place media ads, and contact neighboring owners/tenants. 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 16 17	R/D A/S	Obtain District Environmental approval of lessee's environmental document. Obtain DARC approval of final construction plans. 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 <a href="#">Exhibit 15-EX-05</a> [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 ( <a href="#">Exhibit 15-EX-04</a> [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)**

<b>Step</b>	<b>Responsible Party</b>	<b>Action</b>
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 MOUs 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**

The Department is no longer allowing subleases in new agreements. Existing leases with subleasing clauses must comply with terms of the lease agreement. Any deviations must be approved by HQ RWLS. 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), application ([15-EX-19](#)), and credit report. See Section 15.06.01.00.
- 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, 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 according to [23 CFR 710.403\(e\)](#), 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 (e.g., buildings, restaurants, mini storages, motels, shelter developments, etc.) are required quarterly and inspections of all non-developed sites (e.g., parking lots, parking garages, parks, telecommunications, seasonal lots, etc.) are required annually. R/D A/S shall coordinate with SFM for annual inspections. Some uses may require more periodic inspections based on the usage and past inspection results. Sites that historically have had compliance issues need to be inspected quarterly. Flammable materials are not permitted within airspace sites. **Refer to the FHWA memo of 11/15/23 ([15-EX-20](#)) for guidance on the definition of flammable material.** 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 **must** 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/or hazardous materials), R/D A/S **must**:

- Notify the SFM and/or CHP as needed.
- Give a formal 24-hour notice to lessee, unless otherwise directed by the agreement, to correct the problem or to quit.
- Serve a three-day notice to vacate if the condition is not corrected within the allotted time, as the lessee is **now** in default.

Violations requiring **any** notice **must** 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.

Stormwater inspections of leased airspace are required under the Department's Stormwater Management Plan (see Section 15.07.10.00 and [Exhibit 15-EX-14](#) [internal Caltrans link]). Stormwater 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    Notices**

R/D A/S agents are to provide written notices of default in all cases of default when corrective action has not been taken by the tenant. Any deviations must be approved by the District Director and RW Division Chief. R/D A/S agents are to immediately initiate a written notice to terminate the lease agreement if the tenant has not corrected the violations outlined in the notice of default by the due date on the default notice. There are four different types of notices: 24-hour, 3-day, 15-day, and 30-day.

**24-Hour Notice:** A 24-hour notice is an immediate safety violation. Items or actions that are life-threatening or pose a danger to the traveling public, roadway, or structure. Examples of this include blocked or locked exits, lack of or obstructed sprinkler system (if required) or fire extinguishers, explosives, fireworks, illegal drug manufacturing, obvious electrical violations, indoor use of anything that produces flames, gasses, or fumes, high piles of combustible materials, sheets/tarps used as walls.

A copy of this notice is also to be sent to the SFM and/or CHP if they are not the documenting source. If a 3<sup>rd</sup> party vendor is required to correct the violation, the tenant has 24 hours to show proof of an appointment with the vendor or licensed contractor.

**3-Day Notice:** A 3-day notice is for non-immediate safety violations – items or actions that are prohibited but not life-threatening. Removal of prohibited items not covered under a 24-hour notice, structures, or people, vegetation abatement, high piles of non-combustible materials, and non-functioning safety signage.

If the SFM is not the documenting source, the tenant will be notified that the SFM will be notified of the violation and may conduct their own inspection and issue a separate notice.

15-Day Notice: Removal of items or people that may require additional time to correct and are not covered by the above notices. Mini storage facilities shall contact customers to remove prohibited items or reduce overfilled units. Vegetation abatement of larger areas, removal of larger quantities or larger items.

If the SFM is not the documenting source, the tenant will be notified that the SFM will be notified of the violation and may conduct their own inspection and issue a separate notice.

30-Day Notice: Situations or activities that do not pose an immediate safety threat or may require a 3<sup>rd</sup> party vendor or special planning/handling to complete. Removal of unauthorized/unpermitted improvements. These may include lease violations such as a non-approved use.

## **15.07.01.02    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 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    Stormwater 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 stormwater drainage system. Typical sites are paved parking 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    Prohibited Items within Airspace Sites**

Per the FHWA Memo dated 11/15/2023 ([15-EX-20](#)), "Within the scope of the proposed non-highway use of the facility, there is a presumption that any structures, buildings, or facilities which utilize combustible materials (such as wood, wood fiber, plastic, etc.) that may be fire hazards do not satisfy 23 CFR 710.405(a). Such non-highway uses cannot be allowed under or adjacent to overpasses and bridges, absent a showing that such uses would provide for the safe and secure operation and maintenance of the highway facility."

Prohibited hazardous items include but are not limited to:

- Oil
- Gasoline (when outside of an operable vehicle)
- Wood/Lumber
- Portable buildings/structures
- Pallets
- Wood chips
- Flammable/Hazardous landscaping materials
- Non-operable vehicles
- Plastic piping/Tubing
- Tires (when not on an operable vehicle)
- Paper/Paper products (when stored in quantities beyond consumer use)
- Fabrics
- Batteries (excluding alkaline types)
- Chemicals/Cleaning supplies in industrial quantity
- Any other combustible, hazardous, or flammable materials that are capable of being easily ignited and burning quickly

Should these items be discovered during inspections, follow default proceedings for corrections. See Section 15.07.01.01.

### **15.07.09.04**     **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.

### **15.07.09.05**     **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.

## **15.07.09.06      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:

- Prohibited or Hazardous items on site. See Section 15.07.09.03.
- Violations identified by State Fire Marshal.
- Delinquent account.
- Insurance certificate not current.
- Failure to maintain site to current lease 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 must monitor each Airspace leased site 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). When a leased site is not properly maintained or a violation is discovered, the agent will inform the tenant of the violations by written letter sent by certified mail, a copy of the letter is to be kept in the airspace file. The notification must also set a timeframe for the violations to be cured. If the violation is not cured within an appropriate timeframe the region or district must begin default proceedings.

The lessee must correct violations in a timely manner as specified by the written default notice. To ensure this, R/D A/S must issue a formal written notice to make corrections within a specific time frame (usually 15-day, 30-days, or, if it is an immediate safety issue, a 24-hour or three-day notice). Further information on Notices can be found in Section 15.07.01.01.

If action is not taken, R/D A/S must initiate default proceedings (e.g., termination, eviction, lawsuit, and collections).

Prior to initiating action, R/D A/S must carefully review the Right of Way Use Agreement to determine the appropriate remedies available. HQ A/S and Legal shall be contacted to determine if there are additional steps that can be implemented.

### **15.07.11.01      Unlawful Detainers**

The District Right of Way Division Chief has the authority to approve unlawful detainers of tenants. The District Director and the HQ Right of Way Division Chief must be notified prior to approval. The District Right of Way Division Chief has 30 days to respond to a request to initiate default proceedings by ROW staff if a tenant is unable or unwilling to correct violations.

## **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 **must** 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 non-developed 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 non-developed and vacant site (annually).

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

### **15.08.03.00    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 non-developmental leasing activities through competitive bid should be familiar with standard bidding and auctioning techniques, appropriate laws on contracting with the private sector, clauses in standard 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.

<b>Reference</b> (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	<b>RW Manual Section</b>	<b>Responsibility</b>	<b>Delegation</b>	<b>Lowest Level of Sub-Delegation</b>
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
<a href="#">CTC G-02-14</a> (internal Caltrans link)	15.03.04.00	Execution of Standard Broker's Commission Agreements	District	RW Manager
<a href="#">CTC G-02-14</a> (internal Caltrans link)	15.06.05.02	Letters of Understanding	District	RW Manager
<a href="#">CTC G-02-14 2.3</a> (internal Caltrans link)	15.04.01.07	Three-Year Directly Negotiated Non-Development Agreement	District	Supervising RW Agent
<a href="#">23 CFR §710</a>	15.06.01.00	Approval/Execution of Standard Rental Agreements	District	Senior RW Agent

<b>Reference</b> (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	<b>RW Manual Section</b>	<b>Responsibility</b>	<b>Delegation</b>	<b>Lowest Level of Sub-Delegation</b>
<a href="#">CTC G-02-14</a> (internal Caltrans link) <a href="#">23 CFR §710</a>	15.06.02.00	Approval/Execution of Standard Short-Term Bid Leases (5 Years)	District	Senior RW Agent
<a href="#">CTC G-02-14</a> (internal Caltrans link) <a href="#">23 CFR §710</a>	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
<a href="#">CTC G-19-43</a> <a href="#">GOV §14013</a>	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

<b>Reference</b> (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	<b>RW Manual Section</b>	<b>Responsibility</b>	<b>Delegation</b>	<b>Lowest Level of Sub-Delegation</b>
	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
<a href="#">CTC G-02-14</a> (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

# CHAPTER 15

## AIRSPACE

### TABLE OF CONTENTS

#### EXHIBITS

<b><u>Exhibit No.</u></b>	<b><u>Title</u></b>
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
15-EX-20	Documentation and Treatment of Materials Stored Under a Highway Bridge

(REV 7/2024)

Exhibits are located online:

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

(REV 7/2024)



# CHAPTER 15

## AIRSPACE

### TABLE OF CONTENTS

### FORMS

<b><u>Form No.</u></b>	<b><u>Title</u></b>
RW 15-01	District Annual Marketing Plan for Fiscal Years (for internal Caltrans use)
RW 15-02	Appraisal Summary (for internal Caltrans use)
DOT RW 15-03	Insurance Information
DOT RW 15-04	Lease Renewal
RW 15-05	District Checklist for Telecommunications Proposals (for internal Caltrans use)
DOT RW 15-06	Consent of Assignment (No Relief)
DOT 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)

(REV 7/2024)