

15.00.00.00 – AIRSPACE

CHAPTER 15

AIRSPACE TABLE OF CONTENTS

15.01.00.00	GENERAL
01.00	Function
01.01	Definitions
01.02	General Airspace Policy
01.03	Statutory and CTC Resolution Requirements – Direct Negotiation vs. Competitive Bidding
01.04	Statutory Provisions Related to Leased Rights of Way
02.00	Responsibilities of HQ A/S
02.01	HQ Reporting
02.02	HQ Liaison Region/District Visits
03.00	Responsibilities of R/D A/S
04.00	Policy and Procedural Manuals
05.00	Airspace Revenue
06.00	Training and Development
07.00	Reference Materials
08.00	Resourcing & Program Efficiency
09.00	Non-Right of Way Managed Airspace Uses
09.01	Filing on State Right of Way
15.02.00.00	AIRSPACE FOR INTERNAL DEPARTMENTAL USES
01.00	Department Use of Airspace Sites
02.00	Transportation Project Use of Active Airspace Sites
03.00	Construction Staging Use of Operating Right of Way
15.03.00.00	AIRSPACE SITE INVENTORY
01.00	Inventory Requirements
02.00	Identification Numbers
03.00	New Sites in Inventory
04.00	District Reporting
05.00	ROWMIS Usage

(REV 7/2026)

15.04.00.00 PLANNING AND ADVERTISING

- 01.00 General
- 02.00 Planning
- 03.00 Advertising
- 03.01 Signs for Advertising Site Prior to Competitive Bid
- 04.00 Broker Commissions

15.05.00.00 AIRSPACE RIGHT OF WAY USE AGREEMENTS

- 01.00 Right of Way Use Agreement (RUA)
- 01.01 Types of Right of Way Use Agreements
- 02.00 Rental Agreement
- 03.00 Parking Agreement
- 04.00 Marler-Johnson Agreement
- 04.01 Parklets
- 04.02 Pocket Parks
- 05.00 Agreements on Established Park and Ride Facilities
- 05.01 Park and Ride Lot Utilization
- 06.00 Construction Staging Agreement
- 07.00 Telecommunications Licenses (Wireless)
- 08.00 Tieback and Tower Crane Agreements
- 09.00 Emergency Shelters & Feeding Programs
- 10.00 Underground High-Voltage Electric Agreement
- 11.00 Renewable Energy & Solar Agreement
- 12.00 Electric Vehicle (EV) Charging Agreement
- 13.00 Other Clean Energy and Connectivity (CEC) Agreements
- 14.00 Legacy Agreements
- 14.01 Open Storage Agreement
- 14.02 Non-Developmental Agreement
- 14.03 Developmental Agreement
- 14.04 Oil and Gas Agreements
- 14.05 Broadband
- 14.06 Toll Bridge Authority Agreement

15.06.00.00 LEASING METHODS OVERVIEW

- 01.00 Overview
- 02.00 Direct Negotiations
- 02.01 Adjoining Users
- 03.00 Competitive Bid Auction
- 03.01 Sealed Bid
- 03.02 Oral Bid
- 04.00 Public Entity to Public Entity

(REV 7/2026)

15.07.00.00 INITIATING DIRECT NEGOTIATIONS

- 01.00 Direct Negotiations
- 02.00 CTC Consent to Directly Negotiate
- 03.00 Processing Fee
- 04.00 Approval Term
- 05.00 Application (Reference)
- 06.00 Credit Checks (Reference)
- 07.00 Letter of Understanding
- 08.00 CTC Approval of Terms and Conditions
- 08.01 CTC Book Item for Terms and Conditions
- 09.00 Encroachment Permit
- 10.00 Estoppel Certificate
- 11.00 Memorandum of Lease
- 12.00 FHWA Approval (Reference)

15.08.00.00 INITIATING COMPETITIVE BID

- 01.00 Scheduling
- 02.00 EV Charging within Competitive Bids
- 03.00 Brochure Requirements
- 04.00 Sealed Bid Best Practices
- 05.00 Oral Bid Best Practices
- 06.00 Application
- 07.00 Credit Check
- 08.00 Bid Deposit and Payment
- 09.00 Winning Bid Requirements
- 10.00 Bid Forfeiting
- 11.00 Competitive Bid 5-Year Term Limit
- 12.00 Competitive Bid Terms Longer than 5 Years
- 13.00 Bid Auction
- 14.00 Minimum Bids
- 15.00 Competitive Bids on Interstates

15.09.00.00 INITIATING PUBLIC ENTITY TO PUBLIC ENTITY AGREEMENTS

- 01.00 CTC Requirements
- 02.00 Public Entity Right of Way Use Agreements
- 03.00 Term
- 04.00 Rent
- 05.00 Marler–Johnson Act Park Agreements
- 06.00 Valuation (Reference)
- 07.00 Legacy Subleasing vs. Third Party Operator (Reference)
- 08.00 Encroachment Permits

(REV 7/2026)

15.09.00.00 INITIATING PUBLIC ENTITY TO PUBLIC ENTITY AGREEMENTS (Cont.)

- 09.00 FHWA Processing (Reference)
- 10.00 Approval for Less than Fair Market Value

15.10.00.00 DISTRICT AIRSPACE REVIEW COMMITTEE (DARC) PROCESS

- 01.00 Region/District Airspace Review Committee Overview
- 02.00 DARC Membership Makeup
- 03.00 DARC Communication Methodology
- 04.00 Review Timelines and Fees
- 05.00 Conceptual Approval
- 06.00 Preliminary Approval
- 07.00 Final Approval

15.11.00.00 VALUATION AND ADJUSTMENTS

- 01.00 Scheduling Valuation Requests
- 02.00 Types of Valuation of Rental Rate
- 03.00 Minimum Bid Valuation
- 04.00 Public Entity to Public Entity Valuation
- 05.00 Tieback and Tower Crane Valuation
- 06.00 Unique Types of Rental Rates
 - 06.01 Percentage Agreements
 - 06.02 Plottage Value
 - 06.03 Rate of Return
- 07.00 Minimum Rental Rate
- 08.00 Rental Offsets for Marler-Johnson
- 09.00 Rental Rate Increases and Periodic Adjustments
 - 09.01 Consumer Price Index (CPI)
 - 09.02 Predetermined Percentage Escalator
- 10.00 Re-evaluation
- 11.00 Rental Rate for Emergency Shelter and Feeding Program
- 12.00 Fee Matrix
 - 12.01 Wireless Fee Matrix
 - 12.02 Underground Fee Matrix
- 13.00 Late Payment Fees

(REV 7/2026)

15.12.00.00 ENVIRONMENTAL DOCUMENT REQUIREMENTS

- 01.00 Environmental Status
- 02.00 Aerially Deposited Lead
- 03.00 NEPA Delegation to the Department
- 04.00 Air Quality
- 05.00 Hazardous Waste
- 05.01 Inventory of Hazardous Waste Sites
- 05.02 Potential Surface Contamination
- 06.00 Stormwater Management Requirements

15.13.00.00 GENERAL AGREEMENT TERMS AND CONDITIONS

- 01.00 Limitations for Under, Over, or Next to Structures
- 02.00 Terms
- 03.00 Options to Extend
- 04.00 Insurance Requirements
- 04.01 \$5 Million Insurance Requirement
- 04.02 \$20 Million Insurance Requirement
- 04.03 Self-Insurance
- 05.00 Holdover Policies
- 06.00 Rental Payments
- 07.00 Security Deposits
- 08.00 Right of Entry
- 09.00 Encumbrances
- 10.00 Prohibited Materials
- 10.01 Prohibited Uses
- 11.00 Aerially Deposited Lead
- 12.00 Hazardous Materials
- 13.00 Stormwater
- 13.01 Best Management Practices for Stormwater Management (Appendix)
- 14.00 Encroachment Permits
- 15.00 Special Terms & Conditions
- 16.00 Column Protection
- 17.00 Seismic Retrofit Adjustments
- 18.00 Legacy Subleasing
- 19.00 Batch Plants
- 20.00 Emergency Shelters and Feeding Program Terms & Conditions
- 21.00 Clean Energy Connectivity Conditions
- 22.00 Changes to Standard Clauses

(REV 7/2026)

- 15.14.00.00 PROCESSING NEW AGREEMENTS**
- 01.00 Documentation Required for Executing a Right of Way Use Agreement (General Discussion)
 - 02.00 Applications & Credit Checks
 - 03.00 Requirements for Occupancy and/or Use of the Improvements
 - 04.00 FHWA Approval for Use and Public Interest Finding (PIF)
 - 05.00 Mapping
 - 06.00 Encroachment Permits
 - 06.01 Encroachments by Exception
 - 06.02 Permits for Telecommunications Licenses
 - 06.03 Monitoring Construction
 - 06.04 Environmental Document Requirements
 - 07.00 Executing Agreements
- 15.15.00.00 EMERGENCY SHELTER AND FEEDING PROGRAM**
- 01.00 Statutes for Emergency Shelter and Feeding Program
 - 02.00 Site Identification for Emergency Shelters and Feeding Programs
 - 03.00 Rental Agreement for Emergency Shelter and Feeding Program
 - 04.00 Term for Emergency Shelter and Feeding Program
 - 05.00 Valuation for Emergency Shelter and Feeding Program
 - 06.00 FHWA Approval for Emergency Shelter and Feeding Program
 - 07.00 Park and Ride Lots as Shelter Sites
- 15.16.00.00 RESERVED**
- 15.17.00.00 CLEAN ENERGY AND CONNECTIVITY (CEC)**
- 01.00 Middle Mile Broadband Network (MMBN)
 - 01.01 California Department of Technology (CDT) Agreements
 - 02.00 EV Charging
 - 03.00 Renewable Power Generation and/or Storage

(REV 7/2026)

15.18.00.00 CHANGES TO AGREEMENTS

- 01.00 Processing
- 02.00 Updated DARC
- 03.00 Encroachment Permit for Changes in Agreements
- 04.00 CTC Requirements for Changes in Agreement
- 05.00 FHWA Requirements for Changes in Agreements
- 06.00 Subsequent Right of Way Use Agreement Documents
- 06.01 Fees for Changes in Airspace Agreements or Other Documents
- 07.00 Amendments
- 08.00 Exercising Option to Extend an Existing Agreement

15.19.00.00 FHWA APPROVAL

- 01.00 FHWA Approval for Use on Interstate
- 01.01 FHWA Approval for Change in Use
- 02.00 FHWA Approval for Less Than FMV (Public Interest Finding)
- 03.00 Final FHWA Approval Process
- 04.00 FHWA Package Requirements

15.20.00.00 MANAGING AIRSPACE TENANCIES

- 01.00 Overview of Managing Airspace Tenancies
- 02.00 Tenancy Management
- 03.00 Monitoring Insurance
- 04.00 Monitoring Occupancy Certificates
- 05.00 Tracking Inspection Schedule
- 06.00 Monitoring Rents
- 06.01 Periodic Rental Rate Adjustments
- 07.00 Caltrans Maintenance
- 08.00 Vacating a Site
- 08.01 Moving Vacant Sites to Maintenance
- 09.00 Backflushing
- 10.00 Right of Way Management Information System (ROWMIS)
- 11.00 Reporting of Fire

15.21.00.00**INSPECTIONS**

- 01.00 Frequency of Inspections
- 01.01 Notice of Pending Inspection
- 01.02 Inspection Forms
- 01.03 Non-Improved Sites
- 01.04 Structural Improved Sites
- 01.05 Stormwater Inspections
- 01.06 Legacy Mini-Storage Inspections
- 02.00 State Fire Marshal (SFM)
- 02.01 SFM Inspection Scheduling
- 02.02 SFM Inspection Frequency
- 02.03 SFM Passing Inspection
- 02.04 SFM Failed Inspection
- 02.05 Special Requests
- 02.06 SFM HQ RW Notification
- 03.00 Inspections with Hazardous Material and Waste

15.22.00.00**DELINQUENCIES & DEFAULTS**

- 01.00 Delinquencies
- 02.00 Late Payments
- 03.00 Repayment Plans
- 04.00 Defaults (Violations of RUA)
- 04.01 Correctable Violations
- 04.02 Uncorrectable Violations
- 05.00 Default Notices
- 06.00 Terminating Agreement Due to Default

15.23.00.00**NOTICES**

- 01.00 Types of Notices
- 02.00 Notices to Correct
- 02.01 24-Hour Notice to Correct
- 02.02 3-Day Notice to Correct
- 02.03 15-Day Notice to Correct
- 02.04 30-Day Notice to Correct
- 02.05 Extensions to Notice to Correct
- 03.00 Notices to Pay or Quit
- 03.01 3-Day Notice to Pay or Quit
- 03.02 Other Date Specific Notices to Pay or Quit
- 04.00 Notices to Terminate & Vacate
- 04.01 Notices to Terminate & Vacate Due to Departmental Need

(REV 7/2026)

15.24.00.00	UNLAWFUL DETAINER ACTIONS
01.00	Unlawful Detainers
02.00	How to Request an Unlawful Detainer Action
03.00	Unlawful Detainer Action Process
15.25.00.00	VACATING AND CLOSING OUT TENANCIES
01.00	Vacating Delinquent Accounts
01.01	Apply Security Deposit to Delinquent Balance
01.02	Rental Amounts Due, \$250 or Less
01.03	Rental Amounts Due, Greater Than \$250
01.04	Collection Agency Procedures
02.00	Improvement Ownership at Agreement Expiration or Termination
03.00	Move-out Inspection
04.00	Security Deposit Refund
05.00	Closing Out Tenancies in ROWMIS
06.00	Vacating a Tenant for Department Project Need
15.26.00.00	LEGACY DEVELOPMENTAL AGREEMENTS
01.00	Legacy Developmental Agreement Overview
02.00	Existing Status of Developmental Agreements
03.00	Policy Regarding Improvements
04.00	Estimating Clearance and Demolition
05.00	DARC Approvals for Legacy Long Term Developmental Renewal Agreement
06.00	Long-Term Developmental Renewal Agreements
07.00	Requirements for Continued Occupancy and/or Use of the Improvements Subject to Long-Term Renewals
15.27.00.00	POLICY EXCEPTION REQUEST PROCESS
01.00	Policy Exceptions
01.01	Policy Exception Process Overview
15.28.00.00	FILE CONTENT
01.00	Airspace File
02.00	Documents to Upload Into ROWMIS
03.00	Retention Policy
04.00	How to Archive a File
15.29.00.00	DELEGATIONS
01.00	Delegations of Authority

(REV 7/2026)

15.01.00.00 – GENERAL

15.01.01.00 **Function**

The Airspace function is responsible for managing alternate use of real property within the boundaries of both federally aided and non-federally aided facilities where an alternate 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 of Transportation (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 kept free of all other public or private alternate uses, unless such alternative uses are permitted by Federal law (including regulations) or the [Federal Highway Administration \(FHWA\)](#). An alternate 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. Some basic examples of alternate uses include, but are not limited to, parking, construction staging, telecommunications, and parks.

Leasing of Department property that is being held for future transportation projects but is not yet part of an operating transportation facility is managed by the Property Management function (see RW Manual Chapter 11).

15.01.01.01 **Definitions**

Airspace

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).” For purposes of this chapter, the term “Airspace” will still be used because, as explained in 15.01.01.00 above, the Airspace function manages alternate land use only for Department-owned land within the operating right way footprint, and within Department operational facilities.

Right of Way Use Agreement (RUA)

The document utilized by the Department to allow for alternate use of Airspace is the Right of Way Use Agreement (RUA), formerly known as an Airspace lease. The updated RUA terminology is more appropriate because our agreement language reserves the Department’s right to unilaterally pause or terminate the

alternate use due to Departmental transportation needs. As the Department transitions into this new agreement terminology and agreement templates are updated and approved by HQ Legal, the current agreement templates utilizing airspace lease terminology shall still be used by all Districts.

Other types of RUA documents, including, but not limited to, Joint Use Maintenance Agreements (JUMAs), Encroachment Permits or Consent Letters, authorize use of Department right of way by other parties, but these authorizations and associated documents are not managed by the Airspace function.

Airspace Site

For purposes of this section and California State Statutes, an “airspace site” (also known as an airspace parcel) is a site located in operating right of way within, above or below Interstate or conventional highway facilities, or non-operating right of way located within operational facilities such as Maintenance Stations, Traffic Management Centers (TMCs) and Department-owned Park & Ride facilities, 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 compatible alternate use within the Right of Way will not be within the traveled way or its immediate shoulder. An airspace site may consist of:

- Surface rights under a bridge or viaduct structure.
- Space above the traveled lanes.
- Shoulders and other areas within the operating right of way.
- 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.
- An area within a Safety Roadside Rest Area.
- Space within an operating facility such as a Maintenance Station, TMC, Department-owned Park & Ride, etc.*

*Caltrans Division of Business Operations (DBO) manages district offices and satellite offices are not considered airspace.

[California Transportation Commission \(CTC\)](#)

The CTC is the governing body for approving alternate uses of the right of way through the Airspace program. Any airspace site agreement that does not go through the competitive bid process, or is not with a public entity, must receive approval from the CTC.

15.01.01.02 General Airspace Policy

[Streets and Highways Code \(SHC\) 104.12](#), “Leasing of Airspace,” authorizes the Department to lease airspace above, below, and adjacent to State highways to public and private entities in accordance with prescribed CTC procedures. [CTC resolutions G-25-14](#) (which superseded G-24-14) and [G-25-24](#) (which superseded G-19-43) outline some specific procedural requirements for initiation and execution of RUAs. These various requirements are discussed in Section 15.01.01.03.

Airspace leasing activities by means of an RUA are conducted pursuant to the CTC Resolutions noted above, [SHC 104.12](#), [23 CFR 710.403](#), [23 CFR 710.405](#), and policy and procedures established in this chapter. While this chapter may at times refer to a “lease agreement” (as this continues to be used historically in statute and CTC resolution), it is noted that there is no “leasehold interest” being conveyed. All agreements must be revocable, should the Department need the property. An RUA allows alternate use for non-highway purposes where the alternate 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 applies to access-controlled freeways and highways (interstates and/or federally funded transportation facilities). However, in certain circumstances, RUAs 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 a private entity, telecommunications, or an exclusive use of a sidewalk and/or a portion of the highway [e.g., the parking lane] for a temporary private commercial use [e.g., adjacent construction]).

Parcels located outside the operating right of way (non-operating right of way) but located within operational facilities may also be leased using airspace procedures. These include space within a maintenance station, TMCs, etc. Often telecommunications facilities and cell towers can safely be accommodated within Departmental Airspace (if access and utilities are from outside the traveled way). Guidelines for allowing alternate use of Department right of way for telecommunications and cell tower purposes fall outside this chapter and are detailed in the Caltrans Wireless Communication Guidebook. Master License Agreements with telecommunication carriers and Site License

Agreements for specific telecommunication sites are the instruments that allow for and document the terms of the telecommunications alternate use.

Established policies and procedures within this chapter provide guidelines to allow alternate use of airspace sites where practicable, to maximize use of property acquired for transportation purposes.

See [CTC Resolutions G-25-14](#) and [G-25-24](#).

15.01.01.03 **Statutory and CTC Resolution Requirements – Direct Negotiation vs. Competitive Bidding**

In addition to authorizing the Department to allow alternate use of Airspace via an RUA, [Streets and Highways Code 104.12](#) states the RUA processes “shall be made in accordance with procedures to be prescribed by the CTC, except that, in the case of RUA execution with private entities, the RUA’s shall only be made after competitive bidding unless the CTC finds, by unanimous vote, that in certain cases competitive bidding would not be in the best interest of the state.”

Direct Negotiation – Private Entities:

Per [CTC Resolution G-25-14](#), when approached directly by a private entity to initiate alternate use of a specific Airspace site, listed below are the only scenarios under which the Department may enter into Direct Negotiations for alternate use without first obtaining CTC permission:

- Negotiation and execution of a non-bid, non-developmental lease of up to three years with Caltrans construction contractors for construction staging.
- Negotiation and execution of short-term non-bid leases up to a period of six months with no extensions allowed without CTC approval.
- Negotiation and execution of month-to-month rental agreements with non-profit organizations on Park & Ride lots.
- Negotiation and execution of a Master License Agreement and Site License Agreement for any location when only one telecommunications (wireless) carrier has indicated interest, provided that those agreements only involve cash payments and no “in kind” payments. The Caltrans Wireless Communication Guidebook policy and procedure must be used for negotiation and execution of these telecommunications agreements.

The Department must first obtain CTC permission prior to entering into direct negotiations with a private entity for all other alternate use scenarios other than those listed above. In order for CTC to approve a direct negotiation proposal,

the Department must clearly justify why it is in the State's best interest to lease directly with a proposed entity instead of bidding out the site in the marketplace. See RW Manual 15.07.01.00 for a more detailed discussion regarding justification.

Direct Negotiation – Public Entities:

Per [CTC Resolution G-25-24](#), when approached directly by a public entity for alternate use of a specific Airspace site, the Department may enter into Direct Negotiations for alternate use without first obtaining CTC permission ONLY if ALL of the following conditions below are satisfied:

- The lessee is a public entity as defined in the [Public Contract Code](#).
- The lease will fulfill a public purpose.
- The Department will receive either (1) Fair market rent for the property (only exceptions to this fair market rent requirement listed in [CTC Resolution G-25-24](#), or (2) A lesser amount as authorized by any statute enacted by the Legislature, so long as the property satisfies the limitations and conditions set forth in the applicable statute.

Except for the conditions listed immediately above, the Department must first obtain CTC permission prior to entering into Direct Negotiations for all other alternate use scenarios with a public entity.

Competitive Bidding – Public and Private Entities:

Use of all Airspace sites other than those CTC-authorized Direct Negotiation scenarios discussed earlier in this section must be competitively bid per [Streets and Highways Code 104.12](#). A maximum authorized term of five years for Airspace sites offered by the Department via the bidding process.

Districts may request an increase to this five-year term limit from HQ RW RPS prior to bid for the two alternate use scenarios listed below (may require FHWA approval):

- Renewable Power Generation and/or Storage. Up to a twenty-year term may be allowed. This exception supports Senate Bill 1020 which creates clean electricity targets of 90% by 2035 and 95% by 2040.
- Parking and Zero Emission Vehicle (ZEV) Motor Vehicle Charging. This exception supports Governor's 2018 ZEV Action Plan and the Caltrans 2020-2024 Strategic Management Plan by helping achieve the goal of ensuring convenient charging and fueling infrastructure to the public.

Five-year bid term exceptions for other alternate uses where District is seeking sizeable capital investment from use in a bid scenario may also be submitted to Headquarters Office of Real Property Services – Airspace (HQ A/S), for consideration/approval, but District must present a compelling justification for why it is in Department's best interest to do so. In no instance does Region/District Airspace Staff (R/D A/S) have delegated authority to bid out a site for a term greater than five years without approval from HQ RPS Office Chief.

The District Airspace Review Committee (DARC), HQ A/S, and FHWA for those Airspace sites along/under Interstates must all approve this greater than five-year term. District's request package submitted to HQ A/S must include a copy of the DARC memo and a record of responses from all DARC members approving the proposed use and term, a District justification memo to HQ RW RPS citing reasons supportive of the increased term, and applicable Airspace site map, competitive bid estimate, draft agreement and bid package selection criteria.

15.01.01.04 Statutory Provisions Related to Leased Rights of Way

- [Streets and Highways Code 104.12](#) authorizes the Department to lease to public or private entities subject to conditions it deems necessary to ensure adequate protection to the safety and the adequacy of highway facilities and to abutting or adjacent land uses. The agreements shall be made in accordance with procedures to be prescribed by the CTC, except that, in the case of leases with private entities, the agreement shall only be made after competitive bidding unless the CTC finds, by unanimous vote, that in certain cases competitive bidding would not be in the best interests of the State.
- Authorized emergency vehicles defined in Section 165 of the Vehicle Code, that are not being stored and are on active duty, are given preference to lease at no cost.
- [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 pursuant to SHC Section

146.5 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.

- [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.
- [23 CFR 710.403\(b\)](#) specifically allows for alternative use of Department right of way funded under [Title 23](#) if subject non-highway alternative uses are permitted by Federal law (including regulations) or the FHWA, are 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. Park and Ride lots are exempted from the provisions of this part and their requirements are found in [23 USC 137](#) and [23 CFR 810.106](#).
- [23 CFR 710.405](#) specifies the scenarios under which the FHWA must approve third-party alternate use of Interstate right of way.

FHWA has full authority over Airspace on Interstate for final approval authority.

15.01.02.00 Responsibilities of HQ A/S

HQ A/S is responsible for:

- Developing all policies and procedures governing all aspects of airspace alternate use and management. 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 RUA's (previously known as lease agreements).
- Quarterly CTC Reporting ([Resolution G-25-14](#))
- 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, agreement 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 and adjoining owners. Note: Developing standardized template language to address potential liabilities and claims from sub-lessees is now not needed as subleasing is prohibited. Any changes to a pre-existing agreement that contains a subleasing provision must be approved by HQ RW and HQ Legal.
- 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 HQ Reporting

HQ A/S prepares reports such as:

- **Shelter Report** – 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.
- **Quarterly Report to the CTC** – regions/districts provide information on inventory, income, terms, rental rates, violations, risks, and other pertinent information requested by the CTC every quarter.

Caltrans Executive Management, the California State Transportation Agency (CalSTA), or the California Legislature may also require special reports or information throughout the fiscal year.

15.01.02.02 HQ Liaison Region/District Visits

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

- Written policies, procedures, and instructions.
- 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 R/D A/S

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

- Administer and manage all airspace agreement areas.
- Maintain a current and accurate database of the inventory.
- Develop sites when directed and where appropriate in partnership with both private and public end users.
- Coordinate with the Environmental Branch to identify project environmental implications or determinations and to provide requirements for environmental clearances, stormwater pollution prevention, and air quality studies or statements.
- Protect active airspace sites against adverse economic impacts, such as inappropriate utility encroachments, by contacting the appropriate division.
- Develop an effective management program to minimize delinquencies, secure airspace sites through timely inspections, and reduce risks that may conflict with the safety and operation of the transportation system.
- Obtain approval from HQ A/S for any actions not discussed in this chapter or not delegated in the delegation matrix.

15.01.04.00 **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, 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 in a timely manner.

15.01.05.00 **Airspace Revenue**

Right of Way Management Information System (ROWMIS) 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, the State Controller's Office, and the legislature periodically, it is critical Airspace make all efforts to collect rental payments on a timely basis.

15.01.06.00 **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 the duties related to property management found within this chapter, ROWMIS procedures, ROWMIS reports, and rules on collecting payments.
- Agents assigned competitive bids should be familiar with standard bidding and auctioning techniques, contracting, clauses in standard Right of Way Use Agreement, advertising techniques, and rules on collecting bid deposits.
- Agents assigned more complex activities (direct negotiations, and public entities) should be familiar with negotiation and conflict resolution techniques, development costs, rates of return, CPI trends, special Right of Way Use Agreement language, 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, advertising, 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 their planning departments on the program or areas of concern relevant to their jurisdictions.
- 3) Negotiate terms, including fair market lease rate and rate of return, for all Airspace 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 advertising plans.

15.01.07.00 **Reference Materials**

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

- Airspace Chapter with exhibits and forms.
- Appropriate R/W policies and procedures from Appraisals, Property Management, and Planning and Management that pertain to Airspace.
- Appropriate policies and procedures from Encroachment Permits, Environmental, and Maintenance that pertain to Airspace.
- [23 CFR, Streets and Highways Code](#), and CTC Resolutions.
- Standard Right of Way Use Agreement (kept on the RPS intranet website).
- CTC agenda, minutes, approvals, and reports to the CTC and CalSTA.
- ROWMIS.

15.01.08.00 **Resourcing & Program Efficiency**

The Airspace program is resourced through the Division of Traffic Operations. As a component of the Division of Traffic Operations, the Airspace Program is required to track usage of these resources throughout the fiscal year.

Tracking for the Airspace program is currently done by using reporting codes depending on the type of work completed. These reporting codes correspond to specific tasks and deliverables that, when combined, create a workload unit. Workload units are how the Division of Traffic Operations assesses the needs of each program within its purview. The inability of Districts to accurately track resources may result in resources being reallocated to other Traffic Operation programs within their District.

To successfully request additional resources from the Division of Traffic Operations, Districts must ensure that each Airspace Agent uses reporting codes correctly and can support the usage of resources with specific tasks or deliverables. When the data is combined over many fiscal years HQ A/S can then propose the request for additional resources to the Division of Traffic Operations.

However, any misuse of resources, excess charging above the allocated resources, or insufficient documentation supporting the use of the resources by the Districts may result in the inability of HQ A/S to request additional resources.

HQ A/S will assess quarterly the accuracy of the Districts' reporting code utilization and usage of resources. HQ A/S may provide reports periodically throughout the fiscal year to Districts in order to ascertain their current status.

Together, HQ and R/D A/S, through this effort, can effectively manage the Airspace program and request the necessary resources needed to successfully achieve our goals.

15.01.09.00 Non-Right of Way Managed Airspace Uses

Some aspects of the Airspace program are not managed by the R/D A/S and may be allocated to specialized units for statewide management.

15.01.09.01 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.

15.02.00.00 – AIRSPACE FOR INTERNAL DEPARTMENTAL USES

15.02.01.00 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 internal use (temporary or permanent). Any site may be held for "CALTRANS USE" if the requesting program's submittal to Right of Way Airspace is approved.

15.02.02.00 Transportation Project Use of Active Airspace Sites

Transportation project uses include new transportation facility construction or modifying an existing highway facility.

A transportation project's proposed use normally takes precedence over any leased alternate use. If the site is currently leased, review the agreement carefully and determine a probable cost to cancel the Right of Way Use Agreement if the requesting program's need is prior to the RUA's expiration date. (Probable cost may include future rents and potential buyout cost. RW Appraisals should be consulted in complex cases.)

If the future transportation project need is required after the RUA expires, then no termination of the RUA is necessary. However, if the future transportation project need is required before the RUA expires, then termination of the RUA may be necessary and must follow RUA terms and conditions.

There may also be scenarios, depending on RUA terms, where the tenant may choose to vacate the site during the construction staging timeframe and then reoccupy the site after the Department's use of the site has ended.

15.02.03.00 Construction Staging Use of Operating Right of Way

No RUA is required for contractor's construction staging if the area is clearly within the project's limit and environmentally approved footprint.

No RUA is required for contractor's construction staging outside the project's limits if the requesting program has included the site in the Construction Bid Package that was offered to all bidders.

If use of the operating right of way for contractor use is not included within the project's limits or within the Construction Bid Package, contractor use of the airspace site shall only be allowed via a Right of Way Use Agreement at a fair market value rental rate. Direct Negotiation with the construction contractor is allowed with a maximum three-year term limit (see Section 15.01.01.03.) R/D A/S has delegated authority to approve and execute construction staging RUAs.

A final decision by the Headquarters Deputy Director of Project Delivery is required if the District Director's conclusion to allow the use of construction staging RUAs are in conflict with other Department guidance, instructions, standards, or delegations for approval.

15.03.00.00 – AIRSPACE SITE INVENTORY

15.03.01.00 Inventory Requirements

Each airspace site shall be entered into ROWMIS.

The inventory data is used to obtain site-specific information, track inspections, delinquencies, and other important site information within the Region/District or Statewide.

15.03.02.00 Identification Numbers

ROWMIS has replaced the previous Right of Way Property Management System (RWPM) for Airspace administration.

Airspace Site Number:

Prior to ROWMIS implementation, each site was assigned a freeway lease area (FLA) number using two-digit region/district number, three-letter county abbreviation, three-digit highway route number, and a four-digit site number (e.g., 04-SFX-101-0010). Under ROWMIS the site number consists of two-digit region/district number, two-letter county abbreviation, three-digit highway route number, and a three-digit site number (e.g., 04-SF-101-001). Please see the [County Abbreviations table](#) (internal Caltrans link).

Unit Number:

In ROWMIS each individual tenant on a single site must occupy its own unit number.

Tenancy Number:

Each tenancy will have its own tenancy number in ROWMIS consisting of the Airspace Site number, two-digit unit number, and two-digit tenancy number (e.g., 04-SF-101-001-01-01).

As new tenants move in or as new RUAs are executed, each tenancy is given a new sequential tenancy number (e.g., 04-SF-101-001-01-02).

Airspace Site Number Table

Site Numbers	Types of Use
100-299	General Airspace
300-399	Hold for Future Use
400-499	Hold for Future Use
500-599	Tie-Backs & Tower Cranes
600-699	Hold for Future Use
700-799	High Voltage Underground Utility
800-899	Oil & Gas
900-999	Telecommunications (Wireless)

15.03.03.00 **New Sites in Inventory**

New sites should be added to the inventory when money is accepted on the account or when the RUA is executed. Examples of when money may be deposited prior to execution of an RUA 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.

15.03.04.00 **District Reporting**

ROWMIS tracks tenant balances, including credits and delinquencies. Monthly delinquency reports are sent to the Districts to monitor tenants with outstanding balances and ensure appropriate follow-up actions are taken. Districts are to note the status of each site with delinquencies and actions being taken to reduce the delinquent amount in the Delinquency Workbook. To assist in lessening overpayments held by the State, a credit report is sent monthly to the Districts as well. Additionally, other data can be pulled in report form, including inspection dates and insurance expiration dates using the tenancy report to assist staff in managing their inventory.

15.03.05.00 **ROWMIS Usage**

ROWMIS is the system of record for most airspace activities. ROWMIS is also the accounting system for Airspace and Wireless tenancies, and generates bills, tracks payments, late fees, and security deposits. Ensuring ROWMIS is kept up to date with data on new and vacated tenancies, as well as inspections, insurance coverage dates, and other information, is imperative to a successful Airspace and Wireless program.

Required quarterly and annual inspections should be recorded in ROWMIS, and the inspection report shall be uploaded into the system. If risks (deficiencies, lease violations, etc.) are found, those must also be added to the inspection report entry. To ensure ROWMIS is up to date and is a complete record of all site activities, inspections should be added to ROWMIS within 15 days of the inspection date. State Fire Marshal inspections, when received, shall also be uploaded to ROWMIS following the same process.

When a tenant's RUA is terminated, ROWMIS must be updated to reflect this. Closing a tenancy in ROWMIS ensures billing stops, security deposits can be refunded, and records are accurate. When notified of an airspace RUA that has terminated, ensure this is updated in ROWMIS within 15 days of the termination date or move-out inspection date.

15.04.00.00 – PLANNING AND ADVERTISING

15.04.01.00 General

Properties offered for alternate use must adhere to all federal and state regulations, statutes, and policies. Standard real estate advertising techniques should be used to ensure adequate exposure of the property.

15.04.02.00 Planning

Pursuant to [SHC Section 104.12\(c\)](#), and the requirement for the Department to consider future lease potential of areas above or below state highway projects when planning new state highway projects, R/D A/S shall participate in intra-department consultation with project development offices, as appropriate.

R/D A/S shall monitor the future expiration of all RUAs and engage in site-specific planning to manage vacancies and ensure that no RUA enters into holdover status, which is now a prohibited airspace management practice. This District planning shall occur, at minimum, on an annual basis.

Each site with an upcoming RUA expiration date should be reviewed for possible advertising, and if it qualifies, plan to complete pre-agreement activities (e.g., DARC review, appraisals, preparation of bid package, CTC approval for direct negotiations, as applicable) that need to be accomplished prior to subsequent bid or direct negotiation. These activities should be completed before expiration of the current right of way use agreement to mitigate vacancies. See Section 15.20.02.00.

If there is little or no interest in a site remove the site from the Airspace inventory and return to the Division of Maintenance. All site mapping and preliminary work should be retained in a Region/District archive file for future use, should interest in the site resurface.

15.04.03.00 **Advertising**

Sites should be advertised using the appropriate media, e.g. Internet sites such as the Department website, external property advertising sites, site signage, etc.

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 advertising effort.

Note all advertising efforts in the airspace site diary.

15.04.03.01 **Signs for Advertising Site Prior to Competitive Bid**

Advertising signs can be placed on airspace sites per District discretion, as follows:

- **For Solely Parking Use** – at least one month prior to bid opening.
- **For All Other Acceptable Non-Parking Uses**– at least three months prior to bid opening.

Standard “For Lease” and “For Auction” Signs should be at least 2' x 3' (metal or plastic) and safely mounted or secured in some fashion.

Example:

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

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

15.04.04.00 **Broker Commissions**

While the Department is authorized, per [CTC Resolution G-25-14](#), to contract for the services of a real estate broker to assist in development of airspace sites, it is not currently feasible for the Department to exercise this authority because there is no Departmental funding mechanism in place to support this activity. In addition, the potential need for a real estate broker's services is minimal because certain types of complex development scenarios, such as construction and placement of buildings or mini-storage facilities as alternate uses, are now prohibited.

15.05.00.00 – AIRSPACE RIGHT OF WAY USE AGREEMENTS

15.05.01.00 **Right of Way Use Agreement (RUA)**

Standard agreements for all types of airspace RUAs 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 RUAs provisions, and the R/W Program Manager or a delegated representative must execute the agreement. One original executed copy of all long-term RUAs (more than 5 years) must be sent to HQ A/S.

Construction of permanent buildings in any Department airspace is now prohibited.

15.05.01.01 **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, no improvements, and use for six months (without bidding). Can be for longer if done through bid auction or directly negotiated.
- **Parking Agreement** – typically short term, solely for parking use for up to five years with no options or extension. Usually, the result of a competitive bid process.
- **Marler-Johnson Park Agreement** – Local public entities use of a site for a park or recreational facilities. Some examples are:

- **Parklets** – Local public entities can lease sites over on-street parking or extend their sidewalk into the highway right of way for specific uses.
- **Pocket Parks** – Local public entities can lease small portions of right of way for parks and/or community gathering that are safely accessible to the public areas.
- **Agreement on Park and Ride Facilities** – month-to-month agreement with a nonprofit organization to use the park and ride facility in exchange for maintenance and security services.
- **Construction Staging Agreement** – three-year agreement with no right of extension, resulting from direct negotiations for sites that will be utilized by a contractor in support of construction and/or maintenance of State routes and/or Interstates.
- **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 agreement. 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.
- **Emergency Shelter & Feeding Program Agreement** – Local cities and counties may individually or with partners use right of way for emergency shelters and feeding programs.
- **Underground High Voltage Electric Lines Agreement** – Under specific requirements utilities are able to install longitudinally within highway right of way for fair market value.
- **Solar Agreement** – Unique agreements are being developed to accommodate the installation of solar improvements within the highway right of way.
- **Electric Vehicle (EV) Charging Agreement** – Unique agreement templates are being developed to allow the installation of EV Charging equipment within highway right of way.
- **Other Clean Energy and Connectivity (CEC) Agreement** – As additional CEC uses are proposed, unique agreements must be developed to accommodate them if allowable.

LEGACY AGREEMENTS – agreements that are currently in existence and will not be renewed, extended, or newly executed.

- **Open Storage Agreement** – formally allowed in all airspace sites, are currently prohibited.
- **Non-Developmental Agreement** – formerly allowed non-structure improvements to the site. Usually the result of direct negotiations.
- **Developmental Agreement** – formerly allowed permanent structures (e.g., buildings) are now prohibited.
- **Toll Bridge Authority Agreement** – For use on Airspace sites within toll bridge authority projects.
- **Oil and Gas Agreement** – unique agreements for leasing out the oil and gas rights within the highway's right of way.
- **Broadband Agreement** – is now considered a utility and will be assessed individually if necessary.

See Section 15.14.00.00 for processing these agreements.

Right of Way Use Agreement 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 15.29.00.00.

Other RUAs may be entered into with public entities (e.g., local public agencies, school districts, and government agencies).

15.05.02.00 Rental Agreement

Districts are delegated authority to enter into rental agreements for interim uses (e.g., Christmas tree sales, radio frequency testing, etc.). The term is limited to six (6) months. At no time will the use be extended beyond 6 months with the same tenant for the same purpose. In situations that require longer than 6 months, CTC approval must be obtained per [CTC Resolution G-25-14](#).

Through the competitive bid process this standard agreement can also be used for other uses that will not exceed five years as long as all other provisions in the agreement remain the same.

15.05.03.00 Parking Agreement

This type of agreement is for short-term, less than 24 hours parking, of operable vehicles, on the airspace site that 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 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 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, and approved by CTC).

In situations that require longer than 5 years, HQ A/S approval must be obtained.

15.05.04.00 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-25-25, a public entities can request use of an airspace site for public park or recreational purposes. The normal DARC process is followed and a Fair Market Rental Rate (FMRR) is established. Rental offsets for anticipated savings to the Department can be deducted from the FMRR to determine the actual rate.

Example 1:

FMRR	\$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 may need to be involved to review

the Aerial Lead Deposit for areas proposed under, over or next to highway structures.

Please see section 15.09.00.00, Initiating Public Entity To Public Entity Agreements, for additional information.

15.05.04.01 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 500.31 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-25-24](#). The normal DARC process is followed and a FMRR is established. The RUA term for a parklet is up to one year and additional one-year periods may be considered.

15.05.04.02 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 and are generally larger than parklets and not typically situated 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 RUA. 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 FMRR is established. The Marler-Johnson Park Agreement (see 15.05.04.00) is used for leasing to a local public entity and the Rental Agreement (see 15.05.02.00) 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 needs to be involved to review the Aerial Lead Deposit for areas proposed adjacent to highway structures.

15.05.05.00 Agreements on Established Park and Ride Facilities

Per the [CTC Resolution G-25-14](#), these types of agreements allow month-to-month tenancies for non-profits on department-owned park and ride lots to enhance lot occupancy by providing security and maintenance.

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

The FMRR for the area to be used is offset against the savings to the Department from not having to provide security and maintenance. Any reduction in the number of parking spaces available will need to be approved by the HQ Park and Ride office. The minimum rental rate is \$1 per month, calculated by subtracting the savings to the Department from an approved FMRR or \$500 (minimum rental rate), whichever is greater. Despite the exceptions to the minimum \$500 FMRR discussed in 15.05.05.01, Park and Ride agreements are not allowed to go below the \$500/month minimum rental rate unless allowed per statute or offset by maintenance costs as shown below.

Example 2:

FMRR	\$400/mo
Minimum Rental Rate	\$500/mo
Maintenance Offset	\$600/mo \$499/mo (maximum offset)
Rental Rate	\$1/mo (minimum rental rate)

R/D A/S should review agreements annually to ensure usage at the site has improved with onsite management, and 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 a 30-day notice if: the Department needs the area, if on-site management has not improved usage, or if the lessee is not providing the required level of security and maintenance.

15.05.05.01 Park and Ride Lot Utilization

FHWA has determined that *temporary* alternate uses of the RW 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 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 alternate use of the Park and Ride lot will not conflict or otherwise adversely impact the

transportation functions at the site, the alternate 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.

15.05.06.00 Construction Staging Agreement

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 site within the project's limits. If the standard specifications allow the use of any Airspace sites 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 Airspace site and the disposition of those sites.

In the instances in which the Department's construction contractor requires a construction staging area not included within the Construction Bid Package, R/D A/S is authorized to negotiate directly for up to a three-year maximum term, under the following conditions per [CTC Resolution G-25-14](#):

- Must meet 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 rate is escalated each year by an appropriate negotiated percentage or by the area's Consumer Price Index (CPI).
- Rental term cannot exceed three years, even with extensions.
- Use cannot require any major site improvements.
- 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.).
- May not be under, over, or next to highway structures.
- No hazardous materials and/or waste can be produced, stored, or transported.
- 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.

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.

Note: For construction contractors engaging in services on near the highways but not under direct Departmental contract, approval to use this type of agreement is required from HQ A/S.

15.05.07.00 Telecommunications Licenses (Wireless)

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 Department owned property (maintenance facility, park and ride lot, 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 are usually only through the Encroachment Permits Office.

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

15.05.08.00 Tieback 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 mentioned above.

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.

15.05.09.00 Emergency Shelters & Feeding Programs

Statute directed under [SHC 104.30](#), R/D A/S is authorized to directly negotiate with cities and counties for the use of highway right of way for the specific use of emergency shelters and feeding programs.

Please see Emergency Shelters and Feeding Programs section 15.15.00.00.

15.05.10.00 Underground High-Voltage Electric Agreement

For fire-prone areas classified as Tier 3 by the [California Public Utilities Commission \(CPUC\)](#) map. Utility companies have been allowed to use highway right of way to underground their high-voltage electrical lines. See Section 15.16.01.00.

Although classified as a utility by the CPUC, longitudinal installation of their improvements falls outside of the Chapter 17 Utility Accommodations Policy in the Design Manual. Allowing utilities to use highway right of way after they have been compensated to relocate outside of access control lines may constitute a gift of public funds. In order to avoid this conflict, utility

companies must have an agreement and be charged fair market value to re-enter and use highway right of way.

These types of requests are individually reviewed. They must be approved through the Design Exception policy and through an HQ Interdivisional Review Committee.

R/D A/S is not delegated or authorized to approve agreements for undergrounding high-voltage electrical lines, but will participate in the HQ Interdivisional Review committee and execute the agreement should it be approved.

Please contact HQ A/S for additional information.

15.05.11.00 **Renewable Energy & Solar Agreement**

Senate Bill 49 authorized the Department to investigate and develop a process to use highway right of way for the development, production, and storage of renewable energy.

This initiative is ongoing and is currently in the developmental stages. Upon completion, the Airspace program will have developed a new process for using highway right of way for renewable energy purposes.

No specific agreement currently exists. While these are being developed, each request will be reviewed on a case-by-case basis, and the most appropriate agreement type will be modified to fit this need.

15.05.12.00 **Electric Vehicle (EV) Charging Agreement**

In order to assist in the State's overall goal of total zero-emission vehicles on the state's roads, the Department has been authorized to prioritize the installation of Electric Vehicle Charging equipment within the highway's right of way.

Federal regulations limit the Department's ability to allow the installation of EV charging equipment in Rest Stops and other areas. Furthermore, EV charging under, over, or next to structures has been limited to exclude buses or other large transportation vehicles due to the increased fire risk they pose.

While the Department continues to develop and roll out their process for using highway right of way to private entities, R/D A/S will need to review these types of requests individually.

Until templated agreements have been provided by HQ A/S, agreements must be tailored to each individual request.

15.05.13.00 Other Clean Energy and Connectivity (CEC) Agreements

FHWA has allowed the installation of Clean Energy and Connectivity (CEC) uses on the interstate through an expedited approval process.

CEC uses include but are not limited to:

- renewable energy
- alternative fueling
- electrical transmission and distribution
- broadband projects

Uses without their own unique agreements must be reviewed individually and be approved through FHWA if located on the interstate.

Questions about CEC uses should be directed to HQ A/S.

15.05.14.00 Legacy Agreements

These are agreements that are currently in existence and will not be renewed, extended, or newly executed.

15.05.14.01 Open Storage Agreement

Open Storage is currently a prohibited use on all airspace sites. Any future agreements for this use will not be approved or allowed. Existing open storage will be terminated if exceptions are not approved.

Open storage includes but is not limited to the storing of any items not approved within this chapter (e.g. inventory, commercial equipment, materials, goods, personal property, inoperable vehicles, trailers, portable structures, etc.).

Any airspace site on the interstate and/or under, over, or next to a highway structure will not be considered for an exception. Should the decision of the District Director to allow open storage conflict with this policy, approval from HQ A/S will be required.

An open storage site allowed through an approved exception shall not

contain any items contained in the prohibited items list. See Section 15.13.10.00 for prohibited items.

Any questions regarding this policy should be directed to HQ A/S.

15.05.14.02 **Non-Developmental Agreement**

This agreement is very similar to the Rental and Parking Agreements; except they were used in scenarios where tenants installed non-structural improvements that require substantive investment (e.g., new construction for a parking lot facility and other alternate uses).

15.05.14.03 **Developmental Agreement**

The Department is prohibiting any development of buildings or parking garages on any Airspace sites.

Legacy Developmental agreements will be evaluated for potential cancellation and for demolition of existing buildings near structures. The Department will review RUAs to evaluate whether non-renewal or cancellation of leases inconsistent with the new policy is possible, given the existing agreement language. RUAs for buildings near Department's structures will also be evaluated for non-renewal or cancellation.

The review of these agreements will require HQ involvement and approval.

Please see section 15.18.00.00, Changes to Agreements, for additional information.

15.05.14.04 **Oil and Gas Agreements**

No longer advised to execute these types of agreements without HQ A/S approval. In the past to generate revenue, oil and gas rights were leased to any oil and gas company that would pay rates equal to or greater than the rate being paid to individuals in the same geographical area.

To use a site, the company would 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 executed the agreement before the Department executed it. Generally, the Right of Way Use Agreement or the memorandum of the lease was recorded. R/D A/S should have ensured that the Department's signature is authorized to

execute recordable documents in the county where the site is located. The company paid a fixed rental rate based on market data until the drilling operation began.

When the company started actual production, royalties became due (percentage of gross revenues). R/D A/S then changed the account to reflect zero rent and schedule the agreement 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 agreements 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) in the old RWPM system and will use 800 in ROWMIS.

15.05.14.05 Broadband

Wired Broadband facilities are now treated as wired telecommunications utilities for the purpose of issuing encroachment permits.

See Clean Energy and Connectivity Section 15.17.00.00 for additional information.

15.05.14.06 Toll Bridge Authority Agreement

Special handling is required for revenue received from airspace sites created by the 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 agreements under the same procedures as regular accounts are managed.

15.06.00.00 – LEASING METHODS OVERVIEW

15.06.01.00 Overview

The Department may negotiate agreements using three different methods.

Direct Negotiations: This method is used when competitive bidding is not in the best interest of the State of California, or the property is landlocked and there is only one adjoining owner.

Competitive Bid: This method is used when the Department engages the public for bidding on a property for a specific use for a specific time.

Public Entity to Public Entity: This method is used when another government body wishes to negotiate a use of the right of way for a public purpose.

15.06.02.00 Direct Negotiations

Right of Way may be used through direct negotiations in some circumstances that are in the best interests of the state. These circumstances include adjoining owners, construction contractors, or groups of individuals wishing to use a property for a public purpose. In the history of the airspace program, direct negotiations were used for development of independent business, which included the building of improvements within the right of way.

Entering into agreements directly with an entity requires a two-step [California Transportation Commission \(CTC\)](#) approval process, except for the few scenarios where CTC has given the Department delegated authority to directly negotiate. See Section 15.01.01.03 and [CTC Resolutions G-25-14](#) and [G-25-24](#) for more information. Under the leasing scenarios where the Department does not have delegated authority, before negotiation commences, the Department must first request permission from the CTC to directly negotiate with an entity. If approved, the Department is then able to begin and complete the negotiation process. The Department must then request approval from the CTC of the negotiated terms and conditions before Right of Way Use Agreements are fully executed.

See Section 15.07.00.00 for detailed information on this process.

15.06.02.01 **Adjoining Users**

When a site becomes available, R/D A/S may contact all adjoining users and occupants to give them pertinent information about the anticipated use for the site. Note all discussions in the airspace site diary. If two adjoining users are interested in the use of the property, and the property is landlocked or not otherwise accessible to the public, the Department may have a private competitive bid auction for adjoining users only.

15.06.03.00 **Competitive Bid Auction**

The Department is authorized to engage in public offerings for the use of right of way through a public bid auction. Districts can choose to engage in a silent bid auction, or an oral auction depending on the circumstances. Please see section 15.08.00.00 for more information on this topic.

When a site becomes available, R/D A/S may contact any adjoining users and occupants to give them pertinent information about upcoming bid auctions to lease the site, if directed by their District or HQ management. Note all discussions in the airspace site diary.

15.06.03.01 **Sealed Bid**

Sealed bid auctions are generally used for two circumstances:

- The location of the site is remote, and an oral auction would create a hardship for participants.
- There is a possibility of questionable bidding practices between participants. This would be substantiated by past auctions within the District.

Any use of a sealed bid process outside of the two circumstances above will require HQ A/S approval.

15.06.03.02 **Oral Bid**

Oral bid auctions are generally used for most circumstances. The district should take care to follow all procedural guidance in section 15.08.05.00.

15.06.04.00 **Public Entity to Public Entity**

The CTC has given the Department the authority to engage in Direct Negotiations with Public Entities so long as they meet the three qualifiers detailed in 15.09.01.00. If the use does not meet all three qualifiers, then negotiations must be approved by the CTC. See sections 15.01.01.03 and 15.09.01.00 for more information.

15.07.00.00 – INITIATING DIRECT NEGOTIATIONS

15.07.01.00 Direct Negotiations

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. The CTC must approve directly negotiated Right of Way Use Agreements, with some exceptions, which are documented in [CTC Resolutions G-25-24 \(Procedure for Leasing to Public Entities\)](#) and [G-25-14 \(Procedure for Leasing Airspace to Private Entities\)](#). 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).

Per [CTC Resolution G-25-24](#) (revised from G-19-43), CTC concurrence is not needed to directly negotiate with a public entity if certain conditions are met. The terms and conditions for a directly negotiated landlocked site require CTC approval.

Direct Negotiations is a two-step process for those leasing scenarios where CTC has not delegated authority to the Department. The first step is to request permission to engage in direct negotiations from the CTC. After CTC approval of the initial request, the [Letter of Understanding \(Exhibit 15-EX-04\)](#) (internal Caltrans link) is sent to the Lessee.

The second step is to request CTC approval of the negotiated terms and conditions. This requires planning for approval over two different CTC meetings.

Please see [CTC Resolution G-25-14](#) or the most current resolution.

15.07.02.00 **CTC Consent to Directly Negotiate**

R/D A/S must submit a package to HQ A/S requesting permission to directly negotiate from the CTC. Package consists of the following:

- Memo to the CTC Commissioners
 - County, Route, Location
 - Thorough background of the site
 - Access to the site
 - Adjacent user's interest
 - Best Interest to the State
 - Map, Aerial Image
 - Conceptual DARC Summary
 - List of divisions who had input, including the State Fire Marshal.

See Office of CTC Liaison intranet for the most up-to-date version of the [book item template](#) (internal Caltrans link).

The request for CTC approval to direct negotiations must clearly state **why** it is in the State's best interest to enter into an agreement directly with the proposed entity (e.g., security and/or maintenance). It is best to state direct benefits in terms of savings or maintenance costs to the State. Indirect terms, such as a general benefit to the local community is difficult to quantify, but should be included nonetheless.

See [Exhibit 15-EX-05 \(Request for Consent to Directly Negotiate \[AAC\]\)](#) (internal Caltrans link).

15.07.03.00 **Processing Fee**

Each proposed lessee must pay a minimum processing fee of \$1,000 (or, depending on the complexity of the proposed use, an appropriate amount required to negotiate the Right of Way Use Agreement) if the CTC consents to direct negotiations. The R/D A/S Office Chief is responsible for determining the appropriate processing fee for complex sites.

Processing 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.

15.07.04.00 **Approval Term**

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.

15.07.05.00 **Application (Reference)**

All potential Lessees shall be required to submit an application for the department's approval. This application shall have an attestation that the Lessee has not filed a bankruptcy in the last 10 years, nor has had Unlawful Detainer Processes initiated in the last 10 years. See section 15.14.02.00 for more details.

15.07.06.00 **Credit Checks (Reference)**

All potential lessees must submit a credit report to the Department to demonstrate that the Lessee has not had a bankruptcy or Unlawful Detainers in the last 10 years. See Section 15.14.02.00 for more details.

15.07.07.00 **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 15.11.00.00). 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.

15.07.08.00 **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.

15.07.08.01 **CTC Book Item for Terms and Conditions**

R/D A/S must submit a package to HQ A/S requesting approval of terms and conditions from the CTC. The package consists of the following:

- Memo to the CTC Commissioners
 - County, Route, Location
 - Thorough background of the site
 - Access to the site
 - Adjacent owner's interest
 - Best Interest to the state
 - Rent
 - Escalation Rate
 - Re-evaluation Rate
 - Length of Agreement
 - Any Options to Extend
 - Insurance Amount
 - Any special Clauses
 - Map, Aerial Image
 - Proposed Lease Agreement
 - Valuation Report
 - Environmental Document
 - Conceptual DARC Summary
 - List of divisions who had input, including the State Fire Marshal.

See Office of CTC Liaison intranet for the most up-to-date version of the [book item template](#) (internal Caltrans link).

15.07.09.00 **Encroachment Permit**

If the use requires soil disturbance or is a new use, the Lessee must submit an application for an encroachment permit. Further, upon completion of construction, the Lessee must submit as-built plans to the Encroachment Permit Office.

15.07.10.00 **Estoppel Certificate**

For legacy parcels, 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 to 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 \(Estoppel Certificate\)](#) (internal Caltrans link) for the **mandatory** format.

15.07.11.00 **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 to the appropriate representative authority, stating the lessee is not in default with any provisions of the Right of Way Use Agreement.

15.07.12.00 **FHWA Approval (Reference)**

If the parcel is on an interstate, approval for use must be sought in addition with the approval of the CTC. FHWA approvals should be sought prior to submittal to the CTC package being submitted for approval of terms and conditions. Refer to section 15.19.00.00 for more information on FHWA Package submittals.

15.08.00.00 – INITIATING COMPETITIVE BID

15.08.01.00 Scheduling

R/D A/S needs to review the expiration dates of the right of way use agreements a year out. R/D A/S need to identify the site(s) to be offered for use. R/D A/S need to confirm the sites within inventory and that it has Mapping from Right of Way Engineering. Then R/D A/S will request DARC conceptual approval of the terms and the proposed use. If a site has never been leased, minimum bid is based on market data established by the Bid Lease Valuation. A memo should be sent to the R/D Appraisal Function requesting any Bid Lease Valuations. If the site was previously leased, the new minimum bid is based on the most recent/current Fair Market Rental Rate (FMRR) and must be adjusted for current market conditions and annual adjustments, so long as the FMRR is no older than 1 year. R/D A/S needs to start this process immediately once the site is identified to allow adequate time to include permits and SFM approvals as appropriate.

15.08.02.00 EV Charging within Competitive Bids

Typically, the installation of EV charging stations will be handled via the bid process by the department requiring prospective bidders to install EV chargers. If approached by an EV company for EV placement, it must be put out for public bid to give the other EV charging companies the same opportunity.

15.08.03.00 Brochure Requirements

The auction brochure is a packet of information to announce the auction to the public. The auction brochure summarizes the pertinent information of the auction, procedures, and the site. The auction brochure must be posted on the Department's public website to advertise the auction.

The auction brochure must contain:

- Site information:
 - locations of site and link to online mapping
 - location relative to structure (under, over, or next to)
 - photos
 - size
 - shape
 - available utilities
 - applicable zoning

- Auction terms:
 - format of auction (oral or sealed bid)
 - For sealed bids, the auction brochure must additionally contain:
 - mailing instructions where to submit sealed bid
 - bid opening date and time
 - bid envelope notice and sealed bid instructions
 - date of auction
 - location of auction (if applicable)
 - bidder deposit and minimum bid amount
 - limitations/disclaimers
 - insurance requirements
 - credit check/unlawful detainer disqualification criteria
 - winning procedures
 - Airspace staff contact information
- General disclaimers should include:
 - allowed uses,
 - alterations or improvements must be received prior to approval, lessee must maintain and keep the site clean and comply with all federal, state, and local laws,
 - lessee may not sublet, and
 - Department reserves the right to enter the site
- List items prohibited:
 - oil, gasoline, lumber, pallets, wood, wood chips landscaping materials, non-operable vehicles, plastic piping and/or tubing, tires, paper/paper products, fabrics, batteries, and chemicals.
- Any additional required data

Prior to posting on the internet, the brochure must be remediated for ADA compliance by R/D A/S.

R/D A/S will submit the brochure to HQ A/S for assistance in posting auction brochure to the [Properties for Sale or Lease web page](#). R/D A/S will need to advertise the auction brochure a minimum of one (1) month prior to the auction, unless directed otherwise by HQ A/S. If not directed by HQ A/S, the R/D A/S will need to receive approval from HQ A/S for anything under thirty (30) days.

15.08.04.00 **Sealed Bid Best Practices**

R/D A/S obtains a lock box to be secured in a designated locked cabinet. As sealed bid envelopes are received, R/D A/S will place the unopened-sealed bid into the locked box. The locked box must remain locked until auction time. On the day of auction, R/D A/S will check the mail room approximately ten (10) minutes prior to the auction start time for any additional sealed bids. If sealed bidders are present, ask if there are any bids that would like to be submitted approximately one (1) minute prior to the auction start time. A designated R/D A/S staff member will open the lock box in front of the entire room, and/or video if virtual. If more than one site is being bid on, sort envelopes by site number. Open one bid at a time, announce the entity making the bid aloud, confirm the bid package is complete, and keep all contents of the bid package together. Continue this process until all bids have been opened.

Ensure R/D A/S staff have been designated to perform the roles outlined above, including recording bids, opening and announcing bids, and serving as the public observer.

15.08.05.00 **Oral Bid Best Practices**

Once auction site is identified, establish date, time, and location for oral auction. Create a bid package and submit to HQ A/S for review and approval. For the day of the auction, R/D A/S needs to confirm enough staff are available to conduct a successful auction.

Sample of staff needed to conduct an auction:

- Auctioneer, speak loud and clear
- Team to set up room with laptops, printers, podium, and other electronics as needed.
- Staff to escort public into auction room (if necessary)
- Register attendees (bidders and non-bidders must register)
- Verify deposit check and bid package
- Assign a paddle number – document on spreadsheet to correlate name, paddle number, and bidding parcel
- Public observer – needed for both silent and oral auction

On the day of the auction, collect the bid deposit, the registration form, name, and assign a paddle number for the bidder. Non-bidders can register to attend but will not receive a bid paddle. Verify bidders have a deposit check and return to bidder. Make sure all bidders have the appropriate minimum bid deposits available to bid on a site. The agent performing the registration duties

will make note of what properties each bidder is approved to bid for and paddle number assigned. Provide all bidders with the written rules of the auction and the next steps if selected as the winning bidder. Steps include: number of days to provide complete application package, list all documents/items needed, such as security deposit, business documents, credit report, and R/W agent point of contact. Prior to starting auction, auctioneer should go over auction procedure and rules of the auction. Public Observer will use spreadsheet provided by Registration agent to ensure improper bidding behaviors do not occur.

15.08.06.00 **Application**

All potential Lessees shall be required to submit an application for the department's approval. This application shall have an attestation that the Lessee has not filed a bankruptcy in the last 10 years, nor has had Unlawful Detainer Processes initiated in the last 10 years. For an oral auction, this application will be due at the time of the auction as part of check-in documentation. For a sealed bid auction, this will be included in the sealed bid package.

See section 15.14.02.00, Applications and Credit Checks for more details.

15.08.07.00 **Credit Check**

All potential lessees must submit a credit report to the Department to demonstrate that the Lessee has not had a bankruptcy or Unlawful Detainers in the last 10 years. Credit report must be supplied within 7 calendar days of auction completion. Applicants with Unlawful Detainer or Bankruptcy will not be considered.

See Section 15.14.02.00, Applications and Credit Checks, for more details.

15.08.08.00 **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. Each site requires a bid deposit. If a bidder is bidding on 2 separate sites, the bidder is required to have 2 bid deposit checks. After completion of the bid or auction, R/D A/S shall immediately contact the successful bidder and request payment of the balance due within 7 calendar days, 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 qualified highest bidder in the process. Funds are not returned to the proposed lessee if the agreement is not executed.

15.08.09.00 **Winning Bid Requirements**

Oral and Sealed auctions, highest bidder that meets criteria wins. If the highest bidder does not fulfill requirements of the auction within the 7-day window, the second highest bid wins. This step is continued until a bid meeting all requirements wins.

15.08.10.00 **Bid Forfeiting**

Winning bid requirements must all be met to avoid forfeiting. If a winning bid deposit is not received within 7 calendar days of the winning bid, the bid will be forfeited. After the seventh day, the bidder will be notified in writing that their bid has been forfeited. On the eighth day, notify the second-highest bidder that the highest bidder has forfeited, and if they are still interested in the site, they have 7 calendar days to fulfill bid requirements. Repeat the process until a new tenant is initiated. If no more bidders are available, put the property up for auction again.

15.08.11.00 **Competitive Bid 5-Year Term Limit**

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.

15.08.12.00 **Competitive Bid Terms Longer than 5 Years**

Long-term bid Right of Way Use Agreements are not commonly used. For agreements with terms longer than 5 years, there will most likely be at least minimal construction (e.g., fences, landscaping, curbing, lighting, and paving). Requirements for the submittal of plans for any improvements will apply. The plans should also show traffic circulation on the site and the ingress and egress routes.

Any lease term more than 5 years requires HQ A/S Approval.

Refer to Table 1, "Process – Long Term Competitive Bid."

TABLE 1 PROCESS – LONG-TERM COMPETITIVE BID

Step	Responsible Party	Action
1	R/D A/S	Identify the site to be leased by an inquiry.
2		If not in inventory, request production of mapping from R/W Engineering.
3		Request DARC conceptual approval of terms and proposed use. Include Permits and State Fire Marshal approvals as appropriate.
4	DARC	Review and approve/disapprove the conceptual request. Comments to disapprove should accompany the review.
5	R/D A/S	If DARC does not approve, determine the problem and try to resolve any difficulty with the proposal. If the problem cannot be resolved and a short-term use cannot be identified, remove the proposal from consideration.
6		If DARC approves the request, ensure all program restrictions and conditions are included in the bid package and the Right of Way Use Agreement (e.g., access limitations, column protection, and landscaping).
7		If possibly controversial and on the Interstate, send proposal, DARC comments, and a site map to HQ A/S for FHWA conceptual approval.

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

Step	Responsible Party	Action
8	R/D A/S	Request bid lease valuation if needed.
9		Send proposed bid package to HQ A/S for review and approval.
10		Place sign at site, email, place media ads (i.e., Costar LoopNet), and contact neighboring owners/tenants.
11		Prepare a memo requesting FHWA approval if the winning bidder's proposal differs slightly from the approved use and submit through HQ A/S. Obtain DARC preliminary review if proposal differs slightly from conceptual plans.
12	R/D A/S	Any modifications or changes require prior HQ A/S approval.
13		Obtain local agency concurrence and evidence of insurance.
14		Obtain District Environmental approval of lessee's environmental document.
15		Obtain DARC approval of final construction plans.
16		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 agreements.)
17	Lessee	Execute Right of Way Use Agreement and pay lease rate per terms of the Agreement.
18	R/D A/S	After final reviews/approvals are obtained, apply for an encroachment permit to construct.
19		Monitor lessee's move onto the site, including any construction, and begin property management activities.

15.08.13.00 **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 \(Bid Package\)](#) (internal Caltrans link) for a sample bid package and [Exhibit 15-EX-03 \(Bid Instruction\)](#) for sample bid instructions. HQ A/S review and approval for use of less than 6 months bid package is not required.

Failure to complete a bid auction and engage in direct negotiation without CTC approval will result in conflict with CTC resolutions and jeopardize the Department's delegated authorization to enter into other agreements.

15.08.14.00 **Minimum Bids**

For establishing minimum bid valuation see Section 15.11.03.00, Minimum Bid Valuation.

15.08.15.00 **Competitive Bids on Interstates**

In addition to DARC approval, FHWA approval is required. Please see section 15.19.00.00 for additional information.

15.09.00.00 – INITIATING PUBLIC ENTITY TO PUBLIC ENTITY AGREEMENTS

15.09.01.00 CTC Requirements

Per [CTC Resolution G-25-24](#) (revised from G-19-43), when approached directly by a public entity for alternate use of a specific Airspace site, the Department may enter into Direct Negotiations for alternate use without first obtaining CTC permission only if all of the following conditions below are satisfied:

- a. That the lessee is a public entity as defined in the Public Contract Code or is a federally recognized tribe.
- b. That the lease will fulfill a public purpose.
- c. That the Department will receive either:
 - i. fair market rent for the property, or;
 - ii. a lesser amount as authorized by any statute enacted by the Legislature, so long as the property satisfies the limitations and conditions set forth in the applicable statute.

Also, per the CTC resolution, Caltrans may enter into airspace agreements with public mass transportation agencies at fair market value rental rates less a twenty percent (20%) discount, subject to specific CTC approval.

Except for the conditions listed immediately above, the Department must first obtain CTC permission prior to entering into Direct Negotiations for all other alternate use scenarios with a public entity.

15.09.02.00 Public Entity Right of Way Use Agreements

Right of Way Use Agreements with public entities do not require CTC consent to negotiate directly or for the approval of the terms and conditions as long as the lessee meets the resolution requirements above. A school district, local public entity, or other governmental agency defined in the Public Contract Code, can use an airspace site at the Fair Market Rental Rate (FMRR) for public use (refer to [CTC Resolution G-25-24](#) or the most recent resolution).

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 rental rate stating it is fair market value.

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.

15.09.03.00 **Term**

Although no maximum term is set by the CTC Resolution or statute for leasing to a public entity at 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 R/D A/S needs to have sufficient documentation to justify the longer term, and request approval from HQ A/S.

Please see [CTC Resolution G-25-24](#) or the most current resolution.

15.09.04.00 **Rent**

R/D A/S should coordinate new RUAs and payment schedules with the agency's budget cycles to ensure rental 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 a new RUA will be necessary. 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 rental rate increases. If it is a mass public transportation agency follow the CTC resolution for adjustment to value.

15.09.05.00 **Marler-Johnson Act Park Agreements**

Per [SHC 104.15](#), the Department is authorized to lease to public entities for park purposes.

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 entities should contact R/D A/S about using a site within nonoperating rights of way ([Government Code Section 14013](#)). R/D A/S shall review the local entities 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 up to 2 five - year extensions at the R/D Senior’s discretion. Any agreement that exceeds a total of 20 years, including extension, will require HQ A/S approval. FMRR 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 site 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-25-24](#) or the most current resolution.

15.09.06.00 **Valuation (Reference)**

For Public Entity leases they must be fair market value or statute-driven for less than Fair Market Value.

See section 15.11.04.00 for the Valuation of Public Entity RUAs.

15.09.07.00 **Legacy Subleasing vs. Third Party Operator (Reference)**

Subleases are no longer allowed. Some Public Entity leases may allow legacy subleasing with an exception from HQ A/S. Otherwise, public entities are barred from subleasing or assigning a lease. Public Entities are granted leases at preferable terms and should not benefit from this arrangement.

Public Entities are allowed to contract with a third-party service to operate on the airspace site. If the public entity is paying for the service, it is not a sublease.

See section 15.13.18.00 for terms & conditions for Legacy subleasing.

15.09.08.00 **Encroachment Permits**

If the use requires soil disturbance or is a new use, the Lessee must submit an application for an encroachment permit. Upon completion of construction, the Lessee must submit as-built plans to the Encroachment Permit Office.

15.09.09.00 FHWA Processing (Reference)

Public Entity right of way use agreements require FHWA review and approval if on an Interstate.

See section 15.19.04.00 for FHWA package requirements.

15.09.10.00 Approval for Less than Fair Market Value

Public Entity agreements require a Public Interest Finding for less than fair market value. Private entities cannot lease for less than fair market value without proper approval. Please contact HQ A/S to inquire about approvals for less than fair market value.

See section 15.19.02.00 for FHWA approval for less than fair market value.

15.10.00.00 – DISTRICT AIRSPACE REVIEW COMMITTEE (DARC) PROCESS

15.10.01.00 Region/District Airspace Review Committee Overview

R/D A/S is responsible for conducting a region/district review of all alternate use proposals as part of the Airspace process. DARC reviews are required regardless of the leasing method utilized to get an agreement in place, i.e., bidding or direct negotiation with private entity or public entities. The purpose of the DARC review is to ensure that no aspect of the alternate use and installation of tenant improvements, if any, interferes with the Department's mission, operational safety, or operational needs.

A DARC review shall always be conducted for any material change in the agreement. While not all inclusive, see below for some basic change scenarios requiring DARC:

- Development of a new airspace site, with or without improvements
- Proposal to lease an existing airspace site for the same existing alternate use
- Proposal to lease an existing airspace site for a new alternate use
- An existing lessee proposes to install improvements within the airspace site
- Wireless Site Licensing Agreements

While separate DARC reviews may be held at the Conceptual, Preliminary, and Final phases to ensure previous concerns have been addressed and the proposal has not drastically changed since the Conceptual approval, the Preliminary phase may not always be needed. A Conceptual and Final DARC review is always required. DARC review phases may be combined. 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. Preliminary review typically occurs when tenant improvements are part of the lease proposal. Consult HQ A/S if there are questions regarding how to achieve a complete, strong, and supportable DARC review for a specific proposal.

The proposed use will dictate how many separate DARC review phases are conducted. R/D A/S shall use sound judgement to ensure all concerns are addressed conducting the appropriate number of separate DARC reviews

tailored to the proposal. Any conflicts between the proposal and internal uses should be mitigated with the proposed lessee to the fullest extent possible.

REGION/DISTRICT AIRSPACE REVIEW PHASES

Stage	Review
Conceptual	• Does the proposal make sense? • Any program objections? • Identify upgrades or modifications to site (e.g., slope or column protection.) • Other interested parties? • Highest and best use. • Can an agreement be directly negotiated, or must a competitive bid process be used? • Advise proposed lessee of DARC comments (lessee is identifiable only under a Direct Negotiation scenario.) • Does the lessee understand the requirement to pay a fair market rental rate (lessee is identifiable only in a Direct Negotiation scenario)?
Preliminary	• Preliminary plan review (effect on operations): ◦ access, utilities. ◦ highway structures. ◦ lessee's improvements. • Potential risks and liabilities compared to benefits and revenue. • Advise the proposed lessee of DARC comments.
Final	• All DARC comments addressed and issues, if any, mitigated in final plans. • Construction and maintenance schedule provided to DARC for those lessee's involving tenant improvements. • Final plans should include information showing excavation and trenching. • Advise proposed lessee and Permits Office of status after final DARC approval for those leases involving tenant improvements.

15.10.02.00 DARC Membership Makeup

The DARC shall consist of representatives from Right of Way, Planning, Design, Traffic Operations, Landscape Architecture, Project Management, Maintenance, Environmental, Structures, Hydraulics, and the State Fire Marshal, who 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).

HQ A/S will facilitate all DARC requests between R/D A/S and the State Fire Marshal.

For telecommunications reviews, the DARC membership shall include the respective District representative from the HQ's Division of Maintenance, Office of Radio Communications. DARC representatives should be permanent members from each program who have committed to participate fully in the review. While not a member of the DARC, in certain scenarios, FHWA plays a role in the DARC review process for Airspace located within the Interstate system. See Section 15.10.04.03 for details of FHWA's role in the DARC review process.

R/D A/S must ensure that each airspace site is thoroughly reviewed by all relevant parties to reduce potential risks to the Department. All affected programs and those entities with authority over the process should review each proposal, as appropriate.

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 Functional branches. Encroachment Permit staff 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).

15.10.03.00 DARC Communication Methodology

Although formal DARC meetings may be held, informal discussions and email routing of the proposal will suffice if the proposal is not extremely complex. Communication methodology is at R/D A/S discretion as long as it is effective. In the communication to DARC members for an airspace proposal, R/D A/S shall provide relevant information such as:

- Proposed use and term.
- Site improvements, if any (proposed and existing) – paving, striping, curbing, lighting, electric vehicle chargers, solar panels, electric battery storage, etc.
- Access – ingress and egress.
- Utilities, including water.
- Legacy Major developments – buildings, storage tanks, etc.

Prior to submitting the proposal to DARC for evaluation, 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 [private party or public entity]).
- Adjacent property management and excess sites that can be utilized to support the decertification of the airspace site and moved over to one of the other functions.
- History of prior leases (including term and use).

15.10.04.00 **Review Timelines and Fees**

Responses from DARC members to R/D A/S 's request for DARC review 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.

R/D A/S review fees are collected when district has obtained DARC and FHWA conceptual approval if applicable, i.e., if proposal is controversial and/or is 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:

- Rental agreements up to six months: \$0
- Directly negotiated Right of Way Use Agreements: \$2,500 (Construction Staging for Contractors on Highway projects may be exempted at District's discretion.)
- Competitively bid Right of Way Use Agreements and bid does not require prospective lessee to install improvements: \$0 (Winning bidder pays Liquidated Damages or Forfeiture of Deposit.)
- Winning bidder of a competitively bid Right of Way Use Agreements and bid requires installation of improvements: \$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). Review fees may be waived or increased by District with Senior approval and supporting reasoning (e.g., hardship to small agency or complex review), and documentation to file with an information copy to HQ.

15.10.05.00 **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 approve the proposed use to R/D A/S in order for the proposal to move forward under bid or direct negotiation methods. After the Conceptual DARC approval in the District, and if the proposed use can be interpreted as unusual or controversial, 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 conceptual proposal only and is in no way bound to accept the final proposal, unless the DARC proposal submitted for FHWA review is a combined

Conceptual/Final DARC (which would only occur under specific bid scenarios, see 15.10.01.00). FHWA does not need to conceptually approve the use if documentation exists that the same use was approved for the particular site in a prior FHWA review. This documentation shall be kept in the Right of Way Use Agreement file.

See Section 15.19.00.00 for FHWA's role in the DARC process and other approval requirements.

15.10.06.00 **Preliminary Approval**

Preliminary approval is only needed when the information at conceptual approval was insufficient to determine the major impacts on the site or when the proposed use differs. A site may have Conceptual/Final DARC approval for the alternate use and agreement term as unimproved parking, but during subsequent discussions for direct negotiation scenarios, or after winning the bid, 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.

15.10.07.00 **Final Approval**

Before the Right of Way Use Agreement is executed, amongst other requirements, i.e., evidence of insurance, environmental approval, etc. (see Section 15.14.00.00, Processing New Agreements), the proposed use must receive Final DARC approval.

Sites offered for competitive bid must have Conceptual/Final approval for the proposed use. The bid package must state that Final DARC approval in accordance with these procedures must be obtained before the site is occupied. **FHWA approval is required on all sites on the interstate.**

All issues raised at the Conceptual phase must be addressed in the Final DARC package.

See Section 15.19.00.00 for FHWA's role in the DARC process and other approval requirements.

15.11.00.00 – VALUATION AND ADJUSTMENTS

15.11.01.00 Scheduling Valuation Requests

Annually during the review of airspace sites, R/D A/S assesses 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 District's Appraisal Branch by June 1. The list identifies the airspace 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 the 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 must state:

- Airspace site number
- Property rights to be appraised
- Appraisal maps, plans, and profiles of the freeway
- Any restrictions that will be placed on the use of the site

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 the 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.

15.11.02.00 Types of Valuation of Rental Rate

The rental rate for airspace sites is the Fair Market Rental Rate (FMRR). Any rate below the FMRR is subject to the conditions set by the [23 CFR 710](#), the State Statutes, and the CTC resolutions. The FMRR is established by the following methods:

Airspace Estimates – used for preliminary discussions with potential users. This will be delivered to the airspace agent on [RW 07-19](#) by the appraiser, along with the vicinity and site map.

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

Bid Lease Valuations – A bid valuation is required to establish minimum rental rates on the basis of competitive bids. This valuation will be done on [07-EX-27](#) and will estimate, and report, the most probable rental rate for the airspace parcel. 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.

Airspace Appraisals – A market value airspace appraisal is required for any site that will be rented on a direct basis without competitive bids and for those situations not meeting the criteria for bid valuations. This format is used for all RUAs with structural improvements 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 an RUA with structural improvements are entered into, the appraisal should not be requested until the potential lessee executes a Letter of Understanding (see Section 15.07.05.00) 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 rental rate is required prior to extending the term of a legacy long-term Right of Way Use Agreement if terms and conditions allow, 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.

15.11.03.00 **Minimum Bid Valuation**

When utilizing the competitive bid method, an estimate can be used for the current rental amount if under the new minimum adjusted value.

The minimum bid for a less than 5-year 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 FMRR 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 rental rate did not draw any bidder to the auction.

The maximum return to the State should be obtained.

15.11.04.00 **Public Entity to Public Entity Valuation**

Public Entity rental rates need to be at fair market value unless the CTC resolution is met where statutes indicate less than fair market value can be applied.

See Section 15.09.01.00 for the CTC Requirements for Public Entity Agreements.

15.11.05.00 **Tieback and Tower Crane Valuation**

Fair market value (FMV) must be paid for both tieback and tower crane agreements. The FMV for tiebacks is the cost to remove the remaining rods in case of a future project conflict. The installation cost will be \$3,000 per tieback rod. For Tower Cranes, the FMV is nominal of \$500/mo. as defined below in 15.11.07.00.

15.11.06.00 **Unique Types of Rental Rates**

Sometimes rental rates are not a simple monthly amount; they can be derived from various forms of the appraisal process and result in unique rental rates.

15.11.06.01 **Percentage Agreements**

In rare cases, the FMRR will be a percentage of the gross income the lessee will generate at the site. R/D A/S can provide information to the Appraisal Branch if available in order to determine the best percentage and establish the method for calculating it (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.

15.11.06.02 **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. This should not be confused with encumbering of the property. Any value derived from this process should not be used by the applicant to encumber the property.

15.11.06.03 **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 rental rate to use in negotiating all terms and conditions of the Right of Way Use Agreement. A typical rate of return will appear as a percentage of the site's FMV of fee. (e.g., \$100,000 FMV x 10% rate = \$10,000 annual FMRR monthly = \$835 rounded.)

15.11.07.00 **Minimum Rental Rate**

The minimum rental rate is the appraised FMRR, 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 the rental rate (e.g., public entity use, homeless shelters).

The approved FMRR 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 FMRR 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 FMRR RUAs might conflict with [23 CFR 710.403\(e\)](#) requirement for FMRR and will require a public interest finding to be sent to FHWA for all federally funded properties. Any below fair market valuation, except as prescribed in the CTC Resolutions, will also require CTC Approval.

15.11.08.00 **Rental Offsets for Marler-Johnson**

Rental offsets may not be promised or offered to a lessee unless the offset is part of an approved Right of Way Use Agreement, like the Marler-Johnson. Rental offsets are reimbursements for expenses paid by the tenant to maintain or clean up the property after the execution of the RUA. Rental offsets come out of the property management 058 fund. If a Right of Way Use Agreement is already in effect, the R/D Senior must approve the offset in writing. This includes Marler-Johnson leases and Park and Ride lots. Offsets made after the Right of Way Use Agreement has been executed 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 R/D Senior approved adjustment.

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

R/D A/S 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.

15.11.09.00 **Rental Rate Increases and Periodic Adjustments**

The rental rate must be adjusted for all RUAs every year. Districts are delegated the authority to use the most common practice for their market. Types of periodic adjustments should be determined by the type of right of way use agreement, or common market practices for their region. Typically, the date of adjustment is on a predetermined date (e.g., anniversary of the start of each agreement).

15.11.09.01 **Consumer Price Index (CPI)**

The Consumer Price Index is an economic gauge for calculating inflation by measuring the average change in prices paid by consumers for a basket of goods and services. When using this method, at minimum, the rate will be equal to the CPI for the area and adjusted annually or a set annual escalator based on the average CPI of the last 3 years. A CPI increase cannot exceed 25%.

15.11.09.02 **Predetermined Percentage Escalator**

Certain Right of Way Use Agreements have a set predetermined percentage that the rent is increased to maintain the Fair Market value every year (e.g., 3%, 2.5%, 5%).

15.11.10.00 **Re-evaluation**

Rate re-evaluations should occur every time the site is being leased or a minimum of every 5 years. Long-term agreements, those with terms longer than 5 years, should have language describing when to re-evaluate the rental rate.

15.11.11.00 **Rental Rate for Emergency Shelter and Feeding Program**

The rental rates for the use of Department-owned property are 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 RUA.

The administrative fee specified in the various statutes ranges 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 a higher administrative fee necessary to cover the Department's costs.

Until sufficient resource expenditure data has been collected for this agreement 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 RUAs of this type. The flat rate for administrative fees shall be \$5,000.00 for RUAs pursuant to [SHC 104.30](#), and \$500.00 for all other RUAs identified in Section 15.15.01.00.

15.11.12.00 **Fee Matrix**

A fee matrix is a pricing model from the Appraisal Branch that uses a table to calculate fees over a period of time and area. A matrix is a way that allows for an increased percentage adjustment to be made every year. Each matrix is dependent on the length of time the appraiser has developed, ranging from 5 to 10 years.

There are currently two fee matrices: Wireless and Underground Utilities.

15.11.12.01 **Wireless 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 FMRR for wireless sites statewide.

For all valuations other than Annual Base License, both current use and rental rate should be considered when the airspace site is rented and the determination of the rental 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.

The most recent fee matrix is posted [online](#), and carriers are provided the most recent copy.

15.11.12.02 **Underground Fee Matrix**

A statewide underground utilities comparable fee review is made by Airspace or Appraisal functional staff every ten (10) years. Annual fees for comparable sites based on the location and the size of installation were used. The underground matrix is a 10-year table that is based on the county and the size of the installation.

The approved fee matrix is considered to be the FMRR for underground utility sites statewide.

15.11.13.00 **Late Payment Fees**

Late Payment Fees in Right of Way Use Agreements are to be charged at one and a half percent (1.5%) of the payment due and unpaid, plus \$100. R/D A/S needs to individually review each RUA to assess what the late charges are for the specific airspace site.

See Section 15.13.06.00 Rental Payments for more information.

15.12.00.00 – ENVIRONMENTAL DOCUMENT REQUIREMENTS

15.12.01.00 Environmental Status

Every airspace site must have a NEPA (National Environmental Policy Act)/CEQA (California Environmental Quality Act), including a “6010 metal study” report written by the lessee and approved by Caltrans Environmental Division for the proposed use that addresses environmental issues. Proposed lessee may 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 approved by R/D A/S. The approval memo must state that the document meets applicable CEQA and NEPA requirements.

R/D A/S should consult District Environmental or HQ Environmental on specific questions.

15.12.02.00 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 site 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 District Environmental.

There is an agreement regarding aerially deposited lead with the Department of Toxic Substances Control (DTSC). This agreement dictates the approved thresholds for alternate use of the right of way. Consult HQ Environmental for further information on the agreement.

15.12.03.00 NEPA Delegation to the Department

On May 24, 2021, the Federal Highway Administration (FHWA) and Department 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 interim agreement remained in effect while the Division of Environmental Analysis worked to incorporate these actions into the renewal of the 23 USC 326 Memorandum of Understanding (MOU). The MOU was renewed and became effective April 18, 2022, granting the Department continued authority to assume responsibility for certain CEs under NEPA.

When submitting packets for FHWA approval for use and/or public interest findings, the expectation is that the packet includes the Department-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 Department 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.

15.12.04.00 **Air Quality**

The District air quality staff will review the application for an airspace site to determine if an air quality study or a technical memo is needed. This review is required for all airspace sites when the use will involve vehicle traffic or transit, including parking. Like all other environmental documents, the air quality documentation needs to be provided by the lessee.

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 district 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 Planning Organization (MPO) is needed. The statement should address the fact that the Airspace Right of Way Use Agreement is not a regionally significant transportation project. A blanket approval for all future Airspace Right of Way Use Agreements for a specified use only (e.g., parking lots with less than 250 parking spaces) may be obtained from the local MPO.

FHWA must approve the air quality conformity analysis (AQCA) prior to execution of the Right of Way Use Agreement.

The air quality requirement applies to all new agreements, or any agreement with a change in use.

15.12.05.00 **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, in coordination with the HQ Environmental Division, to investigate and test the site immediately to determine if the site is potentially or actually 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.

15.12.05.01 **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 all items being stored within airspace areas. A statewide report is provided to Caltrans Structures and the State Fire Marshal as requested.

15.12.05.02 **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.

15.12.06.00 **Stormwater Management Requirements**

Airspace sites are managed to prevent the discharge of pollutants to the stormwater drainage system in compliance with the Department's Permit and Stormwater Management Plan. R/D A/S will use standardized Right of Way Use Agreement language that conforms with the Stormwater Management Plan. The Right of Way Use Agreement language requires implementation of stormwater Best Management Practices (BMPs) that are activity specific and elimination of unauthorized illicit connections/illegal discharges to the storm drain system. Stormwater education and outreach materials, including stormwater pollution prevention fact sheets, will be provided to the lessee/tenant. The fact sheets contain the Best Management Practices (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 Stormwater 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 fall outside of the Department's Statewide Stormwater Permit require coverage (e.g., a batch plant,) under the General Industrial Permit, and will be required to provide the following:

- Copy of Notice of Intent (NOI) filed with Stormwater Resources Control Board (or No Exposure Certification).
- Copy of Receipt letter from Stormwater Resources Control Board with Waste Discharge Identification (WDID) number.
- Copy of Stormwater Pollution Prevention Plan (SWPPP) or the Water Pollution Control Program (WPCP), as appropriate, covering lessee's facility and activities.

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

R/D A/S will conduct annual inspections of leased property using the Airspace Stormwater Inspection Report ([Exhibit 15-EX-14](#) [internal Caltrans link]), to comply with the Stormwater Management Plan measurable objectives and assess lessee's compliance with RUA terms. Refer to section 15.21.01.06 for further inspection information. 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.

All A/S agents are required to complete the RW Stormwater training biennially:

- RW Stormwater Training Introductory
- RW Stormwater Real Property

Airspace Stormwater Inspection (15-EX-14) and Illegal Connection, Illicit Discharge and Illegal Dumping Response Plan (Incident Notification Report Form).

Refer to the Right of Way Property Management and Airspace Stormwater Guidance Manual for most updated version of stormwater pollution prevention

fact sheets (or Best Management Practices), guidance materials and compliance procedures.

15.13.00.00 – GENERAL AGREEMENT TERMS AND CONDITIONS

15.13.01.00 **Limitations for Under, Over, or Next to Structures**

Airspace sites located under, over, or next to structures have additional limitations on their allowed uses and ability to be leased. Open storage is prohibited in all areas of the right of way. Tenant-constructed structures, flammable materials, and non-operable vehicles are also prohibited on these airspace sites. The only approved use for airspace sites located under, over, or next to structures is daily parking.

Daily parking is limited to passenger vehicles as defined in Vehicle Code Section 465, with a maximum number of two axles, under a total weight of 11,000 lbs., are not for commercial use, and are not defined as a house car in the Vehicle Code.

15.13.02.00 **Terms**

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.
- Rental rate per approved valuation report, if not prescribed by legislation, and also the rate of return.
- If a bid, the rental rate must be based on the last bid or the previous rental rate.
- Reevaluation provisions and periodic adjustments to the rental rate.
- Insurance and indemnification requirements.
- FHWA indemnification requirements.
- Default, liability, and termination provisions.
- Sublease (Legacy), assignment, and transfer provisions.
- Retention and removal of improvements.
- Maintenance responsibilities of all parties.

The standard Right of Way Use Agreement covers all of 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 include detailed information about the above terms and conditions.

Sample format:

Use:	Improved parking
Term:	10 years
Rental 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 \$20,000,000

15.13.03.00 Options to Extend

New RUAs that are awarded through the competitive bid process should not contain an option to extend. CTC approval is required to extend an agreement.

15.13.04.00 Insurance Requirements

Each airspace site must be insured for a minimum of \$5,000,000 in liability coverage, and sites located under, over, or next to a structure must be insured for a minimum of \$20,000,000. If the site has improvements, the tenant must be insured for 100% of the replacement cost, or whichever is greater of the required \$5 million or \$20 million as outlined above. The lessee must provide a current certificate of insurance each year. R/D A/S should review it to ensure that the fire coverage is adequate considering increases in value. Each telecommunications wireless facility must be insured for a minimum of \$5,000,000 in liability, unless it is located under, over, or next to a structure which must be insured for a minimum of \$20,000,000. R/D A/S shall monitor the insurance requirements for the telecommunications licenses. All RUAs are subject to this new requirement; if RUA clauses contradict increased insurance requirements, HQ A/S must be notified for legal review. Use [Form RW 15-03](#).

15.13.04.01 **\$5 Million Insurance Requirement**

Airspace sites not under, over, or next to a structure have a minimum insurance requirement of \$5,000,000. To fulfill this requirement, at least \$1 million must be covered by a commercial general liability policy and may be supplemented with an umbrella or excess policy.

15.13.04.02 **\$20 Million Insurance Requirement**

Airspace sites that are under, over, or next to structures have a minimum insurance requirement of \$20,000,000 in liability.

Districts may receive certificates of insurance (COI) from tenants who are under, over, or next to structures in the following ways:

Commercial General Liability (CGL): Either \$1 million or \$2 million.

Excess Policy: Any combination to reach a \$20 million threshold.

Umbrella Policy: May be combined with excess to cover the \$20 million threshold.

Examples:

- \$2 million CGL, \$18 million umbrella
- \$1 million CGL, \$10 million excess, \$9 million umbrella
- \$2 million CGL, \$5 million excess, \$1 million umbrella
- \$2 million CGL, \$5 million excess, \$3 million excess

15.13.04.03 **Self-Insurance**

The Department may accept letters of self-insurance from public entities so long as the following criteria are met:

- Self-insurance letters must indicate the government code under which authorities have self-insurance.
- If the city is part of a “pooled” insurance group, it should specify the limitations of the pooled coverage.
- If the city does not meet the threshold, then an excess policy must be obtained. A certificate of insurance for this amount should be maintained in the file in addition to the self-insurance letter.

Unless the agreement language dictates otherwise, self-insurance letters should be updated annually and maintained in the site file.

15.13.05.00 **Holdover Policies**

The CTC has revoked the Department's ability to permit holdovers. Holdovers are tenants whose agreement has expired, commonly referred to as month-to-month. As an Airspace agent, developing a plan to prevent a holdover is crucial.

Holdover provisions are standard clauses in agreement documents. This does not grant the authority to allow an agreement to enter holdover status.

15.13.06.00 **Rental Payments**

The rental 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., public entities that operate on a specific budgeting cycle or for minimum rental rates to save administration costs). If advanced payments remain and to avoid issuing refunds on active tenancies, credit balances may be held and applied to future payments. Credits may also be transferred between multiple sites held by a single tenant. Refunds may be processed for vacated sites or tenancies with reconciled balances and no other options remain to utilize the funds.

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

If a tenant fails to submit a payment by the 10th day of the month, and their agreement has a late fee clause, then a late payment has to be assessed on the tenant's balance.

Late payments are only assessed once per late payment. They are not compounded and don't accrue interest. The District is delegated the authority to waive late fees.

15.13.07.00 **Security Deposits**

The minimum security deposit for any airspace site is one month's rent, but not less than \$500. Security deposits are mandatory for all Right of Way Use Agreements except for telecommunications licenses and agreements with public entities.

When the proposed use poses an extraordinary risk to the Department, there is a high potential for damage or contamination, or removal of improvements is high R/D A/S must ensure that the minimum security deposit is increased to reflect this

additional risk or liability. The ability to require an increased security deposit does not negate any other part of this chapter.

The security deposit should be collected when the RUA is signed for direct negotiations and within 7 days following the auction if the site was won through the competitive bid process.

15.13.08.00 **Right of Entry**

A Right of Entry clause in the agreement is what allows the Department to enter the used area for inspection, maintenance, transportation, security, fire, or other departmental needs. This does not allow the Department to remove private property without a court order.

15.13.09.00 **Encumbrances**

The lessee may need to encumber the airspace site in order to secure a loan. Standard Right of Way Use Agreements may permit encumbrance with HQ A/S approval before the loan is secured. If granted, R/D A/S should ensure the financial institution will be responsible for all rental payments in the event the lessee defaults on their agreement.

The Right of Way Use Agreement should be thoroughly reviewed for any special language or provisions regarding encumbering. Any non-standard language must be approved by HQ A/S and HQ Legal.

15.13.10.00 **Prohibited Materials**

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 on any airspace site.

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 15.22.04.00.

15.13.10.01 Prohibited Uses

At this time, the following uses are prohibited within airspace sites:

- Open storage (e.g., rotating inventory, piles of materials, shipping containers, portable trailers, etc.)
- Passenger Vehicle parking exceeding 24hrs.
- Non-passenger vehicle parking (e.g., semi-truck parking, equipment parking, EV charging buses, etc.)

15.13.11.00 Aerially Deposited Lead

Standard Right of Way Use Agreements on the RPS intranet website contain an aerially deposited lead (ADL) clause stating that the lessee is responsible for conducting a soil evaluation and has the right to access the site to survey for ADL.

See Environmental section 15.12.02.00 for more information on Aerially Deposited Lead.

15.13.12.00 Hazardous Materials

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.

15.13.13.00 **Stormwater**

Standard Airspace Right of Way Use Agreements on the RPS intranet website contain an approved stormwater clause stating that the Lessee shall comply with all applicable State and Federal water pollution control requirements regarding stormwater and non-stormwater discharges from the lessee's agreement area. The lessee must comply with the terms of the statewide stormwater permit or the department's permit may be at risk.

15.13.13.01 **Best Management Practices for Stormwater Management (Appendix)**

All airspace sites must include best management practices as appendix attachments pertinent to the RUA use. See 15.12.06.00 for complete Stormwater information.

15.13.14.00 **Encroachment Permits**

Standard Airspace Right of Way Use Agreements on the RPS intranet website contain an encroachment permit clause stating that the lessee shall submit engineered plans if any improvements or changes to soil will be made. All changes to the use and site require an Encroachment Permit.

15.13.15.00 **Special Terms & Conditions**

These are not common to all agreements, and can be added when necessary with approval from HQ A/S and Legal.

Standard special terms and conditions are pre-approved clauses that can be used when necessary. These are a part of the RUA templates and can be removed if not necessary.

15.13.16.00 **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, and (Legacy) truck parking, 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, column protection must be installed as part of the terms for using the site.

There are various methods of column and other structural protections. The SMI Guidelines are [Exhibit 15-EX-11](#).

15.13.17.00 **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 used 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.

15.13.18.00 **Legacy Subleasing**

The Department is no longer allowing subleases in new agreements. Existing RUAs with subleasing clauses must comply with the terms of the agreement. If allowed by current Right of Way Use Agreement, HQ 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 rental 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 15.14.02.00.
- 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 rented 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 entities are barred from subleasing or assigning a RUA. Public entities are granted RUAs at preferable terms and should not benefit from this arrangement.

15.13.19.00 **Batch Plants**

Batch plants, as defined by the Standard Identification Code (SIC), can be established on the Department 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 the 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 Department Stormwater contact approval for such uses as batch plants will also be required. If this is within an active Department 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 Department 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 R/D A/S as often as required to protect the NPDES Stormwater Permit Department uses for overall Stormwater requirements. This required inspection ensures the tenant is complying with these Stormwater requirements. An initial walk-through must occur with the District Stormwater contact, as well as a final inspection when the agreement is terminated. R/D A/S will also receive and retain these required inspection reports.

15.13.20.00 **Emergency Shelters and Feeding Program Terms & Conditions**

See the Emergency Shelters and Feeding Program section for specific terms and conditions, section 15.15.00.00.

15.13.21.00 **Clean Energy Connectivity Conditions**

Any special terms or conditions required for CEC RUAs will need HQ A/S and legal approval. See section 15.17.00.00.

15.13.22.00 Changes to Standard Clauses

Any changes to templates or approved clauses require HQ A/S approval and may also require legal approval.

15.14.00.00 – PROCESSING NEW AGREEMENTS

15.14.01.00 Documentation Required for Executing a Right of Way Use Agreement (General Discussion)

There are various processes and documentation that must be completed prior to a new Right of Way Use agreement execution. Each specific leasing scenario shall dictate which processes and documentation are required.

Some required processes/documentation for all RUAs include DARC review, valuation (bid estimate or appraisal), environmental approval (NEPA/CEQA to include tenant's completion of a "6010 Metal Study"), and a request for application/credit check from the prospective tenant.

Some situational processes/documentation may include a request for mapping and completion of maps for new sites, completion of a Certificate of Occupancy (if needed), completion of bid offering for vacant site(s), CTC package completion and approval (if needed), FHWA package completion and approval (if needed), various permit completion (such as Encroachment, Survey and/or Annual Permits (if needed)).

15.14.02.00 Applications & Credit Checks

All prospective non-public entity 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 the date of application. The submittal timeframe varies depending upon the leasing method, i.e., competitive bid or direct negotiation.

- Bidding Scenario: All bidders must submit an Airspace Lease Application as part of their bid package submission (winning bidders must then submit a credit report within 7 days).
- Non-delegated Direct Negotiation scenario: R/D A/S must obtain an Airspace Lease Application and credit report from the prospective tenant and submit it to HQ A/S along with the CTC package requesting permission to directly negotiate.
- Delegated three-year directly negotiated construction staging scenario: R/D A/S does not need to obtain an Airspace Lease Application and credit report from the prospective tenant prior to RUA execution.

[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 are required to obtain 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.

Corporations, limited liability companies (LLCs), or partnerships shall provide a business credit report, however, entities that have existed less than one year may not have an established credit history. In those cases, the Articles of Incorporation, or equivalent formation documents must be submitted to verify the date of entity formation. The reporting credit bureau will not have any information on newly formed corporations or LLCs until financial history is established.

15.14.03.00 **Requirements for Occupancy and/or Use of the Improvements**

Prior to the tenant occupying or using any structural improvements on the site, if any, 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 R/D A/S 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 for securing this document. Districts shall expect to bill the tenant for the amount incurred.

15.14.04.00 **FHWA Approval for Use and Public Interest Finding (PIF)**

FHWA approval of an alternate use is required only when the airspace site is located on an Interstate or on routes that have federal funding. In addition, when the site is being leased at less than FMV, R/D A/S must obtain an approved PIF prior to RUA execution. All federal requirements in [23 CFR 710](#) shall be followed.

See Section 15.19.00.00 for more information on FHWA Approvals.

15.14.05.00 **Mapping**

Maps shall be prepared for each airspace site in accordance with R/W Engineering Section 6.01.05.00. 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 airspace 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 RUA. 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.

15.14.06.00 **Encroachment Permits**

A determination should be made on the kind of Right of Way Use Agreement used to authorize/allow for a non-departmental party's use of Department property within operating right of way, i.e., an encroachment permit from the District's Encroachment Permits Division or an alternate use agreement issued from the R/D A/S. 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 Use Agreement. In no case shall an encroachment permit substitute for a Right of Way Use Agreement in use scenarios where a Right of Way Use Agreement is required.

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 District's Encroachment Permit Division versus the District's Right of Way Division can be found by looking at [Exhibit 15-EX-17](#).

Both 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 legacy 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.

In those instances where both an RUA and an EP must be executed, an encroachment permit should not be issued prior to the DARC approval, FHWA approval, and execution of the Right of Way Use Agreement through the District Right of Way Division. Construction must not occur prior to obtaining the encroachment permit.

Refer to the [Encroachment Permits Manual](#) for specifics.

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.

15.14.06.01 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 (an Airspace use when involving private utility companies).
- 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 Architecture).

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 requested and the location is on an interstate. This is handled by HQ Design.

15.14.06.02 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 [Encroachment Permit Manual](#) for more information.

15.14.06.03 Monitoring Construction

Permits and R/D A/S shall carefully monitor construction of all development on airspace sites. The permit shall provide that lessee will not occupy the improvements until all work is completed to the Department's satisfaction, a notice of completion has been issued to the lessee, and the SFM has issued a certificate of occupancy.

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.

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 State Fire Marshal.

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.

15.14.06.04 **Environmental Document Requirements**

See Section 15.12.01.00 for environmental document requirements. Prior to Department action to advertise new airspace sites via competitive bid, or an existing airspace site, District Airspace must secure environmental clearance for the proposed use. All required environmental clearance documents must be approved prior to RUA execution, regardless of the method used to initiate the leasing activity, i.e., Direct Negotiation or competitive bid.

15.14.07.00 **Executing Agreements**

Agreements can be executed only after complete and final documents have been received with CTC and FHWA approval, if required. R/D A/S needs to be the last signature after CTC and FHWA approval.

15.15.00.00 – EMERGENCY SHELTER AND FEEDING PROGRAM

15.15.01.00 **Statutes for 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 public entities for temporary emergency shelters or feeding programs.

If local public entities that implement their own transportation projects are subject to similar legislation, then local public entities should follow the guidelines outlined in the sections below.

For statutes directing the use of an airspace property for park and recreation use, please follow the Marler Johnson Park Act provisions (15.09.05.00).

15.15.02.00 **Site Identification for Emergency Shelters and Feeding Programs**

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.

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

Requesting a Reporting Code: Complete [Form FA-1036](#) (internal Caltrans link) and [email the completed form](#). Reporting Codes must be assigned for **each** separate homeless agreement 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 agreement.
- *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 agreement.

15.15.03.00 **Rental Agreement for Emergency Shelter and Feeding Program**

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

The HQ A/S 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.

15.15.04.00 **Term for 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 agreement. Additionally, the Region/District shall not execute any RUAs 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 public entity wish to extend a RUA term beyond three years, or renew the RUA after three years, the Region/District shall obtain approval by HQ A/S. All requests for extensions or renewals of RUA terms should be sent to the HQ A/S liaison.

15.15.05.00 **Valuation for Emergency Shelter and Feeding Program**

See Valuation section for further information on determining rental rates.

15.15.06.00 **FHWA Approval for 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 15.15.00.00, the Region/District shall submit a written Public Interest Finding (PIF) to HQ A/S 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 RUA 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 Section 15.19.00.00, FHWA Approvals.

15.15.07.00 **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. See section 15.05.05.01, Park and Ride Lot Utilization, [23 U.S.C. 137 \(Fringe and corridor parking facilities\)](#), [142 \(Public transportation\)](#), and [149 \(Congestion mitigation and air quality improvement \[CMAQ\] program\)](#).

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](#)).

15.17.00.00 – CLEAN ENERGY AND CONNECTIVITY (CEC)

15.17.01.00 Middle Mile Broadband Network (MMBN)

Wired Broadband facilities are now treated as wired telecommunications utilities for the purpose of issuing encroachment permits. See [Wired Broadband as a Wired Telecommunications Utility Memo](#) (internal Caltrans link).

15.17.01.01 California Department of Technology (CDT) Agreements

The Department has been tasked with supporting CDT in constructing the MMBN across California. The Department and CDT have an interagency agreement together to complete this endeavor, which outlines the Maintenance and Operations of the infrastructure. Since CDT is the owner and operator of the network, they also need to complete Right of Way Use (RUA) Agreements with the Department.

CDT is partnering with private entities, including private broadband providers, to install broadband infrastructure within the State highway right of way as part of the MMBN infrastructure.

15.17.02.00 EV Charging

Alternate use for installing EV charging stations in conjunction with parking use is allowable pending appropriate review. Districts shall utilize the same processes, reviews, and approvals documented in this manual to process applications for this alternate use.

Competitive bidding is the most likely method to secure a right of way use agreement for this purpose because there are potentially many entities in the market who may be interested in leasing an airspace site for this alternate use. However, if a District can demonstrate and justify the benefit of Direct Negotiations for this use to HQ A/S and CTC for approval, the direct negotiation path to secure a right of way use agreement for this use is not prohibited. See 15.06.00.00 for leasing methods.

The Rental Agreement RUA template should be used for parking and EV charging station installations.

15.17.03.00 **Renewable Power Generation and/or Storage**

Senate Bill 49 (SB 49), which added Section 91.9 to the Streets and Highways code, requires the Department, in coordination with the State Energy Resources Conservation, Development Commission, and the Public Utilities Commission to evaluate various issues and policies related to the development of land within Department-owned rights of way for renewable energy generating, storage, and distribution facilities, as specified.

Streets and Highways Code 91.9(b)(8) specifically requires the Department to establish a land use agreement process for entities interested in leasing or obtaining an easement or joint use agreement for land within Department-owned rights of way to operate and build these facilities.

15.18.00.00 – CHANGES TO AGREEMENTS

15.18.01.00 Processing

At various times, the R/D A/S staff will need to process agreement changes, DARC updates, new agreements, or to obtain new CTC approval. R/D A/S is expected to be on top of processing these documents when they come up.

15.18.02.00 Updated DARC

Legacy developmental agreements, wireless site license agreements, and other changes to agreements will go through an updated DARC. Updated DARC's are to verify that the proposed timeline for the changes will not interfere with Departmental 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 that do not conflict or change their current use, this will require following the normal DARC process of a Conceptual, Preliminary, and Final.

See Section 15.10.00.00 on DARC Process.

15.18.03.00 Encroachment Permit for Changes in Agreements

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 [Encroachment Manual](#) Section 500.3.

15.18.04.00 CTC Requirements for Changes in Agreement

Because the agreement 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 and conditions of the agreement.

15.18.05.00 FHWA Requirements for Changes in Agreements

FHWA approval will be necessary on 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.

15.18.06.00 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, legacy 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 outlined in the section below.

15.18.06.01 Fees for Changes in Airspace Agreements or Other Documents

- Assignment: \$2,500
- Change in use: Consistent with Right of Way Use Agreement type
- Encumbrance: \$1,000
- Estoppel: \$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.

15.18.07.00 Amendments

If an amendment to an executed Right of Way Use Agreement is considered a **major** change, prior approval from the CTC 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 agreement (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.
- Agreement adjustments and reevaluations (e.g., frequency or rate).
- Change in use.

R/D A/S must explain the purpose 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.

15.18.08.00 **Exercising Option to Extend an Existing Agreement**

Not to be confused with the Option Agreement, some CTC-approved 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 for wireless). The lessee must state in writing, within the timeframe outlined in the agreement, 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 the Department agrees to the option, 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 rental rate prior to the extension, requiring R/D A/S to coordinate the reevaluation with the Appraisal Branch and the lessee (see 15.11.09.00). 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.

As of June 2024, new agreements cannot contain an option to extend language without unanimous CTC approval.

15.19.00.00 – FHWA APPROVAL

15.19.01.00 FHWA Approval for Use on Interstate

When a new use is proposed for a site on an Interstate, or when a new RUA is negotiated for the same use, a letter requesting approval of use must be submitted to FHWA. See section 15.19.04.00 below for FHWA package requirements.

Conceptual approval requires a narrative describing the use and a location map. FHWA Conceptual approval is needed only when the proposed use is controversial or unusual.

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 (Including telecommunication 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).

15.19.01.01 FHWA Approval for Change in Use

FHWA approval is required if the use of an interstate property has changed.

15.19.02.00 FHWA Approval for Less Than FMV (Public Interest Finding)

When the site is on an interstate, or the non-interstate route has federal funding, and is being rented at less than FMV according to [23 CFR 710.403\(e\)](#), a Public Interest Finding (PIF) must be submitted to FHWA for approval. A PIF is a unique determination that must meet CFR requirements in order for it to be approved. See section 15.19.04.00 for FHWA package requirements.

15.19.03.00 **Final FHWA Approval Process**

R/D A/S will submit packages for FHWA approval to the HQ A/S Liaison. FHWA approval requests should be made prior to the CTC approval. Right of Way Use Agreements shall not be executed by the District until written approval by the FHWA has been obtained. R/D A/S shall utilize, complete, and include Exhibit 15-EX-01 (DARC Checklist) and Exhibit 15-EX-07 (DARC Approval Memos for each responding Division) in their FHWA approval submission package to HQ A/S.

15.19.04.00 **FHWA Package Requirements**

All FHWA approvals must be retained in the Right of Way Use Agreement file for the duration of that particular use. When submitting a package for FHWA approval, the districts must submit the following documents to HQ A/S:

- Right of Way Use Agreement
- DARC summary notes, including items identified as concerns and how these were addressed and resolved.
- Environmental Document: NEPA, Categorical Exemption, or Environmental Impact Document of any new Right of Way Use Agreement or a new lessee, and 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](#).
- Maps
- Memo summarizing the package

15.20.00.00 – MANAGING AIRSPACE TENANCIES

15.20.01.00 Overview of Managing Airspace Tenancies

The R/D Senior should ensure sufficient staff are assigned to and adequate time is spent on managing the Region/District's Airspace program, which includes tenancy management activities, advertising sites, and program efficiency.

15.20.02.00 Tenancy Management

Tenancy management activities are those actions taken after a site is leased and improvements (if any) are constructed. (See Section 15.14.00.00.) Airspace must ensure the lessee is complying with all terms and conditions of the Right of Way Use Agreement. Since each site is improved differently, the degree of tenancy 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 rental 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 Right of Way Use Agreements will be scheduled for auction (If applicable), CTC approval (if applicable), or termination.

Quarterly –

- 1) Future adjustments to the rental rate have been calculated and are scheduled to be billed per the percentage established in the Right of Way Use Agreement.
- 2) Inspect all sites with structural improvements or identified as requiring quarterly inspection cycles. Follow up when necessary to ensure deficiencies are corrected.

Annually –

- 1) Inspect all sites not requiring quarterly inspection at least annually. 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 rental payments. Airspace and the lessee should initiate the review of gross receipts at least 60 days prior to the next billing cycle.
- 3) Lessee's insurance certificate provides the appropriate liability coverage and is current. Sites with structural improvements will also require fire insurance for all improvements. Failure to provide a current insurance certificate is cause to initiate default proceedings.

Field reviews are important in tenancy management activities, and each site should be inspected on a regular basis to ensure the site is being used and maintained as authorized (see 15.21.01.00). 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 site with structural improvements (quarterly); each non-improved (annually), and sites prior to termination.

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

15.20.03.00 Monitoring Insurance

The R/D A/S agent is responsible for reviewing submitted insurance certificates for compliance with the applicable insurance requirements of the RUA. The insurance certificate should be obtained annually, or as it expires, and be uploaded into ROWMIS, and the expiration date logged. If a tenant is not in compliance with insurance requirements, the tenant is in default of the agreement terms. (See section 15.13.04.00 on full insurance requirements for each site type.)

15.20.04.00 Monitoring Occupancy Certificates

When a new Airspace RUA is executed, or significant renovations or structural changes occur, an occupancy certificate may be required. The authority responsible for issuing occupancy certificates for airspace sites on State property is CalFIRE (SFM). The certificate should be obtained prior to a tenant occupying the site, or before business operations begin.

15.20.05.00 **Tracking Inspection Schedule**

The R/D A/S should ensure inspections of airspace sites are tracked and scheduled to occur prior to becoming overdue. See Frequency of Inspections (section 15.21.01.00) for required inspection timelines depending on the specific site use.

15.20.06.00 **Monitoring Rents**

Tenant rental balances should be reviewed monthly by R/D A/S to ensure delinquent accounts are notified and rental collection can occur. HQ A/S will send a monthly delinquency report to the district identifying delinquent airspace sites. Districts are to note the status of each site with delinquencies and actions being taken to reduce the delinquent amount in the Delinquency Workbook. To assist in lessening overpayments held by the State, a credit report is sent monthly to the Districts as well. Additionally, other data can be pulled in report form, including inspection dates and insurance expiration dates, using the tenancy report to assist staff in managing their inventory.

15.20.06.01 **Periodic Rental Rate Adjustments**

The rental rate must be adjusted for all Right of Way Use Agreements every year. Please see section 15.11.09.00, Rental Rate Increases and Periodic Adjustments, for more information.

15.20.07.00 **Caltrans Maintenance**

Maintenance is responsible for maintaining certain areas of the right of way even if a site is leased. These responsibilities may include inspection and maintenance of structural support columns, fencing, and backflushing of drains (15.20.09.00). R/D A/S are the liaisons between tenants and maintenance, should access by maintenance of the leased area or other coordination be required.

15.20.08.00 **Vacating a Site**

When an Airspace tenancy terminates an agreement, R/D A/S is responsible for inspecting the site, assessing any damages, if any, logging move-in and move-out inspection dates, and closing the account in ROWMIS to initiate the refund of any monies due to the tenant, if any. R/D A/S should notify maintenance (Area Superintendent) that a site has been vacated, in writing if possible, or notate the contact in the site diary.

15.20.08.01 **Moving Vacant Sites to Maintenance**

R/D A/S must inform District Maintenance of any vacant airspace site. 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 058) for sites that are or will be vacant because Airspace is not allotted 058 funds.

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).

15.20.09.00 **Backflushing**

At certain times the R/D A/S may be asked by maintenance to inform tenants that backflushing will occur, and access is required.

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.

15.20.10.00 **Right of Way Management Information System (ROWMIS)**

The Airspace inventory is maintained in the Right of Way Management Information System (ROWMIS), which contains information of, and generates reports on region/district airspace RUAs, number and type of Right of Way Use Agreements, income, internal uses, high priority sites, telecommunications licenses, and due dates (e.g., expiration, inspections, and adjustments). Accounting also uses ROWMIS to generate bills and to track account payments and adjustments. All Airspace Right of Way Agents shall be proficient in using ROWMIS.

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 advertised.

15.20.11.00 Reporting of Fire

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

1. Type of incident (fire, explosion, etc.)
2. Location of incident
3. Time of incident
4. Was the local Fire/Police Department dispatched
5. Information on any injury or fatality
6. Your 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 using this manual for non-state-owned properties shall follow their agencies' fire reporting protocol.

15.21.00.00 – INSPECTIONS

15.21.01.00 Frequency of 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 must regularly inspect sites to ensure lessees are maintaining sites properly. Inspections of all sites with structural improvements (e.g., buildings, restaurants, mini storages, motels, shelter developments, etc.) are required quarterly, and inspections of all non-improved (e.g., parking lots, parking garages, parks, telecommunications, seasonal lots, etc.) are required annually. R/D A/S shall coordinate with SFM for 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 site file diary notes by using [Exhibits 15-EX-15 or 15-EX-16](#) (internal Caltrans link) and, at a minimum, yearly site pictures. ROWMIS shall be updated within 15 days of the date of the inspections.

When a 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 site 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 15.22.04.00.

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 do 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 15.12.06.00 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. The date of the stormwater inspection must be entered into ROWMIS.

15.21.01.01 **Notice of Pending Inspection**

The R/D A/S can provide notice of inspection, which may assist in the ability to fully inspect a site and gain access to areas unable to be inspected from outside of the site.

15.21.01.02 **Inspection Forms**

The site that you are inspecting will dictate whether a Structural Improved Site or Non-Improved Site inspection form will be utilized. If a Stormwater inspection is due or needed at the time of your site inspection, a Stormwater inspection report will also need to be completed. The inspection forms can be found in the Exhibits section of this manual. R/D A/S must bring the appropriate form(s) with them at the time of the inspection. Inspection forms must be filled out by the agent during the inspection.

Inspection forms:

- 15 EX-14, Stormwater Inspection Report
- 15 EX-15, Structural Improved Sites Inspection Report
- 15 EX-16, Non-Improved Sites Inspection Report

15.21.01.03 **Non-Improved Sites**

Non-Improved sites are properties that do not have any occupied structures on the site, such as parking lots, parking garages, parks, telecommunication sites, seasonal lots, etc. These inspections are required to be done annually. Photos must be taken at the time of the inspection and should be kept in the file.

15.21.01.04 Structural Improved Sites

Sites with structural improvements are properties that have buildings and structures with people working or housed on site, such as buildings, restaurants, mini storages, motels, shelter developments, etc. These inspections are required to be done quarterly. Photos must be taken at the time of the inspection and should be kept in the file.

15.21.01.05 Stormwater Inspections

R/D A/S must annually inspect airspace sites for stormwater compliance. Additionally, local agencies or other mandates may require R/D A/S to also inspect airspace sites after a storm to ensure standing water does not collect contaminants before entering the stormwater drainage system. Potential stormwater pollutants can be items like trash, oil spills, grease, etc. Typical sites are paved parking lots that may have oil and gas residue.

R/D A/S will want to make sure the site is well-maintained and that the general housekeeping of the site is in an orderly condition. The R/D A/S must make sure that there is no trash or overfilled trash bins and that the trash bins have lids that remain closed. R/D A/S want to make sure that storm drains are clear of debris and that straw waddles are utilized when needed.

If any violations are present at the time of the inspection, the R/D A/S must notify the tenant that corrections need to be made to comply with their agreement and the state's stormwater permit.

See Section 15.12.06.00 for more on Stormwater Management.

15.21.01.06 Legacy Mini-Storage Inspections

New mini-storage structures construction is not permitted. Inspections of existing (legacy) mini-storage structures should include reviewing the resident manager's restrictions on the storage of high-value or high-risk personal property. The resident manager shall be required to provide immediate access to individual storage units for SFM inspection. The resident manager shall be required to provide immediate access, or per the time period required by the Right of Way Use Agreement, 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.

15.21.02.00 State Fire Marshal (SFM)

State Fire Marshal (SFM) will inspect sites for fire safety, unapproved construction, illegal or dangerous storage practices, wiring, fire extinguishers, and sprinklers.

The Office of Structure Maintenance and Investigations (OSM&I) established general guidelines ([Exhibit 15-EX-12](#)) that 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.

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 moving into an existing building and there will be tenant improvements prior to occupation. R/D A/S is 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 the tenant occupying or using any of the improvements on the Airspace site, the tenant must receive final building approval and a Certificate of Occupancy from the State Fire Marshal or any delegated/authorized issuing agency with SFM concurrence. 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 in 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, see section 15.15.02.00 under Site Identification for Emergency Shelter and Feeding Program.

15.21.02.01 SFM Inspection Scheduling

The SFM will initiate inspections either during their scheduled inspection period, contact 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.

15.21.02.02 SFM Inspection Frequency

The SFM shall conduct inspections per their established schedule (usually no less than once every three years). 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 will inform SFM of sites needing inspections and any new sites that will be leased, requiring initial and periodic inspection. 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 conduct internal and external inspections of all buildings and all other airspace inventory based on their determination.

The SFM will also inspect sites by request. See Section 15.21.02.05.

The SFM inspection is independent of the inspection that the R/D A/S must perform. For the inspections done by R/D A/S, please refer to Section 15.21.00.01, Frequency of Inspections.

15.21.02.03 SFM Passing Inspection

If a passing State Fire Marshal inspection report is received, the inspection should be input into ROWMIS, and the report should be saved to the inspection record and placed in the airspace file.

If the passing inspection is the result of a reinspection of a failed SFM, it should be entered into ROWMIS, and the report should be saved to the inspection record. Additionally, the risk should be cleared in ROWMIS and placed in the airspace file.

15.21.02.04 SFM Failed Inspection

The SFM shall submit an inspection report, identifying any areas needing immediate correction to R/D A/S and the tenant. R/D A/S will give the lessee a notice to correct deficiencies (see section 15.23.01.00 to determine notice, i.e., 24-hours, 3-days, 15-days, or 30-days to correct). The failed SFM inspection should be input into ROWMIS as an inspection, and the issues identified by the SFM should be logged as a risk. A reinspection will be necessary, and a passing inspection will be required to clear the risk(s). R/D A/S may initiate default proceedings if the lessee does not correct the problem.

15.21.02.05 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.

15.21.02.06 SFM HQ RW Notification

R/D A/S shall notify HQ A/S of failed state fire marshal inspections within 15 days of receiving the report from the state fire marshal. Notification shall include the date the tenant was notified of the failed SFM inspection. A copy of the inspection report and the notice provided to the tenant should be submitted to the district's HQ liaison.

15.21.03.00 Inspections with 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 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.

15.22.00.00 – DELINQUENCIES & DEFAULTS

15.22.01.00 Delinquencies

Tenancies that have failed to make their rental payment after 30 days are considered delinquent. A tenant has 10 days to submit a payment to avoid a late payment fee, and 30 days to submit a payment to avoid being noticed to pay or quit.

Tenants also have the ability to enter into a repayment plan before the 30 days to avoid being noticed to pay or quit.

15.22.02.00 Late Payments

If a tenant fails to submit a payment by the 10th day of the month, and their agreement has a late fee clause, then a late payment fee has to be assessed on the tenant's balance.

Late payment fees are only assessed once per late payment. They are not compounded and do not accrue interest.

Late payment fees may be waived with approval from the District Right of Way Manager, and supporting reasoning (e.g., hardship to small agency) and documentation must be included in the file with an informational copy sent to HQ.

15.22.03.00 Repayment Plans

Tenants who are in good standing are able to enter into a repayment plan to avoid being noticed to pay or quit.

R/D A/S must discuss with tenant the options available to them, and the duration of time being requested to make the repayments. This should include discussions on the amount the tenant is willing to make towards the repayment plan.

No repayment plan should extend for longer than one calendar year from its default month.

Repayment plans are a risk, since entering into them may prolong the R/D A/S ability to pursue any other legal actions to recoup rent or regain possession of the airspace site. Due to this level of risk, R/D Right of Way Managers must

approve every repayment plan. Documentation of the request and approval must be entered into the Airspace file in the form of a memo. Once approved, a letter to the tenant must be sent containing the following items:

- Total Amount Owed
- Current Rental Rate
- Date by which all repayments must be submitted (cannot exceed 1 year)
- Monthly amount owed (current rental rate + monthly repayment amount)
- The following language: "If tenant fails to make the agreed upon monthly payments, this repayment plan will be voided, and the tenant will be liable to pay in full the remaining balance of the repayment plan immediately. Failure to pay the remaining balance will result in the tenant being in default of their agreement, and termination proceedings will commence."

15.22.04.00 Defaults (Violations of RUA)

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 agreement. Typical defaults are:

- Prohibited or Hazardous items on site. See Section 15.13.10.00.
- Violations identified by State Fire Marshal.
- Delinquent account.
- Insurance certificate not current.
- Failure to maintain site to current RUA standards.
- Current use not authorized.
- Allowing others to use the site without Department's prior approval (e.g., assignment and sublease when permitted by the RUA).

R/D A/S must monitor each Airspace 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 an airspace 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 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 3-day notice). Further information on Notices can be found in Section 15.23.01.00.

If action is not taken by the tenant, 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 must be contacted to determine if there are additional steps that can be implemented.

15.22.04.01 **Correctable Violations**

Correctable violations are those that can be remedied by the tenant within a reasonable timeframe

These include, but are not limited to:

- Trash or vegetation clearance
- Minor repairs
- Low-risk State Fire Marshal violations
- Removal of nonpermitted or nonapproved personal property

Even correctable violations can be considered uncorrectable if they pose a risk to structures, people, or neighboring properties.

Follow-up and site inspection by the R/D A/S to verify that the violation has been remedied is a requirement. Proper documentation must be maintained within the Airspace file of all actions taken by the tenant to remedy the violation.

Tenants who continuously have correctable violations must be reviewed by the R/D A/S for possible termination. Allowing tenants who habitually have correctable violations to remain in possession of the Airspace property may pose a greater risk to life and safety.

15.22.04.02 **Uncorrectable Violations**

Uncorrectable violations are those that pose an immediate risk to life and safety, are unable to be corrected by the tenant in a reasonable amount of time, or are prohibited items within their Right of Way Use Agreement.

These include, but are not limited to:

- Major damage to the property, nearby structures, or highway improvements.
- Large piles of personal property
- Hazardous material or waste
- High-risk State Fire Marshal Violations
- Improper usage of the site
- Illegal activity
- Failure to remedy correctable violations

Upon discovery of an uncorrectable violation, the R/D A/S must issue the appropriate type of notice to the tenant. Uncorrectable violations must not be allowed to continue, and the security of the Airspace site must be the top priority of the R/D A/S.

If immediate action is required, R/D A/S must do everything within the confines of the agreement, the state statutes, and federal regulations to secure the site and reduce the risk to life and safety.

No tenant found to have an uncorrectable violation should be allowed to remain on the property. R/D A/S must pursue termination proceedings as soon as possible.

15.22.05.00 **Default Notices**

The tenant must be issued specific notices depending on the type of violation or default they have incurred. Failure to properly notice tenants may result in delays for the Department to pursue legal actions.

Notices are for recovering rental payments, pursuing unlawful detainers, or engaging in other legal actions that are governed by the Code of Civil Procedures.

Following the proper notice steps will ensure that Right of Way is not the cause of any roadblocks when moving forward with tenants in default.

15.22.06.00 Terminating Agreement Due to Default

In rare situations, a tenant's default status may result in the termination of the agreement.

Choosing to terminate an agreement is a decision that must be made with the approval of the R/D Right of Way Manager and Legal Office. Additional approval from the District Directors or HQ may also be required for tenants that fall into unique or special categories.

Termination of agreement notices can be made with specific dates to allow tenants the necessary time to vacate the property. This does not mean that all tenants should receive large amounts of time to vacate. Some violations warrant that tenants only receive the minimum amount of time to vacate in order to safely secure the site.

15.23.00.00 – NOTICES

15.23.01.00 Types of Notices

R/D A/S is to provide written notices whenever the tenant is in default of the agreement or when the Department requires the property for highway purposes. Defaults of an agreement may include failure to correct correctable and uncorrectable violations, failure to pay, and certain other agreement violations.

The following notice types have templates available for R/D A/S to use with pre-approved language:

- Notice to Correct
 - 24-Hour Notice to Correct
 - 3-Day Notice to Correct
 - 15-Day Notice to Correct
 - 30-Day Notice to Correct
- Notice to Pay or Quit
- Notice to Terminate & Vacate

Any notice that is modified or does not have a template must be drafted by the R/D A/S and have approval from Department Legal and HQ A/S.

Any deviations from issuing notices must be approved by the District Director and Deputy District Director of RW. R/D A/S is to immediately initiate a written notice to terminate the Right of Way Use Agreement if the tenant has not corrected the violations outlined in the notice by the due date on the notice. Notices must be served in person and by certified mail. Each notice should have a section for the agent serving the notice to sign and date. The signature and date are required by many statutes and regulations to qualify for pursuing legal action. Failure to properly serve tenants may result in delays and place unnecessary risks on the Department.

15.23.02.00 Notices to Correct

Notices to correct are issued when the violations are correctable within a given time frame. See sections below for specific information.

15.23.02.01 **24-Hour Notice to Correct**

A 24-hour notice is an immediate safety violation. Those include items or actions that are life-threatening or pose a danger to the traveling public, roadway, or structure. Some examples of these include blocked or locked exits, lack of/or obstructed sprinkler system (if required) or fire extinguishers, explosives, fireworks, controlled substances, obvious electrical violations, indoor use of anything that produces flames, gases, or fumes, high piles of combustible materials, and sheets/tarps used as walls.

A copy of this notice is also to be sent to the SFM and/or California Highway Patrol (CHP) if they are not the documenting source. If a 3rd 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.

15.23.02.02 **3-Day Notice to Correct**

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 may include non-permitted structures, unauthorized individuals, 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 informed that the SFM will be notified of the violation and may conduct their own inspection and issue a separate notice.

15.23.02.03 **15-Day Notice to Correct**

A 15-Day Notice is for removal of items or unauthorized individuals 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 informed that the SFM will be notified of the violation and may conduct their own inspection and issue a separate notice.

15.23.02.04 **30-Day Notice to Correct**

30-Day Notices are for situations or activities that do not pose an immediate safety threat or may require a 3rd party vendor or special planning/handling to complete. Removal of unauthorized/unpermitted improvements or to gain proper permits for these improvements. These may include lease violations, such as a non-approved use.

15.23.02.05 **Extensions to Notice to Correct**

Any extension to a notice's deadline must be approved by the District Director & RW District Manager. HQ A/S must be notified of any changes to notice deadlines.

Extensions must only be allowed once. Subsequent issuing of extensions to notices to correct could result in an increased risk to the Department and limit the Department's ability to pursue legal actions.

15.23.03.00 **Notices to Pay or Quit**

R/D A/S are required to issue notices to pay or quit whenever a tenant has failed to pay within 30 days of a missed payment. A tenant can avoid receiving a notice to pay or quit if they pay within 30 days of a missed payment or enter into a repayment plan.

Although notices to pay or quit have boiler plate language to terminate the agreement and vacate the property or face legal action, the tenant is still able to correct the issue within the deadline of the notice.

Notices to pay or quit typically have a deadline of 3 days, however some agreements entered into before June 1, 2025, may have varying days allotted to the tenant to pay or quit. Please review the agreement for your specific site before issuing a notice to pay or quit.

15.23.03.01 **3-Day Notice to Pay or Quit**

The majority of agreements have a 3-day deadline to pay or quit once the tenant has become delinquent. You may find templates in the Exhibits for this type of notice.

This notice is particularly important when noticing tenants of their failure to pay on time. Failure to issue this notice in a timely and expedient manner will result in unknown delays when pursuing legal actions to reclaim uncollected rental payments or obtain possession of the property.

15.23.03.02 **Other Date Specific Notices to Pay or Quit**

For agreements that stipulate a different timeframe to pay or quit, R/D A/S must draft a notice that corresponds to the exact number of days within the agreement.

Approval from the Department's Legal must be obtained before issuing these types of notices to the tenant. Improperly worded notices may result in delays for the Department's Legal to pursue legal actions.

15.23.04.00 **Notices to Terminate & Vacate**

Notices to terminate and vacate are typically issued when a tenant has an expiring agreement, an uncorrectable violation, fails to correct a violation, fails to pay and quit, or the Department requires the property for transportation needs.

Notices to terminate and vacate must contain the reason for the termination and the deadline for the tenant to return possession of the property to the Department. Some agreements have varying amounts of time allotted for the tenant to vacate. Please refer to your agreements for the exact amount of time.

Only when the tenant has failed to vacate upon the agreed deadline can an unlawful detainer action be pursued. Please coordinate with your District's Legal office and HQ A/S when it is known that the tenant will not vacate on time.

15.23.04.01 **Notices to Terminate & Vacate Due to Departmental Need**

The majority of agreements have a unilateral (one party) ability to terminate agreements upon the Department's need for the property. These are considered no-fault terminations and should not be counted against the tenant. An ample amount of time should be allocated to notifying the tenant about the upcoming needs of the Department, and coordination with the tenant should be prioritized.

15.24.00.00 – UNLAWFUL DETAINER ACTIONS

15.24.01.00 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 RW staff if a tenant is unable or unwilling to correct violations.

15.24.02.00 How to Request an Unlawful Detainer Action

No less than 30 days before a tenant is known to retain possession of a property after being notified of their default status and asked to vacate the property, the R/D A/S must issue a written memo request for approval to pursue an unlawful detainer action to their District RW Manager. Upon receiving approval from their District RW Manager, the agent must coordinate with the Department's Legal and begin the unlawful detainer action process.

If the District RW Manager denies the request for pursuing an unlawful detainer action, the reasoning behind the decision must be reported to HQ A/S and the District Director.

15.24.03.00 Unlawful Detainer Action Process

Right of Way prepares and sends a package to the Deputy Chief Counsel of the Department's Legal Office that serves the District in which the property is located. The package should contain the following documents:

- a) Unlawful Detainer Memorandum summarizing history of tenancy.
- b) Copy of the 3-Day Notice to Pay Rent or Quit or Notice to Vacate for each person served.
- c) Original signed and dated Proof of Service or Proof of Mailing for the applicable Notice for each person served.
- d) Copy of memo to Accounting advising that payments are not to be accepted.
- e) Original rental agreement and all amendments.
- f) Site diary.
- g) A copy of current Superior Court Local Rules (rules that apply solely to that county's courts obtained from the Clerk of the Court) if Legal has not already been provided with a copy.

Once the Department's Legal Office has received the Unlawful Detainer package request, and the process has begun, Right of Way may be asked to file copies with the County's Superior Court and to the Sheriff's Department or CHP for serving.

Depending on the response from the tenant, this legal action may result in a Default Judgment or may proceed to court. Whatever the next step, Right of Way must work in conjunction with Legal to have a successful outcome.

15.25.00.00 – VACATING AND CLOSING OUT TENANCIES

15.25.01.00 Vacating Delinquent Accounts

When a delinquent tenant vacates and does not leave a forwarding address, the Region/District has up to 15 calendar days to complete an investigation to locate the former tenant before further collection efforts proceed. The Region/District must submit the account to the Division of Accounting, R/W Accounts Receivable. 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 a ROWMIS Adjustment. 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.

15.25.01.01 Apply Security Deposit to Delinquent Balance

Prior to refunding, security deposits should be applied to any monies due to the State, i.e., delinquent rent, damages, utilities, etc.

15.25.01.02 Rental Amounts Due, \$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 a ROWMIS Adjustment. 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.

15.25.01.03 Rental Amounts Due, 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 in the Rent Recovery section under the tenancy tab in ROWMIS.

- 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.

15.25.01.04 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 the 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 A/S to be shared with the Regions/Districts.

Under the terms agreed to with the collection agency, Accounting and HQ A/S, 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 the vacate date.

15.25.02.00 **Improvement Ownership at Agreement Expiration or Termination**

Current RUA terms should be evaluated to determine if the ownership of the improvements reverts to Caltrans (this will likely be the case for most agreements) or to the lessee. If the RUA allows for an alternate option, such as demolition, the district should consider whether taking ownership or requiring the lessee to demolish the improvements is best for the district and the public.

15.25.03.00 **Move-out Inspection**

On the last day of the tenancy, the agent should perform a final inspection of the site, take photos of the site condition, noting any damages in the site diary. The tenant shall be immediately informed if any damages are present and if any security deposit will be withheld to correct the damages.

15.25.04.00 **Security Deposit Refund**

By law, the Department has 20 days after a tenant vacates a property to process a refund of the security deposit. The tenant must be informed if any portion of the security deposit is being held for damages, and the reason why.

15.25.05.00 **Closing Out Tenancies in ROWMIS**

Tenancies should be closed in ROWMIS within 5 days once a move-out inspection has verified the site is vacated. This stops the billing, reduces the need for accounting adjustments, and ensures timely refunds. Vacating sites also ensures tenancy records are up to date.

15.25.06.00 **Vacating a Tenant for Department Project Need**

Depending on the agreement terms, a site may temporarily vacate due to Department use or a project need. In ROWMIS, pause the billing by turning off auto-billing and notify accounting of the change to prevent payment from being accepted.

15.26.00.00 – LEGACY DEVELOPMENTAL AGREEMENTS

15.26.01.00 Legacy Developmental Agreement Overview

In the 1970s and 1980s, the Department engaged in leasing activities for ground leases, while developers built buildings in the airspace, mostly for commercial use. These RUAs were written extremely favorable for the developers, and after decades of activity, they have grown to be very unfavorable for the State. Unfortunately, most of these RUAs do not have termination clauses in them, and therefore would need to be active until the expiration of the term.

15.26.02.00 Existing Status of Developmental Agreements

As of November 11, 2024, the Department prohibits new development of permanent structures in the airspace. At this time, the Department will evaluate all agreements with structural improvements on a case-by-case basis for continuation of the agreement at the end of the term, or demolition.

15.26.03.00 Policy Regarding Improvements

The Department prohibits new development of permanent building improvements within the airspace. However, existing improvements may remain for the duration of the term, so long as the structure is compliant with the State Fire Marshal provisions and inspections. Should a building not pass inspection, the Department will work with both the State Fire Marshal and the owner of the building to determine what changes must be made to the building in order to obtain a passing inspection.

15.26.04.00 Estimating Clearance and Demolition

Continual failed inspections by the State Fire Marshal, without improvements being made to address the building deficiencies, may result in a default by the tenant and an unlawful detainer action by the Department. The R/D A/S should notify HQ A/S of continual failures by the State Fire Marshal. The R/D A/S should consult Clearance and Demolition of the District to obtain an estimated cost of Demolition of the improvements. Once an estimate is achieved, the District Division of Right of Way should notify the District Director and the Division Chief of Right of Way of the potential expense.

15.26.05.00 **DARC Approvals for Legacy Long Term Developmental Renewal Agreement**

Two years before the end of the term of a legacy developmental agreement, the R/D A/S will conduct a District Airspace Review Committee (DARC) review to determine if the structure is still within compliance with State Fire Marshal standards or if the building is functionally obsolescent. At a minimum, the DARC membership must include Structures Maintenance and Investigations (SM&I), the State Fire Marshal, Maintenance, Traffic, Legal for both the Division and HQ, and HQ A/S. The final District/HQ DARC review with any issues and their respective resolutions shall be submitted for FHWA's final approval for those legacy long-term sites located on an Interstate.

The tenant should be notified that the Department will evaluate the building for standards, use, and risk to the Department's facilities. Renewal is not guaranteed, and the Department may choose to demolish the improvements at the end of the term.

15.26.06.00 **Long-Term Developmental Renewal Agreements**

If the DARC approves the renewal of the agreement, and CTC approves Direct Negotiation, 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, termination clauses, use of property for transportation purposes, demolition expenses, and insurance clauses. The agreement should not be for longer than a 20-year period, not to exceed the functional obsolescence of the building, with rental adjustments at least every year and re-evaluations every 5 years built into the agreement. The security deposit may need to be updated to reflect an increase in rent (if one occurred). Periodic adjustments to the rental 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.

15.26.07.00 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 Marshal is not requiring renewal of the Certificate of Occupancy.

All costs incurred in 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.

15.27.00.00 – POLICY EXCEPTION REQUEST PROCESS

15.27.01.00 Policy Exceptions

There are times when the policies located within this manual may conflict with requests made by prospective tenants, internal or external stakeholders, or management.

In those situations, the R/D A/S must assess if it is able to support the request, and if so, will go through the policy exception process.

15.27.01.01 Policy Exception Process Overview

The policy exception process consists of the R/D A/S completing the memo template supporting the request, routing it through the District for appropriate signatures that recommend approval, and submitting it to HQ A/S for additional processing and approvals.

R/D A/S must coordinate with HQ A/S to confirm what signatures will be required in the memo.

R/D A/S may submit draft versions of the template to HQ A/S for preliminary review before requesting signatures at the District Level.

Please contact HQ A/S for the most recent template and for any questions.

15.28.00.00 – FILE CONTENT

15.28.01.00 Airspace File

Each Airspace Right of Way Use Agreement must have a physical file or electronic equivalent that includes the following requirements:

- Diaries
- Right of Way Use Agreement
- DARC Documents (including signatures and comments from all phases)
- Environmental and Air Quality Documents
- Plans (if applicable)
- Maps
- CTC Approvals (if applicable)
- FHWA Approval (if applicable)
- Application
 - Credit Check
- Valuations
- Bid Package (if applicable)
 - Auction Materials (including Brochure and Documents) – if applicable
- Policy Exceptions
- Insurance Certification (ALL – do not discard)
- Inspection Forms (SFM, Stormwater, and Site Inspections - do not discard)
- Photos of Site
- Proof of Violation Corrections
- Documents Pertaining to File (Memos, Attachments, etc.)
- Letters and Tenant Correspondence
- Notices (if applicable)

15.28.02.00 Documents to Upload Into ROWMIS

- Right of Way Use Agreement
- Master License Agreement
- Site License Agreement
- Site Inspection Forms
- State Fire Marshal Inspection Report
- Certificate of Occupancy (if applicable)
- Certificate of Insurance

15.28.03.00 **Retention Policy**

Documents must be kept according to the [Records Retention Schedule](#) (internal Caltrans link).

15.28.04.00 **How to Archive a File**

Prior to archiving a file, purge the file per the Retention Policy. Purpose of purging is to eliminate duplicate copies and records not required to be retained. Final file content must include, but is not limited to, the list in 15.28.01.00.

15.29.00.00 – DELEGATIONS

15.29.01.00 **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. Any activities outside of the scope of this manual or the delegation matrix shall be subject to HQ RW's approval. Approval may be conveyed in writing or electronically. The Region/District shall maintain a copy of the approval in the Airspace file(s) to which it applies.

Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	RW Manual Section	Responsibility	Delegation	Lowest Level of Sub-Delegation
CTC G-24-14	15.03.01.00	Establish Inventory (Subject to FHWA Approval)	District	Senior RW Agent
	15.03.02.00	Maintain Inventory	District	Senior RW Agent
	15.23.05.00	Deletions from Inventory	District	Senior RW Agent
	15.02.01.00	Approval of Internal Uses of Airspace by Department	District	RW Manager
SHC 104.12 (c)	15.04.03.01	Approval of District Planning and Advertising Plan	District	Supervising RW Agent
CTC G-24-14	15.04.04.00	Execution of Standard Broker's Commission Agreements	District	RW Manager
CTC G-24-14	15.07.05.00	Letters of Understanding	District	RW Manager

Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	RW Manual Section	Responsibility	Delegation	Lowest Level of Sub- Delegation
CTC G-24-14	15.05.06.00	Three-Year Directly Negotiated Agreement (only allowed for contractors as lessee for construction staging)	District	Supervising RW Agent
23 CFR §710	15.05.02.00	Approval/Execution of Standard Rental Agreements (6 months or less)	District	Senior RW Agent
CTC G-24-14 23 CFR §710	15.05.03.00	Approval/Execution of Standard Rental or Parking Agreements through Competitive Bid (5 Years)	District	Senior RW Agent
CTC G-24-14 23 CFR §710	15.08.12.00	Approval/Execution of Standard Airspace Agreement through Competitive Bid Auction (5+ years)	HQ	Supervising RW Agent
	15.09.03.00	Approval/Execution of Standard Airspace Agreement through Public Entity to Public Entity up to a 20-year Term	District	Supervising RW Agent
	15.09.03.00	Approval/Execution of Standard Airspace Agreement through Public Entity to Public Entity for More than 20- year Term	HQ	Supervising RW Agent
	15.13.22.00	Approval of Nonstandard Lease Language and Agreements	HQ	Supervising RW Agent

Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	RW Manual Section	Responsibility	Delegation	Lowest Level of Sub- Delegation
	15.07.08.00	Estoppel Certificate	District	Supervising RW Agent
	15.05.07.00	Execution of Wireless Telecommunication Master License Agreements	HQ	Supervising RW Agent
	15.05.14.00 15.26.00.00	Approval/Execution/ Extension/Renewal of Any Long-Term Legacy Agreements	HQ	Caltrans Director
CTC G-19-43 GOV §14013	15.05.04.00	Approval of Standard Park (Marler-Johnson) Agreements	District	Supervising RW Agent
	15.13.17.00	Approval of Seismic Retrofit Rental Adjustments	District	Supervising RW Agent
	15.11.03.00	Reducing the Minimum Bid Below 75% of Bid Valuation, the Previous Minimum Bid, or the Previous Rental Rate	HQ	Supervising RW Agent
	15.13.06.00	Approval of Waiving Late Fees	District	Supervising RW Agent
	15.13.18.00	Approval of Subleases and Assignments	HQ	Supervising RW Agent
	15.18.05.00	Approval of Amendments to Terms and Conditions of Agreements After CTC Approval	HQ	Supervising RW Agent
SHC 104.12 23 CFR §710	15.01.01.02 15.19.00.00	Requests for Approval From the FHWA, CTC, and Other External Agencies	HQ	Supervising RW Agent

Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	RW Manual Section	Responsibility	Delegation	Lowest Level of Sub- Delegation
	15.12.05.00	Approval of an Agreement of a Site Confirmed to Contain Hazardous Waste or Materials with Prior Approval of the DARC and the District Hazardous Waste Coordinator	HQ	Supervising RW Agent
CTC G-24-14	15.05.07.00	Execution of Wireless Site License Agreement (SLA)	District	Supervising RW Agent

CHAPTER 15

AIRSPACE

TABLE OF CONTENTS

EXHIBITS

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

<u>Form No.</u>	<u>Title</u>
RW 15-01	District Annual Marketing Plan for Fiscal Years (for internal Caltrans use)
RW 15-02	Appraisal Summary (for internal Caltrans use)
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)