

MANUAL CHANGE TRANSMITTAL

RW 0001 (REV 10/2007)

R/W MANUAL CHANGE

RWMC- 250

PROCEDURAL HANDBOOK
(1984 Edition)RWPH-__-__-__
TRANSMITTAL#__

TITLE:

AIRSPACE

APPROVED BY:



MICHAEL J. RODRIGUES

DATE ISSUED:

SEP 11 2015

Page 1 of 2

SUBJECT AREA:

CHAPTER 15 – AIRSPACE

ISSUING UNIT:

OFFICE OF REAL PROPERTY SERVICES

SUMMARY OF CHANGES: Revises Sections 15.01.00.00, 15.02.00.00, 15.03.00.00, 15.04.00.00, 15.05.00.00, 15.06.00.00, 15.07.00.00, 15.08.00.00 and updates its Table of Contents.

PURPOSE

This manual change revises all 8 Sections of Chapter 15 to update and clarify the Airspace Leasing Process. Former Airspace Advisory Committee (AAC) is replaced with California Transportation Commission (CTC).

Section 15.01.01.00 is revised for clarification.

Section 15.01.01.01 is revised to clarify the meaning of “airspace.”

Section 15.01.01.02 is revised to include applicable statute.

Section 15.01.01.03 is added to include applicable statute.

Section 15.01.02.00 is revised for clarification.

Section 15.01.02.01 eliminates the AB142 report which is no longer required, and is updated and revised for clarification.

Section 15.01.04.00 is revised to clarify DARC charging practices.

Section 15.02.01.03 updates the reference to the Plans Preparation Manual on the Internet.

Section 15.02.02.00 is revised for clarification.

Sections 15.03.03.00, 15.03.04.00, and 15.03.05.00 are revised for clarification.

Section 15.04.01.00 is revised to include reference to lease templates and delegations found on the Intranet and provides reference for DARC members charging to their own program’s project IDs.

Section 15.04.04.00 is revised to include reference to lease templates on the Intranet.

Table 1 in Section 15.06.03.00 and Table 2 in Section 15.06.04.00 are revised for process clarification.

Section 15.06.10.00 and Section 15.06.11.00 update Airspace review fees.

Section 15.06.11.03 is revised for clarification.

Where applicable, formatting update from two columns to one column was applied to several sections and general typographical errors were corrected throughout the 8 Sections.

EFFECTIVE DATE

Immediately.

MANUAL IMPACT

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

REVISION SUMMARY

<u>Chapter</u>	<u>Remove Old Pages</u>	<u>Insert New/Revised Pages</u>
	Remove the following in its entirety:	Replace with the following in its entirety:
15 - Sections	Table of Contents (REV 7/2007) 15.01.00.00 (REV 7/2007) 15.02.00.00 15.03.00.00 15.04.00.00 15.05.00.00 15.06.00.00 (REV 7/2007) 15.07.00.00 (REV 7/2007) 15.08.00.00	Table of Contents (REV 9/2015) 15.01.00.00 (REV 9/2015) 15.02.00.00 (REV 9/2015) 15.03.00.00 (REV 9/2015) 15.04.00.00 (REV 9/2015) 15.05.00.00 (REV 9/2015) 15.06.00.00 (REV 9/2015) 15.07.00.00 (REV 9/2015) 15.08.00.00 (REV 9/2015)

CHAPTER 15

AIRSPACE TABLE OF CONTENTS

15.01.00.00	GENERAL
01.00	Function
01.01	Definition
01.02	Airspace Policy
01.03	Statutory Provision Related to Leased Rights of Way
02.00	Responsibilities of Headquarters Airspace
02.01	Annual Reports
02.02	HQ Liaison Region/District Visits
03.00	Responsibilities of Region and District Airspace Development Units
04.00	Region/District Airspace Review
15.02.00.00	INVENTORY OF AIRSPACE LEASES AND INTERNAL USES
01.00	Inventory Requirements
01.01	Identification Number
01.02	New Sites in Inventory
01.03	Mapping
02.00	Department Use of Airspace Sites
02.01	Internal Use
02.02	Existing Internal Uses and Potential Airspace Leases
02.03	Property Retention Policy
15.03.00.00	PLANNING AND MARKETING
01.00	General
02.00	Planning
03.00	Marketing
03.01	Advertising
03.02	Signs
03.03	Promotion
03.04	Adjoining Owners
04.00	Broker Commissions
05.00	Discriminatory Rezoning
15.04.00.00	AIRSPACE LEASES
01.00	Types of Airspace Leases
01.01	Rental Agreement
01.02	Parking and Open Storage Agreement
01.03	Nondevelopmental Agreement
01.04	Developmental Agreement
01.05	Marler Johnson Agreement
01.06	Park and Ride Agreement
01.07	Three-Year Directly Negotiated Nondevelopment Agreement
01.08	Telecommunications Licenses
01.09	Public Agency Leases
01.10	Film Industry Leases
02.00	Oil and Gas Leases
03.00	Utility Companies

15.04.00.00	AIRSPACE LEASES (Continued)
04.00	Lease Agreements
04.01	Terms and Conditions
04.02	Insurance Requirements
05.00	Option to Lease
05.01	Option Agreements
05.02	Option Payments
05.03	Exercising Option Rights
06.00	Exercising Option to Extend an Existing Lease
15.05.00.00	LEASE RATES AND ADJUSTMENTS
01.00	Valuation of Lease Rate
01.01	Lease Rate Appraisal
01.02	Percentage Leases
02.00	Plottage Value
03.00	Rate of Return
04.00	Scheduling Valuation Requests
05.00	Lease Payments
05.01	Minimum Lease Rate
05.02	Minimum Security Deposit
05.03	Periodic Adjustments
06.00	Rental Offsets
07.00	Seismic Retrofit Adjustments
15.06.00.00	AIRSPACE LEASES - PROCESSING
01.00	Rental Agreement
02.00	Short-Term Leases - Competitive Bid
02.01	Bid Auction
02.02	Minimum Bids
02.03	Bid Deposit and Payment
02.04	Renewals
03.00	Long-Term Leases - Competitive Bid
03.01	Offer and Proposal
04.00	Long-Term Leases - Directly Negotiated
04.02	Letter of Understanding
05.00	CTC Approval
05.01	CTC Consent to Directly Negotiate
05.02	CTC Approval of Terms and Conditions
06.00	Public Agency Leases
07.00	Processing Other Lease Agreements
08.00	Marler Johnson Park Lease
09.00	Toll Bridge Authority Lease
10.00	Subsequent Lease Documents
10.01	Estoppel Certificate
10.02	Encumbrance
10.03	Memorandum of Lease
10.04	Sublease and Assignment
10.05	Amendments

15.06.00.00	AIRSPACE LEASES - PROCESSING (Continued)
11.00	Reviews and Approvals
11.01	Conceptual Approval
11.02	Preliminary Approval
11.03	Final Approval
12.00	Environmental Status
13.00	FHWA Approval
14.00	Air Quality
15.00	Transmitting Documents
15.07.00.00	INSPECTION AND USE REQUIREMENTS
01.00	Inspections
01.01	Inspections of Vacant Sites
02.00	Column Protection
03.00	Backflushing
04.00	Highway Structures
05.00	Miniwarehouse Inspections
06.00	Storm Water Inspections
07.00	Encroachment Permits
07.01	Encroachments by Exception
07.02	Permits for Telecommunications Licenses
07.03	Permits Office
07.04	Monitoring Construction
08.00	State Fire Marshal Inspections
08.01	SFM Inspection Responsibilities
08.02	Conducting Inspections
08.03	Inspection Reports
08.04	Special Requests
09.00	Hazardous Materials and Waste
09.01	Inspections
09.02	Hazardous Waste Coordinator
09.03	Inventory
09.04	Potential Surface Contamination
09.05	Lease Clause
10.00	Storm Water Management
11.00	Default
15.08.00.00	MANAGING THE AIRSPACE PROGRAM – PROPERTY MANAGEMENT AND THE MARKETING PLAN
01.00	General
02.00	Property Management
03.00	Lease File
04.00	Right of Way Property System
05.00	Income
06.00	Marketing Plan
07.00	Program Efficiency
08.00	Policy and Procedural Manuals
09.00	Training and Development
10.00	Reference Library

15.00.00.00 - AIRSPACE

15.01.00.00 - GENERAL

15.01.01.00 Function

The Airspace function is responsible for leasing real property within the boundaries of a federally-aided facility where the use is permitted by Federal regulation and such use is consistent with the continued operation, maintenance, and safety of the facility. Per 23 CFR 710.403 (a), the Department must assure that all real property within the boundaries of a federally-aided facility is devoted exclusively to the purposes of that facility and is preserved free of all other public or private alternative uses, unless such alternative uses are permitted by federal regulation or the FHWA. An alternative use must be consistent with the continued operation, maintenance, and safety of the facility, and such use shall not result in the exposure of the facility's users to other hazards.

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

15.01.01.01 Definition

Airspace is defined in 23 CFR 710.105 (b) as that space located above and/or below a highway or other transportation facility's established grade line, lying within the horizontal limits of the approved right-of-way or project boundaries. An airspace site is a site within airspace capable of development that ensures adequate protection to safety and adequacy of highway facilities and to abutting or adjacent land uses. An airspace site may consist of:

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

15.01.01.02 Airspace Policy

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

Airspace leasing activities are conducted pursuant to CTC Resolutions, 23 CFR 710, and policy and procedures established in this chapter. See the most current CTC Resolutions.

Parcels outside the traveled way may also be leased using airspace procedures. These include space within a maintenance station, park and ride lot, roadside rest areas, office buildings, or other facilities. Conventional highways are generally too narrow for secondary uses. Exceptions include telecommunications facilities and cell towers where they can safely be accommodated (e.g., access and utilities are from outside the traveled way).

In general, airspace leases are not utilized on conventional highways.

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

See Reference File for the most current CTC Resolution.

15.01.01.03 **Statutory Provision Related to Leased Rights of Way**

- Streets and Highways Code 225.5(a): no person shall display, sell, offer for sale, or otherwise vend or attempt to vend any merchandise, foodstuff, or service within any vista point or safety roadside rest area. However, S&H Code Section 220.5 allows vending machines in safety roadside rest areas.
- Vehicle Code Section 22518: Fringe and transportation corridor parking facilities constructed, maintained, or operated by the Department of Transportation pursuant to Section 146.5 of the Streets and Highways Code shall be used only by persons using a bicycle or public transit, or engaged in ridesharing, including, but not limited to, carpools or vanpools. No person shall park any vehicle 30 feet or more in length or engage in loitering or camping, or vending or any other commercial activity, on any fringe or transportation corridor parking facility.
- However, Public Resources Code 25722.9(b) specifically authorizes the Department to develop incentive programs for EV charging stations within park and ride lots 50 spaces or more.

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

15.01.02.00 **Responsibilities of Headquarters Airspace**

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

- Developing all policies and procedures governing all aspects of airspace leasing and management. Note: District Permits handles all proposals to use property within the right of way of a conventional highway with the exception of Department owned property adjacent to a conventional highway (e.g., maintenance station, park and ride lots).
- Establishing delegation levels for review and approval of airspace uses and lease agreements.
- Preparing periodic reports on statewide and region/district income, expenses, inventory, production, and goals.

- Establishing standards to measure Airspace activity (i.e., income, expenses, production, and workload) in accordance with current and future contracts for region/district performance.
- Liaison with region/district Airspace Seniors, CTC, FHWA, other programs, and all external agencies.
- Coordinating budget requests for region/district PY allocation and workload projections.
- Resolving technical issues through research and subsequent written guidance.
- Monitoring region/district activities to ensure the most effective and streamlined procedures are in place and working with regions/districts to make necessary changes to region/district activities or statewide procedures.
- Holding meetings, functional councils, training seminars, and workshops.
- Developing standardized lease agreements and language to protect the Department from potential liabilities and claims from the lessee, sublessees, and adjoining owners.

15.01.02.01 Annual Reports

HQ A/S prepares two reports.

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

Management or the Legislature may also require special reports or information.

15.01.02.02 HQ Liaison Region/District Visits

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

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

15.01.03.00 Responsibilities of Region and District Airspace Development Units

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

- Develop a positive marketing program to maximize revenue.
- Implement multiple use concepts during the project planning and design processes.
- Administer and manage all freeway leasehold and airspace areas.
- Identify potential airspace sites and maintain a current and accurate database in the inventory.
- Coordinate with the Environmental Branch to identify project environmental implications or determinations and to assist developers with requirements for environmental clearance, storm water pollution prevention, and air quality studies or statements.
- Coordinate with region/district Maintenance and Landscape units to market the joint use of roadside rest areas and park and ride lots to provide better services to the traveling public while decreasing the Department's maintenance expenses on the sites.
- Cooperate with private industry to develop suitable sites.
- Protect airspace sites against adverse economic impacts, such as inappropriate utility encroachments and discriminatory down zoning.

15.01.04.00 Region/District Airspace Review

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

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

- Best method to lease the site (bid or directly negotiated).
- Adjacent property management and excess sites that could be joined to the site and leased together.
- History of prior leases (including term and use).

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

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

- Proposed use and term.
- Site improvements (proposed and existing) - paving, striping, curbing, lighting, etc.
- Access - ingress and egress.
- Utilities, including water.
- Major developments - buildings, storage tanks.

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

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

R/D A/S should use discretion when forming a DARC review for a proposed use. Only those members that can provide valuable input on the impact to their program should be included in the review. A legal, low-value, noncomplex proposal with no improvements may require a less intensive review than a parking structure underneath a highway structure. Additionally, many of these types of proposals may not require extensive review at the conceptual phase. This can be done at the preliminary and final stages after the potential lessee provides more detailed information on the proposed lease.

DARC reviews are held at the conceptual, preliminary, and final phases to ensure previous concerns have been addressed and the proposal has not dramatically changed since conceptual approval.

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

Functional branches involved in the review of airspace lease proposals shall charge their time to their own program overhead Project ID (Encroachment Permits Manual Section 501.6).

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

15.02.00.00 - INVENTORY OF AIRSPACE LEASES AND INTERNAL USES

15.02.01.00 Inventory Requirements

Each airspace site shall be entered into RWPS. Refer to the RWPS User's Manual for inventory procedures.

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

15.02.01.01 Identification Number

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

Telecommunications sites are identified with a special site numbering system, using 9XXX, with an alpha for the last character (e.g., 04-SF-101-901A-01 is the first site on the route and the first carrier; 04-SF-101-902B-01 is the second site on the route and the second carrier on the site). This helps identify and track all carriers on the same site.

15.02.01.02 New Sites in Inventory

New sites identified as potential leases should be added to the inventory as soon as possible. Potential sites on new freeway projects should be added to the inventory within six months of completion of construction.

To assist in preparing the District Marketing Plan, Airspace should indicate which sites in the inventory have the highest revenue potential.

15.02.01.03 Mapping

Maps shall be prepared for each airspace site in accordance with R/W Engineering Section 6.01.04.00 and Exhibit 6-EX-1B.

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

Refer to Plans Preparation Manual, Division of Design, Section 4-15:

<http://www.dot.ca.gov/hq/oppd/cadd/usta/ppman/default.htm>

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

15.02.02.00 Department Use of Airspace Sites

A Department program may need to use an airspace site for a future transportation highway project (new construction or modifying an existing highway facility) or reserve it for an internal use (temporary or permanent). Any vacant or soon to be vacant site may be held for “CALTRANS USE” if the requesting program’s submittal is approved.

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

- Estimated fair market lease rate (FMLR) is based on the fair market value (FMV) of the site considering the highest and best use, the potential length of a lease, and the present worth of the income stream.
- Potential loss of possessory interest tax revenue to the local agency.
- Date the requesting program needs the site for proposed construction or modification to an existing facility.
- If the site is currently leased, probable cost to cancel the lease if the requesting program’s need is immediate.
- Environmental considerations of the proposed internal use, including potential neighborhood and community impact.

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

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

15.02.02.01 Internal Use

A Department program may need an airspace site for a permanent or temporary internal use. Examples of permanent uses are maintenance operations (e.g., vehicle storage), landscaping projects, employee parking, and park and ride lots. Examples of temporary uses are sites for relocated businesses due to seismic retrofit, internal construction staging areas, holding areas for historic buildings pending sale, and other immediate needs of the Department. If the site is not in the inventory, it should be added and coded as “CALTRANS USE” (“CT” in RWPS) to track potential savings to the Department by using its own real estate assets.

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

15.02.02.02 **Existing Internal Uses and Potential Airspace Leases**

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

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

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

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

15.02.02.03 **Property Retention Policy**

The procedures for internal and external uses of Airspace property are subject to the Department's Property Retention Policy, which requires the Property Review Committee (PRC) recommend any proposed use of Airspace property for **other than revenue generation**.

NOTES:

15.03.00.00 - PLANNING AND MARKETING

15.03.01.00 General

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

15.03.02.00 Planning

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

Pursuant to S&H Code Section 104.12, R/D A/S shall take necessary action to implement multiple use concepts developed in the project planning and design stage; therefore, staff should provide necessary technical information, including DARC recommendations.

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

15.03.03.00 Marketing

Prior to preparation of the annual budget, R/D A/S should prepare its annual plan for the next two fiscal years for marketing and budgeting purposes. The plan includes target workloads for all short term, long term, and telecommunications leasing activity. The plan shows sites R/D A/S intends to market, by quarter, and the lessee selection process (direct negotiation or bid) (Exhibit 15-EX-01). The plan is used to forecast, schedule, and identify resources.

In addition, each vacant site should have a specific marketing plan identifying and scheduling the leasing activities (e.g., appraisals, CTC approval, lease agreement, and construction). See Exhibit 15-EX-01.

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

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

15.03.03.01 Advertising

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

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

15.03.03.02 Signs

Advertising signs should be placed on airspace sites in accordance with the marketing plan and as follows:

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

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

15.03.03.03 Promotion

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

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

*FOR LEASE
Contact: (Phone Number)
Right of Way Office
(Property of State of California)*
- **District Public Affairs Office’s** news releases and radio and television public announcements on ongoing and completed developments.
- **Staff Presentations** to community, local governmental entities, and professional real estate organizations.
- **Personal Contact** with local builders and developers to discuss the program.

15.03.03.04 Adjoining Owners

When a site becomes available, R/D A/S should contact adjoining owners and occupants to give them pertinent information about leasing the site, discussing potential uses for their benefit. Note all discussions in the site diary.

15.03.04.00 Broker Commissions

Although not currently a common practice, the Department is authorized, per CTC Resolution G-02-14, to contract for the services of a real estate broker to assist in developing a long-term lease. If approved by DDC-R/W, the standard agreement must state:

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

15.03.05.00 **Discriminatory Rezoning**

The Department is concerned about local agency proposals to change the zoning of potential airspace sites that adversely affect their marketability. R/D A/S should work closely with local planning agencies to prevent general plan and zoning proposals that adversely affect existing or potential Airspace properties. R/D A/S may be notified of a planning action by direct correspondence from the local agency or by formal notice in a newspaper of general circulation pursuant to GC Sections 65854, et seq. Although formal notices are usually required, Section 65858 provides authority for local agencies to adopt certain interim zoning ordinances as urgency measures without the above notice requirements.

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

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

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

NOTES:

15.04.00.00 - AIRSPACE LEASES

15.04.01.00 Types of Airspace Leases

The typical airspace lease agreements are:

- **Rental Agreement** – noncomplex, nondevelopmental use for six months with one six-month extension.
- **Parking and Open Storage Agreement** - short term, nondevelopmental use for up to five years with no options or extension. Usually the result of an open bid process.
- **Nondevelopmental Agreement** - longer term nondevelopmental use for more than five years (including options), which may involve minor improvements to the site. Usually the result of direct negotiations.
- **Developmental Agreement** - long term developmental use for more than five years (including options) involving major construction. Usually the result of direct negotiations.
- **Marler Johnson Park Agreement** - Local public agency's use of a site for a park or recreational facilities.
- **Park and Ride Agreement** – month-to-month agreement with a nonprofit organization to use the park and ride facility in exchange for maintenance and security services.
- **Three-Year Directly Negotiated Nondevelopmental Agreement** – three-year lease with no right of extension, resulting from direct negotiations for sites that are not good candidates for bidding, or have been offered for competitive bid but no bids were received.
- **Telecommunications Wireless License (Site License Agreement)** - specific site agreement for a wireless facility for ten years with three 5-year options. Carrier must have executed a HQ A/S Master License Agreement, which defines the specific terms and conditions for all sites.

See Section 15.06.00.00 for processing these leases.

Lease templates may be found in the Exhibits¹ and Real Property Services² Intranet Web sites:

¹ <http://row.onramp.dot.ca.gov/right-way-manual-exhibits>

² <http://row.onramp.dot.ca.gov/airspace-and-telecommunications-licensing>

Current delegations for approvals are found at the Right of Way & Land Surveys Intranet site:

<http://row.onramp.dot.ca.gov/downloads/row/files/Statewide-Delegations-11-1-2012.pdf>

<http://row.onramp.dot.ca.gov/downloads/row/files/HQDelegationsmay2005.pdf>

Other lease agreements may be entered into with public agencies (e.g., local public agencies, school districts, and government agencies) and the motion picture industry.

15.04.01.01 Rental Agreement

Rental agreements are for interim uses (e.g., Christmas tree sales, radio frequency testing, and construction staging areas). The term is limited to six months with one six-month extension and cannot go beyond one year without HQ approval. At no time will the use be extended beyond 18 months.

Although a rental agreement can be used when a site is pending approval of the terms and conditions of a directly negotiated lease, the preferred method is to use a Letter of Understanding or Option Agreement. A rental agreement does not imply any approval to lease the site for development purposes.

15.04.01.02 **Parking and Open Storage Agreement**

Short-term parking and open storage lease agreements are used when the proposed lessee will make limited or no improvements to the site, so does not need an extended period of time to amortize the cost of improvements. The term is normally two years but can be for five years, depending on the need of the lessee and the potential rate of return that may result from a longer term agreement.

The standard agreement can also be used for other nondevelopmental uses that will not exceed five years as long as all other provisions in the agreement remain the same. HQ A/S should be contacted prior to modifying any lease provisions for this different use.

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).

15.04.01.03 **Nondevelopmental Agreement**

This agreement is very similar to the Parking and Open Storage Agreement, except the lease term is beyond five years but usually no more than 15 years, including all options and extensions. The longer lease time is needed to generate a higher rate of return, or the lessee needs the site as plottage for an adjoining development or to amortize the minor improvements needed at the site (e.g., paving, striping, lighting, and curbing). Also, local school districts or governmental agencies may require longer terms.

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

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

15.04.01.04 **Developmental Agreement**

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

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

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

15.04.01.05 Marler Johnson Agreement

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

Example 1:	
FMLR	\$825/mo
Security costs from previous SFY	-212/mo
Maintenance costs (debris, weeds, fire abatement) from previous SFY	<u>-372/mo</u>
Actual rate	\$241/mo

R/D A/S should ensure local agency proposals do not propose a children’s play area directly underneath the edge of the highway structure as this could create an unsafe condition should debris be tossed over the side by a passing vehicle.

15.04.01.06 Park and Ride Agreement

An FHWA approved demonstration program allows month-to-month tenancies on park and ride lots to enhance lot occupancy by providing security and maintenance.

Traffic Operations, Park and Ride Office, may request assistance from R/D A/S in locating a nonprofit organization to occupy a park and ride lot that is not being used to its full capacity. Leasing a portion of the lot provides on-site management of the facility to assist with maintenance and security, which should improve facility usage. In some cases, longer-term leases with other entities may be considered. Consult with HQ A/S on specific proposals.

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

Example 2:		
FMLR	\$400/mo	
Minimum Lease Rate	\$500/mo	
Maintenance Offset	\$600/mo	
	\$499/mo	(maximum offset)
Lease Rate	\$ 1/mo	(minimum lease rate)

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

15.04.01.07 Three-Year Directly Negotiated Nondevelopment Agreement

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

- The use is nondevelopmental, with limited improvements (e.g., paving, striping).
- Lease rate is based on an estimate of FMLR.
- FMLR is adjusted 5% each year.
- There is only one potential lessee.
- DARC and FHWA must approve the use.
- The use complies with local zoning and is considered noncontroversial.
- No hazardous materials can be produced, stored, or transported.

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

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

15.04.01.08 Telecommunications Licenses

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

The MLA allows the carrier to install a facility on any Caltrans owned property (maintenance facility, park and ride lot, office building, and within operating and nonoperating right of way) where it is deemed safe and noninterfering.

The current MLA does not apply, however, to proposals to install wireless facilities on conventional highways. The Permits Office must handle those requests.

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

15.04.01.09 **Public Agency Leases**

A school district, local public agency, or other governmental agency can lease an airspace site for public use. R/D A/S should coordinate renewals and payment schedules with the agency's budget cycles to ensure lease payments are allocated in its budget. R/D A/S should contact the agency at least six months prior to the budget cycle date to determine if the lease will be renewed. If so, an appraisal should be requested with a due date prior to the date of the lessee's budget request. After the appraisal is approved, R/D A/S should begin discussions immediately with the lessee to ensure adequate time for the lessee to request additional funds if the lease rate increases.

15.04.01.10 **Film Industry Leases**

In accordance with GC 14998.7, the Department shall waive compensation and cooperate fully with the film industry for use of vacant airspace sites or for subletting leased sites.

15.04.02.00 **Oil and Gas Leases**

To generate revenue, oil and gas rights may be leased to any oil and gas company that will pay rates equal to or greater than the rate being paid to individuals in the same geographical area.

To lease a site, the company will provide R/D A/S with its proposed lease agreement, the anticipated revenue, a vicinity and site map, and a written legal description. After R/D A/S review of the agreement (with assistance from HQ A/S and Legal as appropriate), the company must execute the agreement before the Department executes it. Generally, the lease agreement or the memorandum of the lease is recorded. R/D A/S should ensure that the Department's signature is authorized to execute recordable documents in the county where the site is located. The company must pay a fixed lease rate based on market data until the drilling operation begins.

When the company starts actual production, royalties become due (percentage of gross revenues). R/D A/S must change the account to reflect zero rent and schedule the lease for an annual payment (in arrears).

When the lease is terminated, a quitclaim must be recorded, with a copy to R/W Engineering to update their records.

15.04.03.00 **Utility Companies**

R/D A/S leases and procedures are not used to establish or to continue the placement of public utility lines in freeway rights of way. The Caltrans Encroachment Advisory Group (EAG) in Headquarters issues permits for the use and occupancy of such rights of way for a public utility purpose. In other words, under no circumstances will the Department grant an airspace lease in the right of way to a utility company. Exceptions are granted if a utility company proposes to lease an airspace site for parking or office space. The utility company must be referred to the Office of Permits, which will handle all requests for an encroachment permit, including requests for exceptions to the longitudinal encroachment policy.

Telecommunications Wireless Carriers are not treated as utility companies, even if some are regulated by the California Public Utilities Commission (PUC) as they do not provide a necessary service to the public, and they operate in a competitive arena. Sites for wireless facilities are handled exclusively as "site licenses" by Airspace and not by District Permits Office.

15.04.04.00 Lease Agreements

Standard lease agreements for all types of airspace leases are available in each region/district. Lease templates may also be found at the Real Property Services Intranet Web site:

<http://row.onramp.dot.ca.gov/right-way-manual-exhibits>

<http://row.onramp.dot.ca.gov/airspace-and-telecommunications-licensing>

HQ A/S must approve all modifications to the standard lease provisions, and the R/W Program Manager or a delegated representative must execute the agreement. One original executed copy of all long term leases must be sent to HQ A/S.

15.04.04.01 Terms and Conditions

The standard terms and conditions of a lease agreement generally include:

- Use and improvements.
- Term of the agreement, including options and extensions.
- Lease rate per approved valuation report, if based on the FMV, and also the rate of return.
- If a bid, the lease rate must be based on the last bid or the previous lease rate.
- Reevaluation provisions and periodic adjustments to the lease rate.
- Default, liability, and termination provisions.
- Sublease, assignment, and transfer provisions.
- Retention and removal of improvements.
- Maintenance responsibilities of all parties.

The standard lease agreement provides for all the above and more, and HQ A/S must preapprove any modifications to the clauses.

Requests for “CTC Approval of Terms and Conditions” of a lease agreement must provide detailed information about the above terms and conditions.

Sample format:

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

15.04.04.02 Insurance Requirements

Each airspace site must be insured for \$5,000,000 in liability and, if the site is developed, 100% of replacement cost. The lessee must provide a current certificate of insurance each year. R/D A/S should review it to ensure the fire coverage is sufficient considering increases in value. Each telecommunications wireless facility must be insured for \$5,000,000 liability. HQ A/S will monitor the insurance requirements for the Telecommunications licenses. Some existing leases only required \$2,000,000 or less at the time of execution, and these should be increased to the new minimum as the leases are amended or extended. Use Form RW 15-3.

15.04.05.00 Option to Lease

An option allows the proposed lessee to hold the site while obtaining all reviews and approvals necessary to construct (e.g., local permits and construction funding). The use of an option for long-term competitive bids does not require prior HQ A/S approval, but R/D A/S should consult with HQ A/S about the applicability of an option.

15.04.05.01 Option Agreements

HQ A/S will assist R/D A/S in preparing the Option Agreement. If the lease is through direct negotiations, the CTC must approve terms and conditions (Exhibit 15-EX-06), “CTC Approval of Terms and Conditions.” The standard option period is three to six months.

15.04.05.02 Option Payments

The Option Agreement will specify the amount of option payment that the proposed lessee (Optionee) must pay to hold the site pending all approvals and executing the lease agreement. The option payment should be based on the minimum bid and the potential rate if leased as is. The standard minimum option payment is one month’s rent based on the successful bid.

15.04.05.03 **Exercising Option Rights**

The optionee/lessee must notify R/D A/S, in accordance with the notice provisions in the option agreement, whether or not optionee/lessee intends to exercise the option to execute the lease agreement. Extensions can be granted in rare circumstances, and provisions for such extensions should be addressed in the initial Option Agreement.

15.04.06.00 **Exercising Option to Extend an Existing Lease**

Not to be confused with the Option Agreement, some lease agreements provide for an option to extend the original term (e.g., 10-year lease with three 5-year options). The lessee must state in writing 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) has the right to deny the option. If so, R/D A/S must immediately conduct a DARC review of the site before formally acknowledging the request. Also, the lease agreement may provide for reevaluation prior to the extension, requiring R/D A/S to coordinate the reevaluation with the Appraisal Branch and the lessee. R/D A/S sends an acknowledgment letter to the lessee and sends copies of the letter and notice to HQ A/S.

If there is no change in the provisions of the lease, an amendment to exercise an option is not needed. If there is a change, it is handled in the same manner as amendments (see Section 15.06.12.05).

15.05.00.00 - LEASE RATES AND ADJUSTMENTS

15.05.01.00 Valuation of Lease Rate

The lease rate for an airspace site is established by the following methods:

- **Airspace Estimates** - used for preliminary discussions with potential users, for minimum value sites, or for uses of six months or less.

The lease rate for the rental agreement may not require an airspace estimate if there is already a clear basis in the market for the lease rate.

- **Airspace Appraisals** - A market value airspace appraisal is required for any site that will be leased on a direct basis without competitive bids and for those situations not meeting the criteria for bid lease valuations. This format is used for all development leases or when there is a question as to the site's highest and best use. The appraisal is valid for one year.

When direct negotiations for a development lease are entered into, the appraisal should not be requested until the potential lessee executes a Letter of Understanding (see Section 15.06.04.02) and makes a deposit that is sufficient to cover the cost of the appraisal. The potential lessee has the option of obtaining an independent appraisal report from a list of approved appraisers.

A reevaluation of the current lease rate may be required prior to extending the term of a long-term lease agreement, requiring a new airspace appraisal.

- **Bid Lease Valuations** - A bid lease valuation is required to establish a range of value in determining minimum rental rates on the basis of competitive bids. The valuation is valid for one year.

Both current use and lease rate should be considered when the airspace site is leased and the determination of the lease rate will be used to establish a new minimum bid.

See Section 7.15.00.00 for specific procedures.

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

15.05.01.01 Lease Rate Appraisal

In lieu of a full appraisal report for any nondevelopmental uses on directly negotiated airspace leases, the Appraisal Branch can choose a simplified format to determine the value of sites used for parking, storage, or public parks. (See 7.15.05.00 for additional information.)

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

This streamlined approach cannot be used if the highest and best use is in question or if the airspace site is considered as plottage to an adjoining property. (See 7.15.05.00 for additional information.)

15.05.01.02 Percentage Leases

In rare cases, the FMLR will be a percentage of the gross income the lessee will generate at the site. R/D A/S must determine the best percentage and establish the method for calculating same (e.g., five percent of gross revenues over a base rent). In addition, the lease 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.

The Office of Audits and Security shall preevaluate the lessee's method of keeping books, records, and accounts of financial transactions in connection with the lease. After the lease is executed, R/D A/S should request the Office of Audits and Security to audit the lessee's records every three years to validate annual audits conducted. R/D A/S can also request assistance to calculate the annual percentage rate if there is a question about the information the lessee provided.

15.05.02.00 Plottage Value

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

15.05.03.00 Rate of Return

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

15.05.04.00 Scheduling Valuation Requests

Annually during the budget process, R/D A/S estimates the number and type of airspace site appraisals needed for the next fiscal year. The list identifies the lease areas to be valued and the dates by which the appraisals are needed. This list is then given to Appraisals, where it is used to prioritize preparation of airspace appraisals. R/D A/S should also request updates of appraisals over one year old.

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

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

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

15.05.05.00 **Lease Payments**

The lease rate is typically paid monthly; however, advance lump sum payments can be made on a semiannual or annual basis (e.g., governmental entities that operate on a specific budgeting cycle or for minimum lease rates to save administration costs).

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

15.05.05.01 **Minimum Lease Rate**

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

- For Park and Ride (nonprofit) and Marler Johnson lessees only, the lessee will provide a service to the Department (e.g., maintenance or security) or there is some other benefit.
- The legislature mandates lease rate (e.g., public agency use, homeless shelters).
- The FMLR supports a minimum rent of less than \$500, and the proposed use will benefit the local community or neighborhood.

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

15.05.05.02 **Minimum Security Deposit**

The minimum security deposit for any airspace site is one month's rent for nondeveloped, short-term sites, but not less than \$500, and three months' rent for nondeveloped long-term sites. The minimum security deposit for developed sites is three months' rent, or more if the risk to the Department is great or the potential for damage and removal of improvements is high. Security deposits are required for all leases except Telecommunications Licenses and public agencies.

When the proposed use represents an extraordinary risk to the Department, R/D A/S will need to ensure the minimum security deposit is increased to reflect this additional risk or liability. R/D A/S should only allow high-risk uses when the benefits of the proposed use outweigh any risks or liability to the Department.

15.05.05.03 **Periodic Adjustments**

The lease rate must be adjusted for all leases over two years. At a minimum, the rate will be equal to the Consumer Price Index (CPI) for the area and adjusted annually. Lease provisions establish a base rent and may not allow the adjusted rate to fall below the initial base rent (the lease rate when the lease was executed). Other lease provisions may not allow the adjusted rate to be less than the previous year's rate. It is imperative that R/D A/S review the lease provisions to determine if negative adjustments to the lease rate can be applied. Other proposals to adjust the rate can be based on a range (e.g., more than 2%, but less than 7%) of the CPI, or adjusted at greater intervals than annually, but are compounded annually (e.g., adjusted every five years based on the annual CPI not to exceed 25%).

Reevaluations of the lease rate for long-term lease agreements should occur at least every ten years.

Increases in the lease rate require periodic adjustments to the security deposit to ensure there are sufficient funds to cover potential damages or losses. Some basic lease types establish a mandatory rate increase.

15.05.06.00 **Rental Offsets**

Rental offsets may not be promised or offered to a lessee unless the offset is part of an approved lease. If a lease is already in effect, the Senior must approve the offset in writing. This includes Marler Johnson leases and Park and Ride lots.

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

15.05.07.00 **Seismic Retrofit Adjustments**

If the lease provides for such, adjustments may be made when the region/district needs temporary access to the Airspace site for seismic retrofitting. The temporary use must be less than six months, impact less than 50% of the site, and not impact any of the improvements.

HQ A/S must preapprove R/D A/S's request for an adjustment. The request must be accompanied by the lessee's statement that no other form of compensation will be solicited.

The Department's long-term use of all or a portion of a leased airspace site may require the leasehold interest be acquired, depending on the specific provisions in the lease agreement.

Refer to appropriate Acquisition and Appraisal policy and procedural instructions for more details.

15.06.00.00 - AIRSPACE LEASES - PROCESSING

15.06.01.00 **Rental Agreement**

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

After DARC determines the appropriateness of the use and the lease rate is established, R/D A/S executes the standard rental agreement and opens an account in RWPS. HQ A/S and FHWA review, approval, and concurrence are not needed, and no copies need to be submitted to HQ A/S.

The tenant may be granted one six-month extension, for a total occupancy of one year, if no other parties have indicated an interest and if R/D A/S does not have plans to market the site for a higher use. If others are interested in the site, the competitive bid process must be initiated immediately.

15.06.02.00 **Short-Term Leases - Competitive Bid**

Many sites in the inventory are not suitable for development or have not yet attained their highest and best use. In some cases, parking or open storage may be the highest and best use. These sites can generate substantial revenue if leased for uses with shorter terms, such as parking and open storage.

Short-term uses are for two to five years and are most commonly used for parking lots with private lessees. When a site is offered for bid, R/D A/S should attempt to contact all interested or potentially interested parties. Marketing efforts may include media advertising, signing of the property, personal contact with owners and tenants of abutting properties, and mailing notices to all parties on the inquiry list.

15.06.02.01 **Bid Auction**

A bid auction shall be held at least three months prior to expiration of any existing lease. 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 lease agreement should be attached or made available to all interested parties. See Exhibit 15-EX-02 for a sample bid package and Exhibit 15-EX-03 for sample bid instructions. HQ A/S review and approval of a short-term bid package is not required.

15.06.02.02 **Minimum Bids**

The minimum bid for a short-term use is established by the following:

- **Site Has Never Been Bid Or Leased** - minimum bid is based on market data the Appraisal Branch establishes.
- **Site Has Been Previously Bid** - new minimum bid is based on the last minimum bid adjusted for current market conditions, but not less than 75% of the previous minimum bid.
- **Site Has Been Previously Leased** - new minimum bid is based on the most recent FMLR adjusted for current market conditions and annual adjustments (e.g., CPI percentage).

HQ A/S must approve reducing the minimum bid below 75% of the bid valuation, the previous minimum bid, or the previous lease rate if R/D A/S can substantiate the need to attract more interest in the bidding process.

The maximum return to the State should be obtained considering the reduction in costs to maintain a vacant site.

15.06.02.03 **Bid Deposit and Payment**

Each interested party in the competitive bid process must bring a cashier's check equal to three months of the minimum bid (Bid Deposit) to be allowed to participate in the auction. After completion of the bid or auction, R/D A/S shall immediately contact the successful bidder and request an **immediate** payment of the balance due, calculated by multiplying the successful bid by two months, adding the security deposit, and then subtracting the Bid Deposit. All other Bid Deposits are returned to the originators. The successful bidder, now the proposed lessee, must execute the standard lease agreement within 30 days of the bid, or R/D A/S will contact the second successful bidder in the process. Funds are not returned to the proposed lessee if the agreement is not executed.

15.06.02.04 **Renewals**

When the current lessee is the successful bidder in a competitive bid to lease the same property, a Lease Renewal (Form RW 15-4) may be used to identify any new provisions in the terms and conditions for continued use (such as storm water pollution prevention requirements), as well as the new rental rate. Extensive changes to the previous agreement would require a new lease agreement.

A renewal is different from an extension to an existing long-term lease agreement.

15.06.03.00 **Long-Term Leases - Competitive Bid**

Long-term bid leases are not commonly used and are rarely used for development. The process is generally the same for both nondevelopment and development leases. Since there will be at least minimal construction (e.g., fences, landscaping, and paving) in most nondevelopmental leases, the requirements for plans may still apply. The plans should also show circuitry of traffic on the site and the ingress and egress routes.

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

TABLE 1 PROCESS – LONG-TERM BID LEASE			
Step	Responsible Party	Action	
1	R/D A/S	Identify site to be leased, either by an inquiry or as part of the marketing plan.	
2		If not in inventory, request maps from R/W Engineering.	
3		Request DARC conceptual approval of proposed use. Include Permits and State Fire Marshal approvals as appropriate.	
4	DARC	Review and approve/disapprove request.	
5	R/D A/S	If DARC does not approve, determine the problem and try to resolve any difficulty with the proposal. If the problem cannot be resolved and a short-term use cannot be identified, remove the proposal from the marketing plan and the inventory.	
6		If DARC approves the request, collect airspace review fee and ensure all program restrictions and conditions are included in the bid package and the lease agreement (e.g., access limitations, column protection, and landscaping).	
7		If on the Interstate, send DARC comments and a site map to HQ A/S for FHWA conceptual approval.	
8		Request bid lease valuation if not already scheduled.	
9		Send proposed marketing plan and bid package to HQ A/S for review and approval. If the bid package suggests an option period, the proposed Option Agreement should be developed and included in the package. If not, the standard agreement should be included.	
10		Sign site, place media ads, and contact neighboring owners/tenants.	
11		Mail bid package to interested parties; conduct a site review as needed.	
12		Open Offer and Proposal bids. Analyze all bids received and send recommendation of the successful bidder to HQ A/S. Prepare memo requesting FHWA approval if the proposal differs slightly from the approved use, and submit through HQ A/S.	
		Obtain DARC preliminary review if proposal differs slightly from conceptual plans.	
13*		Lessee	Execute the standard option or lease agreement. Any modifications or changes require prior HQ A/S approval. An Option Agreement requires payment when executed by Optionee.
14			Obtain local agency concurrence and evidence of insurance.
15		R/D A/S	Obtain District Environmental approval of lessee's environmental document.
16	Obtain DARC approval of final construction plans.		
17	Obtain FHWA approval of final construction plans, environmental document, and air quality study if required for the project on the Interstate.		
18	Lessee	Execute Lease Agreement and pay lease rate per terms of the Agreement.	
19	R/D A/S	Submit Agreement to HQ Program Manager or delegated representative for approval.	
20	HQ A/S Delegated Rep	Development lease only: Sign Option and/or Agreement and return to Airspace.	
21	Lessee	After final reviews/approvals are obtained, apply for an encroachment permit to construct.	
22	R/D A/S	Monitor lessee's move onto the site, including any construction, and begin property management activities.	

*Note - required for development purposes only.

15.06.03.01 Offer and Proposal

An airspace site that will be developed with a longer-term lease agreement requires a different method of selecting the successful bidder. While shorter-term parking or nondevelopment leases are awarded based on the highest bid (lease rate), the preferred method for longer-term development leases is to evaluate the offers and proposals received from developers.

The bid package should specify exactly how the successful bidder will be selected, requiring an Offer and Proposal (O&P) from prospective bidders. The O&P describes in detail the type of development proposed (e.g., amusement park, office building, and major recycling center) and the proposed lease rate over a period of years (e.g., graduated payments and percentage of revenues). The airspace site should be awarded to the developer that proposes the best and highest return to the Department.

Selection of the successful bidder should involve evaluating the best development and use of the site, as well as the quality and certainty of the investment return (“income”) to the Department. The construction of an amusement park may be less intensive than an office building, but the Department may have little use for the amusement park after the lease has expired. A major recycling center may generate a higher return in the earlier years of the lease but not generate the highest return over the entire term of the lease. Also, there may be more risks associated with a major recycling center because of contaminants. An office building, however, may require a longer option period before all approvals to construct are obtained.

HQ A/S will work closely with R/D A/S in determining the best method to lease a site for development and, if a competitive bid is selected because of considerable interest in the site, provide assistance in developing the bid package for O&Ps.

15.06.04.00 Long-Term Leases - Directly Negotiated

The CTC must approve directly negotiated leases for a long-term agreement (more than five years), with some exceptions. Direct negotiations are often approved when an airspace site’s potential revenue is increased if the site is “joined” with an adjacent site (whether privately or governmentally owned). Processing a directly negotiated lease is generally the same for development and nondevelopment leases. In most nondevelopment leases, there will be at least minimal construction (such as fences, landscaping, and paving), so the requirements for plans may still apply.

CTC concurrence is not needed to directly negotiate with a public agency or an owner adjoining a landlocked site. The terms and conditions for a directly negotiated landlocked site require CTC approval.

Refer to Table 2, “Process – Long-Term Negotiated Lease,” on the following page.

TABLE 2 PROCESS – LONG-TERM NEGOTIATED LEASE		
Step	Responsible Party	Action
1-7	Various	See Steps for Long Term Bid Lease.
8	R/D A/S	Send “Consent to Directly Negotiate from the CTC” (see Exhibit 15-EX-05) to HQ A/S.
9	HQ A/S	Submit the Request to Directly Negotiate to CTC.
10	R/D A/S	If approved, R/D A/S may provide the proposed lessee with a Letter of Understanding (Exhibit 15-EX-04) detailing the anticipated lease agreement, with a copy to HQ A/S.
11		Request an appraisal report for the proposed use, either through the Appraisal Branch or from the proposed lessee. HQ must approve the appraisal report.
12		After lessee is advised of the FMLR, negotiate all other terms and conditions of the lease, including time frame, term, and extensions. <i>No term is independent of another, so Airspace should negotiate the best terms for the Department, with the understanding that a favorable position for the Department in one area may require a less favorable term elsewhere.</i>
13		Secure preliminary plans and submit for preliminary DARC approval.
14		Request “CTC Approval of Terms and Conditions” by sending a memorandum to HQ A/S.
15	HQ A/S	Request “CTC Approval of Terms and Conditions” at the next monthly meeting.
16	R/D A/S	If CTC approves terms and conditions, request lessee to execute the lease agreement, and forward it to HQ A/S for execution (unless delegated). All final approvals must be obtained PRIOR to execution (see 15.06.11.03).

15.06.04.02 Letter of Understanding

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

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

If mutual agreement cannot be reached on the terms and conditions within one year, the CTC may grant an extension. If the proposed lessee wishes to continue negotiating, there is no additional processing fee. If negotiations will not continue beyond the first year due to CTC, lessee, or R/D A/S desiring to terminate discussions, R/D A/S must send written notice to the proposed lessee canceling the negotiations and any and all agreements stated in the Letter. No fees or funds are returned to the proposed lessee.

15.06.05.00 CTC Approval

Before the Letter of Understanding, 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 negotiated terms and conditions, along with the appraisal summary, are presented to the CTC for approval.

After CTC approval of the terms and conditions, the R/W Program Manager or delegated representative can execute the standard lease agreement.

See Reference file for most current CTC guidelines.

15.06.05.01 CTC Consent to Directly Negotiate

The request for CTC to consent to direct negotiations must clearly state **why** it is in the State's best interest to lease directly to the proposed entity (e.g., plottage value, rate of return, and improvements to the site).

Each proposed lessee must pay a processing fee of \$1,000 if the CTC consents to direct negotiations.

CTC's consent to negotiate directly is only good for one year. Airspace must request an extension from the CTC to negotiate beyond that time. An additional processing fee is not required.

See Exhibit 15-EX-05.

15.06.05.02 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 lease agreement is executed.

15.06.06.00 Public Agency Leases

Leases with public agencies do not require CTC consent to negotiate directly or approval of the terms and conditions, as long as the lease rate is at or above FMLR. Prior to concluding negotiations, R/D A/S must advise HQ A/S of the proposed rate and the appraised value. The executed lease agreement must have the appraisal summary supporting the lease rate stating it is fair market.

NOTE: The site **must** be used for a "public" purpose.

15.06.07.00 Processing Other Lease Agreements

Three-Year Directly Negotiated Nondevelopment Leases, leases with nonprofit organizations on park and ride lots, and leases with the motion picture industry should follow a process similar to the directly negotiated lease agreement. R/D A/S should document the file as to why direct negotiations are in the State's best interest, the lease rate is based on market, and the standard lease agreement is being used.

It is important to note that “for profit” uses on a park and ride lot can be approved by following the normal lease process, and, although generally the lessee should be selected via a competitive bid, direct negotiations can be used if that method is in the best interest of the State.

Processing **Telecommunications Site License Agreements** is described in the Department’s Telecommunications’ Licensing Process and Siting Guidelines. See the flowcharts on the following two pages and R/W Form 15-5 (Checklist) for a quick reference to processing the SLA.

If several carriers are interested in the same site for a wireless facility, then Airspace must offer the site through competitive bidding, using the pricing matrix in the MLA as the basis for the minimum bid. However, if the carriers can agree on a colocation (multiple carriers at the same site) or select other sites that are more feasible for their facility, Airspace can initiate the process to execute the SLA.

15.06.08.00 **Marler Johnson Park Lease**

R/D A/S shall specifically notify all appropriate local agencies of the availability of airspace for park and recreational uses that meet CTC criteria. Local agencies should be contacted about leasing potential sites.

Lease agreements under this statute shall be made on the standard lease 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 lease.

Local agencies should contact R/D A/S about leasing a site within nonoperating rights of way (GC Section 14013). R/D A/S shall review the local agency’s request and, if the site will not generate a higher return if leased for some other use, initiate the process to lease the site to the local agency.

After determining that a Marler Johnson park or recreational use is appropriate, the Department may offer a lease for a period of ten years with five year extensions at the Senior’s discretion. FMLR is required, but the rate may be offset up to the amount the Department will save in landscaping and maintenance expenses. Special provisions to terminate the lease are included in the standard lease agreement. CTC approval is not required if the lease meets all other park lease requirements.

15.06.09.00 **Toll Bridge Authority Lease**

Special handling is required for revenue received from airspace sites created by construction of bridges under authority of the Toll Bridge Authority Act and from concession leases in Terminal Facilities. Because these facilities were financed by the Toll Bridge Authority Act and bond indentures were executed under such Act, the Department’s accounting procedures provide for handling and distribution of funds through District 4. Although the revenue is treated differently, all sites identified as airspace on the toll bridges shall be controlled by the same procedures established for any airspace site, including processes and approvals.

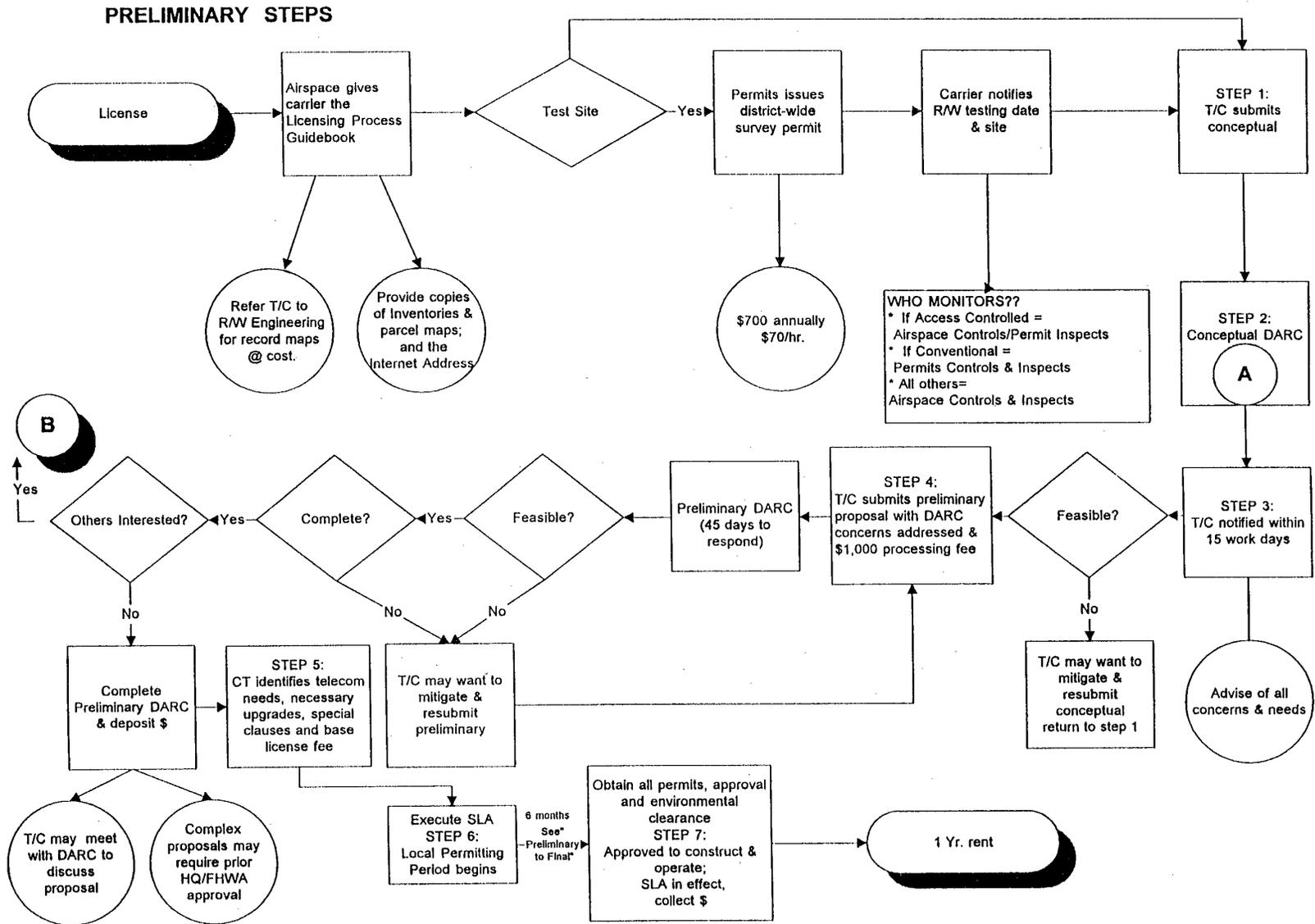
Property Management manages terminal facility leases under the same procedures as regular accounts are managed.

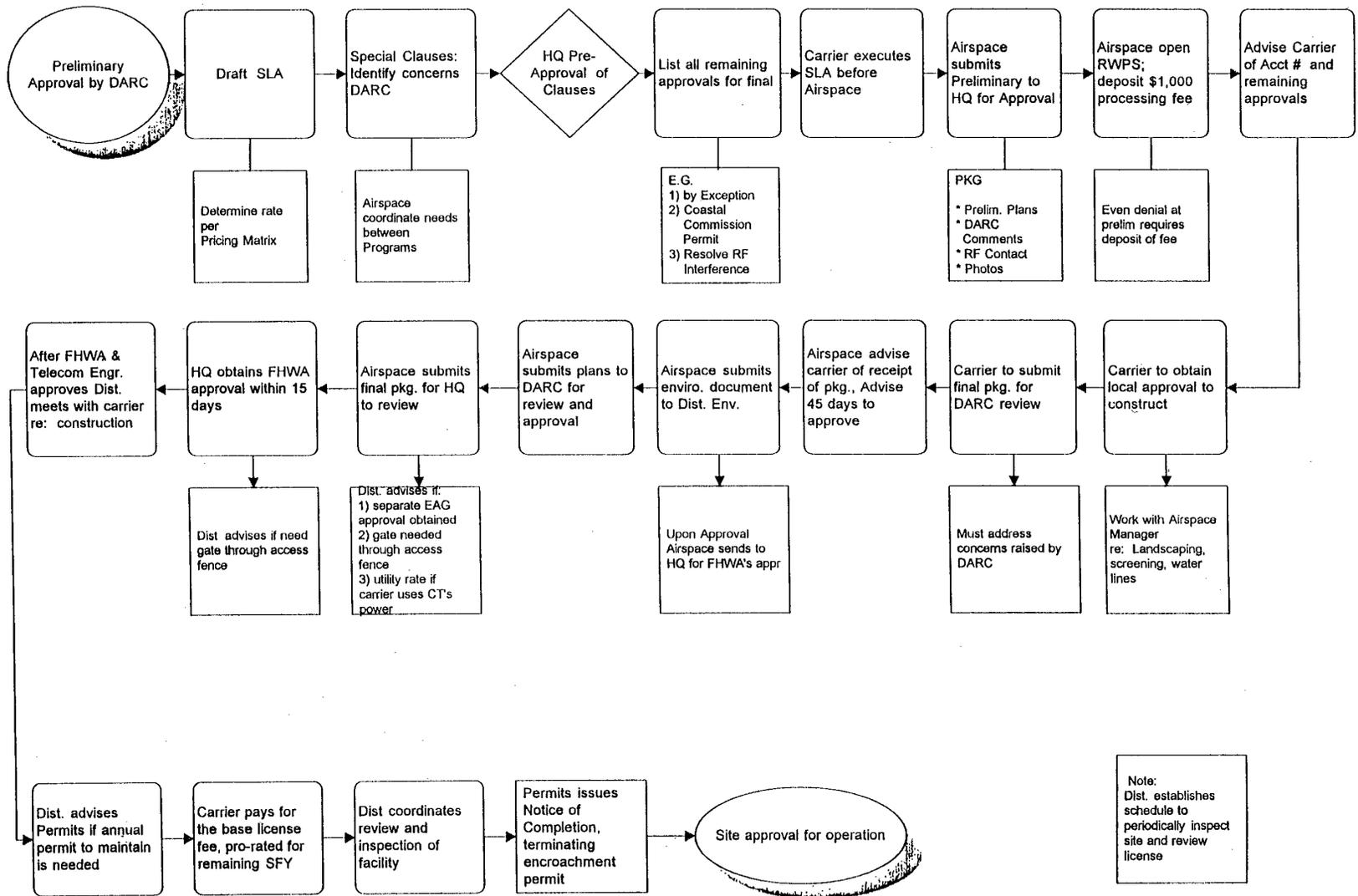
15.06.10.00 Subsequent Lease Documents

After a lease has been executed, the lessee may need additional formal consent from R/D A/S to construct or modify operations on the site.

The lessee should be charged a processing fee to obtain approval of most subsequent documents, primarily subleases, assignments, and encumbrances. The processing fee is based on time involved in the review and provisions in the lease agreement to charge fees:

- Assignment: \$1,000
- Renewal: \$0
- Change in use: Consistent with lease type
- Encumbrance: \$1,000
- Substitution: \$1,000
- Amendments:
 - Minor changes: \$0
 - Major change (tantamount to new lease, requiring DARC review, CTC and/or FHWA approvals): \$2,500 to \$5,000 at district's discretion. Amount charged over minimum requires file documentation.
- Major change (tantamount to new lease, DARC review, CTC approval, FHWA approvals): \$2,500-\$5,000 at district's discretion; amount charged over \$2,500 requires file documentation.





Note:
Dist. establishes schedule to periodically inspect site and review license

15.06.10.01 Estoppel Certificate

Lenders and potential assignees may want assurances that the lessee is not in default prior to executing any agreements with the lessee. The lessee's financial institution may request Airspace provide the lease status prior to approving the lessee's construction loan. The Estoppel Certificate states there is a valid lease agreement, the lessee is in full compliance with the terms and conditions, and the lease payments are current.

See Exhibit 15-EX-08 for the **mandatory** format.

15.06.10.02 Encumbrance

The lessee may need to encumber the airspace site in order to secure a loan. Standard lease agreements may allow encumbrance with R/D A/S approval before the loan is secured. If granted, R/D A/S should ensure the financial institution will be responsible for all lease payments in the event lessee defaults on the airspace lease.

The lease agreement should be reviewed carefully regarding any special language or provisions for encumbering.

See Exhibit 15-EX-09.

15.06.10.03 Memorandum of Lease

When a lessee applies for a loan, the lending institution may require a Memorandum of Lease (MOL) signed by R/D A/S. If the MOL will be recorded, a region/district representative authorized to execute real estate documents for that geographical area must sign it.

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

See Exhibit 15-EX-10.

15.06.10.04 Sublease and Assignment

R/D A/S must approve lessee's request to assign or sublease any or all interests in an Airspace lease. Each lease agreement provides for the notice and approval process, along with a fee and a sharing of any increase in the lease rate generated by the transfer.

R/D A/S will execute the Assignment of Lease (Forms RW 15-6 or RW 15-7) or Consent to Sublease (Form RW 15-8) after review of the:

- Lease agreement with the lessee.
- Proposed assignment or sublease between the parties.
- Statement detailing assignee's or sublessee's proposed use.
- Proposed assignee's or sublessee's financial statement (unless it is a bank or financial institution).
- Current lessee's status as a tenant. In rare circumstances, R/D A/S may relieve the primary lessee of the responsibilities in the lease agreement should the assignee or sublessee default. In some cases, the primary lessee's bank or financial institution may become the new lessee due to defaults between the two parties.

FHWA concurrence with subleases or assignments is required only if on the Interstate and there is a change in use or if the current use affects air quality.

15.06.10.05 Amendments

If an amendment to an executed lease is considered a **major** change, prior approval from CTC and FHWA (when on the Interstate) may be required. R/D A/S shall submit the request to HQ A/S for processing. Any change that affects the following is considered major:

- Term of lease (primary or option).
- Reduced rental rate or the return to the State for the remaining term.
- Use including the type and square footage of the development.
- Lease adjustments and reevaluations (e.g., frequency or rate).

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

15.06.11.00 Reviews and Approvals

R/D A/S must ensure that each airspace site is thoroughly reviewed and appropriately approved to reduce potential risks to the Department. All affected programs and those entities with authority over the process should review each use. R/D A/S review fees are collected when district has obtained DARC and FHWA conceptual approval (if on the Interstate) or for subsequent lease documents, at the time of the request.

Fees for Airspace review are as follows:

- Short-term rental agreements up to six months with one 6-month extension: \$0
- Directly negotiated short-term leases (two to five years): \$2,500
- Competitively bid short-term leases: \$0 (Winning bidder pays Liquidated Damages or Forfeiture of Deposit)
- Long-term nondevelopment leases: \$2,500-\$5,000; amounts above minimum at district's discretion, file documentation in support of amount over minimum (e.g., proposed development includes new technology requiring extraordinary time and consultation with DARC)
- Long-term developmental leases: \$10,000. Note: Some projects may require an EA to cover work not captured in the standard review fee.

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

15.06.11.01 Conceptual Approval

Either R/D A/S or a proposed lessee may want to have an airspace site approved for a conceptual use. DARC must recommend the proposed use to FHWA through HQ A/S for parcels located on the Interstate. Based on information provided by R/D A/S, FHWA approves the general concept of the proposal only and is in no way bound to accept the final proposal. FHWA does not need to conceptually approve the use if the same use was approved when entered into the inventory.

15.06.11.02 Preliminary Approval

Preliminary approval is only needed when the information at conceptual approval was insufficient to determine the major impacts on the property or when the proposed use differs. A site may have conceptual approval as unimproved parking, but at the preliminary phase the lessee wants to pave, light, and stripe (with some excavation). The DARC should review the proposal again to determine the effects on operations (e.g., drainage, column protection, ingress, and egress). Restrictions and conditions are provided to the proposed lessee so all requirements are identified on the final plans. FHWA preliminary approval is also required for parcels on the Interstate.

15.06.11.03 Final Approval

Before the lease agreement is executed, the proposed use must receive final approval. Generally, formal approval for a lease over five years includes:

- DARC approval of the final construction plans of the proposal.
- Local agency concurrence that the proposal does not conflict with local zoning ordinances (as evidenced by issuing a building permit).
- Recommendation of lessee's environmental document by District Environmental.
- Sites on the Interstate require FHWA approval of the final construction plans, environmental document, and, if necessary, an air quality study.
- Evidence of insurance per the lease agreement.

Sites offered for competitive bid must have conceptual approval for the proposed use. The bid package must state that final approval in accordance with these procedures must be obtained before the site is occupied.

Airspace sites for short-term unimproved parking and open storage, with no change in the approved use or improvements, may need less formal review for final approval.

When formal approval has been obtained, the lease agreement may be executed, and the tenant may make application for an encroachment permit to construct from the District Permits Office.

15.06.12.00 Environmental Status

Every site must have an approved document for the proposed use that addresses environmental issues. Proposed lessee must obtain final approval of their plan from the local agency, which usually requires an environmental study. The study must be submitted to District Environmental for review and approval. The recommendation states the document meets applicable CEQA and NEPA requirements. A new lease for the same use will require an approved environmental document within the last three years.

Airspace should consult the Environmental Manual or the District Environmental Unit on specific questions.

15.06.13.00 FHWA Approval

FHWA approval of airspace leases is required only when the airspace site is located on an Interstate highway. All federal requirements in 23 CFR 710.405 shall be followed.

If the proposal is considered a major environmental action, FHWA will require an appropriate Environmental Impact Statement (EIS) or Environmental Assessment (EA) in accordance with 23 CFR 771.

FHWA’s final approval is required before the encroachment permit for construction can be issued. R/D A/S must submit, through HQ A/S, the final DARC comments, the environmental document, an air quality statement or study, the proposed use and terms, and the final construction plans.

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

See table below.

FHWA APPROVAL OF AIRSPACE SITES ON THE INTERSTATE REQUIRED FOR:
<ul style="list-style-type: none">• Conceptual use of an airspace site not in the current inventory. (Requires a narrative describing the use and a location map.)
<ul style="list-style-type: none">• A change in use (whether new lease, assignment, amendment, etc.).
<ul style="list-style-type: none">• Preliminary and final approval of the proposed use, including site plans, on any airspace site within the right of way (Includes telecom sites). Note 1: Preliminary approval <u>not</u> required if only minor improvements (paving, striping, lighting) will be made. Note 2: Final approval of an airspace or telecom site requires detailed mapping and plans of all impacts to the land (location of buildings, excavation, trenching, utilities). Note 3: DARC notes must be submitted with any request for conceptual, preliminary, or final approval.
<ul style="list-style-type: none">• Categorical Exemption or Environmental Impact Document of any new lease or a new lessee if the previous Categorical Exemption is over five years.
<ul style="list-style-type: none">• Air Quality Statement.

15.06.14.00 Air Quality

An air quality study or statement is required for all airspace sites when the use will involve vehicle traffic, especially short-term parking. The study or statement will consider the impact of the frequency of hot and cold starts of the vehicles.

The determination of whether an air quality statement or study is needed depends on the site’s status. If the site has never been leased, an Air Quality Assessment from the local Air Quality Regional Board or the local Association of Governments (e.g., SCAG) is required. This assessment must address the impacts of the proposed use on air quality based on each Region’s Air Quality Assessment Model.

If the proposed use is the same as the previous use, a statement from the local Metropolitan Transportation Commission (MTC) is needed. The statement should address the fact that the Airspace lease is not regionally significant and is not a transportation project. A blanket approval for all future Airspace leases (new and renewals) for a specified use only (e.g., parking lots with less than 250 parking spaces) may be obtained from the local MTC.

FHWA must approve the air quality study or statement prior to execution of the lease agreement.

The air quality requirement applies to all new leases, any lease with a change in use, or a renewal of a lease if it is a different lessee. All other leases are currently exempt from the process.

15.06.15.00 **Transmitting Documents**

HQ A/S involvement in the lease process varies depending on the level of review and approval for the different lease agreements and the degree of delegations to R/D A/S. To ensure the appropriate level of review and involvement by HQ A/S occurs on a timely basis, R/D A/S should use a transmittal checklist in routing documents for processing.

Use Form RW 15-9 to transmit documents to HQ A/S.

NOTES:

15.07.00.00 - INSPECTION AND USE REQUIREMENTS

15.07.01.00 Inspections

Region/District Airspace (R/D A/S) is responsible for security and maintenance of all leased airspace sites, so must regularly inspect sites to ensure lessees are maintaining sites properly. Inspections of all developed sites are required quarterly and inspections of all nondeveloped sites (e.g., parking lots) are required annually. Some uses may require more periodic inspections. Airspace should inspect and document all activities related to the lessee's property management activities.

When a leased site is not properly maintained, R/D A/S shall immediately inform the lessee of the violation and provide the lessee with a list of actions that must be taken and a time period within which to make corrections. If action is not taken, R/D A/S may initiate default proceedings to secure the site.

If a condition requires **immediate attention** (e.g., public safety and hazardous materials), the lessee should be given a formal 30-day notice to correct the problem and properly maintain the premises or to quit pursuant to lease provisions. If the condition is not corrected within that time, the lessee is declared in default and served a three-day notice. Violations requiring a 30-day notice shall be reported to HQ A/S.

R/D A/S may negotiate with District Maintenance to assist with periodic inspections of occupied sites, charging their time to the Airspace account. As maintenance crews are in the field on a more regular basis, their assistance is needed in ensuring that hazardous or unsightly conditions do not occur. If problems are found, Maintenance should notify R/D A/S in writing.

Storm water inspections of leased airspace are required under the Department's Storm Water Management Plan (see Section 15.07.10.00 and Exhibit 15-EX-14). Storm water inspections can be done at the same time as regularly scheduled airspace inspections, but should be done at least annually. Date of inspection must be entered into RWPS.

15.07.01.01 Inspections of Vacant Sites

District Maintenance is responsible for inspection, security, and maintenance of all vacant airspace sites within operating and nonoperating right of way.

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

R/D A/S will advise Maintenance when a site has been vacated and there are no immediate plans to lease it. Maintenance will not automatically maintain vacant sites that appear to be leased (e.g., improved sites).

15.07.02.00 Column Protection

R/D A/S sites underneath highway structures require special provisions to protect support columns. Two basic elements to consider in determining what type of protection is required is based on:

- Design of the columns.
- How the property will be used.

If the columns are made of steel and the use is anything other than passive (e.g., park or landscaping use), they must be protected as described in Exhibit 15-EX-11. Note that use of 0.109 galvanized steel pipe is not acceptable as a barrier protecting steel columns.

If the columns are concrete, the Structures Office will determine specific column protection. Protection may not be required for all parking leases as the types of vehicles and the specific parking area may not mandate barriers. Heavy usage, pattern of traffic, truck parking, and RV storage, however, require the maximum level of column protection. The required protection method ranges from nominal to sophisticated.

On all new leases, renewals, or extensions, column protection must be installed as part of the terms for renewing, extending, or leasing the site.

See Exhibit 15-EX-11 (multiple pages) for various methods of column and other structural protections, including backflushing.

15.07.03.00 **Backflushing**

Vertical drains are susceptible to clogging. On open systems, Structures Maintenance must backflush with air and water from the outlet end.

Backflushing is very difficult where enclosed columns and closed drainage systems have been installed. To make backflushing possible on closed systems, gate valves accessible from within the building are required on the outlet end of column drains.

15.07.04.00 **Highway Structures**

All proposed developments underneath a highway structure (e.g., buildings, multilevel parking structures, recreational areas) require the lessee to prepare a Project Study Report (PSR) addressing the safety and potential liability of leasing the site. Issues to address are number and frequency of people at the site, proposed use, hazardous or valuable materials to be stored, and current status of seismic retrofit work on the structure and its columns.

HQ A/S will review and approve the PSR.

At-grade parking and open storage proposals to use an airspace site underneath a highway structure will require less review than a parking structure or office building.

15.07.05.00 **Miniwarehouse Inspections**

Inspections of miniwarehouse structures should include reviewing the resident manager's restrictions on storage of high value or high risk personal property. The resident manager may be required to provide immediate access to individual storage units for Airspace or Fire Marshal inspection. R/D A/S should review the lease agreement for specific provisions on access and inspections. R/D A/S should review the lessee's standard sublease agreements to ensure the tenants are advised of all the Department's restrictions and rights.

15.07.06.00 **Storm Water Inspections**

Local agency or other mandate may require R/D A/S to inspect airspace sites after a storm to ensure standing water does not collect contaminants before entering the storm water drainage system. Typical sites are paved parking and open storage sites that may have oil and gas residue.

15.07.07.00 **Encroachment Permits**

Encroachment permits are issued for all airspace sites when construction occurs. This requirement applies to new paving, striping, lighting, electrical, and curbing, as well as all buildings. Modifications to an existing parking or storage area's traffic pattern may also require an encroachment permit. Minor modifications to the site will generally not require a permit.

Refer to the Encroachment Permits Manual for specifics.

15.07.07.01 **Encroachments by Exception**

Encroachments in access controlled right of way are handled by an exception process. The Program Manager for Design, with assistance from the Encroachment Advisory Group (EAG) in HQ, will review region/district recommendations to allow use of the operating right of way when safe and noninterfering. Typical requests are:

- Utility company installation of a pipeline parallel to the right of way line (not an Airspace use).
- Telecommunications carrier access to maintain the antenna and/or vault from the travelway (part of the site license agreement).
- Access from the travelway to adjoining private property (no exceptions granted).
- Access from adjoining property to landscape or otherwise improve the appearance of the private property (can be an Airspace use or handled by cooperative agreement through the Office of Landscape Architect).

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

FHWA will need to concur with any approvals to allow private entities permanent access for encroachments on Interstate highways.

15.07.07.02 **Permits for Telecommunications Licenses**

The Telecommunications License Program may require three encroachment permits to perform work in the right of way. These are:

- | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none">• Survey Permit - to test the radio frequency of proposed facility prior to submitting preliminary proposals to Airspace.• Encroachment Permit - to construct if proposed use is approved.• Annual Permit - to maintain the equipment if the proposal is within operating right of way. |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Refer to the Telecommunications License Process and Guidelines and the Encroachments Manual for more information.

15.07.07.03 Permits Office

As required in the lease agreement, the lessee shall obtain an encroachment permit prior to construction. In no case shall an encroachment permit substitute for a lease.

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

R/D A/S should formally advise the lessee of the encroachment permit process (e.g., application and required sets of plans). A copy of the letter to Permits will advise that all final approvals (e.g., environmental, local building permit, and DARC review) have been obtained and the lease agreement has been executed.

The lessee must obtain a performance bond and a payment bond, or a performance bond containing the provisions of the labor and material bond supplied by tenant's contractors, provided the bonds are issued jointly to tenant and Caltrans as obligees. An "Irrevocable Letter of Credit" is not acceptable as evidence for performance of a construction obligation.

NOTE: Permits Office does not accept dual obligee bonding. Caltrans must be the only agency on the bond.

15.07.07.04 Monitoring Construction

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

These permits shall specify that notice to the Bridge Structures Unit is required 48 hours prior to installing any attachments to a structure. If construction involves bridge structures, R/D A/S may request assistance from Structures Operations in monitoring the project.

Any changes in the plans shall require prior written approval of R/D A/S and Permits and revised plans covering these changes must be attached to the permit.

The local agency's planning department issues a Notice of Completion in accordance with their building permit. Permits issues an Encroachment Permit Completion Notice. The Permits Inspector does not ensure that building construction conforms to local standards; that is the responsibility of the local agency.

A copy of the final plans shall be forwarded to Structures Operations to ensure that a complete set of as-builts is on file for every structure in the State.

15.07.08.00 State Fire Marshal Inspections

23 CFR 713, Subpart B, requires that the State Fire Marshal (SFM) concur with proposed airspace uses. SFM will inspect for fire safety, unapproved construction, illegal or dangerous storage practices, wiring, fire extinguishers, and sprinklers.

The Office of Structure Maintenance and Investigations (OSM&I) established general guidelines (Exhibit 15-EX-12) that satisfy FHWA requirements and that SFM uses to inspect all facilities. R/D A/S should advise potential developers of these standards.

The regional SFM supervisor, whose final approval is required for development leases, storage of higher risk items (e.g., recycling centers), and all uses underneath a structure, is a member of the DARC. At a minimum, separate copies of the preliminary and final plans for development 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.

HQ A/S is the Contract Manager for the SFM's annual contract.

15.07.08.01 **SFM Inspection Responsibilities**

All lease agreements require SFM have access to the property at any reasonable time for appropriate inspection of the site.

Annually, R/D A/S and the SFM will develop a list and schedule of required inspections, identifying those sites needing quarterly or annual inspections and any new sites that will be leased requiring an initial and periodic inspection.

The SFM will conduct quarterly internal and external inspections of all buildings, annual inspections of open storage areas, inspections by request, and proposals for construction of buildings.

15.07.08.02 **Conducting Inspections**

The SFM will conduct inspections per the established schedule, contacting R/D A/S when a problem is identified, when assistance is needed to gain access to the site, or when the inspection cannot occur as scheduled.

15.07.08.03 **Inspection Reports**

The SFM will submit an inspection report, identifying any areas needing immediate correction. R/D A/S will confirm the problem and give the lessee a 30-day notice to correct deficiencies. R/D A/S may initiate default proceedings if lessee does not correct the problem.

15.07.08.04 **Special Requests**

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

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

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

15.07.09.00 **Hazardous Materials and Waste**

The Department's policy is to ensure that all airspace sites are, and continue to be, free of hazardous materials and waste. A material is hazardous if it poses a threat to human health or the environment. Hazardous materials are defined in the California Code of Regulations, Title 26, Division 4, Section 8-339.

R/D A/S must review all proposals to use or store hazardous materials on an airspace site. The Hazardous Waste Coordinator (HWC) should be included in the DARC to ensure any approved use of hazardous material is under control and in accordance with applicable statutes and regulations. Of particular concern are materials that are flammable, reactive (subject to spontaneous explosion or flammability), corrosive, toxic, or radioactive.

Hazardous **waste** is any of the above materials that have escaped or been discarded or abandoned creating a potential liability for the Department. R/D A/S should closely monitor all approved uses of hazardous materials on an airspace site to ensure conformity with applicable laws, regulations, and local ordinances.

15.07.09.01 Inspections

Airspace sites should be inspected regularly for hazardous materials or waste that could contaminate the property. If R/D A/S discovers hazardous waste, the following action should be taken.

- **Hazardous Waste Exists** - If lessee's operation is causing the waste, notify lessee the action must cease or the lease will be terminated. Lessee is required to clean up any hazardous waste or material. Cooperation with the HWC, Legal, and Project Development may be required. HQ A/S must specifically approve any new lease or lease renewal for a site confirmed to contain hazardous waste or materials.
- **Hazardous Materials Exist** - The risk of allowing the operation to continue with possible cleanup costs must be weighed against net rent, long-term liability, community impact and any positive factors. Document the justification for continuing the lease and retain in the file.

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

The Hazardous Waste Coordinator (HWC) can assist R/D A/S in all inspections and determinations of hazardous materials or waste.

15.07.09.02 Hazardous Waste Coordinator

If inspection of an airspace site indicates a potential for a problem with hazardous waste, R/D A/S should formally request HWC to investigate and test the site immediately to determine if the site is actually or potentially contaminated.

The HWC will inspect the site and determine if:

- **Testing Is Not Necessary** - HWC provides a written statement that no hazardous waste is present.
- **Further Investigation Is Necessary** - HWC hires a consultant to determine if hazardous waste actually exists.
- **No Hazardous Waste Is Present** - Lessee is authorized to use hazardous materials, but the use prompts the HWC to recommend future inspections and specific controls to reduce the Department's potential liability.
- **Hazardous Waste is Present** - Lessee is required to immediately and effectively remediate hazardous situations.

HWC's recommendation may require corrective action by the lessee, more frequent monitoring of the condition, or termination of the current use or the lease agreement.

15.07.09.03 **Inventory**

R/D A/S and HWC 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.

15.07.09.04 **Potential Surface Contamination**

Certain developments may have a greater potential for hazardous waste contamination. Examples include service stations, paint companies, machine shops, light and heavy industrial manufacturing, fertilizer storage, junk and auto wrecking yards, and muffler shops. Proposals to use airspace sites for these uses should not be allowed in most cases.

15.07.09.05 **Lease Clause**

Standard Airspace leases 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 lease is executed, R/D A/S must inquire into the specific type of use and consider the risk, with advice from the HWC as needed.

15.07.10.00 **Storm Water Management**

Airspace sites are within the Department's municipal separate storm sewer system (MS4) and are covered by the Department's Statewide Storm Water Permit and Storm Water Management Plan (SWMP). Airspace sites are therefore managed to prevent the discharge of pollutants to the storm water drainage system in compliance with the Department's Permit and SWMP. R/D A/S will use standardized lease language that conforms with the SWMP in new leases and in existing leases that come up for renewal. The lease language requires implementation of storm water best management practices (BMPs) that are activity specific and elimination of unauthorized illicit connections/illegal discharges to the storm drain system. Storm water education and outreach materials, including storm water pollution prevention fact sheets, will be provided to the lessee/tenant. The fact sheets contain the BMPs applicable to the lessee's activities.

R/D A/S will maintain a list of leases with industrial activities that require coverage under the General Permit for Storm Water Discharges Associated with Industrial Activity (General Industrial Permit) issued by the State Water Resources Control Board (SWRCB). The list of leases requiring such coverage will be included in the Department's Annual Report to the SWRCB.

Lessees whose industrial activities on the lease premises require coverage under the General Industrial Permit will be required to provide the following:

- Copy of Notice of Intent (NOI) filed with SWRCB (or No Exposure Certification).
- Copy of Receipt letter from SWRCB with Waste Discharge Identification (WDID) number.
- Copy of Storm Water Pollution Prevention Plan (SWPPP) covering lessee's facility and activities.

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

R/D A/S will conduct annual inspections of leased property using the Airspace Storm Water Inspection Report (Exhibit 15-EX-14), to comply with the SWMP's measurable objectives and assess lessee's conformance with lease terms. The results of the inspections will be used to develop annual reports that document the Department's compliance with its SWMP.

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

15.07.11.00 Default

The lessee is considered in default if any of the lease provisions are violated. Typical defaults are:

- Delinquent account.
- Insurance certificate not current.
- Failure to maintain site to current standards.
- Current use not authorized.
- Allowing others to use the site without Airspace's prior approval (e.g., assignment and sublease).

R/D A/S should monitor each Airspace lease to ensure any violations are found while there is still time to take corrective action (e.g., collect delinquent rent prior to lessee vacating, getting a current insurance certificate before a situation occurs, and preventing hazardous materials from becoming hazardous waste).

The lessee must correct violations in a timely manner. To ensure this, R/D A/S should issue formal written notice to make corrections within a specific time frame (usually 30 days, unless it is a safety issue, which may require a three-day notice). If action is not taken, R/D A/S should initiate default proceedings (e.g., termination, eviction, lawsuit, and collections).

Prior to initiating action, R/D A/S should carefully review the lease agreement to determine the appropriate remedies available. HQ A/S and Legal should be contacted to determine if there are additional steps that can be implemented.

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

15.08.01.00 General

The Senior should ensure sufficient staff is assigned to and adequate time is spent on managing the region/district's Airspace program, which includes property management activities, marketing plan to lease sites, and program efficiency.

15.08.02.00 Property Management

Property management activities are those actions taken after a site is leased and any developments are constructed. (See Section 15.07.00.00.) Airspace must ensure the lessee is complying with all terms and conditions of the lease agreement. As each site is developed differently, the degree of property management activities will differ with each lease. At a minimum, R/D A/S should review the current status of each lease to ensure:

- **Monthly** - The lease payment has been received and the account is not delinquent. If after proper notification, the lessee does not pay any arrears, default proceedings should be initiated.
- **Monthly** - Expiring rental agreements or lease agreements will be scheduled for renewal, extension, or termination.
- **Quarterly** - Future adjustments to the lease rate have been calculated and are scheduled to be billed per the percentage established in the lease agreement. The lessee must be advised in writing of the increase in the lease rate at least 30 days prior to the billing date.
- **Quarterly** - Lessee's insurance certificate provides the appropriate liability coverage and is current. Developed sites will also require fire insurance for all improvements. Failure to provide a current insurance certificate is cause to initiate default proceedings.
- **Quarterly** - SFM's inspection report has been received on all developed properties. Follow up when necessary to ensure deficiencies are corrected.
- **Annually** - SFM's inspection report has been received on all nondeveloped properties requiring inspection. Follow up as necessary to ensure deficiencies are corrected.
- **Annually** - Lessees paying on a percentage of gross revenues have scheduled audits to calculate the next year's lease payments. Airspace and the lessee should initiate the review of gross receipts at least 60 days prior to the next billing cycle.

Field reviews are important in property management activities, and each site should be inspected on a regular basis to ensure the site is being used and maintained as authorized. The lessee should keep the site clean of debris and of **hazardous waste**. Upkeep should be consistent with or superior to neighborhood standards. At a minimum, Airspace should inspect each expiring lease prior to renewal, extension, or termination (monthly); each developed site (quarterly); and each nondeveloped and vacant site (annually).

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

15.08.03.00 **Lease File**

Each Airspace lease must have a file that includes a diary of all written and verbal communications, including all requests and approvals. The site file must contain written documentation (letters, memoranda, and attachments) on the leasing procedures (bid vs. direct negotiations), proposed use, DARC comments (all phases), development plans, environmental and air quality documents, marketing plan for the site, standardized lease agreement, bid package, RWPS setup, request to add to inventory, field inspections, deficiencies corrected by lessee, default actions initiated, and all other pertinent information.

15.08.04.00 **Right of Way Property System**

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

R/D A/S should ensure the system is current 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 should remain in the inventory or be removed.

IRWS must also be updated as the two systems are integrated. Airspace site numbers cannot be entered into RWPS unless the route and site are first entered into IRWS.

15.08.05.00 **Income**

RWPS and accounting programs track all revenues received through leasing sites. All funds are deposited into the State Highway Account (SHA), which is used for transportation purposes. As such, FHWA does not require a percentage of the income received but expenses are not eligible for federal reimbursement.

Since gross income (funds actually received) is reported to management and the legislature periodically, it is critical Airspace make all efforts to collect lease payments on a timely basis.

15.08.06.00 **Marketing Plan**

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

The Senior should review the marketing plan at least quarterly to ensure all ongoing negotiations and activities are on schedule and that appropriate reviews and approvals are being obtained as scheduled. Processing the documents and following up on their review and approval are critical (e.g., requests for appraisals, reviews of environmental documents, and FHWA's concurrence).

The success of the program depends greatly on R/D A/S's responsiveness to the proposed lessee and the reviewing and approving entities (e.g., CTC, FHWA, and DARC members). Resolving problems with or barriers to leasing the site should be a high priority.

R/D A/S should monitor the future expiration of rental agreements and leases and develop plans to lease the sites again through the bid or negotiation process.

The marketing plan for high priority sites (those that will generate the highest return if developed) should be evaluated to ensure the best methods for marketing and advertising the sites are used. Additionally, interim uses should be considered pending full development of the sites.

Scheduling competitive bids for sites new to the inventory, recently vacant, or expiring should be part of the marketing plan. Each site should be evaluated to determine:

- Highest and best use (if different than the previous use).
- Fair market lease rate based on the term of the new lease (e.g., a five-year lease may generate a higher rate of return than a two-year lease).
- Best method for leasing the site.

15.08.07.00 Program Efficiency

The Senior is responsible for program efficiency. This requires monitoring the current year income and expenditures closely to ensure the income to expense ratio is within the norm for the region/district and the statewide program, based on past year results and new procedures in place.

PY usage should not exceed the budget allocation nor be less than the contracted usage for delivering the program. Modifications to the allocation and contract require HQ Program Manager approval.

HQ A/S prepares periodic reports to the CTC and the Legislature on income and expenses for the region/districts and the statewide program. The Senior should use the periodic reports to monitor gross revenues and operational expenses quarterly to evaluate possible changes in activities and to correct charging errors. HQ A/S will provide R/D A/S with special reports and assist in analyzing the data.

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

15.08.08.00 Policy and Procedural Manuals

The Senior should ensure each Airspace Agent has the current Airspace procedures outlined in the Airspace Chapter with Exhibits and Forms, the Reference File, region/district forms and exhibits, and other written guidance or instructions.

There should also be a plan to review the staff's work product to ensure it complies with all applicable laws and policies and that the work is being done on time and in accordance with the marketing plan.

15.08.09.00 Training and Development

Agents assigned to lease Airspace sites should be at the Associate level and have rotated through the major disciplines within Right of Way. A lesser degree of training and experience is acceptable for Agents who are assigned to property management activities only.

The Senior should ensure staff have adequate training and experience to accomplish assigned tasks in a professional manner. In addition to the Airspace Chapter:

- Agents assigned property management activities should be familiar with property management requirements, RWPS procedures, TRAMS and RWPS reports, and rules on collecting funds.
- Agents assigned nondevelopmental leasing activities through competitive bid should be familiar with standard bidding and auctioning techniques, appropriate laws on contracting with the private sector, clauses in standard lease agreements, marketing techniques, and rules on collecting bid deposits.

- Agents assigned more complex leasing activities (developmental, direct negotiations, and local agencies) should be familiar with negotiation and conflict resolution techniques, development costs, rates of return, CPI trends, special lease language, provisions for assignments and subleases, and CTC procedures to obtain approval to execute lease agreements.
- Agents should expand their knowledge and skills by attending formal courses on leasing, development, auctioning, marketing, and negotiating offered by the California Department of Real Estate, IRWA, and other organizations.

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

- Conduct a bid or auction.
- Meet with and make presentations about the program to local agencies and the planning departments.
- Negotiate terms, including fair market lease rate and rate of return, or developmental uses.
- Evaluate the risks and benefits of potential uses and proposed modifications to standard leases.
- Develop site specific and overall program marketing plans, analyzing potential income to expenses.

15.08.10.00 Reference Library

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

- Airspace Chapter with exhibits, forms, and reference file.
- Appropriate R/W policies and procedures from Appraisals, Property Management, Planning and Management, Encroachment Permits, Environmental, and Maintenance.
- All references in the Right of Way Airspace Chapter, exhibits, forms, and reference file (e.g., 23 CFR, S&H codes, and CTC Resolution).
- Standard lease agreements.
- CTC agenda and minutes, CTC agenda, minutes and approvals, and reports to the CTC and CalSTA.
- Airspace business plan.
- RWPS inventory.
- Region/District's annual marketing plan.