

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.

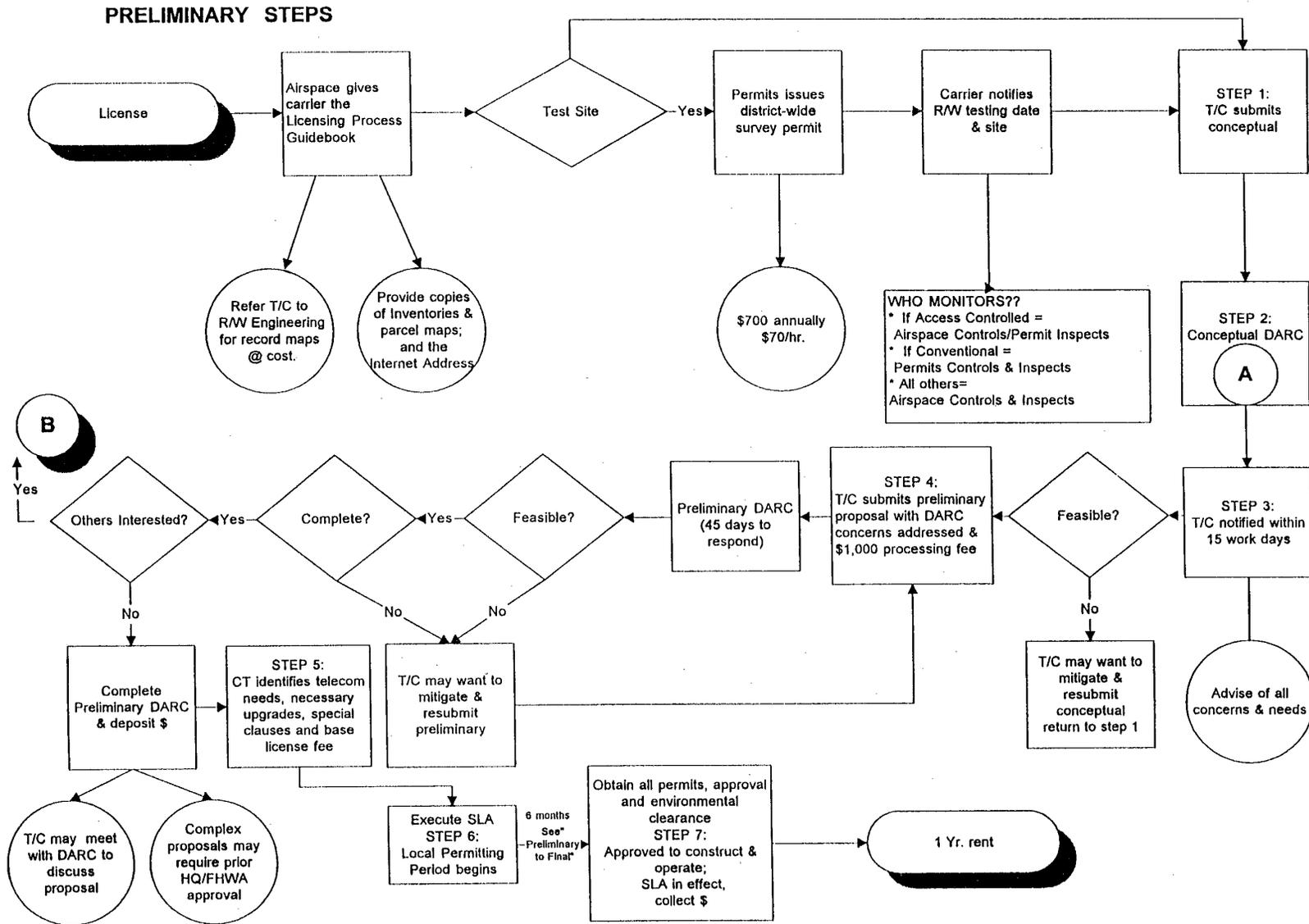
Property Management manages terminal facility leases under the same procedures as regular accounts are managed.

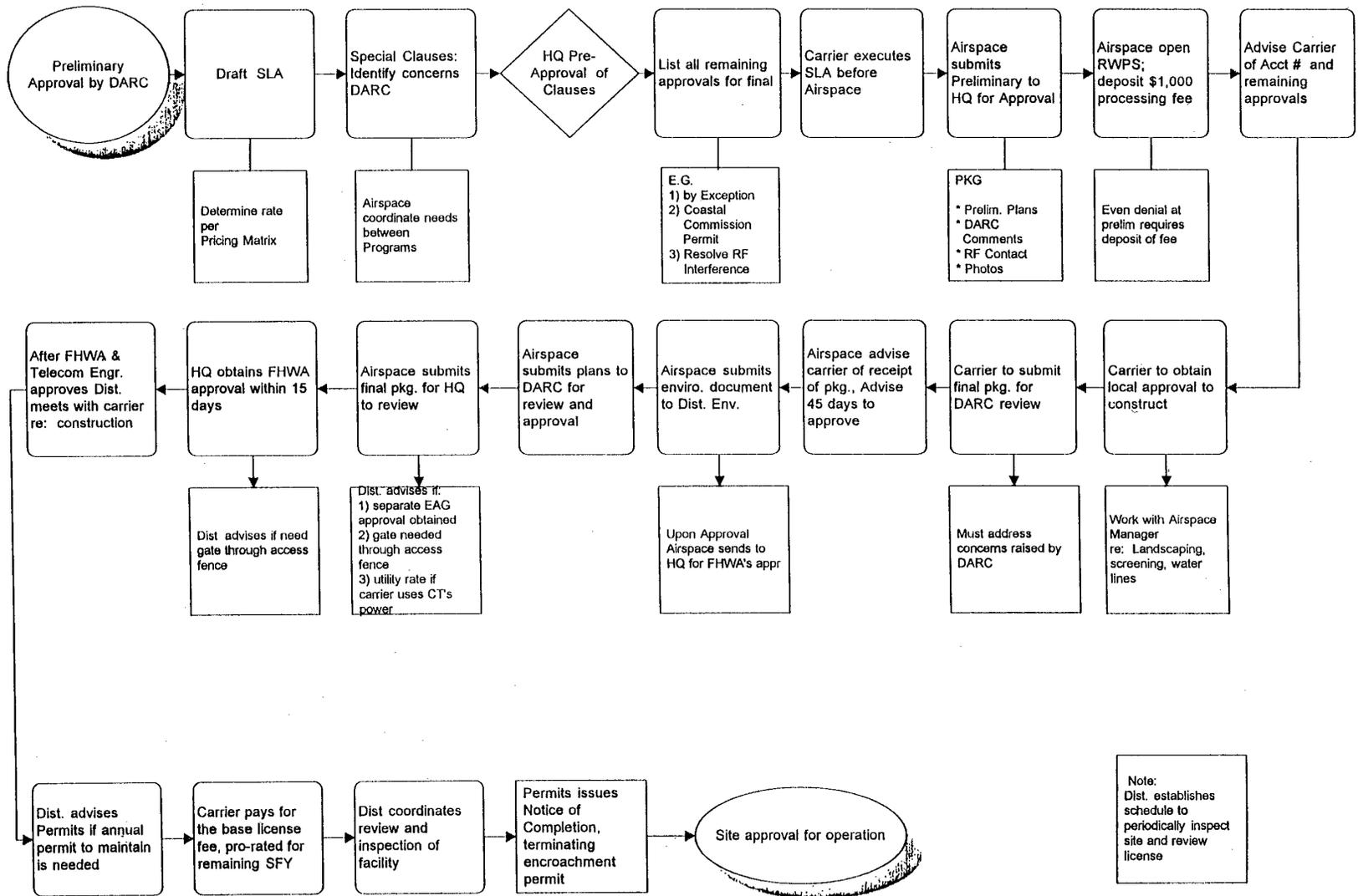
15.06.10.00 Subsequent Lease Documents

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.

CHAPTER 15

Airspace Table of Contents

FORMS

<u>Form No.</u>	<u>Title</u>
RW 15-1	District Annual Marketing Plan for Fiscal Years
RW 15-2	Appraisal Summary
RW 15-3	Insurance Information
RW 15-4	Lease Renewal
RW 15-5	District Checklist for Telecommunications Proposals
RW 15-6	Consent of Assignment (No Relief)
RW 15-7	Consent of Assignment (Relief)
RW 15-8	Consent to Sublease
RW 15-9	Transmittal to HQ A/S

DISTRICT ANNUAL MARKETING PLAN FOR FISCAL YEARS

RW 15-1

The following information is this District/Region's anticipated workload for the Airspace program for the respective fiscal years. The detailed information by site for long term leases is attached.

<u>MSA CHARGE CODES</u>		<u>Upcoming SFY</u>	<u>+1</u>
R641	Property Management <i>(the number of occupied leases considering vacancies and new leases)</i>	_____	_____
R642	Short Term Leases <i>(the number of sites that will be leased for 5 years or less)</i>	_____	_____
R645	Lease Service Documents <i>(subleases, assignments, amendments)*</i>	_____	_____
R643	Long-Term Leases <i>(per attached worksheet)</i>		
	New Bid Leases - 5 years or more	_____	_____
	New Direct Negotiated Leases	_____	_____
	In Progress - Bid Leases - 5 years or more	_____	_____
	In Progress - Direct Negotiated Leases	_____	_____
R649	Site License Agreements		
R350	Airspace Appraisals	_____	_____
R370	Airspace Fair Market Rent Determinations	_____	_____
R250	Airspace Maps (R/W Engineering) <i>(includes maps/descriptions for lease agreements, appraisal and inventory)</i>	_____	_____

* If an amendment to the existing lease agreement will involve a major change in the terms and conditions which requires returning to the AAC for approval, count it as a long-term lease in progress and complete worksheet.

ANNUAL MARKETING PLAN WORKSHEET
LONG-TERM LEASE PRODUCTION (MSA R643)

DISTRICT/REGION _____

STATE FY - Upcoming	a	b	c	d	e	f
BID LEASES - longer than 5 years	APPROVAL: Marketing Plan & Bid Package	Approval: Offer and Proposal	FHWA Approval: Development Plans	Execution: Lease Agreement	Building: Notice of Completion	TOTAL UNITS
New Leases (parcel number) (lessee's name)	(date)	(date)	(date)	(date)	(date)	(# of entries)
TOTAL						

STATE FY +1	a	b	c	d	e	f
BID LEASES - longer than 5 years	APPROVAL: Marketing Plan & Bid Package	Approval: Offer and Proposal	FHWA Approval: Development Plans	Execution: Lease Agreement	Building: Notice of Completion	TOTAL UNITS
New Leases (parcel number) (lessee's name)	(date)	(date)	(date)	(date)	(date)	(# of entries)
TOTAL						

Remarks:

1. Identify and explain any leases or work units that:
 - a. may be complex and/or controversial
 - b. may require a lengthy process due to obtaining approvals
 - c. involve a major development
 - d. are with a governmental entity (i.e. Marler-Johnson)
2. Under "Leases in Progress," list any amendment documents that may:
 - a. be complex and/or controversial
 - b. require a lengthy process due to obtaining approvals
 - c. change the terms (rent, term, development)
3. Under "Leases in Progress," list those leases that will have to be returned to the AAC for extension of their approval.

APPRAISAL SUMMARY

RW 15-2

FLA NO. _____

NAME _____

APPRAISAL SUMMARY

Parcel Description:

Location - _____

Area - _____

Zoning - _____

Valuation:

Highest and best use - _____

Appraised value - _____

Date of appraisal - _____

Proposal:

Use - _____

Option price - _____

Option period - _____

Term - _____

Rent:

Minimum guaranteed - _____

Percentage - No _____ Yes (see attached sheet) _____

Rent adjustment:

CPI - _____

Reevaluation - _____

Evaluation:

Rate of return - _____

APPROVAL RECOMMENDED

District Right of Way Airspace Unit

FLA NO. _____

NAME _____

Percentage Lease

Developer's Project Plan:

Gross square feet - _____

Net rentable - _____

Rent per square foot - _____

Anticipated:

Gross income - _____

Vacancy - _____

Expenses - _____

Net income - _____

Debt service:

T.D. - _____

Term - _____

Interest - _____

Payments - _____

Tax benefits - _____

Developer's equity - _____

Evaluation:

Internal rate of return (IRR) - _____

Net present value (NPV) - _____

INSURANCE INFORMATIONRW 15-3

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION****INSURANCE INFORMATION SHEET****PLEASE GIVE THIS FORM TO YOUR AGENT OR BROKER**

The lease with the State of California, Department of Transportation requires evidence of satisfactory liability and/or fire insurance. This evidence of insurance must be provided by completing the Department's **Certificate of Insurance Form** (enclosed) and returning it to the Department (District Address). In completing this form, the following requirements must be met:

- A. The lessee must be shown as **Named Insured**.
- B. The State of California, its officers, agents, and employees must be included as **Additional Insured's**, but only insofar as operations under the lease are concerned.
- C. The Minimum Limits of Liability are \$5,000,000 per occurrence (CSL) for bodily injury and property damage liability combined.
- D. The insurer will not cancel or reduce the insured's coverage without 30 days prior written notice to the State.
- E. The State will not be responsible for the payment of any premiums or assessments.
- F. If the policy contains any clause excluding coverage as to property in the care, custody, or control of the insured, such clause shall not apply with regard to any liability of the State of California, its officers, agents, or employees.
- G. The minimum limits of fire insurance coverage must be 100 percent of replacement value.

CERTIFICATE OF INSURANCE

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This Certificate does not amend, extend, or alter the coverage afforded by the policies listed below.

Name and Address of Insured	COMPANIES AFFORDING COVERAGE
	Company Letter A
	Company Letter B

This is to certify that policies of insurance listed below have been issued to the insured named above and are in force at this time. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies.

Company Letter	Type of Insurance	Policy Number	Policy Expiration Date	Limits of Liability in Thousands (000) Each Occurrence
GENERAL LIABILITY				
	<input type="checkbox"/> Comprehensive form		Bodily injury	\$ _____
	<input type="checkbox"/> Premises - Operations		Property damage	\$ _____
			Bodily injury and property damage combined	\$ _____
			Personal injury	\$ _____
EXCESS LIABILITY				
	<input type="checkbox"/> Umbrella form		Bodily injury and property damage combined	\$ _____
	<input type="checkbox"/> Other than umbrella form			
	<input type="checkbox"/> Fire insurance		Amount of coverage	\$ _____

Description of Operations/Locations

1. State of California, its officers, agents, and employees are included as additional insured but only insofar as operations under this lease are concerned.
2. The insurer will not cancel or reduce the insured's coverage without 30 days prior written notice to the State.
3. The State will not be responsible for the payment of any premiums or assessments on the policy.
4. If the policy contains any clause excluding coverage as to property in the care, custody, or control of the insured, such clause shall not apply with regard to any liability of the State of California, its officers, agents, or employees.
5. The minimum limit of fire coverage must be 90 percent of replacement value.

Name and Address of Certificate Holder

State of California
Department of Transportation

Date Issued: _____

Authorized Representative

LEASE RENEWAL

RW 15-4

BID LEASE RENEWAL

Acct. _____

THIS LEASE RENEWAL made this _____ day of _____, 19_____, at _____, California, by and between the State of California, Department of Transportation, Lessor, and _____, Lessee _____.

WHEREAS, on _____, 19_____, by public auction _____ (State's Present Lessee) was the successful bidder.

WHEREAS, Lessor and Lessee did, on the _____ day of _____, 19_____, enter into that certain lease agreement identified as Account No. _____, covering land in the County of _____, State of California, commonly known as _____, and more particularly described in said lease, the term of which lease expires on the _____ day of _____, 19_____, and

WHEREAS, it is mutually desired and agreed to extend the lease for a further period of time.

NOW, THEREFORE, it is hereby mutually agreed to extend the term of said lease for a period of _____ months/years commencing on the _____ day of _____, 19_____, and ending on the _____ day of _____, 19_____, under the same terms, covenants, and conditions contained in said lease, except as modified by this instrument which said terms, covenants, and conditions are, by this reference, incorporated herein as follows:

All other terms and conditions remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Renewal the day and year first above written.

Recommended for Approval:

By _____
Right of Way Agent

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____
District/Region Airspace

By _____

DISTRICT CHECKLIST FOR TELECOMMUNICATIONS PROPOSALSRW 15-5

District Checklist for Telecommunications Proposals

- STEP 1: Receive request from carrier to build a site on Caltrans property. Should include a narrative or form describing:
 1. Size of pole, number of antennas, perimeter dimensions (fenced area).
 2. Type of facility (PCS, cellular, other).
 3. Expected time schedule (building permits by when, construction by when).
 4. Colocatees, if any.
 5. Sketch or drawing of the area (site) needed on Caltrans facility (premise).
 6. Optional: Depiction of the equipment (photo rendition, sketch, etc.).

- STEP 2: Meet with the core DARC team (Traffic Operations, Environmental, and Telecommunication Engineering) to review the proposal.
 1. Add (as appropriate) Landscape Architect and the operator of the facility (e.g. park and ride, maintenance superintendent, or facilities manager).
 2. If facility is within the operating right of way, add Project Development.
 3. If facility is on a structure within the operating right of way, add Structures.
 4. If facility is underneath a structure, add Hydraulics and Fire Marshal.
 5. If facility is on a bridge, determine if it will be impacted by seismic retrofit.

- STEP 3: Advise carrier of Conceptual Review response.
 1. Send letter back to carrier, stating either A or B:
 - A. Conceptually their proposal is OK and to please submit their preliminary proposal within 30 days or the site will be available for other carriers to submit proposals.
 1. Response to the carrier is due within 15 working days of receipt of their conceptual proposal.
 2. Inform the carrier that a full DARC review will be held once the preliminary package is submitted and include the preliminary package checklist.
 3. If this is a new carrier (no MLA, no conceptualls, etc.), send them the “Guidelines to License Sites” so they can become familiar with the program.
 4. Ensure the carrier understands Caltrans' right to occupy the tower with a whip antenna (per the MLA) and carrier must provide conduit from a pad to the tower.
 - B. If the answer is NO, tell them why (e.g. completing 2 year seismic retrofit project – “come back then,” widening off-ramp, or consolidating maintenance station).
 2. Additionally, you may want to:
 - A. Offer to help them find a more suitable location.
 - B. Provide them with inventories, data bases, maps, and the Internet address.

- STEP 4: Preliminary proposal submitted by carrier.
 1. Review it to ensure the proposal:
 - A. Meets the requirements of the checklist.
 - B. Is basically the same as the conceptual proposal.
 2. Hold the preliminary DARC, making sure the right programs are represented (not too many or too few).
 3. Set a time frame within which to review the proposal. You can:
 - A. Send carrier copies of plans with a form to use to respond with comments.
 - B. Set a formal meeting time for complex issues or proposals.
 - C. Keep the blueprints in a common room for one week for carrier to review at their discretion.
 - D. Tell carrier that if no comments are received back by a certain reasonable time, then “approved” is assumed. (This does NOT apply to Telecom Engineering; a non-response needs to be elevated to HQ/AS).
 4. If HQ must be involved in the preliminary review, allow additional time:
 - A. The Permit by Exception Committee, Structures Review or Seismic Retrofit coordination will require at least 15 working days to review/approve and get back to districts.
 - B. FHWA (and sometimes Telecommunications Engineering) review/approval is obtained after the preliminary DARC is completed.

(Cont.)RW 15-5

5. Advise carrier of review/approval of their preliminary proposal.
 - A. Advise carrier that the final plans must address any issues raised during the DARC.
 - B. The carrier may want to address any major concerns directly with the DARC.
 - C. If possible, send them the SLA to execute (see Step 5).
6. Deposit the \$1,000 processing fee.
 - A. If the proposal is for more than one carrier, but the plans show all the facilities (thus only one review needed), only one fee is required.
 - B. Open an account in RWPS for each carrier, depositing the processing fee in the primary carrier's account.

 STEP 5: Execute the Site License Agreement.

1. Establish the base license fee per the matrix (HQ R/W must pre-approve any rates outside the matrix).
2. Determine the "special clauses" for the SLA that cover:
 - A. Licensor's use of the facility (reserved space, additional antennas at cost, mounting of surveillance cameras, elimination of interference).
 - B. Access to and from the facility including notification, maintenance, gates.
 - C. Maintenance responsibilities of the carrier.
 - D. Identify if the carrier will be responsible for obtaining a maintenance permit as the facilities and access are within the operating right of way. (Note: this special clause does not apply to the need for an encroachment permit or a building permit as this is covered in the MLA.)
 - E. Other users at the site (colocation), stating that agreement has been reached between the parties and that a separate SLA will be needed for the other carrier and which carrier will be paying the base license fees.
 - F. The known and unknown hazardous substances at the site.
 - G. Identify any "upgrades" or "modifications" to the site that the carrier will be required to do prior to constructing, i.e. protecting the slope, building a gate, protecting trees.
 - H. Any other special clauses, provisions, or agreements needed to protect the Department's interests.
3. HQ R/W will need to pre-approve any "new" special clauses. (see list).
4. Request FHWA's preliminary approval of the proposal. Submit:
 - A. Plans, photos, sketches.
 - B. DARC notes.
 - C. Carrier's narrative description of proposal.
5. District executes SLA granting a six-month period (Local Permitting Period).

 STEP 6: Local Permitting Period.

1. Work with the carrier to obtain final reviews and approvals.
2. Submit environmental document prepared by carrier for review by the Environmental Branch.
3. Submit final plans, final DARC notes and carrier's response to FHWA (via HQ) for final approval, including original Categorical Exclusion/Categorical Exemption executed by District Environmental Branch.
4. Submission of final plans, final DARC notes and carrier's response to HQ Telecommunications Engineering for final approval is required. (May have been provided to the district directly during the preliminary and/or final DARC meeting.)
5. Pend for final approvals, including the local building permit.

 STEP 7: Approval to construct.

1. Obtain final approvals as evidenced by:
 - A. Local building permit.
 - B. Environmental approval.
 - C. Final DARC.
 - D. Final approval of plans.
 2. Annual Base License Fee payment (enter into RWPS as a Telecommunications License account).
-

CONSENT OF ASSIGNMENT (No Relief)

RW 15-6 (REV 1/2013)

ASSIGNMENT OF LEASE

For value received, Assignor, _____ assigns and transfers to Assignee, _____, that certain lease number _____ dated _____, executed by Assignor as Lessee and the State of California, Department of Transportation, as Lessor of that certain real property located at _____ in the city of _____, county of _____ State of California, together with all its rights, title, and interest in and to the lease and the leased premises, subject to all the conditions and terms contained in the lease, to have and to hold from _____ until the present term of the lease expires on _____. A copy of the lease is attached hereto and made a part hereof.

Assignor covenants that it has performed all duties and obligations and made all payments required under the terms and conditions of the lease.

Assignor understands and agrees that this Assignment shall not release it from any of the duties and obligations imposed on it under the terms, covenants, and conditions of the lease, and Assignor shall remain liable to perform all such duties and obligations separately and apart from the assumption made herein by Assignee.

Assignee agrees to pay all rents due after the effective date of this Assignment, _____, and to assume and perform all duties and obligations required by the terms, covenants and conditions of the lease.

Dated: _____

Assignor

Assignee

Name Title

Name Title

CONSENT OF LESSOR

The State of California, Department of Transportation, Lessor named in the above Assignment of that certain lease number _____, executed by Lessor on _____, consents to that Assignment.

Lessor further consents to the agreement by Assignee to assume after _____ the payment of rent and performance of all duties and obligations set forth in the lease. Lessor does not by this consent release _____, Lessee and Assignor from any of its and obligations under the lease, including the payment of rent, and this consent is given only on the express condition that Lessee and Assignor not to be released.

Dated: _____

Lessor
State of California
Department of Transportation

By _____

Name Title

CONSENT OF ASSIGNMENT (Relief)

RW 15-7

ASSIGNMENT OF LEASE

For value received, Assignor, _____, assigns and transfers to Assignee, _____, that certain lease number _____ dated _____, executed by Assignor as Lessee and the State of California, Department of Transportation, as Lessor of that certain real property located at _____ in the city of _____, county of _____, State of California, together with all its rights, title, and interest in and to the lease and the leased premises, subject to all the conditions and terms contained in the lease, to have and to hold from _____ until the present term of the lease expires on _____. A copy of the lease is attached hereto and made a part hereof.

Assignor covenants that it has performed all duties and obligations and made all payments required under the terms and conditions of the lease.

Assignee agrees to pay all rents due after the effective date of this Assignment, _____, and to assume and perform all duties and obligations required by the terms, covenants and conditions of the lease.

DATED: _____

ASSIGNOR

ASSIGNEE

CONSENT OF LESSOR

The State of California, Department of Transportation, Lessor named in the above Assignment of that certain lease number _____, executed by Lessor on _____, consents to that Assignment.

Lessor further consents to the agreement by Assignee to assume after _____ the payment of rent and performance of all duties and obligations set forth in the lease, and releases _____, Lessee and Assignor, from all duties and obligations under the lease, including the payment of rent, after _____, and accepts Assignee as Lessee in place of _____, Lessee and Assignor.

DATED: _____

LESSOR
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____

CONSENT TO SUBLEASE

RW 15-8

CONSENT TO SUBLEASE

The State of California, Department of Transportation, hereby consents to the Sublease of Airspace Site No. _____ dated _____, 19 _____, by and between _____ as Sublessor, and _____ as Sublessee.

DATED _____

LESSOR
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____

TRANSMITTAL TO HQ A/S

RW 15-9 (New 12/97)

TRANSMITTAL FORM

From: District __ Airspace Manager

To: HQ Airspace, Attention: _____

Date:

Re: Review and Approval of Proposed Lease

Attached are documents for processing (**circle one**).

Requests / Conceptual approval / Preliminary approval / Final approval

Please process and advise of approval status.

Check one:

- ___ Request for consent to directly negotiate.
Attached narrative, vicinity map, and draft site map
States why it's in the best interest of the State to negotiate directly
Site isn't landlocked
Proposed lessee isn't local agency

- ___ Request recommendation to approve terms and conditions.
Attached narrative, vicinity map and site map (usable square footage)
Summary of terms and conditions (see _____)
Appraisal summary (see _____)
Will site be used as plottage for the adjacent property?
What is FMV and rate of return?
Is site landlocked?
Proposed lessee isn't local agency
If so, lease rate is less than fair market. Justification attached.

- ___ Request approval of terms and conditions to CTC.
Attached narrative, vicinity map, and site map (usable square footage)
Why is it in the best interest of the State to enter into this lease?
AAC's recommendation
Summary of terms and conditions (see _____)

Note: HQ A/S will prepare Request for Approval of Terms and Conditions to CTC for all sites except leases with public entities that will pay a lease rate based on fair market data.

- ___ Request permission to use 3-Year Directly Negotiated Non-Development Agreement.
 - A. Site cannot be bid because _____
 - OR
 - B. Site was bid but unsuccessfully
Discuss attempts to bid
 - C. Site is landlocked with only one adjacent owner
Proposed use is _____
DARC comments

_____ Transmittal of Telecommunications Site License Agreement.

Narrative describing carrier's proposed facility
Photo renditions
Vicinity and site map
Preliminary DARC comments

Note: If Telecommunications Engineering has already approved at the DARC level,
Draft SLA with special clauses.
 Will Caltrans share the facility, and, if so, identify equipment and method of installation.
 Colocatees at the site?
 Recommendation of non-standard clauses
Construction schedule
Maintenance schedule
Preliminary plans (two 8x11 sets)
Access (and if from the travelway, EAG's approval)
Utilities (and if from Caltrans line, EAG's approval)
 Also requires special clause on paying for services.

_____ Request final approval of Telecommunications Site License Agreement.

Environmental Branch's recommendation of Environmental document
Final construction plans (showing excavation and trenching) (two 8x11 sets)
Final DARC comments stating how all concerns/issues are addressed

_____ Transmittal of lease agreement.

Originally executed copy of a lease over 5 years
Amendment of a lease agreement
Consent to Encumber
MOL
Estoppel Certificate
Consent to Assign (with copy of assignment agreement)
Consent to Sublease (with copy of sublease agreement)

Prior to leasing any site through direct negotiations or bidding, Airspace must obtain conceptual approval:

_____ Request conceptual approval:

Vicinity map (location)
Proposed use
Improvements
DARC comments
FLA number for inventory
Proposed leasing method and agreement

Prior to leasing any site for a development purpose through direct negotiations, Airspace must obtain preliminary approval:

_____ Request for preliminary approval.

Vicinity map and site map (usable square footage)
DARC comments
Preliminary plans

- Show size and location of the proposed development, access and parking, location of columns and other existing structures, and existing and proposed landscaping
- Proposed development, photo rendition, and construction schedule

If developed underneath a structure:

- PSR.
- Proposed column protection.
(Will require Structures Design approval.)

Copy of AAC's consent to directly negotiate.

Proposed schedule to obtain approval of terms and conditions.

Airspace must obtain final approval for:

All developed leases (direct or bid).

All leases over 5 years (direct or bid).

Marler Johnson lease.

_____ Request for final approval of:

Vicinity map and site map.

Local agency approval (zoning ordinance and building permit).

Final construction plans (including all excavation and trenching).

Identify access, circuitry of traffic, utilities, improvements.

Environmental Branch's recommendation of Environmental Document.

Air Quality Statement or Study.

Final DARC review stating how all concerns/issues are addressed.

Copy of CTC's approval of terms and conditions, **OR**

The official request if not already obtained.

Modifications to the standard lease agreement to be used.

District is responsible for final approval for:

All sites that are bid for less than 5 years, as long as the use is as before.

Three Year Directly Negotiated Non-Development Lease.

Park and Ride lease to a non-profit agency.

Rental agreements.

HQ A/S and FHWA do not need to be involved as long as:

Use is as approved at conceptual phase.

No hazardous materials are involved.

Lease rate is based on an approved valuation and is determined to be fair market.

CHAPTER 15

Airspace Table of Contents

EXHIBITS

<u>Exhibit No.</u>	<u>Title</u>
15-EX-1	Site Marketing Plan
15-EX-2	Bid Package
15-EX-3	Bid Instructions
15-EX-4	Letter of Understanding
15-EX-5	Request for Consent to Directly Negotiate (AAC)
15-EX-6	Request for Approval of Terms and Conditions (CTC)
15-EX-7	Request for Recommendation of Terms and Conditions (AAC)
15-EX-8	Estoppel Certificate
15-EX-9	Consent to Encumber
15-EX-10	Memorandum of Lease
15-EX-11	Column Protection
15-EX-12	OSM&I Guidelines
15-EX-13	23 CFR 713
15-EX-14	Storm Water Inspection Report

SITE MARKETING PLAN

(Form #)

SITE MARKETING PLAN

Site _____

APPRAISAL:

Amount
Date
H&B Use
Zoning
Size of Parcel

RENT: Minimum monthly rent to be bid (Rationale for minimum bid when lower range of value used)
Percent of Gross Income (if applicable) (Rationale for percent used)

RENT ADJUSTMENT:

Method to be used (CPI, CPI with lid, percent of Gross Income, etc.)
Frequency

OPTION PRICE:

Rationale as to how price was chosen and advantages to single option price or series of option payments)

TERM OF OPTION:

Special rent considerations during term of option or any incentive to developer to exercise option before completion of option term

TERM OF OPTION:

(Rationale)

UNIQUE FEATURES OF SITE:

Who would be primarily interested in site?

ADVERTISING:

Where
When
Cost

LEASE:

Use standard form and "Z" out clauses not needed.
Cite special clauses drafted or needed due to unique conditions.

BID PACKAGE

(Form #)

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION

NOTICE OF INVITATION TO BID
 FOR LEASING STATE OWNED PROPERTY (Freeway Lease Area)
 FOR THE PURPOSE OF: (state proposed use or development)

Paragraph 1:

Sealed bids will be opened by the State of California, Department of Transportation, Right of Way's Airspace Development Office, located at (address) . The opening will occur at (time) on (day/date) in Room (#)_____ for the purpose of leasing property shown on the attached map(s). The sealed bid must be submitted in writing and placed in an envelope clearly marked with the words "Airspace Sealed Bid Proposal" and the appropriate FLA site number (see example). The sealed bids may be hand delivered or mailed but must be received at the above address before (time/day/date) . No sealed bids will be accepted after this time and date.

OPTION: Oral bids will be held immediately after the sealed bids are opened IF more than one sealed bid is received. If an oral bid is necessary the opening bid will be 5% above the highest sealed bid.

OR

Paragraph 1:

Oral bids will be accepted by the State of California, Department of Transportation, Right of Way's Airspace Development Department for the purpose of leasing property shown on the attached map(s). Those wishing to participate in the auction must be personally present or have an authorized representative at (location) at (time) on (day/date) .

Paragraph 2:

All sealed bids must include (or all oral bidders must have in their possession):

1. A cashier's or certified check for the amount of bid plus \$ (bid deposit) (*amount determined as appropriate*).

NO PERSONAL CHECKS ACCEPTED.

2. A completed proposal for lease of freeway lease area(s) (page #).
3. A completed application for the local agency's Planning Department approval of the proposed use (page #).
4. A certificate of insurance for liability and/or fire (page #), to be completed by your insurance agent.

Paragraph 3:

The bid amount shall be expressed as a flat monthly rate which is not dependent on the revenue or expenses generated by the lot.

Paragraph 4:

For additional information, please contact:

(Insert agent's name, phone number, hours available, District Right of Way office address.)

SEALED BID (or) ORAL BID AUCTION

Identify site(s) to be bid.

FLA #	Location (Address)	Square Feet	Minimum Bid \$	Date Available	Proposed Use	Notes (if any)
1.						
2.						
3.						
etc.						

BID PACKAGE

(Form #)

EXHIBIT

15-EX-02

PAGE 2 OF 4

(Notes can include any specific restrictions, required improvements, and special clauses (i.e. required paving, lighting, fencing); local agency permits/approvals subject to termination of lease with current lessee; current site improved with "chip & seal" which will need to be removed or improved, etc. Proposed use will determine the type of paving required (listing specifics).

I. BID REVIEWS (Acceptance - Rejections - Defaults)

The Department reserves the right to reject any or all bids, or to accept such bids which are in the best interest of the STATE, and to withhold such acceptance or rejection until fifteen (15) days (*or other appropriate time*) after the bid opening date (*longer if HQ A/S and/or FHWA approvals will have to be obtained*).

- * No bid shall be accepted which is less than the minimum monthly bid.
- * Bids not in accordance with the provisions of this notice will be subject to rejection.

The bid deposit of the successful bidder will be applied as a security deposit as required by the Lease Agreement. Bid deposits of unsuccessful bidders will be returned within 3 business days of the bid auction.

If the successful bidder fails to perform as required, the State has the option of awarding the site to the second highest bidder.

In the event of a default or non-execution of a lease on a site, 25% of the bid deposit will be retained as liquidated damages.

II. EXECUTION OF LEASE

As a condition for offering a bid, the successful bidder (hereinafter called LESSEE) agrees to enter into a standard Lease Agreement (hereinafter called AGREEMENT) within fifteen (15) days of receiving verbal or written notice of acceptance by the State of California, Department of Transportation (hereinafter called LESSOR).

STANDARD LEASE AGREEMENT: Copy available for review at ___(address)___, during the hours of Monday - Friday, 8:30 - 4:00, or by mail, upon request.

III. LEASE AGREEMENT will contain at a minimum the following terms, conditions and special provisions:

1. AGREEMENT shall be for a period of two (2) years (unless HQ A/S approval for additional period is obtained prior to bid package - Section 805.002D.)
2. A security deposit of \$___ will be held from LESSEE during the time of occupancy.
3. LESSEE agrees to provide satisfactory liability and/or fire insurance prior to execution of the AGREEMENT and on the anniversary of the AGREEMENT until such AGREEMENT is terminated. Non-compliance with this requirement is grounds for termination of the AGREEMENT. See ATTACHMENT 4.
4. Either party shall have the right to cancel the AGREEMENT upon ninety (90) days written notice. The AGREEMENT will include a cancellation clause allowing LESSOR to enter the property and take possession in case of national or other emergency in order to prevent sabotage or to maintain and protect the structures. LESSOR reserves a Right of Entry for necessary protection, maintenance, reconstruction, and operation of the freeway structures and appurtenances.
5. The leased premises shall be used exclusively for (describe use, e.g. "...the parking of operable wheeled vehicles. Wrecked or inoperable wheeled vehicles shall not be permitted on the leased premises. No vehicle, structure, or enclosure shall be used for human habitation.")
6. The LESSEE's use of the premises shall comply with all Federal, State and local law, and the LESSEE shall be responsible for obtaining all necessary permits for the operation.

7. The leased premises shall not be used for (describe restrictions, e.g. "...vending operations", and/or "...the operation of facilities for a gasoline supply station. Vehicles used for gasoline or petroleum transportation shall not be permitted on the premises. No bulk storage of gasoline or petroleum shall be authorized" and/or "...the storage of combustibles, including wood pallets.")
8. Any bidder desiring to use the property for any other use must receive permission for the Department of Transportation, Airspace Development Department and from the Federal Highway Administration (FHWA). If the successful bidder has not received said approval by the date of the effective date of the AGREEMENT, the property can only be used for parking of wheeled vehicles as described above, until approval or denial of other use is received.
9. The LESSEE will be required to provide freeway column protection according the LESSOR's specifications. (As required.)

OPTION: If column protection is required, the LESSEE may be allowed a rental offset equal to one-half the cost of installation, provided that amount is less than or equal to the rent to be collected by the LESSOR for the term of the AGREEMENT.

10. LESSEE agrees that any construction work required under this bid does not confer upon that party any option or renewal rights in and to the leased area. Said improvements shall be installed at LESSEE's sole expense with no offset granted by the LESSOR. In the event LESSEE wishes to make voluntary improvements on the premises, prior approval from the LESSOR is required. After approval, LESSEE shall secure an Encroachment Permit from the Caltrans Permit Section before commencing any work. At the termination of the AGREEMENT, LESSOR may require LESSEE to remove and dispose of improvements at LESSEE's own expense.
11. The LESSOR reserves the right to advertise any leased area for the purpose of a long term developmental lease.
12. LESSEE agrees to pay all taxes and assessments that may legally be assessed on LESSEE's possessory interest or on any improvements or equipment placed by LESSEE on said premises during the continuance of the tenancy. Payment for all utilities is the responsibility of the LESSEE.
13. LESSOR makes no warranty as to the accuracy of maps used to illustrate the areas contained in the sites available for lease. Each prospective bidder is advised to personally inspect each site prior to making a bid.
14. LESSEE must get prior approval from LESSOR for all assignments, subleases, transfers or encumbrances. LESSEE cannot assign or sublease the property until 6 months pass from the date the AGREEMENT goes into effect. A \$1,000 (amount as appropriate) processing fee, paid in advance, will be charged for all requests for approval. LESSOR will receive 50% of the gross proceeds of any amount collected from the sublessee that exceeds the master lease rate.
15. LESSEE agrees that LESSOR may be required to perform seismic retrofit work on all or a part of any freeway structures situated on, above or near the premises. LESSOR shall have the right to impose such restrictions on LESSEE's right to use, occupy, or enter the premises and to construct improvements as LESSOR deems necessary.
16. Any LESSEE that submits a 90-day notice to terminate the AGREEMENT giving up the right to occupy the site will not be permitted to bid on that same property during the next auction.
17. LESSEE shall pay the monthly rent as determined by the minimum bid by the 5th day of every month until the AGREEMENT is terminated. Monthly rent will be adjusted annually (describe method and percentage). (Note: CPI adjustments and a range of adjustments is discouraged; annual 5% increases are preferred).

BID PACKAGE

(Form #)

EXHIBIT

15-EX-02

PAGE 4 OF 4

- 18. A maximum of two signs which are not greater than 30 square feet each of surface area may be erected on the premises (or other requirements as appropriate).
- 19. Add appropriate restrictions as to Hazardous Waste/Materials.
- 20. The maintenance of the premises, including all driveways, fences and guardrails, shall be the responsibility of the LESSEE, at LESSEE's own expense. The LESSEE shall be responsible for the repair of piers and columns of any freeway structure which is damaged incident to the LESSEE's use of the premises.
- 21. LESSEE agrees to comply with the Federal Civil Rights Act of 1964. (As appropriate.)

NOTE: *Check for other appropriate terms, conditions, and provisions by reviewing standard agreements (short term) (i.e. no relocation benefits, or D11's statement that parking facilities are required to have more stringent insurance limitations (see attachment).*

=====

IV. BID ENVELOPE: Bid envelopes not properly marked shall be disqualified.

"SAMPLE ENVELOPE" for sealed bid auctions:

Return Address	Stamp
State of California - DEPARTMENT OF TRANSPORTATION Airspace Development Department Street Address City, State, Zip Code	

AIRSPACE SEALED BID PROPOSAL: # 1-AAA-111-01-01//Bid Opening January 1, 2001.

Include Cashier's Check for the amount of the bid and deposit, made payable to the Department of Transportation.

Ensure the correct return address is on the envelope and on the bid proposal since unsuccessful bidders will receive their cashier's check back within 3 business days.

Include the completed Proposal for lease of freeway lease area and any other required documents (Item 3, 4, etc.) per the Notice of Invitation to Bid.

Non-compliance with these requirements is grounds for rejecting the bid.

- Attach:
- 1. Local Agency's application for proposed use.
 - 2. Insurance Certificate form.
 - 3. Vicinity map and site map (maps are for reference only - the areas shown are approximate and calculated as gross areas unless otherwise indicated).

BID INSTRUCTIONS

Airspace should determine the following before preparing a bid package:

1. What sites should be included in an upcoming competitive bid. Look at:
 - a. Vacant sites and existing leases that will expire soon.
 - b. Current conditions and any remedial cleanup.
 - c. Changes in the current market (demand, values, trends).
2. The highest and best use as is and if improved by a potential lessee.
3. Any changes in the approved use and improvements requires a DARC. Look at:
 - a. Seismic retrofit, completed and scheduled.
 - b. Necessary upgrades to improve the site and reduce impacts on the site.
 - c. Future needs for all or part of the site for transportation purposes.
 - d. Historical use and problems at the site.
4. Minimum bid value for each site based on the projected term (e.g. a 5-year term may generate a higher lease rate than a 2-year term would generate).
5. Offering multiple sites in one bid package may increase interest and reduce costs. Look at:
 - a. Grouping sites by area or use.
 - b. Time frame between notice and the bid opening.
6. Method of bidding and marketing tools. Look at:
 - a. Sealed bid or open auction.
 - b. Advertising and flyers.
 - c. Bid package should be attractive.
 - d. Mailing list of potential lessees.
 - e. Personally advise current lessees of the upcoming bid.
 - f. Auction area or room and the auctioneer.

Prepare a bid package listing the minimum requirements, the proposed use, the bidding process, critical terms and conditions, special provisions, minimum bid, and required bid deposit.

1. Cashier's checks are the only form of deposit that should be accepted.
2. Each check should be clearly marked with the bidder's name and site.

On the day of the auction:

1. Set up a registration table to collect bidder information.
2. Prepare to collect deposits (one cashier's check from each potential bidder for each site that will be bid on).
3. Provide each bidder with a "bid number."
4. Introduce staff to bidders and explain their respective roles during the bid (e.g. auctioneer, assistant, registrant, leasing agent).
5. auctioneer should proceed down the list of sites, starting with the minimum bid and increasing amounts by at least \$100.00.
6. Assistant should help auctioneer identify bidders and keep track of who bid what amount on which site.
7. After all sites have been bid and awarded, deposits of the non-awarded bidders should be returned.
8. Awarded bidders should meet with the respective leasing agent to increase the deposit to the amount of the winning bid, and to receive a lease agreement ready to be executed.

OR

BID INSTRUCTIONS

(Form #)

EXHIBIT

15-EX-03

PAGE 2 OF 2

On the day of the sealed bid:

1. Set up an area to review sealed bids.
 2. Prepare to collect deposits (one cashier's check from each potential bidder for each site that will be bid on).
 3. Document each bidder's "bid" by site.
 4. After all sealed bids have been opened and documented, determine the winning bidder for each site.
 5. After all sites have been bid and awarded, deposits of the non-awarded bidders should be returned.
 6. Awarded bidders should be contacted by the respective leasing agent to increase the deposit to the amount of the winning bid, and to receive a lease agreement ready to be executed.
 7. Prepare an auction summary detailing the results of the bid by site, minimum bid, number of bidders, awarded bid, and the new lessee.
-
-

LETTER OF UNDERSTANDING

(Form #)

LETTER OF UNDERSTANDING

WHEREAS, _____, hereinafter called "Developer," has presented to the State of California a preliminary development concept for the Airspace site referred to as _____, and

WHEREAS, that preliminary concept appears to meet State criteria for Airspace development, and

WHEREAS, the Airspace Advisory Committee (AAC) has concurred with Airspace's recommendation to directly negotiate with "Developer."

THEREFORE, it is mutually agreed and understood that:

1. The developer will prepare sufficient detail plans and have conducted adequate studies to comply with the requirements of the District Airspace Review Committee.
2. The State agrees to allow developer one year to complete negotiations of the terms and conditions of a long term airspace lease. During said period the State agrees to neither solicit nor accept any other proposals on the subject property
3. The effective date of this "Letter of Understanding" is the day of the AAC's concurrence, which is _____.
4. The "Letter of Understanding," "Offer and Proposal," and any subsequent lease, as well as any required maps, plans, drawings, etc., will be subject to review and approval by the State and, where appropriate, by the Federal Highway Administration.
5. The developer is responsible for the following:
 - a. Securing and submitting any required Environmental Impact Study.
 - b. Any clearances or permits required by virtue of the California Coastal Zone Conservation Act, 1972.
 - c. Any zoning, use and/or building permits required by local agencies.
6. The developer undertakes the above at his/her own time and expense and that under no circumstance is the State liable beyond the specific conditions agreed to in this document.
7. Developer must deposit \$_____ to cover the cost of the State's four market appraisal reports. Such funds must be received within 45 days of this letter in order to receive an approved appraisal in time to successfully complete negotiations.
8. If developer chooses to hire an independent appraiser off of the State's certified list of appraisers, the subsequent appraisal report must meet all State requirements for the valuation of an airspace site. The report must be submitted for review and approval within six months in order to successfully complete negotiations.

(Developer)

**STATE OF CALIFORNIA
DEPARTMENT OF
TRANSPORTATION**

(Date)

By _____

Date _____

REQUEST FOR CONSENT TO DIRECTLY NEGOTIATE - SAMPLE

EXHIBIT
15-EX-05

State of California

Business, Transportation and Housing Agency

Memorandum

To: CHAIR AND MEMBERS
Airspace Advisory Committee

Date:

File:

From: **DEPARTMENT OF TRANSPORTATION**
DISTRICT AIRSPACE

Subject: Request for Consent to Directly Negotiate

RECOMMENDATION:

It is requested that the Airspace Advisory Committee (AAC) consider and approve a request to directly negotiate a 20-year lease with this proposed lessee. It is in the State's best interest to lease this site by direct negotiations and not bid this site publicly because this site is only developable by the proposed lessee.

BACKGROUND:

Said lessee currently owns a medical facility located in the State of California. The proposed lessee plans to develop an additional 6,000 s.m. medical facility to be located on their existing parking lot adjacent to their currently developed 38,000 s.m. facility. The airspace site would provide the additional parking needed for this development.

The subject airspace site contains approximately 16,000 s.m. and is located at the top of slope of the connector ramp from the freeway. Due to access limitations and irregular shape, this site could not support independent development and, for this reason, has never been offered for bid. Said lessee is the only property owner directly adjacent to this site.

SUMMARY:

The optimum return for this site will be realized through a direct lease with said lessee for parking purposes, which is the highest and best use. As medical facility parking, the subject site adds revenue to the State, relieves Caltrans from continuing maintenance problems, and does not detract from the safety and aesthetics of the adjoining connector ramp. The developer proposes to grade, pave, curb, stripe and landscape the site. The negotiated rental rate will be based upon a Fair Market Appraisal and Highest and Best Use Study.

It is requested that the Airspace Advisory Committee grant permission to directly negotiate a 20-year lease with this proposed lessee as it would be in the best interest of the State.

AIRSPACE DISTRICT MANAGER

Attachment (site map)

**REQUEST FOR APPROVAL OF TERMS AND CONDITIONS
(CTC) - SAMPLE**
(Form #)

EXHIBIT
15-EX-06

State of California
Business, Transportation
And Housing Agency
Department of Transportation

HIGHWAY RIGHT OF WAY MATTERS
Airspace Leases
FLA #
CTC Meeting:

Agenda Item:

, Deputy Director
Finance

AIRSPACE LEASES - PROPOSED LESSEE

It is recommended that the California Transportation Commission (CTC) authorize the execution of a lease between the State of California, Department of Transportation and the proposed lessee.

The lease area is located in the (describe its location and identify site location boundaries).

Lessee has leased this property shown on the attached map for automobile sales, service, and storage since 1975. The current lease is scheduled to expire in 2 years and the lease rate is _____ per month. The lessee has requested that the lease be renegotiated at this time in order to accommodate his/her plans, and to avoid the uncertainty of a public bid when the lease expires. Since the current rent is below market value, it is in the State's best interest to lease the property the lessee needs for the facility at market value.

Lessee has agreed to a lease under the following terms and conditions:

Term: Ten (10) years beginning _____, plus one (1) ten (10) year option.

Use: Automobile sales, service, and storage. The lease will not allow the use or storage of flammable, combustible, or hazardous materials.

Rent: _____ per month (based on the State's appraisal), representing a 10% return.

Adjustment: Yearly, based on the Consumer Price Index, with a 2% minimum and 6% maximum.

Reevaluation: Occurs at the end of the initial ten (10) year term, and would apply to the ten (10) year option period.

This agreement is felt to be in the best interest of the State. It allows the sites that have the most marketability and have elicited interest from other parties to be put to public bid, and the remainder leased to lessee for the operation at a significantly higher rental rate than is currently being paid. We, therefore, request approval of a directly negotiated lease to lessee under the terms and conditions outlined above.

The proposed terms and conditions have been reviewed and are recommended for approval by the CTC's Airspace Advisory Committee.

Attachments (vicinity and site maps)

**REQUEST FOR RECOMMENDATION OF TERMS AND
CONDITIONS (AAC) - SAMPLE**

EXHIBIT
15-EX-07
PAGE 1 OF 3

State of California

Business, Transportation and Housing Agency

M e m o r a n d u m

To: CHAIR AND MEMBERS
Airspace Advisory Committee

Date:

From: **DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY PROGRAM
Mail Station 37**

File:

Subject: Approval of Lease Terms and Conditions

RECOMMENDATION

It is requested that the Airspace Advisory Committee (AAC) recommend to the California Transportation Commission (CTC) that it approve the terms of a lease on the above referenced site to lessee. It is in the best interest of the State to lease by direct negotiations and not bid this site publicly because it is landlocked and is only usable by the proposed lessee.

BACKGROUND

Lessee approached District Right of Way to explore ways of increasing the size of their parking lot. Being constrained by a local street on two sides and a fully developed property on the other, Lessee realized that Caltrans held the only property possibly available for expansion. This proposal was not previously brought to the AAC for approval of direct negotiations because the site is landlocked and Caltrans' procedures allow negotiations with the adjoining owner as long as the terms and conditions are presented to the AAC.

The proposed lease area is 26 by 800 meters and below grade with the surrounding land. The lessee plans to fill and pave the leased site for the purpose of increasing the area to display its automobiles for a total of 61 new parking spaces.

The District Airspace Review Committee has approved the conceptual and preliminary proposal and has recently obtained the Federal Highway Administration's approval. In addition, the City's Planning Division has granted the appropriate permits for the planned development.

TERMS AND CONDITIONS

Term:	25 years plus five 5-year options.
Area:	20,800 square meters, of which 3,200 square meters is unusable due to the slope, for a total of 17,600 usable square meters.
Use:	New car storage.
Consideration:	\$1540 per month, based on a fair market appraisal, resulting in a 12% return.

**REQUEST FOR RECOMMENDATION OF TERMS AND
CONDITIONS (AAC) - SAMPLE**

EXHIBIT
15-EX-07
PAGE 2 OF 3

Airspace Advisory Committee
Page 2

- Adjustments: Standard Annual Consumer Price Index adjustments.
- Reevaluation: Every fifth year.
- Cancellation: This lease may be terminated by either party with 90 days' notice. Cancellation by either party will compel lessee to return the property to its previous condition. If the area is needed for a future widening project, the State can cancel the lease and the lessee will return the area to its original condition.

ANALYSIS

This lease represents an excellent use of the state's right of way while providing a stable source of income.

Approval is hereby recommended.

DISTRICT AIRSPACE MANAGER
Right of Way Program

Attachments

AIRSPACE APPRAISAL SUMMARY

LOCATION OF SITE AND BRIEF AREA DESCRIPTION

The airspace site is located within the right of way for the _____
_____ offramp from eastbound Interstate 80. It is adjacent
to the _____ car dealership at _____
_____ in _____, California. This is a newer
retail/commercial region of the city of _____ which
services tourists and the residents who live on the south side of Interstate 80. The services include motels,
restaurants, retail, banks, movie theaters, etc.

BRIEF PROPERTY DESCRIPTION

The subject is rectangularly shaped and contains a net usable area of 17,600 square meters. It is level but
below grade in relation to the offramp and the adjoining private property. The only access to the subject is across
the adjacent property, which is improved with a car dealership.

ZONING

The subject is currently not zoned because it is within the State's right of way. The surrounding private
property is within the City of _____'s Planned Development Commercial (PDC)
designation.

HIGHEST AND BEST USE

There is only one use of the property physically possible, financially feasible, and legally permissible
which returns the greatest value to the land: plottage to the adjoining property for additional parking and inventory
storage for the car dealership. The dealership could use extra area but is not required to have this area.

BASIS FOR ESTIMATING LAND VALUE

The sales comparison approach was used to establish a value for commercial/retail land which could
support car dealerships. The value of the subject is its contributory value to the site it is being plotted to. This
value was established using the sales comparison approach to valuation. The subject has the same unit land value
as the adjacent property after the importation of fill material to elevate the subject to a level which is nearly at
grade with the adjacent property. To fill the site, 3,600 cubic meters of fill are required; this cost must be
subtracted from the indicated land value. The cost of fill is estimated at \$36,000.

ESTIMATED VALUE

The estimated value of ready-to-develop, level, commercial/retail land in the subject area is \$5.10 per
square meter. The value of subject as of February 21, 1996, if ready to develop, is \$90,000. The value of the
subject as is is \$54,000 (\$90,000 - 36,000). Long term land leases should return between 8% and 12%, therefore,
the fair market rent is between \$4,320 and \$6,480 per year, or between \$360 and \$540 per month.

ESTOPPEL CERTIFICATE

(Form #)

CONSENT AND ESTOPPEL AGREEMENT

This CONSENT AND ESTOPPEL AGREEMENT (this "Agreement") is made and entered into as of this _____ (date), by and among the STATE OF CALIFORNIA, acting through its Department of Transportation (Lessor), _____ (Lessee), and _____ (Lender).

RECITALS

A. Pursuant to an Airspace Ground Lease (Lease) which was made and entered into by and between the state and _____ (Lessee), the state leased to the Lessee certain real property in _____ (location) commonly known as Airspace Lease Area No. _____ (file #).

B. As a condition to the Lender's entering into the _____ (describe documents between Lessee and Lender) encumbering the Lessee's interest in the site under the lease, which has been duly executed and delivered to the Lender by the Lessee, shall remain in full force and effect and evidence a first priority lien upon the site, and this Landlord Consent and Estoppel Agreement relating to such Leasehold shall have been duly executed and delivered to the Lender.

NOW, THEREFORE, the parties agree as follows:

1. Definitions. All capitalized terms not defined in the Agreement shall have the meanings given to them in the Lender's document.

2. Representations and Agreements of the Lender. Pursuant to Section 16.5 of the Master Lease, the Lender hereby makes the following representations and agreements:

- a. The Lender is licensed by the _____ to conduct the business of a representative office at _____ (location) in the City of _____ and County of _____, California;
- b. Should the Lender become an Assignee or successor to the interests of the Lessee, the Lender agrees to limit the use of the Site to those uses permitted by the _____ (lease agreements) and
- c. Should the Lender become an Assignee or successor to the interests of the Lessee, the Lender agrees to be bound by all of the terms, covenants and conditions of the _____ (lease agreements).

3. Consent. Pursuant to Section 16.4 of the Lease, the State and the Lessee, respectively, hereby certify and agree as follows:

- a. The execution by _____ (Lessee) of the Leasehold Deed of Trust in favor of the Lender covering all of the Lessee's interest in the Site was not and shall not be deemed by the State to be in violation of, or a default under, the Lease;
- b. The State and the Lessee each consent to (i) the granting of the lien of the Leasehold Deed of Trust by the Lessee in favor of the Lender, (ii) the entering onto the Site by the Lender, its successors or assigns in order to cure any defaults under lease, and (iii) any assignment or transfer of the Leasehold to the Lender or to any other person or entity pursuant to the Leasehold Deed of Trust by way of a judicial or nonjudicial foreclosure, a deed-in-lieu of foreclosure, or otherwise in accordance with law;
- c. As of the date hereof, the Lessee is not in default under the Lease.

ESTOPPEL CERTIFICATE

(Form #)

EXHIBIT

15-EX-08

PAGE 2 OF 2

4. Notice. The State agrees to give the Lender written notice of any default by the Lessee under the Lease, which notice shall be delivered to the following addresses:

(list addresses)

Section 18.13 of the Lease shall govern notices delivered hereunder.

5. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by the law of the State of California. The parties hereby waive, to the fullest extent permitted by law, any rights they may have to a jury trial.

6. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

7. Headings. The section headings used in this Agreement are intended principally for convenience and shall not by themselves determine the rights and obligations of the parties of this Agreement.

8. Severability. Any provision of this Agreement which is prohibited, unenforceable, or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability, or nonauthorization without invalidating the remaining provision hereof or affecting the validity, enforceability, or legality of such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized offices as of the day and year first above written.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
Name:
Title: District Airspace Manager

_____ (Lessee)

By: _____
Name:
Title:

_____ (Lender)

By: _____
Name:
Title:

Attachments (legal description of property)

CONSENT TO ENCUMBER

(Form #)

CONSENT TO ENCUMBER

WHEREAS, on (date) the State of California, acting by and through its Department of Transportation, leased Airspace Lease Area (Site No.) (FLA) located in the City of , County of , (Lessee) for a term of years, and, to

1. (Optional Clause)

WHEREAS, said lease was amended on , 19 ; and

2. (Optional Clause)

WHEREAS, the interest of (original Lessee) as Lessee under the referenced lease was assigned to (Assignee) by an Assignment of Lease dated (date) , 19 ; and

WHEREAS, said lease and all its provisions are, by this reference, incorporated herein; and,

WHEREAS, (Lessee) wishes to borrow, and (Lender) wishes to loan (Lessee) \$, to be secured by a deed of trust, in the form attached hereto, from (Lessee) as Trustor to (Lender) as Beneficiary, against (Lessee) 's interest in the referenced leasehold estate; and,

WHEREAS, Paragraph of the referenced lease from the state of California requires the prior written consent of the State to such an encumbrance; and,

WHEREAS, (Lessee) is not in default under said lease, and the lease remains in full force and effect and the Lessor is not aware of any facts which, with notice or the passage of time, would constitute a default by any of the parties to said lease;

NOW, THEREFORE, the attached deed of trust between (Lessee) as Trustor, (escrow) , as Trustee, and (Lender) as Beneficiary, and the attached promissory note in the principal amount of \$ (the lien of the trust being security for said note) are hereby approved as an encumbrance against the leasehold estate under the , 19 lease, which approval is required by Paragraph of said lease; providing,

BY virtue of countersigning this Consent to Encumbrance, (Lender) hereby agrees and warrants that it will provide the State of California, through the Department of Transportation, with thirty (30) days written notice in the event of any default on its loan to (Lessee) , which agreement is required by Paragraph of the above-referenced lease.

IN the event Lessee defaults under the Ground Lease giving Lessor the right to terminate it:

Lessor shall give (Beneficiary) written notice of default and Intention to Terminate Ground Lease, and the right to cure as stated in Paragraph of said lease.

IN WITNESS WHEREOF, this agreement is executed on the day and year first above mentioned.

Lessor
State of California
Department of Transportation

By _____

(Name of signer)
(Title)
(Address)

District Right of Way, Airspace

MEMORANDUM OF LEASE

(Form #)

MEMORANDUM OF LEASE

This Memorandum of Lease is made this _____ day of _____, 19____, by and between the State of California, acting by and through its Department of Transportation, hereinafter called "Lessor," and _____, hereinafter called "Lessee," who agree as follows:

1. *Premises.* Lessor leases to Lessee, and Lessee leases from Lessor, for the term hereinafter set forth, those certain premises known as Airspace Lease Area No. _____, situated in the City of _____, County of _____, said land or interest therein being shown on the map or plate marked "Exhibit A," attached hereto and by this reference made a part hereof and more particularly described as follows:

(Insert legal description together with exceptions from the master lease)

2. *Term.* The term of this lease is for _____ (years) , commencing _____ (date) , and expiring _____ (date) .

3. *Other Terms and Conditions.* This lease is upon the covenants, conditions and provisions set forth in that certain unrecorded Airspace Ground Lease between Lessor and Lessee dated _____, 19____. These covenants, conditions, and provisions are incorporated into this Memorandum of Lease by reference.

4. *Purpose of Memorandum of Lease.* This Memorandum of Lease is prepared for the purpose of recordation, and it in no way modifies the provisions of the lease referred to herein.

LESSOR:
State of California

LESSEE:

By: _____

By: _____

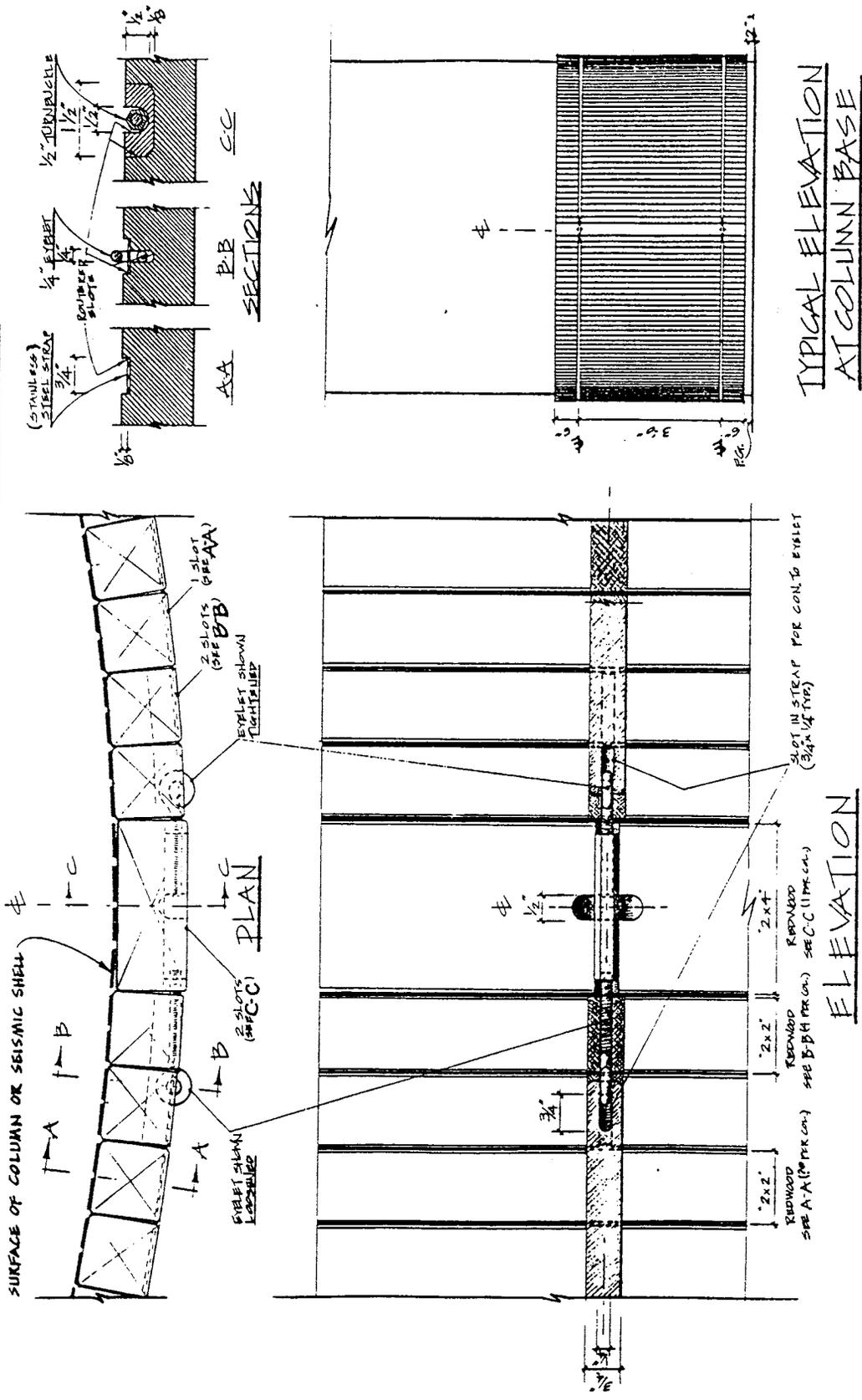
COLUMN PROTECTION SYSTEMS

Airspace Leases require a column protection system in areas where columns are exposed to vehicular traffic. Protection systems using material capable of shrinking with age, such as wood, must have the ability to adjust for shrinkage. Systems using adhesive bonding will not be permitted. Areas exposed to pedestrian traffic will have the additional requirement of presenting smooth surfaces to the passersby.*

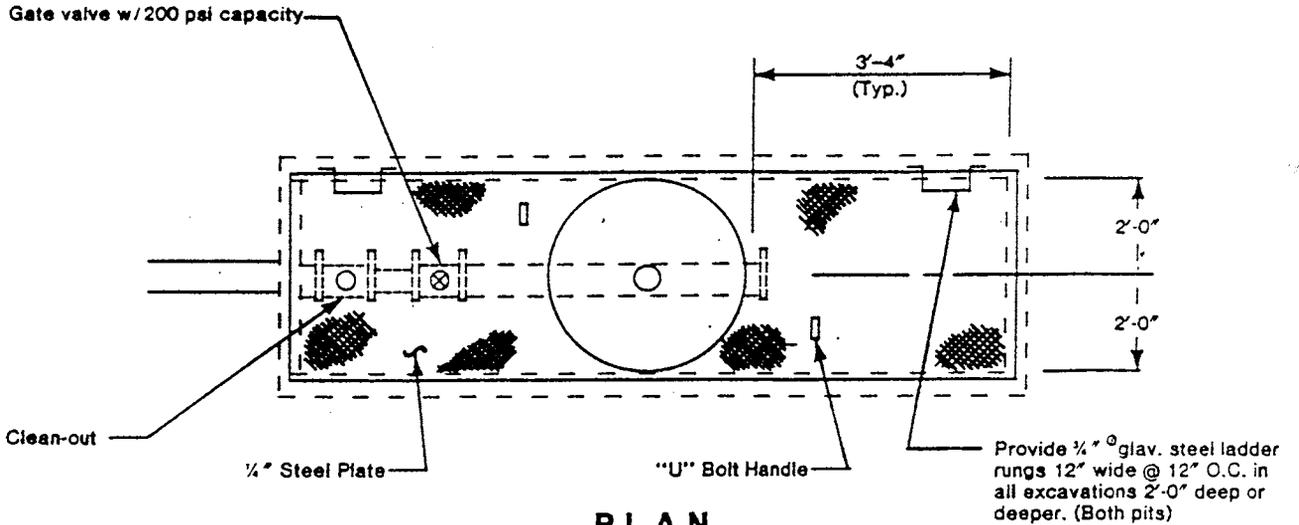
The following illustrations are examples of different types of column protection that can be used. They are not intended to be all encompassing, nor are they mandatory. If the samples provided are not suitable for a particular project, the applicant may submit an independent design of column protection for review. However, the system used shall provide an equivalent amount of protection to the structure columns and public as the examples shown.

* A column protection system as shown in the example utilizing straps and turnbuckle satisfies the smoothness requirement for pedestrians.

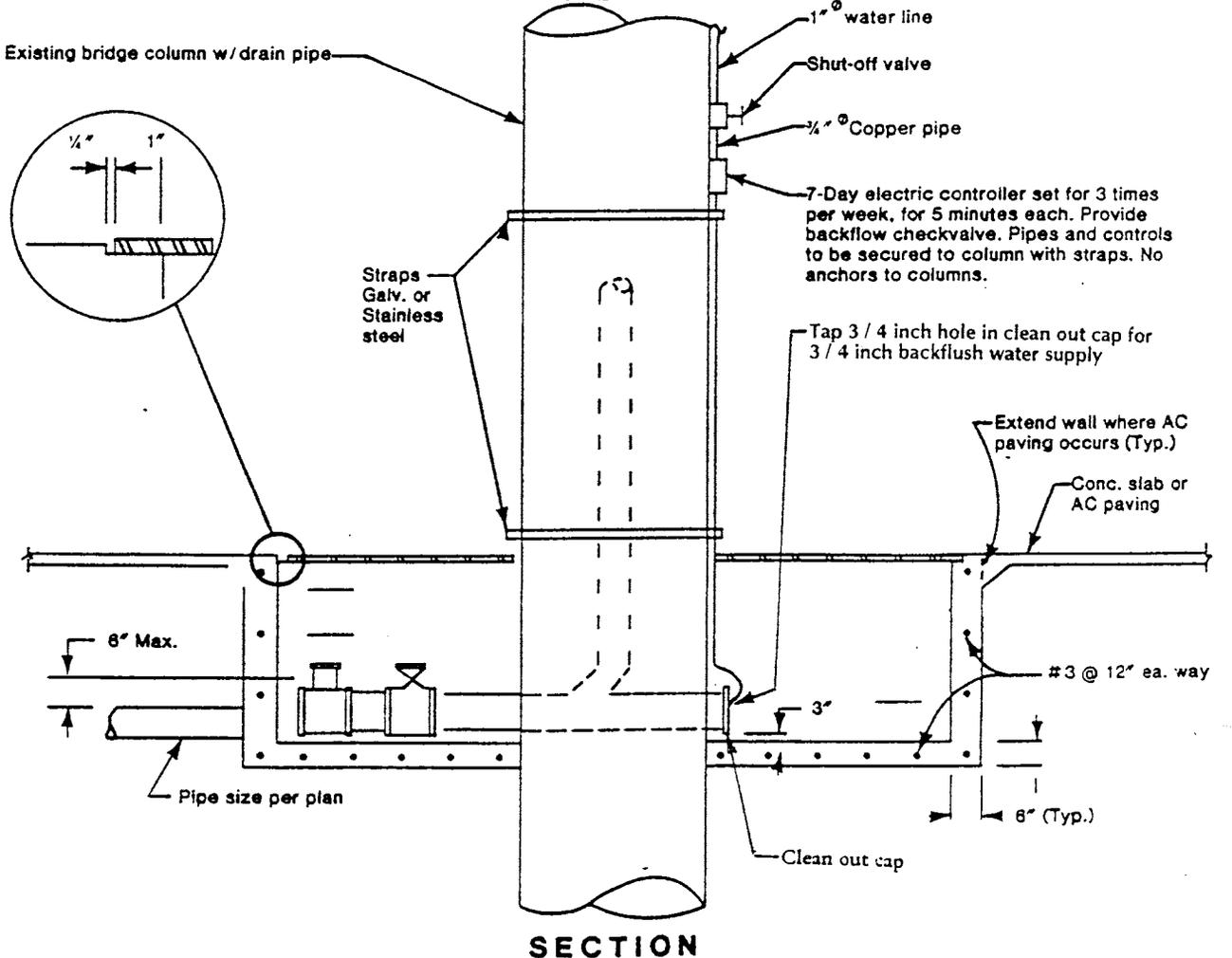
COLUMN PROTECTION (STRAP & TURNBUCKLE)



BACKFLUSHING ENCLOSED VERTICAL DRAIN SYSTEM

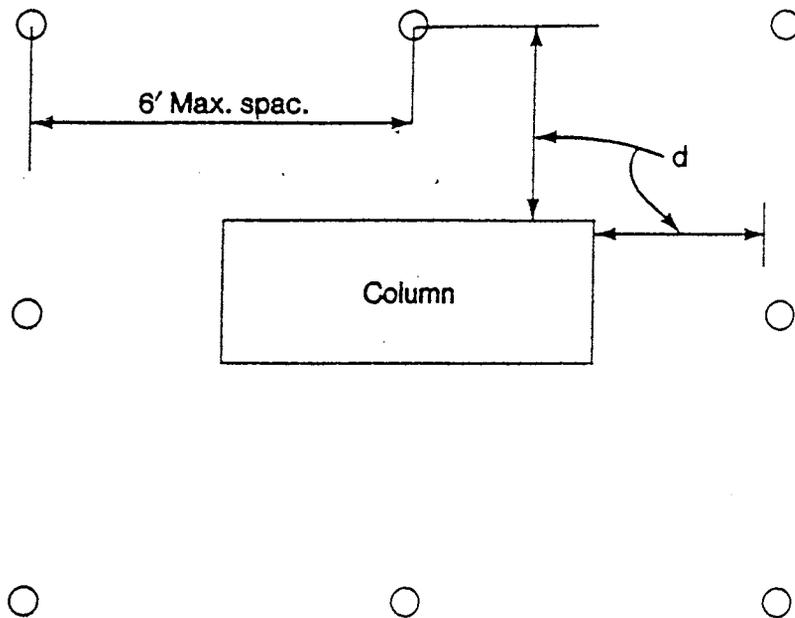


PLAN

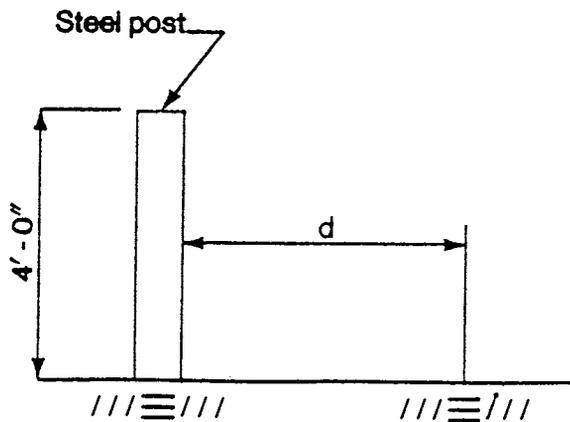


SECTION

COLUMN PROTECTION IN PARKING LOTS



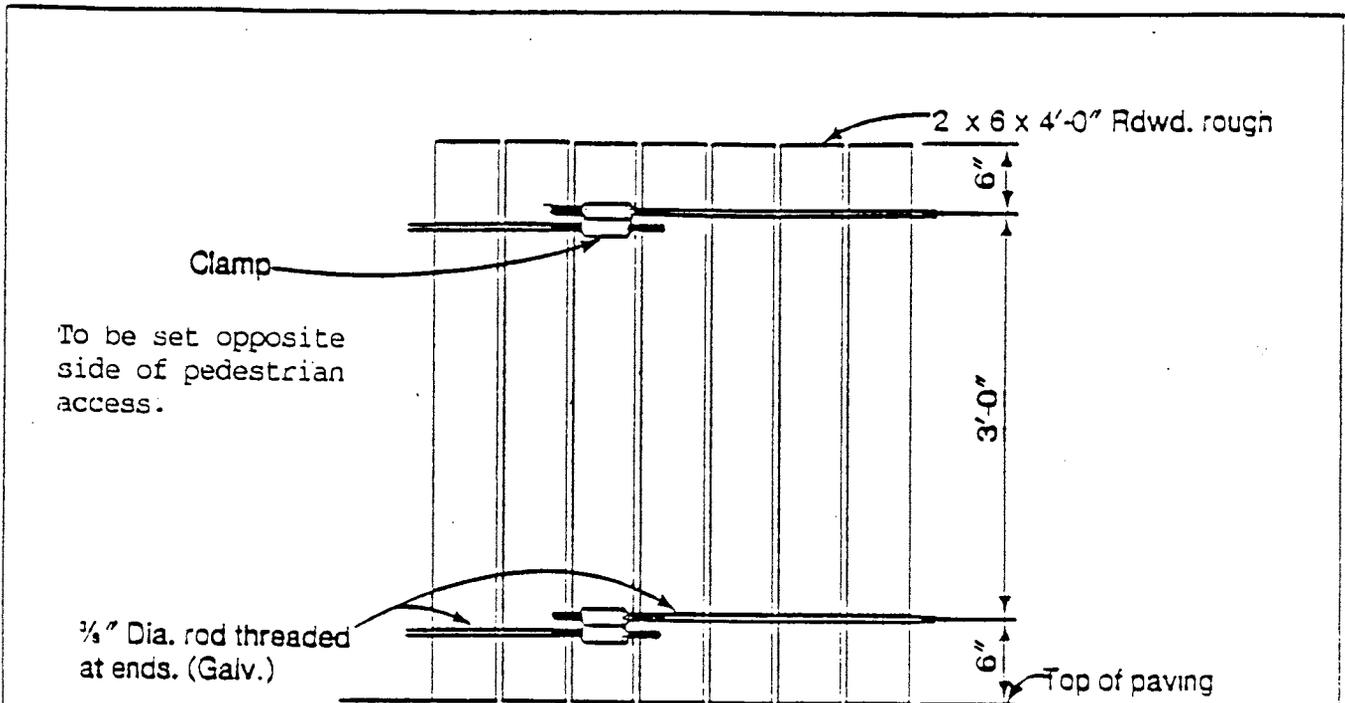
LAYOUT



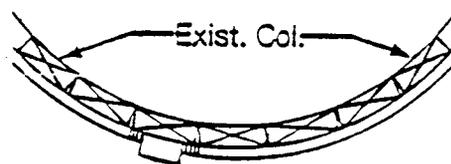
$d = 3$ feet for autos and pickups

$d = 4$ feet for buses and trucks

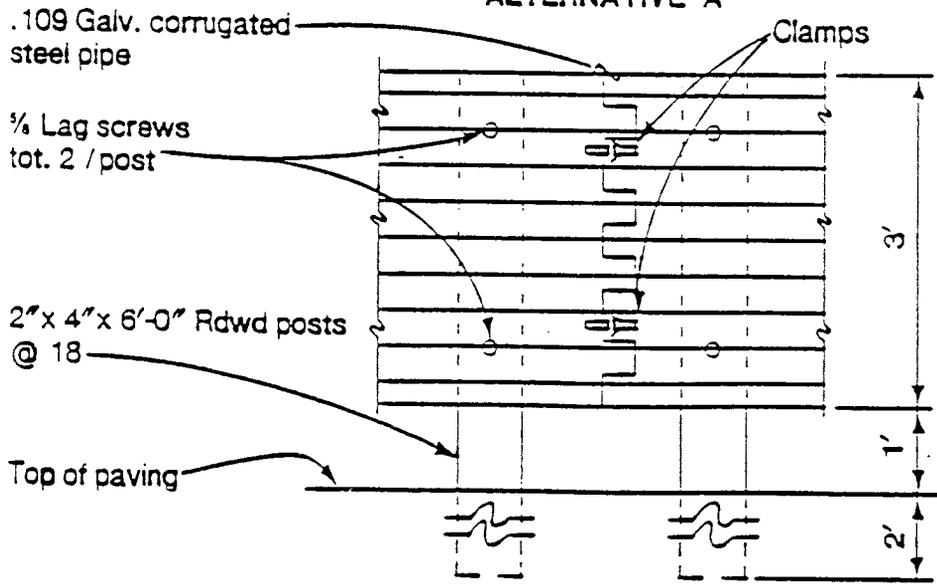
Require 4 inch diameter standard steel pipe post set in and filled with concrete. Depth of post hole will vary dependent on soil conditions. Hole depth must be deep enough for post to bend on impact before overturning.



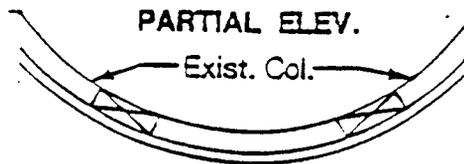
PARTIAL ELEV.



PARTIAL PLAN ALTERNATIVE A

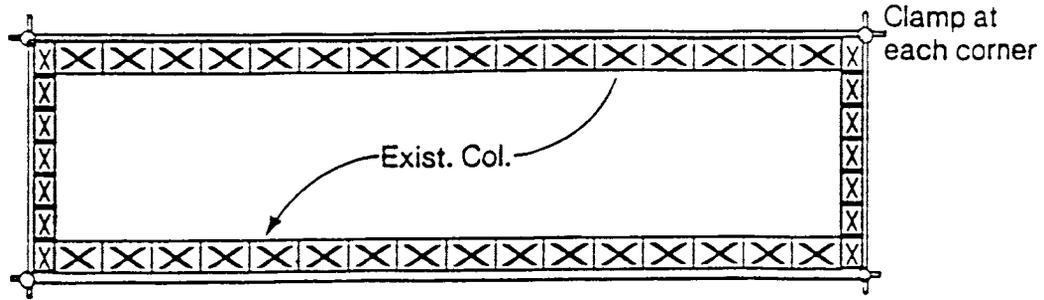


PARTIAL ELEV.



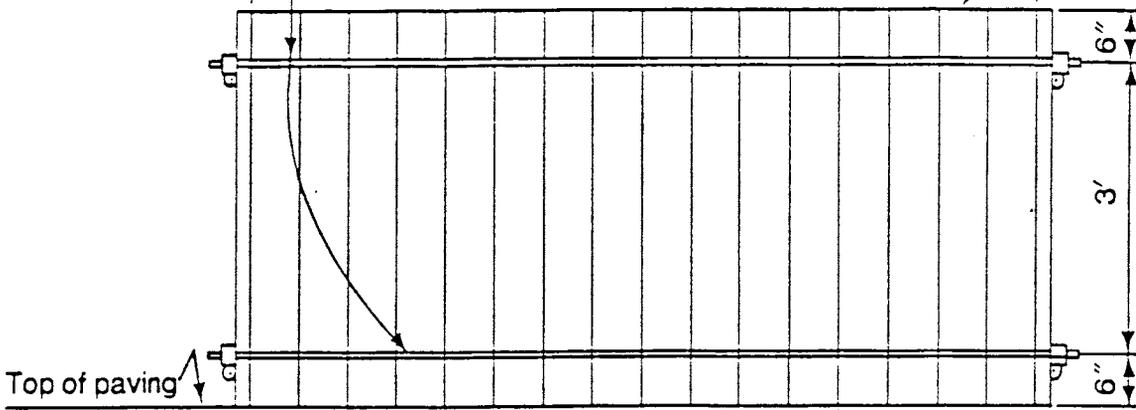
PARTIAL PLAN ALTERNATIVE B

CIRCULAR COL PROTECTOR



3/8" Dia. rod threaded at ends. (Galv.)

2" x 6" x 4'-0" Rdwd rough

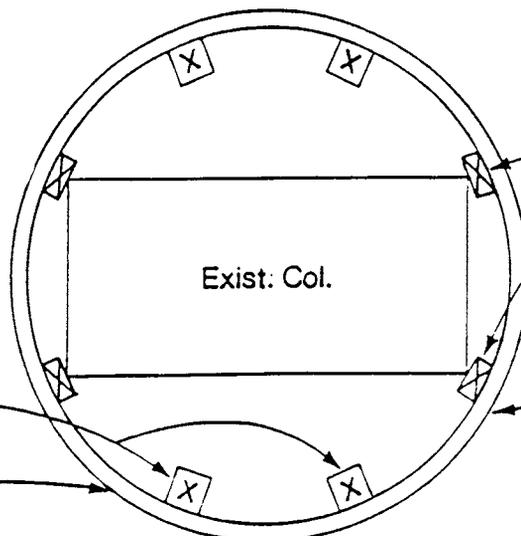


Similar to Alternative A except as noted

4" x 4" x 6'-0" Rdwd post @ .18 max.

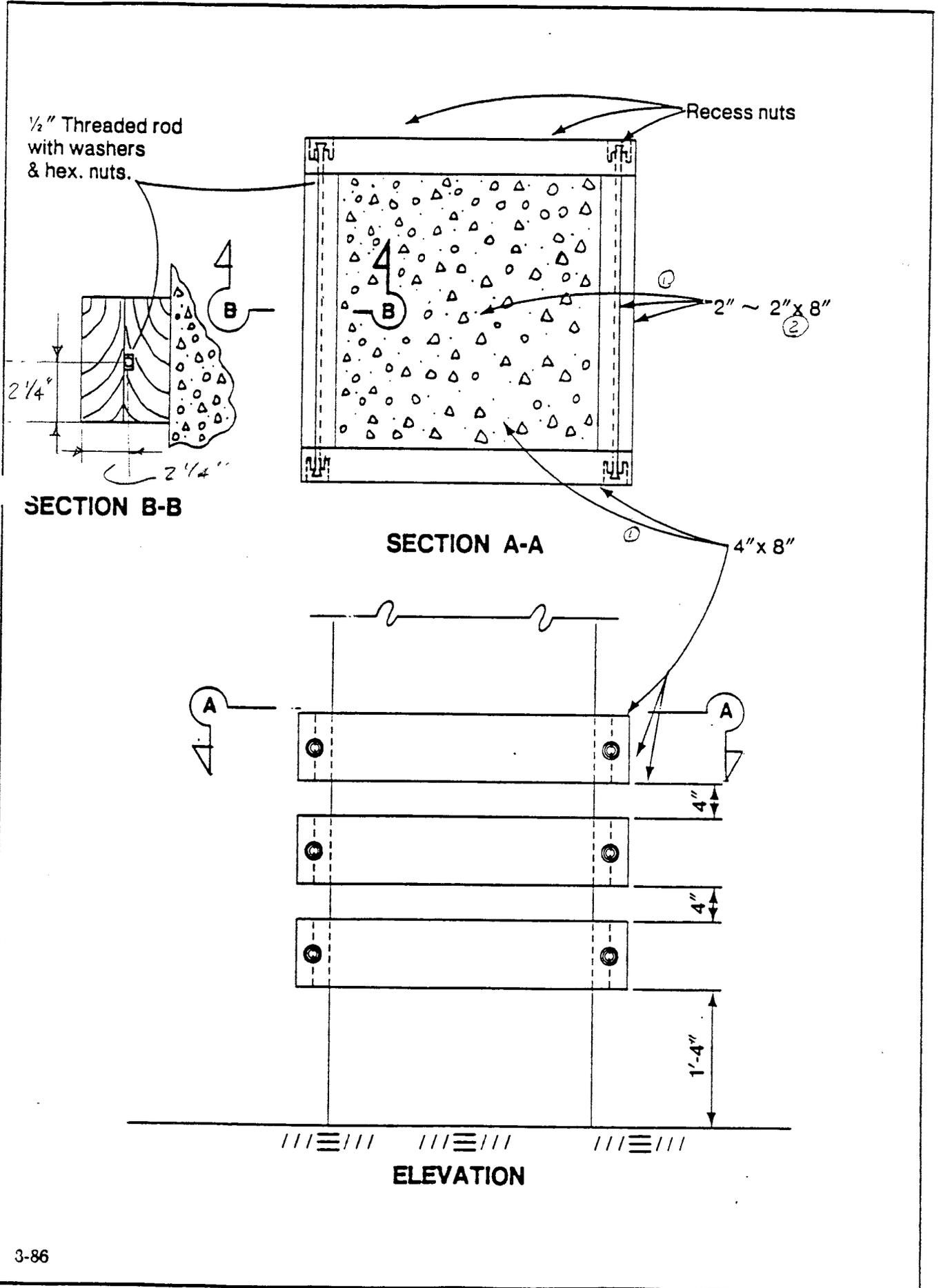
2" x 4" x 6'-0" Rdwd post ~ No. as required 18" max. spacing

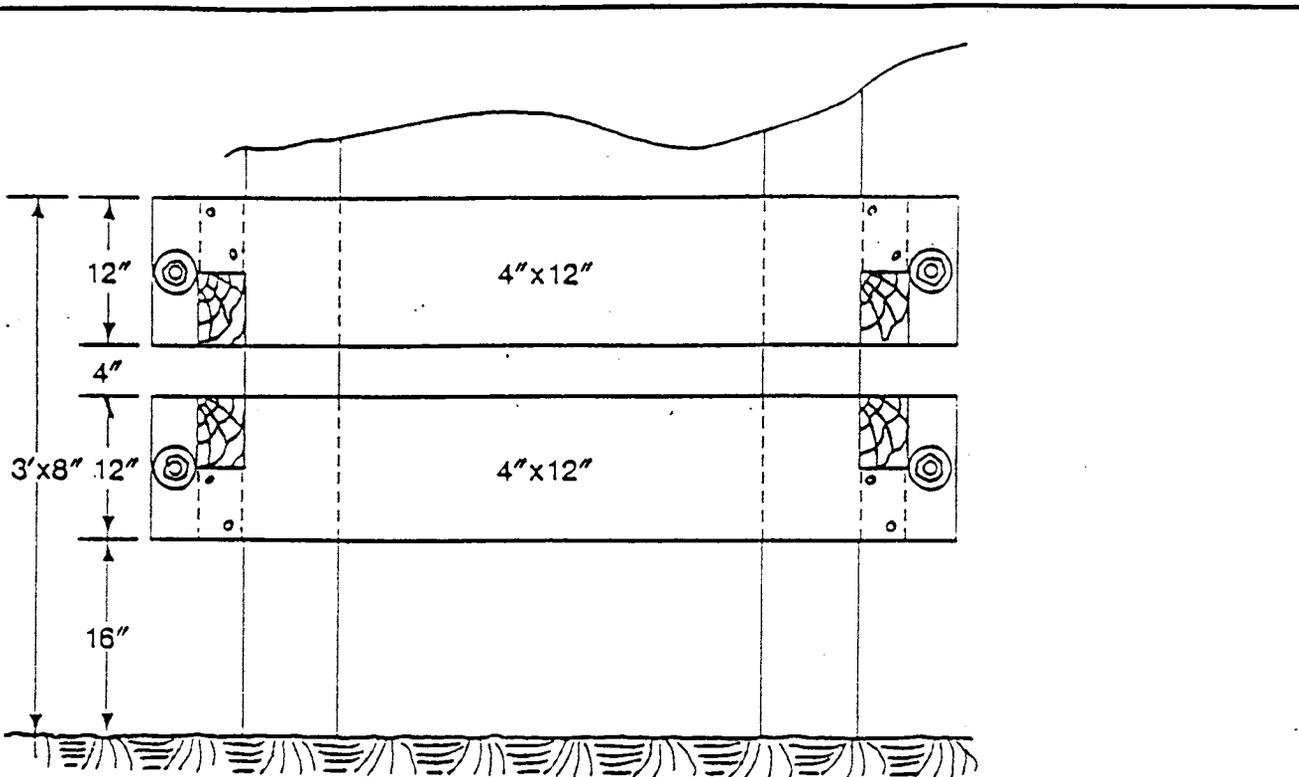
.109 Galv. corrugated steel pipe



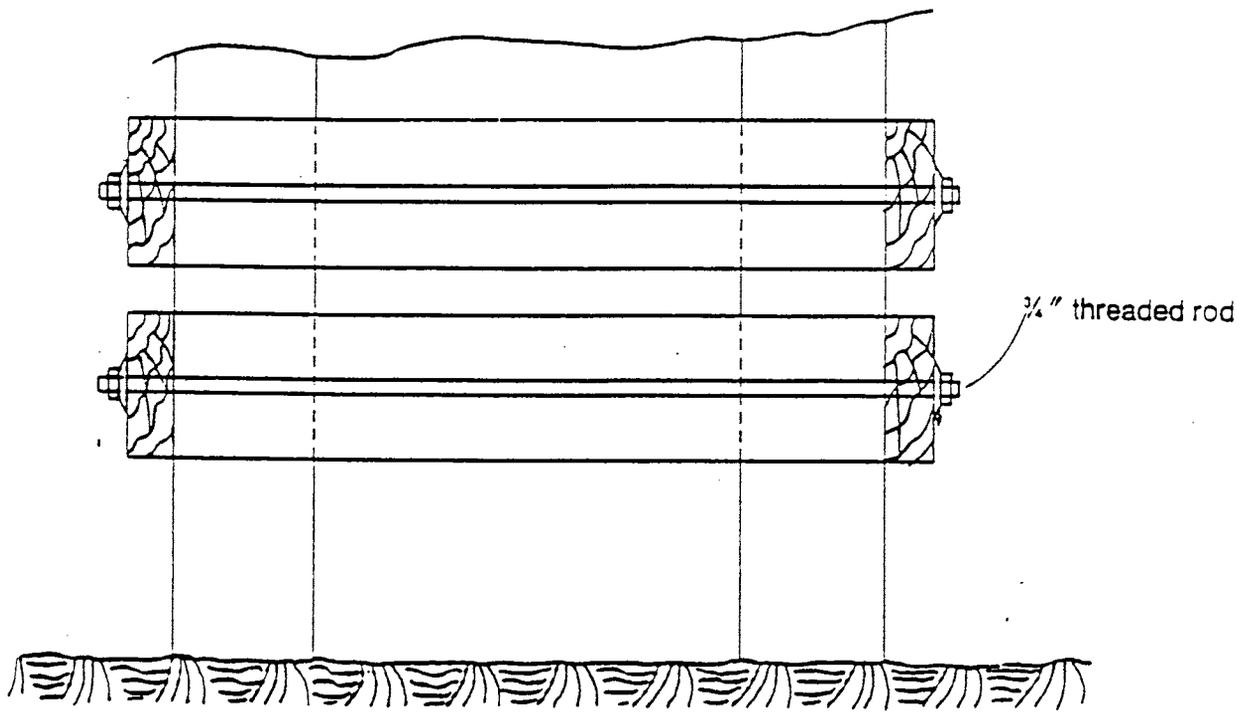
For details not shown see Partial Elev. Alternative B

RECTANGULAR COL. PROTECTOR



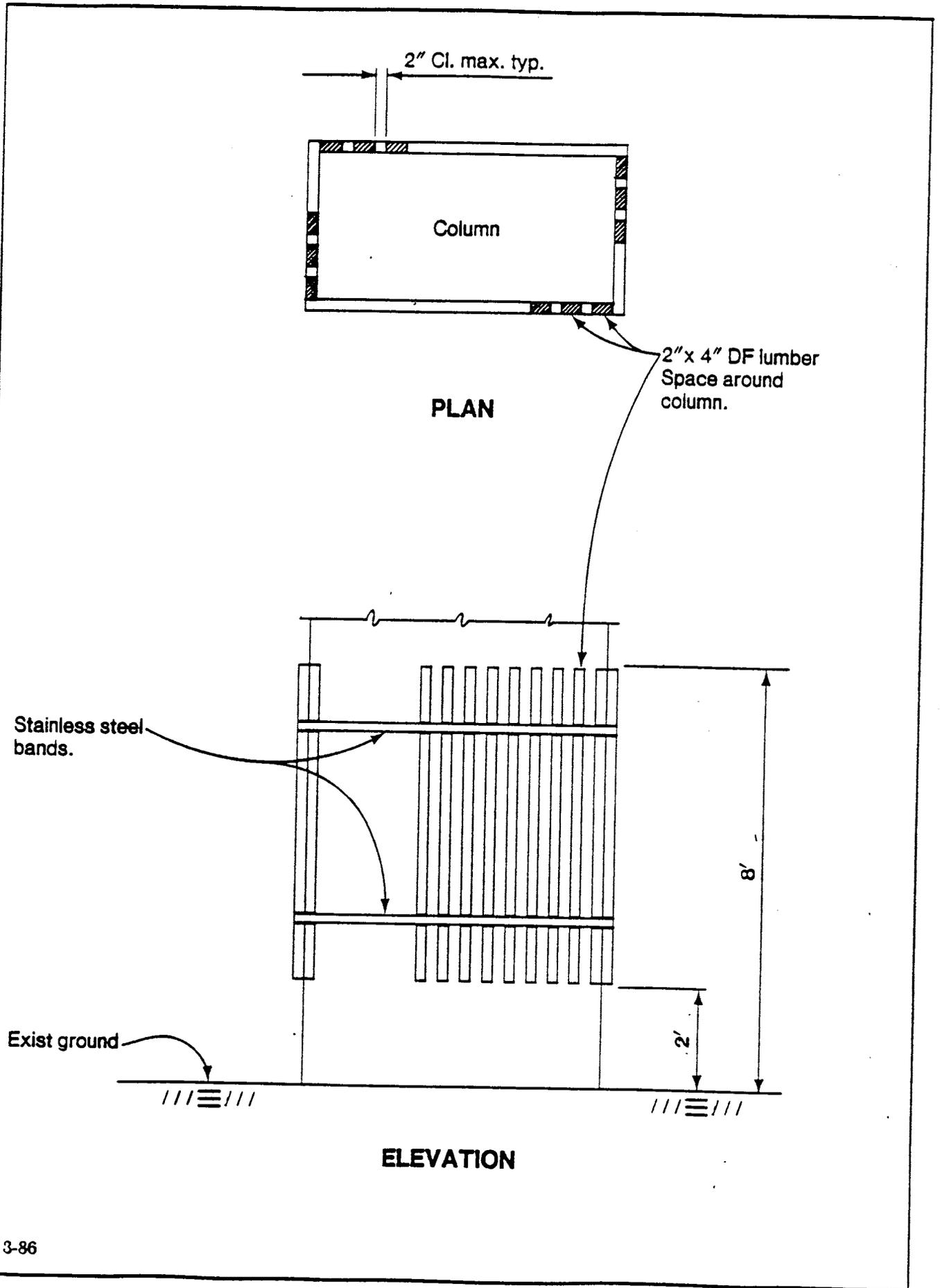


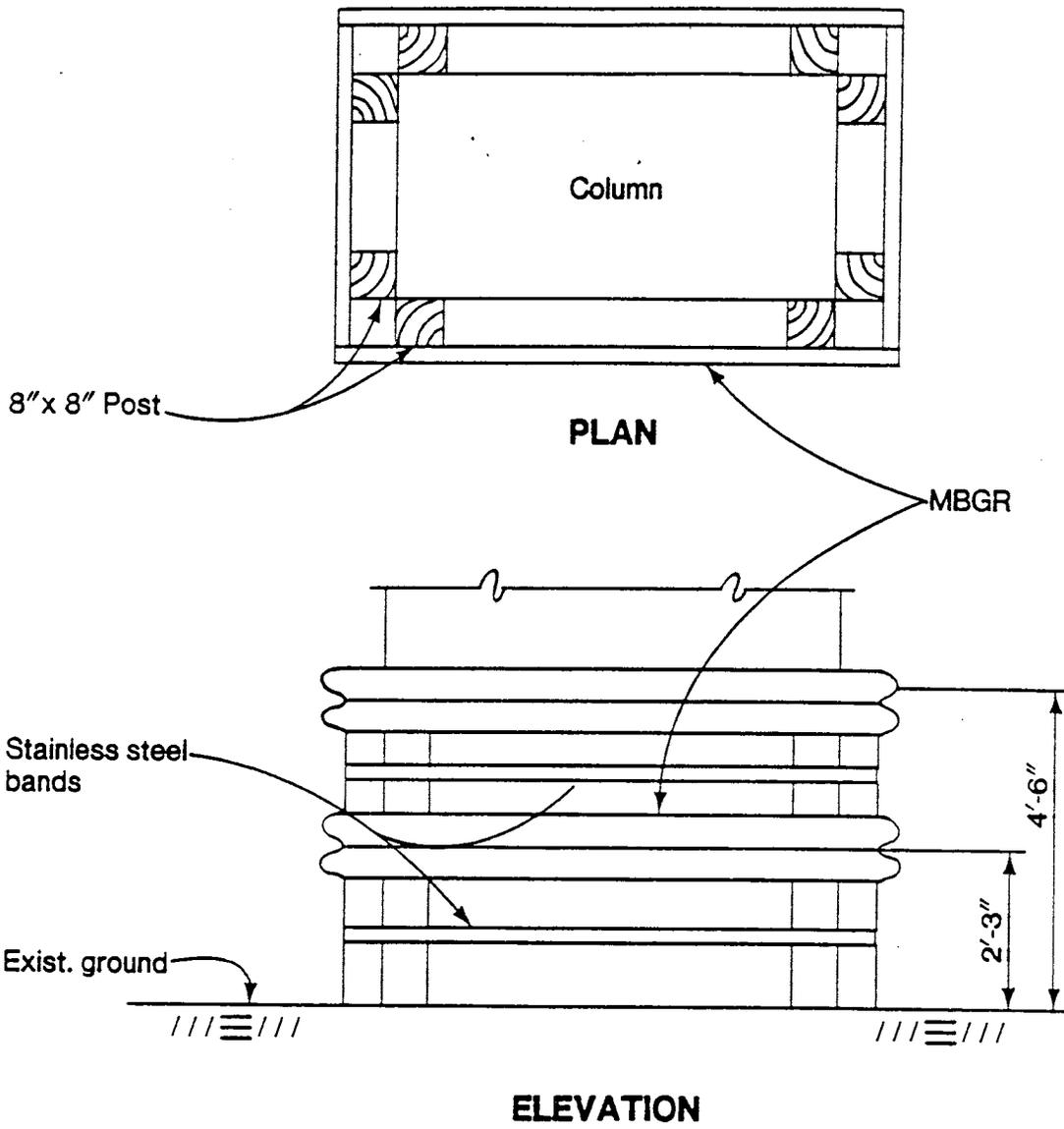
EAST ELEVATION



SOUTH ELEVATION

Nuts to fit flush where pedestrians have access.





State of California

Business, Transportation and Housing Agency

M e m o r a n d u m

To: DENNY SHIELDS, Program Manager
Right of Way
Date: October 16, 1995
Attention: Gene Mattocks
Acquisition
File: 413.3

From: DEPARTMENT OF TRANSPORTATION
OFFICE OF STRUCTURES MAINTENANCE
AND INVESTIGATIONS

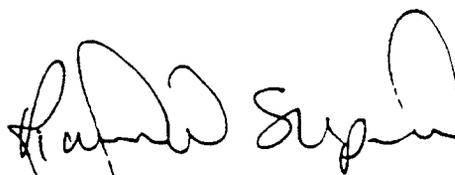
Subject: OSM&I's Guidelines on Air Space Facilities

As a result of our meeting on October 12, 1995 I would like to present the guideline that are being used by the Office of Structure Maintenance and Investigations. Although there may be instances where larger setbacks will be required, adequate access and working room for the vast majority of our structures will be provided by using the following guidelines for permanent and semi-permanent air space facilities:

1. With 24 hour notification access to each column footing, pile cap or column shaft must be provided to allow mobilization of equipment and vehicles for repair. The access must be a minimum of 12 feet wide and must extend from a public street to the columns.
2. The facility must maintain a minimum setback of 10 feet from the perimeter of a column footing or pile cap and maintain a minimum setback of 20 feet from the face of column shafts.
3. Access to hinges must be provided to allow moving vehicles and equipment to the hinge. The access must be 12 feet wide and extend from a public street to the hinge.
4. At hinges the facility must maintain a minimum setback of 30 feet centered under the hinge to allow installation of temporary supporting falsework or perform other future work on the hinge. The setback must extend from edge of deck to edge of deck. In lieu of providing the 30 foot hinge access, jacking points may be constructed in the air space facility capable of supporting the hinge and a working platform to perform future work on the hinge.

Also discussed at the meeting was the need to have bridge numbers added to the Airspace Database. If possible please modify your database to include the official eight digit Bridge Number so that Airspace parcels can be related to bridges.

If you have any questions or comments please contact Harold Herr at 916-227-8277 Calnet 498-8277 or Richard Shepard at 916-227-8266, Calnet 498-8266.



FOR CARROLL D. HARRIS, Chief
Office of Structures Maintenance
& Investigations.

cc: PAskelson

Rev. 2/93

GENERAL REQUIREMENTS
FOR
USE OF AIRSPACE WITH CALTRANS STRUCTURES

Any deviation from the following conditions must be approved in advance by the Office of Structures Maintenance Airspace Coordinator - Reviewer.

1. The use of parcels under and adjacent to Caltrans structures is subject to approval by the Division of Structures Airspace Coordinator/Engineer prior to any agreements that may be binding on the use of the parcel.
2. Long-term Building Development Leases should not be granted in an area where the foreseeable future expansion or maintenance of the transportation facility can be expected.
3. The Division of Structures reserves the right of immediate access to all areas of the structure in the event of a seismic occurrence and/or structure retrofit activities. This right of access includes but is not limited to all activities associated with any inspection needs, and any activities associated with the maintenance, rehabilitation or retrofit of the structure.
4. Airspace facilities shall not be used for the manufacture or storage of flammable, explosive, or hazardous materials, such as fuel tanks, pumps and vents.
5. Access for bridge inspection must be maintained. For secured areas, the Lessee shall provide the following information to the Office of Structure Maintenance and Investigations:
 - a. Responsible party to contact.
 - b. Alternate contact in case of emergency.
 - c. Routine access must be available within 24 hours. Emergency access must be available within one hour.

The above information shall also be clearly posted at the entrance(s) to the secured area and will be kept current at all times.

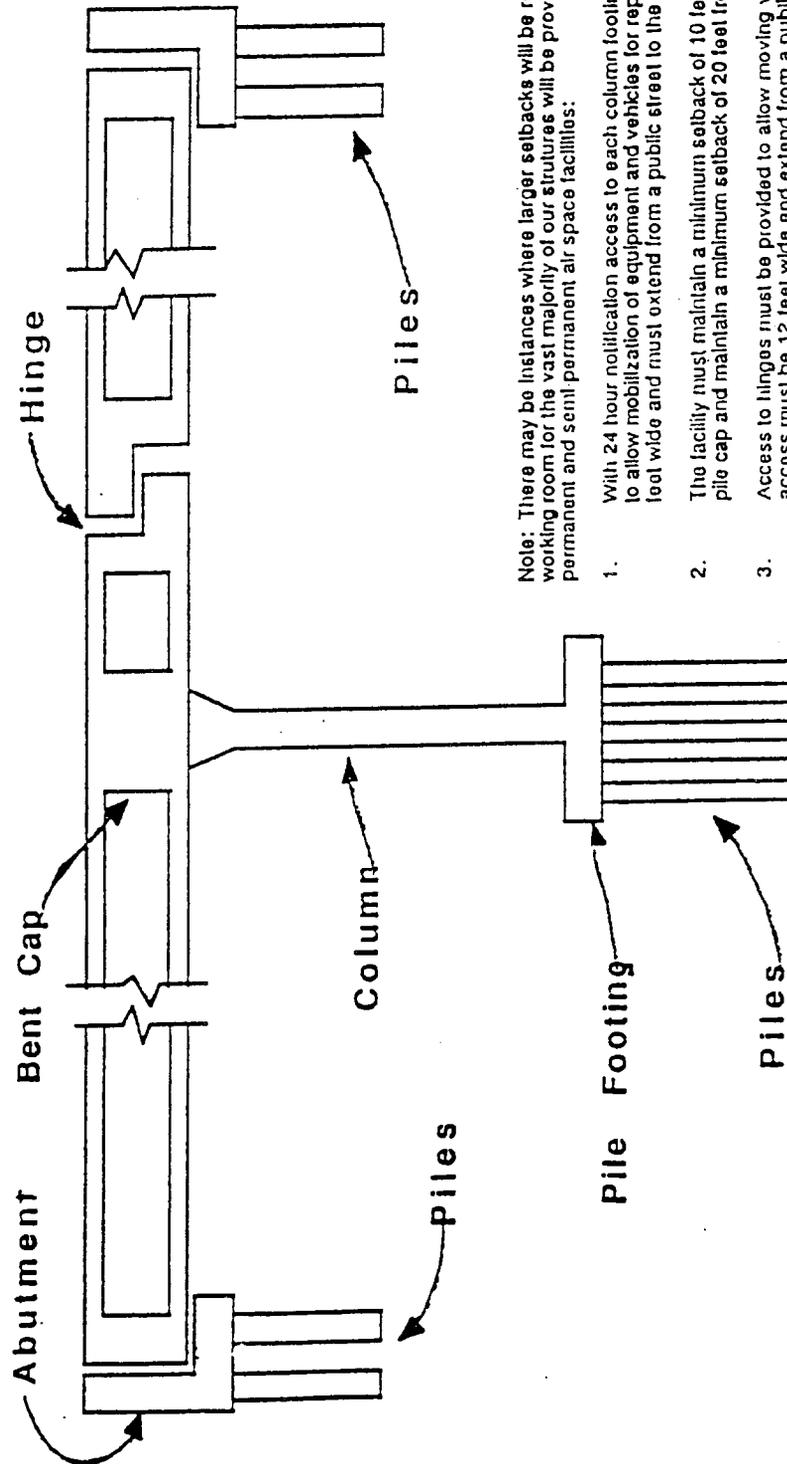
6. Certain minimum vertical and lateral clearances will be required. The specific minimums will be determined upon review of the preliminary plans. As a guideline, buildings will have the following clearances:
 - a. Buildings, having an independent roof, constructed under a concrete or steel box bridge shall have a minimum of three (3) feet vertical clearance for inspection. If the building is to be built under a hinge in the bridge, see (c) below.
 - b. Buildings, having an independent roof, constructed under a concrete or steel open girder bridge require a minimum of five (5) feet vertical clearance to the underside of the girders. The building roof shall be constructed to support painters and their equipment.
 - c. Improvements under highway structure (with hinges) will provide one of the following:
 - 1) Adequate clearance in the vicinity of the structure's hinge to allow for construction of falsework to support the hinge if required for maintenance repairs.
 - 2) A structural support wall shall be built as a part of the airspace use to directly carry the dead and live load occurring at the hinge from the highway structure.

General Airspace Requirements

Sheet 2 of 2

- d. The use of airspace above the existing bridge deck plane is prohibited within an area 15 feet horizontally from the edge of bridge and a horizontal plane at least 16'- 4" (or a minimum vertical and horizontal clearance established by the state) above the bridge deck.
 - e. Buildings located within 20' from the edge of the concrete bridge shall be of one-hour fire resistive construction and fully sprinklerized.
 - f. Buildings located within 20' from the edge of the steel bridge shall be of noncombustible construction.
 - g. Buildings lower than the bridge deck but higher than the bottom (soffit) of the bridge shall not be located closer than 5 feet from the edge of the bridge.
7. Earthwork or superimposed loads from the airspace use, must not jeopardize bridge foundations. If earthwork (including excavations) or additional loadings are a part of the work, a preliminary plan (with appropriate geology or foundation report) is required for review prior to proceeding with the final design.
 8. Nothing shall be fastened to the bridge proper without prior approval.
 9. The bridge drainage system must not be obstructed. Airspace facilities shall have a minimum clearance of 3' from all drain outlets near the base of the columns and provisions for backflushing column drains must be provided.
 10. The Lessee will be responsible for the repair of any damage to the bridge caused by the construction, operation and maintenance of the airspace facility, and vehicle parking.
 11. All construction must meet the fire codes of local building and fire departments and the State Fire Marshall.
 12. Minimum Fire Code Guidelines (additional requirements may apply)
 - a. Buildings constructed under concrete bridges:
 - (1) Single and multi-level buildings having an independent roof shall be one-hour fire resistive construction.
 - (2) Single level buildings using the soffit of the bridge as a roof shall be of noncombustible construction.
 - (3) Multi-level buildings using the soffit of the bridge as a roof shall be of noncombustible construction. Rooms on the lower levels including the floor of the upper level may be of one-hour resistive construction. A one-hour separation shall be required between noncombustible construction and one-hour fire resistive construction.
 - b. Buildings constructed under steel girder bridges:
 - (1) All buildings shall have an independent roof and shall be of noncombustible construction.
 - c. All buildings shall be equipped with sprinklers.
 13. The State shall not be held responsible for any leakage from bridge joints, soffit vents, access openings or cracks. Should the Lessee elect to intercept, collect and dispose of said leakage, he may do so at his expense subject to the approval of the State.
 14. All Engineering plans, specifications, calculations or other Engineering documents shall be provided with the submittal and shall be stamped and signed by the California Registered Engineer(s) in responsible charge of the documents. A submittal shall consist of three sets of the forgoing documents.

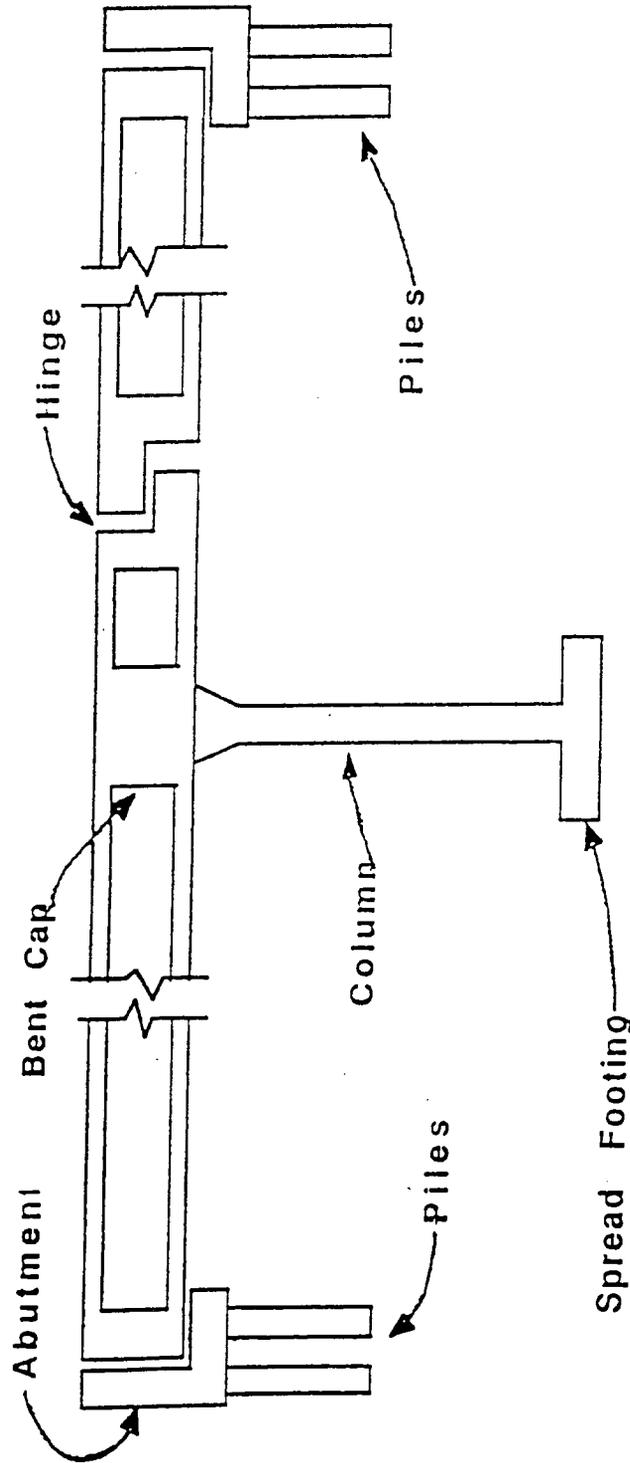
AIRSPACE SETBACK GUIDELINES



Note: There may be instances where larger setbacks will be required, however, adequate access and working room for the vast majority of our structures will be provided by using the following guidelines for permanent and semi-permanent air space facilities:

1. With 24 hour notification access to each column footing, pile cap or column shaft must be provided to allow mobilization of equipment and vehicles for repair. The access must be a minimum of 12 feet wide and must extend from a public street to the columns.
2. The facility must maintain a minimum setback of 10 feet from the perimeter of a column footing or pile cap and maintain a minimum setback of 20 feet from the face of column shafts.
3. Access to hinges must be provided to allow moving vehicles and equipment to the hinge. The access must be 12 feet wide and extend from a public street to the hinge.
4. At hinges the facility must maintain a minimum setback of 30 feet centered under the hinge to allow installation of temporary supporting falsework or perform other future work on the hinge. The setback must extend from edge of deck to edge of deck. In lieu of providing the 30 foot hinge access, jacking points may be constructed in the air space facility capable of supporting the hinge and a working platform to perform future work on the hinge.

AIRSPACE SETBACK GUIDELINES



Note: Abutment is the term for the supports at the ends of the bridge. Bent is the term for a support between the abutments. The parts of a support are: the cap, column or wall, and spread footing (without piles) or pile footing (with piles).
The pile footing is sometimes referred to as a pile cap.

23 CODE OF FEDERAL REGULATIONS 713

Subpart B - Management of Airspace

- 713.201 Purpose: to prescribe FHWA policies relating to the management of airspace on Federal aid highway systems for non-highway purposes.
- 713.202 Applicability:
- (a) The provisions of this subpart apply to the use of airspace on the Federal aid highway systems except as provided in paragraph (b) of this section.
 - (b) This subpart does not apply to railroads and public utilities which cross or otherwise occupy Federal aid highway rights of way nor to relocations of railroads or utilities for which reimbursement is claimed under subparts H and E of part 140 of this chapter; joint development and multiple use of highway rights of way as covered in volume 7, chapter 7, section 8 of the Federal Aid Highway Program Manual {3} {3} - the Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration, 400 7th Street SW, Washington, D.C., 20590; and bikeways and pedestrian walkways as covered in part 652 of this chapter.
- 713.203 Definition: airspace, as used in this subpart, is that space located above, at, or below the highway's established gradeline, lying within the approved right-of-way limits.
- 713.204 Policies:
- (a) Where a SHD has acquired sufficient legal right, title, and interest in the ROW of a highway on a Federal aid system to permit the use of certain airspace for non-highway purposes and when such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility, the right to temporary or permanent occupancy or use of such airspace may be granted by the SHD subject to prior FHWA approval.
 - (b) The airspace required to accommodate foreseeable future expansion of the highway facility may not be used for non-highway purposes, except under the provisions of subpart A of this part, relating to property management.
 - (c) In any case where sufficient land exists within the publicly acquired rights of way of any Federal aid highway system to accommodate needed rail or non-highway public mass transit facilities and where this can be accomplished without impairing automotive safety or future highway improvements, the FHWA may authorize a SHD to make such lands and rights of way available without charge to a publicly owned mass transit authority for such purposes whenever it may deem that the public interest will be served thereby.
 - (d) If found to be consistent with highway designs, any portion of ROW may be used for green strips, small parks, play areas, parking or other highway related public use, or for any other public or quasi-public use which would assist in integrating the highway into the local environment and enhancing other publicly supported programs. Normally, the SHD should retain supervision and jurisdiction over such lands, but could enter into agreements with local political subdivisions relative thereto.
 - (e) An individual company, organization, or public agency desiring to use airspace as defined herein shall submit an application therefor to the SHD in a manner and form deemed appropriate by the SHD. Applications, including a proposed airspace agreement, shall be forwarded to the FHWA, together with SHD recommendations for approval and any necessary supplemental information. The submission shall affirmatively provide for adherence to all policy requirements contained in this subpart where such are appropriate to the intended use.
 - (f) All non-highway use of airspace shall be covered by a properly executed airspace agreement; the agreement shall contain the following:

- (1) The party responsible for developing and operating the airspace.
 - (2) A general statement of the proposed use.
 - (3) The general design for the use of the space, including any facilities to be constructed, and such maps, plans, or sketches as are necessary to set out pertinent features in relation to the highway facility.
 - (4) A detailed 3-dimensional description of the space to be used, except when the surface area beneath an elevated highway structure or adjacent to a highway roadway is to be used for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, and other similar uses. In such cases, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits, may be furnished in lieu of a 3-dimensional description.
 - (5) Provision that any significant revision in the design or construction of a facility described in subsection 5f(3) above shall receive prior approval by the SHD, subject to concurrence by the FHWA.
 - (6) Provision that any change in the authorized use of airspace shall receive prior approval by the SHD, subject to concurrent by the FHWA.
 - (7) Provision that such airspace shall not be transferred, assigned, or conveyed to another party without prior SHD approval subject to concurrence by the FHWA.
 - (8) Provision that the agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.
 - (9) Provision for the agreement to be revoked if the agreement is violated and such violation is not corrected within a reasonable length of time after written notice of non-compliance has been given. Further, that in the event the agreement is revoked and the SHD deems it necessary to request the removal of the facility occupying the airspace, the removal shall be accomplished by the responsible party in a manner prescribed by the SHD at no cost to the FHWA. An exception to this provision is permitted when the improvements revert to the state upon termination of the agreement.
 - (10) When deemed necessary by the SHD or the FHWA, provision for adequate insurance by the responsible party for the payment of any damages which may occur during or after construction of the airspace facilities, to hold the State harmless. Exception to this requirement may be made where the proposal is for the use by a public or quasi-public agency when such agency is assigned the specific responsibility for payment of any related damages occurring to the highway facility and to the public for personal injury, loss of life, and property damage.
 - (11) Provision for the SHD and authorized FHWA representatives to enter the airspace facility for the purpose of inspection, maintenance, or reconstruction of the highway facility when necessary.
 - (12) Provision that the facility to occupy the airspace will be maintained so as to assure that the structures and the area within the highway ROW boundaries will be kept in good condition both as to safety and appearance and that such maintenance will be accomplished in a manner so as to cause no unreasonable interference with highway use. In the event the responsible party fails in its maintenance obligations, there will be provision for the SHD to enter the premises to perform such work.
 - (13) Appropriate provisions of Appendix "C" of the State's Civil Rights Assurances {4} with respect to title VI of the Civil Rights Act of 1964 and 49 CFR part 21. {4} - Appendix "C" of the State's Civil Rights Assurances may be examined at any office of the SHD or at the FHWA, 400 7th Street S.W., Washington, D.C., 20590.
- (g) Use of airspace beneath the established gradeline of the highway shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation, and safety of the highway facility.
- (h) The proposed use of airspace above the established gradeline of the highway shall not at any point between 2 points established 15 feet beyond the 2 outer edges of the geometric section (highway prism) of the highway extend below a horizontal plane which is at least 16 feet, 4 inches above the gradeline of

- the highway or the minimum vertical clearance plus 4 inches as approved by the State, except as necessary for columns, foundations, or other support structures. Where control and directional signs are to be installed beneath an overhead structure, vertical clearance will be at least 20 feet from the gradeline of the highway to the lowest point of the soffit of the overhead structure. Exceptions to the lateral limits set forth above when justified by the SHD may be considered on an individual basis by the FHWA.
- (i) Piers, columns, or any other portion of the airspace structure shall not be erected in a location which will interfere with visibility or reduce sight distance or in any other way interfere materially with the safety and free flow of traffic on the highway facility.
 - (j) The structural supports for the airspace facility shall be located to clear all horizontal and vertical dimensions established by the SHD. Supports shall be clear of the shoulder or safety walks of the outer roadway. However, supports may be located in the median or outer separation when the SHD determines and the FHWA concurs that such medians and outer separations are of sufficient width. All supports are to be back of or flush with the face of any wall at the same location. Supports shall be adequately protected by means acceptable to the SHD and the FHWA. No supports shall be located in the ramp gores or in a position so as to interfere with the signing necessary for the proper use of the ramp.
 - (k) The use of airspace shall not result in either highway or non-highway users being unduly exposed to hazardous conditions because of highway location, design, maintenance, and operation features.
 - (l) Appropriate safety precautions and features necessary to minimize the possibility of injury to users of either the highway facility or airspace due to traffic accidents occurring on the highway or accidents resulting from non-highway uses shall be provided. Airspace facilities shall not be approved for construction over or under the highways unless the plans therefor contain adequate provisions acceptable to the SHD and the FHWA for evacuation of the structures or facilities in case of a major accident endangering the occupants of such structures or facilities.
 - (m) Any airspace facility shall be fire resistant in accordance with the provisions of the local applicable building codes found to be acceptable by the SHD and the FHWA. Such airspace facility shall not be used for the manufacture or storage of flammable, explosive, or hazardous material or for any occupation which is deemed by the SHD or the FHWA to be a hazard to highway or non-highway users. Proposals involving the construction of improvements in airspace should be approved by the State authority responsible for fire protection standards. In cases where the SHD or the FHWA questions the acceptability of the existing code, conformance with a nationally accepted model building code will be required.
 - (n) No structure or structures built over a highway facility shall occupy more length of the highway than will permit adequate natural ventilation of the enclosed section of the highway for the conditions at the location assuming a volume of traffic equal to capacity. Each such covered length shall be preceded and followed by uncovered lengths of highway that will safely effect natural ventilation. The SHD shall determine such lengths for each particular case, subject to FHWA concurrence. Exceptions may be considered when complete tunnel ventilation is provided. Unless tunnel ventilation is provided, structures over highways shall be so designed and constructed as to facilitate natural ventilation of the highway. To this end the underside and any supports for such structures shall have smooth and easily cleanable surfaces. Supports for such structures shall leave as much open space on the sides of the highway as feasible. Such space shall be appropriately graded where deemed necessary or desirable by the SHD.
 - (o) The design, occupancy, and use of any structure over or under a highway facility shall be such that neither the use, safety, appearance, nor the enjoyment of the highway will be adversely affected by fumes, vapors, odors, drippings, droppings, or discharges of any kind therefrom.
-

-
- (p) On-premise signs, displays, or devices may be erected on structures occupying highway airspace, but shall be restricted to those indicating ownership and type of on-premise activities and shall be subject to regulation by the SHD and the FHWA with respect to number, size, location, and design.
 - (q) construction of any structure above or below a highway facility shall not require any temporary or permanent change in alignment or profile of an existing highway without prior approval by the SHD and the FHWA.
 - (r) Where either the SHD or the FHWA is of the opinion that the proposed use of airspace requires changes in or additions to existing highway facilities for the proper operation and maintenance of highways, such facilities shall be provided without cost to Federal funds. There may be exceptions to this policy when the proposed use is for highway related or other public or quasi-public use which would assist in integrating the highway into the local environment and enhance other publicly supported programs. This provision is not intended to expand existing limitations upon expenditures from the highway trust fund nor is it intended to conflict with the provisions of volume 7, chapter 7, section 8, of the Federal-Aid Highway Program Manual {5} relating to joint development of highway corridors and multiple use of roadway properties. {5} - the Federal-Aid Highway Program Manual may be examined at the FHWA, 400 7th Street S.W., Washington, D.C., 20590.
 - (s) Proposed airspace facilities shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and reconstruction when necessary.
 - (t) Permission shall not be granted for any use of airspace which does not conform with the provisions of current, appropriate Federal Aviation Administration regulations.
 - (u) Approval for the use and occupancy of highway ROW for the parking of motor vehicles shall be granted only if proper consideration has been given to the need for the following:
 - (1) Parking design or arrangement to assure orderly and functional parking.
 - (2) Plantings or other screening measures to improve the esthetics and appearance of the area.
 - (3) Surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection devices, etc.
 - (4) Access for fire protection and fire fighting equipment.
 - (v) Disposition of income received from the authorized use of airspace shall be the SHD's responsibility and credit to Federal funds is not required.

713.205 Inventory:

The SHD shall maintain an inventory of all authorized uses of airspace. This inventory, which shall be available for review by appropriate Federal and State agencies, shall include, but not be limited to, the following items for each authorized use of airspace:

- (a) Location by project, survey station, or other appropriate method.
- (b) Identification of the authorized user of the airspace.
- (c) A 3-dimensional description or a metes and bounds description.
- (d) As-built construction plans of the highway facility at the location where the use of airspace was authorized.
- (e) Pertinent construction plans of the facility authorized to occupy the airspace.
- (f) A copy of the executed airspace agreement.

CONFIDENTIAL
 This document contains personal information and pursuant to Civil Code 1798.21, it shall be kept confidential in order to protect against unauthorized disclosure.

I. FACILITY INFORMATION

1. TENANT / FACILITY NAME		2. TENANCY NO.		3. AREA SF FT <input type="checkbox"/> ACRE <input type="checkbox"/>	
4. ADDRESS / LOCATION OF PROPERTY		5. CITY		STATE CA	6. ZIP CODE
7. TENANT CONTACT (NAME)		8. MAILING ADDRESS (if different)		9. CONTACT PHONE NO.	
10. LEASE START DATE		11. LEASE EXPIRATION DATE _____; or MONTH-TO-MONTH			
12. PROPERTY TYPE - <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> INDUSTRIAL <input type="checkbox"/> TELECOMMUNICATIONS <input type="checkbox"/> PARKING <input type="checkbox"/> OTHER:					
13. STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE _____					
14. SIC CODE DESCRIPTION _____					
15. FACILITY COVERED UNDER GENERAL INDUSTRIAL STORM WATER PERMIT? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A					
15a. FACILITY'S INDUSTRIAL WASTE DISCHARGE IDENTIFICATION (WDID) NO. _____ <input type="checkbox"/> N/A					
15b. DOES FACILITY HAVE A CURRENT SWPPP ON-SITE? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A					
16. FACILITY COVERED UNDER OTHER STORM WATER / WASTE WATER PERMIT? <input type="checkbox"/> YES <input type="checkbox"/> NO					
17. PERMIT TYPE _____					
18. PERMIT NUMBER _____					
19. ENTITY RESPONSIBLE FOR STORM WATER DRAINAGE SYSTEM (e.g., County of / City of / Caltrans) _____					

IA. IS THE PROPERTY BEING UTILIZED ACCORDING TO THE LEASE? YES NO

II. ACTIVITY / BMP ASSESSMENT: Note outdoor activities conducted and BMPs implemented.

Photos Yes No Number of Photos _____

				Implementation Effectiveness*	
					Needs Improvement
<input type="checkbox"/> Parking Lots.					
1. Are parking areas adequately maintained (significant cracking, deterioration)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2. Are parking areas kept free of trash and litter?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3. Are parking areas swept or vacuumed regularly and is wash down prohibited unless wash water is contained?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4. Are parking areas kept relatively free of staining (oil, grease, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

STORM WATER INSPECTION REPORT (Cont.)

(Form #)

EXHIBIT

15-EX-14 (NEW 7/2007)

Page 2 of 4

				Implementation Effectiveness*	
					Needs Improvement
<input type="checkbox"/> Building and Grounds Maintenance. 1. Are pesticides and fertilizers used and stored properly? 2. Are areas swept regularly and is wash down by hosing prohibited unless wash water is contained? 3. Are contained wash water, sweepings and sediments disposed of properly? 4. Are materials used in repair and minor remodeling (paints, etc.) stored properly? 5. Are paved surfaces adequately maintained (minimal crumbling asphalt or concrete)? 6. Are safer alternative products used whenever possible?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/> Park and Landscape Maintenance. 1. Are non-vegetated surfaces covered to prevent erosion? 2. Are pesticides and fertilizers used only as needed and stored properly? 3. Are areas swept regularly and is wash down by hosing prohibited unless wash water is contained? 4. Are landscape clippings collected and disposed of properly? 5. Are irrigation systems designed to prevent runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/> Outdoor Loading/Unloading of Materials. 1. Are delivery vehicles parked so spills and leaks can be contained? 2. Is the loading/unloading area covered to reduce exposure of materials to rain? 3. Is loading/unloading area designed to prevent storm water run-on? 4. Are storm drain inlets covered during transfer of materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/> Outdoor Storage of Materials/Products/Equipment. 1. Are covers used to protect all raw materials, by-products, finished products items stored outside? (Circle covering type used) Plastic Roof Canopy Other 2. Are chemicals, drums, or bagged materials on pallets or similar method that keep them off the ground? 3. Are hazardous materials (if permitted in lease) stored in properly designed secondary containment areas? 4. Are drip pans and containers used in areas where drips or leaks may occur? 5. Are berms, curbs, or other structures in place to minimize pollutants from entering the storm water system?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/> Waste Handling and Disposal. 1. Are materials recycled whenever possible? 2. Are wastes segregated and separated? 3. Is storage area designed to prevent storm water runoff? 4. Are waste dumpsters covered?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/> Erodible Surface Areas. 1. Are areas of exposed/disturbed soil properly managed? 2. Do any landscaped areas require re-vegetation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/> Illicit Connections/Illegal Discharges. 1. Are any illicit connections present? 2. Is illegal dumping or uncontrolled spillage/discharge occurring?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

* SATISFACTORY: BMPs (including source control BMPs) are used and are effective.
 NEEDS IMPROVEMENT: No BMPs used and storm water pollution likely/Some BMPs used but not effective/Structural BMPs necessary to improve pollution prevention. *Provide Comments Below*

STORM WATER INSPECTION REPORT (Cont.)

(Form #)

EXHIBIT

15-EX-14 (NEW 7/2007)

Page 4 of 4

26. CORRECTIVE ACTIONS

NONE CORRECT DEFICIENCIES NOTED ABOVE IN TIME FRAME INDICATED.

FACILITY BMP INFORMATION PROVIDED

FOLLOW-UP INSPECTION REQUIRED? NO YES

YES, WITHIN 30 DAYS AFTER _____ YES, TO BE SCHEDULED WITHIN NORMAL FREQUENCY

VII. INSPECTION INFORMATION

27. INSPECTOR NAME (Printed)	28. DATE OF INSPECTION	29. TIME OF INSPECTION
INSPECTOR SIGNATURE		
30. REASON FOR INSPECTION: <input type="checkbox"/> Initial <input type="checkbox"/> Scheduled <input type="checkbox"/> Follow-up <input type="checkbox"/> Response to Complaint		
NAME OF TENANT(S) ACCOMPANYING INSPECTOR 1. _____ 2. _____	SIGNATURE(S) - TENANT RECEIVED FORM 1. _____ 2. _____	
NAME(S) OF OTHERS ACCOMPANYING INSPECTOR (IF ANY) 1. _____ 2. _____		

Ref: Caltrans NPDES Permit No. CAS000003 issued by California State Water Resources Control Board.

**FIELD OBSERVATIONS
HELPFUL HINTS FOR STORM WATER INSPECTIONS****AREAS AND ACTIVITIES WITH POTENTIAL TO SPILL HAZARDOUS FLUIDS**

- SPILL KITS AVAILABLE IF NEEDED
- SPILL RESPONSE AGENCY PHONE NUMBERS CLEARLY POSTED
- MATERIAL SAFETY DATA SHEETS AVAILABLE FOR PRODUCTS

PARKING LOTS

- PAVED AREAS SWEEPED DOWN AND NOT HOSED OFF
- TRASH RECEPTACLES AVAILABLE TO PREVENT LITTER
- SPILLS OR LEAKS SPOT CLEANED AS NEEDED

BUILDING AND GROUNDS MAINTENANCE

- VEGETATION LEFT IN PLACE WHERE POSSIBLE
- SOIL EROSION NOT OBSERVED
- GROUNDS FREE OF LITTER
- PAVED AREAS SWEEPED DOWN AND NOT HOSED OFF
- SAFER ALTERNATIVE PRODUCTS IN USE
- TRASH RECEPTACLES AVAILABLE TO PREVENT LITTER
- MINIMAL USE OF PESTICIDES AND FERTILIZERS

PARK AND LANDSCAPE MAINTENANCE

- SOIL EROSION NOT OBSERVED
- GROUNDS FREE OF LITTER
- PAVED AREAS SWEEPED DOWN AND NOT HOSED OFF
- IRRIGATION SYSTEMS DESIGNED TO PREVENT RUNOFF
- USE OF PESTICIDES AND FERTILIZERS ONLY AS NEEDED

OUTDOOR LOADING/UNLOADING OF MATERIALS

- MATERIAL LOADING/UNLOADING AREAS ENCLOSED OR COVERED
- LOADING AND UNLOADING CONDUCTED IN DRY WEATHER IF NOT COVERED
- LOADING AND UNLOADING AREA BERMED OR SLOPED TO CONTAIN SPILLAGE
- NO DISCHARGE TO STORM DRAIN
- DRIP PANS AVAILABLE TO CAPTURE LIQUID LEAKS

OUTDOOR STORAGE OF MATERIALS/PRODUCTS/EQUIPMENT

- HAZARDOUS MATERIALS LABELED, COVERED, AND CONTAINED
- STOCKPILED MATERIALS COVERED
- NO SIGNS OF EXCESSIVE LEAKING FROM STORED EQUIPMENT
- DRIP PANS AVAILABLE TO CAPTURE EQUIPMENT LEAKS
- STORAGE AREA FREE OF LITTER
- GENERAL GOOD HOUSEKEEPING OBSERVED

WASTE HANDLING AND DISPOSAL

- RECYCLABLE MATERIALS BEING RECYCLED
- WASTE CONTAINERS COVERED TO PREVENT STORM WATER RUNOFF/RUN-ON
- DRIP PANS AVAILABLE TO CAPTURE GREASE WHEN TRANSFERRED
- AREA SWEEPED DOWN ON REGULAR BASIS
- AREA FREE OF STAINS OR OTHER SIGNS OF POLLUTANTS GOING INTO STORM DRAIN SYSTEM
- WASTE CONTAINERS IN GOOD CONDITION FREE FROM LEAKS
- GENERAL GOOD HOUSEKEEPING OBSERVED
- NO LITTERING SIGNS POSTED

ERODIBLE SURFACE AREAS

- PRESERVE NATURAL VEGETATION
- VEGETATION LEFT IN PLACE WHERE POSSIBLE
- SOIL EROSION NOT OBSERVED
- CHEMICAL STABILIZATION OR GEOSYNTHETICS IN USE ON BARE GROUND
- PAVED AREAS SWEEPED REGULARLY

ILLICIT CONNECTIONS/ILLEGAL DISCHARGES

- SIGNS OF ILLICIT CONNECTIONS TO STORM WATER CONVEYANCE SYSTEM(S)
 - SIGNS OF ILLEGAL/UNKNOWN DISCHARGE OBSERVED GOING FROM THE LEASE PREMISES ONTO ADJACENT PROPERTY OR INTO THE STREET
 - SIGNS OF ILLEGAL/OR UNKNOWN DISCHARGE OBSERVED COMING FROM ADJACENT PROPERTY ONTO THE LEASE PREMISES
 - STAINED PAVEMENT IN AREAS NEAR OR SURROUNDING CATCH BASIN OR STORM WATER OUTFALL
-
-