

Memorandum

To : CHAIR AND MEMBERS
Airspace Advisory Committee

Date : March 27, 2001

File No. AIRSPACE
General

From : DEPARTMENT OF TRANSPORTATION
MASS TRANSPORTATION PROGRAM M.S #39

Subject : Airspace Agreements for Public Entities with Mass Transit Facilities Guidelines

SUMMARY AND DISCUSSION:

The purpose of this item is to request the Airspace Advisory Committee (AAC) to review the attached guidelines and submit it the California Transportation Commission (CTC) for their review.

The Airspace Advisory Committee (AAC), at your meeting on January 9, 2001, approved a resolution to implement procedures for leasing airspace to public entities at less than fair market rent. An amendment to CTC Resolution G-6 provided that all leases and other written agreements with public entities for mass transit facilities for less than fair market rent, will require California Transportation Commission (CTC) approval. On February 22, 2001, the CTC approved this resolution (G-01-E2).

Highlights of the guidelines include the following:

1. Other written agreements will be utilized as well.

Present use of other written agreements (joint use agreements, cooperative agreements or encroachment permits) for fixed guideways and bus stops will be utilized and complement these guidelines.

2. Dialogue and field trips with the Department:

Applicants are strongly encouraged to meet and conduct field trips with the District Transit Representative and District Airspace Representative to determine the best airspace locations and agreements for new mass transit facilities.

3. \$2,500 application fee, submittal to DARC, appraisal, and FHWA approval:

Applicants will submit applications with a \$2,500 fee to their District Region Airspace Office. The District Airspace Review Committee (DARC) will review the application. If approved by the DARC, applicants will be asked to do an appraisal prepared with instructions to the appraiser agreed by the Department and applicants. Headquarters Right of Way will seek approval from the Federal Highway Administration.

4. Recommendations will be made:

The District Transit Representative and Mass Transportation Program will provide recommendations to the applicants to improve their applications.

5. AAC Action to the CTC

Applications will then be submitted to the AAC for review and recommendation to the CTC for review and approval.

6. Application components:

Applications will seek information on project site benefits, other sites rejected, project scope and transit patron benefits.

7. Congestion relief justification:

Applicants will also be asked to describe how their projects will positively result in congestion relief.

8. Restrictions to other sites and other conditions:

Restrictions of other sites, if they substitute the use of their property to the Department's property. In addition, applicants will be asked to comply with several conditions in their written agreements to ensure the adequate protection of the Department's highway facilities.

CURRENT SITUATION:

The Regional Planning Transportation Planning agencies and the transit agencies have informed the Department that it is most important to provide low and no cost leases or other written agreements and to minimize bureaucracy. The loss to the Public Transit Account is less important than making this program work. Further comments may be forthcoming following their March 28, 2001 meeting.

RECOMMENDATION:

The Department requests the AAC to recommend to the CTC for their review the attached guidelines, which will enable the Department to proceed with the implementation of the procedures for leasing airspace to public entities per Resolution (G-01-12).



JAMES D. CONANT, Chief
Office of Program Development
Mass Transportation Program

Attachment

Draft, April 5, 2001

CALTRANS

**AIRSPACE AGREEMENTS FOR PUBLIC ENTITIES FOR NEW
MASS TRANSIT FACILITIES FOR TRAFFIC CONGESTION
RELIEF**

GUIDELINES

**REVIEWED BY THE CALIFORNIA TRANSPORTATION
COMMISSION
(INSERT DATE)**

**California Department of Transportation
Right of Way Program
Mass Transportation Program**

2001

This information and application is available to download from the Caltrans Mass Transportation Program's website at <http://www.dot.ca.gov/hq/MassTrans/airspace.htm>

Summary

The California Department of Transportation (Caltrans) announces the solicitation of applications under the Airspace Agreements for Public Entities for New Mass Transit Facilities for the Traffic Congestion Relief. The Department is promoting Chapter 513 of the 1992 Statutes, effective January 1, 1993, which added Section 104.12(b) to the Streets and Highway Code. This would make airspace available to public entities for new mass transit facilities for less than fair market rent. These guidelines include all of the information needed to apply for the program.

Definition of Airspace

Airspace can be defined as property within the right of way limits of an existing operating highway that is capable of other development without interference with the operation and foreseeable future expansion of the transportation corridor without endangering the traveling public. It may consist of the following: surface rights under a viaduct, space above traveled lanes, space within a loop of an interchange, space between main lanes and on and off ramps, and areas in cut or filled slopes.

Application Submission Instructions

Prior to submitting applications, applicants are strongly encouraged to meet and conduct field trips with the District Transit Representative and District Airspace Representative to determine the best airspace locations and agreements for new mass transit facilities within the State Highway System.

Applicants will need to submit a completed application, with a \$2,500 application processing fee to their respective Caltrans District Office. An additional appraisal fee may also apply. See Appendix B for District Transit Representative information. Please make your certified check payable to the California Department of Transportation.

Caltrans will accept communications and project applications for this program electronically (by fax or e-mail). When submitting an application by e-mail, applicants need to follow up by sending an official signed copy within five working days.

For Further Information

Applicants need to contact their respective Caltrans District Transit Representative. Questions on policy issues and interpretation of program guidelines should be directed to:

Jim Conant
Senior Transportation Planner
Caltrans Mass Transportation Program
P.O. Box 942874, MS 39
Sacramento, CA 94274-0001
916-654-9842
Jim_Conant@dot.ca.gov

Table of Contents

- I. Background
- II. Eligible Applicants
- III. Eligible Projects
- IV. Current Airspace Inventory
- V. Application Review Process
- VI. Sample Conditions

Appendix A: Definitions

Appendix B: District Transit Representative Roster

Appendix C: Application: Public Entity Application for Airspace Agreements for New Mass Transit Facilities for Traffic Congestion Relief.

I. Background

At the request of the California Transportation Commission (CTC), Caltrans has been directed to establish guidelines to implement the Airspace Agreements for Public Entities for New Mass Transit Facilities for Traffic Congestion Relief. The Commission is to review these guidelines and to consult with Caltrans and representatives of regional and local agencies in developing these guidelines.

Chapter 513 added Section 104.12 (b) to the Streets and Highways Code, giving Caltrans, in this case, broad discretion regarding charging rent for transit related uses.

“ Notwithstanding subdivision (a) in any case, where sufficient land or airspace exists within the right-of-way of any highway, constructed in whole or in part with federal-aid highway funds, to accommodate needed passenger, commuter, or high-speed rail, magnetic levitation systems, and highway and non-highway public mass transit facilities, the department may make land or airspace available, with or without charge, to public entities for those purposes, subject to any reservations, or conditions that it determines necessary to ensure adequate protection to the safety and adequacy of highway facilities and to abutting or adjacent land uses.”

The above state legislation followed enactment of a nearly identical federal statute [23 United States Code Section 142(g)] as part of the 1991 Intermodal Surface Transportation Enhancement Act (ISTEA). Subsequent federal regulations [23 Code of Federal Regulations Sections 710.405 – 710.407 and 810.2, et seq.] elaborate on the process for implementing the federal statute.

Historically, Caltrans has allowed public mass transit agencies to place fixed guideways within state highway rights of way under joint use, cooperative agreements or encroachment permits, but has charged fair market rent for the lease of airspace for other mass transit facilities, such as parking lots for transit patrons and the storage of buses. The above state statute, however, gives, Caltrans broad discretion regarding charging rent for transit related uses.

I. Background (Continued)

Annually, income from airspace on the state highway system produces \$20 million to the State Highway Account, which also feeds the Public Transit Account, which all public transit agencies draw on. It is estimated that this new program will decrease this annual income \$3-5 million from \$20 million a year.

Hence, Caltrans, at the December 5-6, 2000 meeting of the CTC, presented a proposal for reduced rent related to new congestion relief public mass transit projects. The purposes of the Airspace Agreements for Public Entities for New Mass Transit Facilities for Traffic Congestion Relief are two-fold: 1) to relieve congestion and improve mobility on the State Highway System; 2) to encourage new congestion relief projects. This is in keeping with Caltrans' continuing and growing efforts to relieve congestion and improve mobility on the State Highway System, and to encourage new congestion relief projects.

For the mass transit facilities that result in positive congestion relief, the lease rate will be a nominal amount sufficient to cover the Caltrans' administration costs.

It needs to be noted that the present use of joint use or cooperative agreements or encroachment permits for mass transit projects (longitudinal and transverse alignments of fixed rail, bus stops) be utilized as much as possible and complement these guidelines. This was discussed at the February 8, 2001, Advisory Group meeting of transit agencies.

At the December 5-6, 2000 CTC meeting, the CTC requested the Department to obtain Airspace Advisory Committee's (AAC) approval of a proposed resolution implementing this process, which replaces CTC Resolution G-6. Hence, on January 9, 2001, the Department obtained approval from the AAC with a recommendation to the CTC for approval of the resolution. This resolution provides Procedures for Leasing Airspace to Public Entities. An amendment to CTC resolution G-6 provides that all leases or other written agreements with public entities for mass transit facilities, for less than fair market rent, will require specific CTC approval. On February 22, 2001, the CTC approved this resolution (G-01-12).

These guidelines become effective upon review by the CTC with input and review from the AAC. The CTC may amend these guidelines at any time after first giving notice of the proposed amendments and conducting one public hearing. Other minor changes will be done at the staff level.

II. Eligible Applicants

Eligible applicants include public mass transit agencies that operate mass transit services, including rail projects in the State of California.

III. Eligible Projects

Eligible projects for this program include new bus routes, a new or expanded park and ride lots for mass transit patrons, downtown commuter bus parking facility and other mass transit facilities.

IV. Current Airspace Inventory

There are 711 airspace parcels within the State Highway System, with the majority of the locations in the Greater Bay Area. Other usable airspace sites may not be inventoried. If additional airspace sites are identified, they can be added to the inventory and leased to applicants. The majority of inventoried airspace sites are located under freeway viaducts and bridges or at interchange locations. Contact your local District Airspace Representatives for specific information on the inventory in your location.

District	Area	Number of Airspace Parcels
District 3	Greater Sacramento Area	74
District 4	Greater Bay Area	321
District 6	Fresno	2
District 7	Greater Los Angeles	191
District 8	San Bernardino	11
District 10	Greater Stockton Area	5
District 11	San Diego	74
District 12	Orange County	33

V. Application Review Process

Prior to submitting applications, applicants are highly encouraged to meet and conduct field trips with the District Transit Representative and District Airspace Representative to determine the best airspace locations and agreements for new mass transit facilities along the State Highway System. Through this dialogue, Caltrans will provide applicants the following helpful information: 1) inventory of vacant airspace sites; 2) the most beneficial agreement(s) for the airspace for the particular project use; and 3) adjacent property.

Applicants will then submit completed applications and a \$2,500 application fee to their respective District Region Airspace Office. The District Airspace Review Committee (DARC) will then review the applications to ensure the proposed use and improvements will not adversely affect highway safety nor interfere with operations. Any mitigation will be addressed with applicants. DARC will also hear whether the applicant is seeking the airspace at fair market rent or less than fair market rent. The DARC is committee composed of Caltrans representatives from Traffic Operations, Right of Way, Landscape Architect, Project Development, Maintenance, Structures, Hydraulics, and the State Fire Marshall. Other programs may be included if the program is affected by the proposed use.

If the applications are approved by the DARC, an appraisal needs to be prepared either by Caltrans or the applicant at Caltrans' option. The appraisal will be subject to Caltrans' approval. If applicants are seeking the airspace at less than fair market rent, copies of the applications will be sent to the District Transit Representative, Mass Transportation Program, and the Headquarters Right of Way Office of Airspace. The District Transit Representative and the Mass Transportation Program will then work together to provide recommendations to the applicants, if needed, to improve the applications.

V. Application Review Process (Continued)

Headquarters Right of Way Office of Airspace will then consult with the Federal Highway Administration regarding the proposed use. Upon approval, Right of Way Office of Airspace will submit applications to the AAC for their recommendation to the CTC for review and approval.

Depending on the complexity of the project, applicants can expect a six-month or less review period for simple projects and up to a year review period for complicated projects. Applicants are encouraged to keep in contact with their respective District Transit Representative.

VI. Sample Conditions

By completing and signing the application, the public entity certifies it has provided complete information to Caltrans to process the application properly to lease airspace and agrees to the following general conditions: (Any exception to these conditions will be based on a case-by-case review of the proposed use).

- (1) that submitting this application is not any guarantee or obligation for Caltrans to grant use of the airspace; that any processing or appraisal fees are not refundable;
- (2) that the public entity shall have an appraisal prepared either by Caltrans or the public entity at Caltrans' option. The appraisal will be subject to Caltrans' approval.
- (3) that the public entity is responsible for any costs related to design, engineering, appraisal, seismic, or environmental work and such costs are not refundable or recoverable if the application is denied;
- (4) that Caltrans may request additional information in reviewing the application; that the public entity will, if granted requested rights, use this land and space for the public's benefit to relieve congestion or improve the efficiency or connectivity of its transit services;
- (5) that it will comply with all Caltrans conditions and policies now or in the future on the use of airspace; that the public entity will properly maintain this property, which includes prohibiting the storage or transport of any hazardous or flammable materials;
- (6) that any incidental costs for development in the future or relocation costs will be the sole responsibility of the public entity;
- (7) that the public entity will be responsible for meeting all building and engineering standards necessary for seismic, passenger and highway safety;
- (8) that it will maintain full liability insurance and ensure public safety, including but not limited to, proper lighting, security, signs, fencing, walkways, storm drainage, and ADA compliant facilities during the use of these properties;
- (9) that the public entity will charge no more for passenger parking than is necessary to recover operational and maintenance use costs and will set aside certain space for highway maintenance;

VI. Sample Conditions (Continued)

(10) that the public entity will permit Caltrans immediate access to the land or space for maintenance of highways and structures, including retrofit and reconstruction, if necessary, or during any emergencies;

(11) that to obtain a nominal rental charge, the public entity must clearly demonstrate there is a positive congestion relief or otherwise be required to pay fair market rate for rent;

(12) that the public entity understands that restrictions may be placed on their other properties, if they substitute the use from their property to Caltrans property;

(13) that the public entity, if granted access by Caltrans, does not have any exclusive use, rights or control of the land and space. Caltrans will retain rights as described in the lease or other written agreement;

(14) the public entity understands the lease agreement or other written agreement covering the use of Caltrans property will have additional conditions and requirements.

(15) the public entity must disclose use of and interest they may have in any other properties, within the vicinity of subject applicant owns, leases, controls, or has interest.

Appendix A: Definitions

Airspace: It can be defined as property within the right of way limits of an existing operating highway that is capable of other development without interference with the operation and foreseeable future expansion of the transportation corridor without endangering the traveling public. Airspace may consist of the following: surface rights under a viaduct, space above traveled lanes, space within a loop of an interchange, space between main lanes and on and off ramps, and areas in cut or filled slopes.

Airspace Advisory Committee: A committee of real estate professionals assembled to advise the CTC and Caltrans on right-of-way matters.

Appraisal: The appraisal of fair market rent or lease rate will be prepared by the applicant agency with instructions to the appraiser agreed to by Caltrans and the applicant agency. The valuation of the fair market rent shall be subject to Caltrans' approval.

Caltrans: The California Department of Transportation.

Commission: The California Transportation Commission.

Positive Congestion Relief: A project that has a positive benefit to congestion relief.

District Airspace Review Committee: A committee composed of Caltrans representatives from Traffic Operations, Right of Way, Landscape Architect, Project Development, Maintenance, Structures, Hydraulics, and the State Fire Marshall. Additional programs may be included if the program is affected by the proposed use.

Fair Market Lease Rate: The highest lease rate estimated in terms of money which the leased premises, excluding improvements constructed by Tenant thereon, would bring if exposed for lease in the open market, with a reasonable time allowed to find a tenant, leasing with full knowledge of the purpose and uses to which the leased premises is being put and the restrictions on use contained in the lease. It is important to note that this lease rate would be subject to the standard lease conditions leasing in the open market, not the lease or agreement under the below market rent proposal for new mass transit facilities.

Lease or Other Written Agreement: This is an agreement between Caltrans and the public mass transit agency as to the approved facility for the airspace site. These agreements can include leases, joint-use agreements, cooperative agreements, maintenance agreements, encroachment permits and combination thereof depending on the complexity of the project. Leases need to be used for sites in the existing airspace inventory. Other written agreements referenced need to be utilized for uses in the operating right of way, such as actual transit routes and fixed guideways.

Lease Time Period: The lease period will be up to 99 years.

Public Entity: For purposes of these guidelines, it means the public mass transit agency.

Appendix B: District Transit Representative Roster
Caltrans District Offices are listed as follows:

	<u>Gen Info</u>	<u>PUBLIC #</u>	<u>MAIL</u>
District 1 - Eureka District Airspace Rep <i>Transit Rep-fax (8) 538-5869</i>	<u>Gen Info</u> Michael Baker	(707)445-6600 (530)741-5135	DISTRICT 1 - EUREKA 1656 UNION STREET (95501) P.O. BOX 3700 EUREKA, CA 95502-3700
	<i>Michele Fell</i>	<i>(707)445-6333</i>	
District 2 - Redding District Airspace Rep <i>Transit Rep-fax (8) 442-3578</i>	<u>Gen Info</u> Michael Baker	(530)225-3426 (707)741-5135	DISTRICT 2 - REDDING 1657 RIVERSIDE DRIVE (96001) P.O. BOX 496073 REDDING, CA 96049-6073
	<i>Deborah Pedersen</i>	<i>(530)225-3259</i>	
District 3 - Marysville District Airspace Rep <i>Transit Rep-fax (916) 323-7669</i>	<u>Gen Info</u> Michael Baker	(530)741-4211 (530)741-5135	DISTRICT 3 - SAC. AREA OFF. 703 "B" STREET (95901) P.O. BOX 911 MS 41 SACRAMENTO, CA 95901
	<i>Wayne Schnell</i>	<i>(530)741-4025</i>	
District 4 - Oakland District Airspace Rep <i>Transit Rep-fax (8) 541-5559</i>	<u>Gen Info</u> Marta Bayol	(510)286-4444 (510)286-5476	DISTRICT 4 - OAKLAND 111 GRAND AVENUE (94612) P.O. BOX 23660 OAKLAND, CA 94623-0660
	<i>Wade Green/Tom McDonnell</i>	<i>(510)286-5541</i>	
District 5 - San Luis Obispo District Airspace Rep <i>Transit Rep-fax (8) 629-3077</i>	<u>Gen Info</u> Jerry Janigian	(805)549-3111 (559)488-7325	DISTRICT 5 - SAN LUIS OBISPO 50 HIGUERA STREET SAN LUIS OBISPO, CA 93401-5415
	<i>Tim Rochte</i>	<i>(805)549-3130</i>	
District 6 - Fresno District Airspace Rep <i>Transit Rep-fax (8) 421-5875</i>	<u>Gen Info</u> Jerry Janigian	(559)488-4020 (559)488-7325	DISTRICT 6 - FRESNO 1352 W. OLIVE AVENUE (93728) P.O. BOX 12616 FRESNO, CA 93778-2616
	<i>Marc Birnbaum</i>	<i>(559)488-4260</i>	
District 7 - Los Angeles District Airspace Rep <i>Transit Rep-fax (8) 647-0678</i>	<u>Gen Info</u> David Patler	(213)897-3656 (213)897-4820	DISTRICT 7 - LOS ANGELES 120 S. SPRING STREET LOS ANGELES, CA 90012
	<i>Linda Wright</i>	<i>(213)897-0213</i>	
District 8 - San Bernardino District Airspace Rep <i>Transit Rep-fax (8) 670-7934</i>	<u>Gen Info</u> David Patler	(909)383-4561 (213)897-4820	DISTRICT 8 - SAN BERNARDINO 464 WEST 4 TH STREET SAN BERNARDINO, CA 92401
	<i>Gary Green</i>	<i>(909)383-5926</i>	
District 9 - Bishop District Airspace Rep <i>Transit Rep-fax (8) 627-0678</i>	<u>Gen Info</u> Jerry Janigian	(760)872-0601 (559)488-7325	DISTRICT 9 - BISHOP 500 S. MAIN STREET BISHOP, CA 93514
	<i>Brad Mettam</i>	<i>(760)872-0689</i>	
District 10 - Stockton District Airspace Rep <i>Transit Rep-fax (8) 423-3631</i>	<u>Gen Info</u> Jerry Janigan	(209)948-7543 (559)488-7325	DISTRICT 10 - STOCKTON 1976 E. CHARTER WAY (95205) P.O. BOX 2048 STOCKTON, CA 95201
	<i>Carlos Yamzon</i>	<i>(209)948-3975</i>	
District 11 - San Diego District Airspace Rep <i>Transit Rep-fax (8) 688-4299</i>	<u>Gen Info</u> Fred Birchmore	(619)688-6678 (619)688-3351	DISTRICT 11 - SAN DIEGO 2829 JUAN STREET (92110) P.O. BOX 85406 SAN DIEGO, CA 92186-5406
	<i>Bill Figge</i>	<i>(619)688-6954</i>	
District 12 - Orange County District Airspace Rep <i>Transit Rep-fax (8) 655-2592</i>	<u>Gen Info</u> David Patler	(949)724-2000 (213)897-4820	DISTRICT 12 - ORANGE COUNTY 3337 MICHELSON DRIVE, SUITE 380 IRVINE, CA 92612
	<i>Hector Rangel</i>	<i>(949)724-2731</i>	

**Leasing to Public Entities
Streets & Highways Code 104.12(b)**

Site No: _____ (FOR RIGHT OF WAY USE ONLY)

**Public Entity Application for Airspace Agreements for New Mass Transit Facilities for Traffic
Congestion Relief**

Section I: General Information

A. Public Entity:

Mailing Address:

CEO or Director:

Title:

Phone:

FAX:

Email:

B. Partnering Public Entity:

Mailing Address:

CEO or Director:

Title:

Phone:

FAX:

Email:

C. For Additional Information: Contact Person

Name:

Title:

Mailing Address:

Phone:

FAX:

Email:

D. Caltrans District:

Name:

Title:

Mailing Address:

Phone:

FAX:

Email:

Public Entity Application--Continued

Section I: General Information

E. Total Estimated Cost of Project:
F. Project Start Date:
G. Construction Start Date:
H. Project End Date:
I. Proposed Duration of Lease Start Date: End Date:
J. Describe the geographical area you serve. (Topography, square miles, communities to be served, describe other land developments that might complement or conflict with proposed project. Provide a map or diagram.) <input type="checkbox"/> Major urbanized area with a population over 200,000. <input type="checkbox"/> Medium urbanized area with a population between 50,000 and 200,000. <input type="checkbox"/> Non-urbanized area with a population below 50,000.

Public Entity Application—Continued

Section II: Project Information

A. Project Site and Use Information:

(Identify land or airspace within Caltrans right of way and describe the proposed mass transit facility use. Also indicate whether there will be any commercial vendors, subleases, or subcontractors and the nature of their business. Provide a map with proposed or existing service defined in urbanized area boundaries, if possible).

- New Bus Route
- New or Expanded Park and Ride Lot for Mass Transit Patrons
- Downtown Commuter Bus Parking Facility during the day
- Other Mass Transit Facility: _____

C. What are the benefits of this proposed site?

Public Entity Application—Continued

Section II. Project Information

D. What other sites were considered and why were they rejected in favor of this proposed site?

E. Describe any other properties, within the vicinity of this airspace site that you own, lease, control or have interest:

Public Entity Application—Continued

Section II: Project Information

F. Brief description of organizational capacity to carry out this project:

G. Project Scope and Purpose:

Provide a description of the project's scope and purpose.

Public Entity Application--Continued

Section II. Project Information

F. Describe the current transit system and how this new project will positively result in congestion relief. (Include a brief description of the current system and the new system changes. Describe the congestion levels and commute times of the existing corridor in which this project is proposed. Cite and provide any studies and/or surveys that support your claim or estimates.)

G. Public Entity Application--Continued

Section III: Project Benefits

A. Describe how the proposed project will provide additional transportation benefits to more transit riders. (e.g. expansion of service area or hours, increase frequency of trips, ridership survey results, reduced travel time for riders, increased access and convenience to riders). Provide studies or surveys.

Public Entity Application---Continued

Section VII. Signatures of Applicant Agencies

Chief Executive Officer or Director of
Public Entity

(This person must be the CEO or Director of the public entity and have authority to sign agreements or contracts for the public entity.)

Date

Chief Executive Officer or Director of
Partnering Public Entity (If Applicable)

(This person must be the CEO or Director of the public entity and have authority to sign agreements or contracts for the public entity.)

Date