

Memorandum

Tab 24

To: CHAIR AND COMMISSIONERS

CTC Meeting: December 5-6, 2024

From: TANISHA TAYLOR, Executive Director

Reference Number: 4.9, Action

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Subject: Amendment to Procedure for Leasing Airspace to Private Entities
(Resolution G-24-14A, Superseding Resolution G-24-14)

Recommendation:

Commission staff recommends that the California Transportation Commission (Commission) approve the attached Resolution G-24-14A, which supersedes and replaces Resolution G-24-14, establishing a revised procedure for executing airspace leases to private entities.

Issue:

The California Department of Transportation (Department) issued a press release on November 8, 2024, announcing key changes to the airspace lease program. The Commission's resolution is being amended to integrate these changes, ensuring their effective implementation and adherence.

The Department's press release and the revised resolution includes several key provisions that will sustain the integrity of California's transportation infrastructure. These changes are detailed below:

- No Open Storage near Structure(s) - Caltrans will cancel existing open storage leases under, over, or next to structures that conflict with the Federal Highway Administration (FHWA) policy and regulations per the Code of Federal Regulations.
- No Flammable Materials near Structure(s)- Flammable materials are prohibited in the airspace property under, over, or within adjacent properties.
- No Non-Operable Vehicles near Structure(s) - Non-operable vehicle storage shall be prohibited directly adjacent to, or on sites within any areas under or over structures.
- Restricted parking for Electric Buses under or near Structure(s) - The parking of Electric buses next to or on sites within any areas under or over highway structures is restricted.
- Liability Insurance Increase - In areas under, over, or next to the structure(s), the liability insurance threshold shall be increased to 20 million dollars (including Commercial General Liability policy plus umbrella). In all other areas, the insurance requirement will remain 5 million dollars.

- Limitation on New Lease Uses/Lessees near Structure(s) - Caltrans will limit new lessees to adjoining or government entities; or limit uses to wireless, clean energy connectivity, and utility infrastructure use for sites under, over, or next to the structure(s).
- Prohibit Construction of New Permanent Buildings - New permanent buildings on leased airspace sites will be prohibited.
- Evaluate Leases for Potential Cancellation and for Demolition of Existing Buildings near Structure(s) - Caltrans will review leases to evaluate whether non-renewal or cancellation of leases inconsistent with the new policy is possible, given the existing lease language. Leases for buildings near Caltrans' structures will also be evaluated for non-renewal or cancellation.
- Increase Reliance on Encroachment Permits - When possible, Caltrans will prioritize issuing encroachment permits as the controlling Right of Way Use Agreement document for the alternative use of operating right of way. This minimizes the creation of more complex, Landlord/Tenant relationships when not necessary.
- Exceptions from Policy- Caltrans has developed a process to permit exceptions to the policy that continue to maintain the safety/operational standards to support the state highway system.

These updates are aimed to enhance the protection of the State's transportation system.

Background:

On November 11, 2023, a fire occurred under the Interstate 10 overpass near the intersection of 14th Street and Lawrence Street in Los Angeles, California (referred to as the Lawrence Airspace Lease hereinafter). This incident resulted in the closure of a segment of the freeway, a route traversed by approximately 300,000 vehicles daily. Immediately following the fire, crews from the Department, along with two contractors, worked around-the-clock to clear fire debris from the site and shore up the support pillars for the overpass. The Department successfully reopened the freeway on November 19, 2023, although repair work continued for several more months.

In response to the incident, on May 30, 2024, the Independent Office of Audits and Investigation released an audit report revealing significant deficiencies in the Department's management of the Lawrence Airspace Lease. Since then, the Department has made substantial efforts to address the audit findings including a thorough reevaluating of its policies regarding airspace leases near transportation structures. This reevaluation involved reassessing the risks and benefits associated with such leases. The Department has also continued to update its policies and guidance regarding airspace leases.

Attachments:

- Attachment A: Resolution G-24-14A (Procedure for Leasing Airspace to Private Entities)
- Attachment B: Airspace Program Changes

CALIFORNIA TRANSPORTATION COMMISSION
Procedure for Leasing Airspace to Private Entities

RESOLUTION G-24-14A
Amending Resolution G-24-14

- 1.1 WHEREAS Section 104.12 of the Streets and Highways Code authorizes the California Department of Transportation (Department) to execute airspace leases with private entities utilizing an airspace site above or below State route or the interstates. The airspace leases are to be executed in accordance with procedures prescribed by the California Transportation Commission (Commission); and
- 1.2 WHEREAS Section 30410 of the Streets and Highways Code authorizes the Director, upon such terms and subject to such reservations as are first approved by the Commission, to execute airspace leases, sell, exchange or otherwise dispose of property acquired pursuant to the California Toll Bridge Authority Act and no longer necessary for Toll Bridge purposes or whenever it is for any other reason in the public interest to do so; and
- 1.3 WHEREAS Section 2163 of the Public Utilities Code authorizes the Department to dispose of any property, airport, air navigation facility, or portion or interest, acquired pursuant to the State Aeronautics Act (PUC S21001 et seq.), by sale, lease or otherwise; and
- 1.4 WHEREAS Section 104.12 of the Streets and Highway Code mandates that airspace leases with private entities are to be made only after competitive bidding unless the California Transportation Commission finds by unanimous vote that in certain cases competitive bidding would not be in the best interest of the State; and
- 1.5 WHEREAS Title 23 of the Code of Federal Regulations, Section 710.405 (23 CFR §710.405) requires all real property interest within the right of way limits to be devoted exclusively to the purpose of that facility unless such non-highway alternative uses are permitted by Federal law or approved by the Federal Highway Administration (FHWA); and

- 1.6 WHEREAS 23 CFR §710.403 requires current fair market value to be charged for the use or disposal of all real property interests except where it is specifically authorized under the regulation; and
- 1.7 WHEREAS 23 CFR §710.405 requires that leases to contain provisions that ensure the safety and integrity of a facility, identify the design and location of the non-highway use, provide for adequate insurance to hold the State of California and FHWA harmless, and other requirements stipulated in the regulation.
- 2.1 NOW THEREFORE BE IT RESOLVED that the Commission, in the best interest of the State of California, may authorize the use of a Letter of Understanding and Offer and Proposal format for the awarding of long-term airspace leases in cases where competitive bidding is not employed. These airspace leases shall be subject to unanimous approval by the Commission. Any further extension beyond the original terms of these airspace leases require unanimous approval by the Commission and shall not be granted through any other means; and
- 2.2 BE IT FURTHER RESOLVED that any extension beyond the original terms of a competitively bid airspace lease shall require Commission unanimous approval and shall not be granted through any other means; and
- 2.3 BE IT FURTHER RESOLVED that the Director of Transportation is authorized to execute short-term non-bid, non-developmental airspace leases for construction projects on both State routes and interstates. These agreements shall not exceed a maximum term of three years. These agreements are specifically designated for sites utilized by contractors engaged in services for the construction and maintenance of the State routes and interstate system near the airspace site under consideration. Any extension of these airspace leases require unanimous approval by the Commission and shall not be granted through any other means; and
- 2.4 BE IT FURTHER RESOLVED that the Director of Transportation is authorized to execute short-term non-bid airspace leases up to a period of six months for noncomplex and nondevelopment use. Any further extension of these airspace leases require unanimous approval by the Commission and shall not be granted through any other means; and

- 2.5 BE IT FURTHER RESOLVED that the Director of Transportation is authorized to execute month-to-month leases for Park and Ride lots with nonprofit organizations; and
- 2.6 BE IT FURTHER RESOLVED that the Department shall implement program changes that protect the public and the state's transportation infrastructure. The program changes are outlined in attachment B. These changes are consistent with the Department's press release dated November 8, 2024
- 2.7 BE IT FURTHER RESOLVED that the Department shall submit quarterly reports to the Commission for all airspace lease sites. These reports will serve to demonstrate the Department's compliance with the stipulations outlined in this resolution, as well as adherence to the Department's own manuals, guidance, and procedures, and relevant State and Federal laws and regulations governing airspace leases and management.
- 2.8 BE IT FURTHER RESOLVED that the airspace quarterly reports shall comprehensively document all existing airspace leases. The Department, in consultation with the Commission, will develop the quarterly report format to ensure thorough inclusion of all necessary data and information including: the Department's responsible District, parcel number and address, route, tenant's information, begin and end date of agreements, specified use outlined in each agreement, lease amount, required inspection frequency, date of last inspection, whether the agreement was competitively bid or directly negotiated, location in relation to highway (above or below), proximity to structures, any violations or safety risks noted during last inspection, and any other pertinent information as requested by the Commission; and
- 2.9 BE IT FURTHER RESOLVED that the airspace quarterly report shall document upcoming advertisements for airspace right of way use to be competitively bid, upcoming training initiatives to enhance the monitoring and management of airspace leases, and any updates to guidance, policies, and manuals. The Department shall provide how it is actively overseeing the proper execution, management, and monitoring of airspace leases; and
- 2.10 BE IT FURTHER RESOLVED that the airspace quarterly report shall include an action plan addressing airspace leases safety risk, violations, and known unauthorized encroachments. The action plan should demonstrate the

expeditious pursuit of administrative action when necessary to uphold public safety and safeguard the transportation system.

- 2.11 BE IT FURTHER RESOLVED that the payment of brokers' commissions as inducement for building development is permitted to licensed real estate brokers who assist in the development of airspace sites; and
- 2.12 BE IT FURTHER RESOLVED that the Director of Transportation is authorized to directly negotiate and execute long term development agreements for locations where only one telecommunication (wireless) carrier has indicated an Interest. These agreements may involve cash payments with no "in-kind" payments. In instances where "in-kind" payments become necessary, each agreement will be individually reviewed by the Department and require approval by the Commission; and
- 2.13 BE IT FURTHER RESOLVED that the Department has the authority to enter into revenue sharing agreements with any underlying fee owner, which would require that all telecommunication sites comply with the terms of the department's Master License Agreement and that the Base License Fee would be split 50-50. The Base License Fee must be no less than the rate established by the Master License Agreement unless the underlying fee owner requires higher rate. The fee would only be shared with the underlying fee owner if they submitted a specific request for a portion of the fee, and only if the easement document is for highway purposes only; and
- 2.14 BE IT FURTHER RESOLVED that the Commission has reviewed and revised the Master License and Site License agreements in May 2022, for the telecommunications (Wireless) program; the next review and possible revision will occur no later than May 2027 and every five-years thereafter; and
- 2.15 BE IT FURTHER RESOLVED that the Director of Transportation is authorized to establish policies and procedures setting forth the specific terms and guidelines within which to administer the development of airspace as prescribed in this resolution and in accordance with state and federal laws and regulations and;
- 2.16 BE IT FURTHER RESOLVED that Resolution G-24-14 is hereby replaced.

The California Department of Transportation (Department) issued a [press release](#) on November 8, 2024, outlining key changes to the airspace program. The Department shall implement these changes as outlined below:

- No Open Storage near Structure(s) - Caltrans will cancel existing open storage leases under, over, or next to structures that conflict with the Federal Highway Administration (FHWA) policy and regulations per the Code of Federal Regulations.
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