

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: January 30-31, 2025

From: TANISHA TAYLOR, Executive Director

Reference Number: 4.10, Action

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Subject: Amendment to Procedure for Leasing Airspace to Public Entities
(Resolution G-25-24, superseding Resolution G-19-43)

Recommendation:

Staff recommends that the California Transportation Commission (Commission) approve the attached Resolution G-25-24, which supersedes and replaces Resolution G-19-43, establishing a revision to the procedure for executing airspace leases to public entities.

Issue:

As part of the Middle Mile Broadband Network initiative, the California Department of Transportation (Caltrans) seeks to enter into airspace lease agreements with federally recognized tribes, allowing tribal utility service providers to reach unserved or underserved Californians within tribal boundaries. Commission Resolution G-19-43 delegates authority to Caltrans to enter into airspace lease agreements with public entities without Commission approval under certain conditions. This delegated authority does not currently pertain to agreements with tribal governments. In support of the statewide Middle Mile Broadband Network, the proposed revision would extend the same delegated authority to Caltrans to enter into airspace lease agreements with federally recognized tribes.

Background:

State law authorizes Caltrans to lease the use of airspace above and below state highways to public entities in accordance with procedures to be prescribed by the Commission. In 2019, in order to reduce Commission workload and minimize the number of routine financial resolutions processed, the Commission adopted Resolution G-19-43 which sets the terms and conditions under which authority is delegated to Caltrans to enter into such leases without Commission approval. This delegation authorizes Caltrans to enter into leases with public agencies without specific Commission approval for each airspace lease whenever Caltrans finds:

- a. That the lessee is a public entity as defined in the Public Contract Code.
- b. That the lease will fulfill a public purpose.

- c. That Caltrans will receive either:
- i. fair market rent for the property, or;
 - ii. a lesser amount as authorized by any statute enacted by the Legislature, so long as the property satisfies the limitations and conditions set forth in the applicable statute.

In accordance with Senate Bill 156 (Chapter 112, Statutes of 2021) broadband infrastructure will be installed within State Highway right-of-way to create a statewide Middle Mile Broadband Network. The intent of the Middle Mile Broadband Network is to provide a reliable and resilient network across the state for local service providers to draw from to improve local connectivity for unserved and underserved communities. The Middle Mile Broadband Network will serve as the backbone infrastructure to support the last-mile effort to bring broadband access to as many Californians as possible.

Attachments:

- Attachment A: Amendment to Procedure for Leasing Airspace to Public Entities, Resolution G-25-24

**CALIFORNIA TRANSPORTATION COMMISSION
Procedure for Leasing Airspace to Public Entities**

**RESOLUTION G-25-24
Amending Resolution G-19-43**

- 1.1 WHEREAS, Section 104.12(a) of the Streets and Highways Code authorizes the California Department of Transportation (Caltrans) to lease the use of airspace above and below State highways to public entities in accordance with procedures to be prescribed by the California Transportation Commission (Commission); and
 - 1.2 WHEREAS, Section 104.12(b) of the Streets and Highways Code authorizes Caltrans to make airspace available, with or without charge, to public entities for mass transit facilities; and
 - 1.3 WHEREAS, Section 14013 of the Government Code provides that the Caltrans Director may lease airspace to local agencies for public purposes and may contribute toward the costs of developing local parks and other such recreation facilities on such areas; and
 - 1.4 WHEREAS, funds can only be allocated for acquisitions when such acquisitions comply with environmental laws; and
 - 1.5 WHEREAS, it is desirable to reduce Commission workload by minimizing the number of routine financial resolutions processed.
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- 2.1 NOW THEREFORE BE IT RESOLVED that the Commission hereby authorizes Caltrans to enter into leases with public agencies without specific Commission approval for each airspace lease whenever Caltrans finds:
 - a. That the lessee is a public entity as defined in the Public Contract Code, or is a federally recognized tribe.
 - b. That the lease will fulfill a public purpose.
 - c. That Caltrans will receive either:
 - i. fair market rent for the property, or;
 - ii. a lesser amount as authorized by any statute enacted by the Legislature, so long as the property satisfies the limitations and conditions set for the in the applicable statute.
 - 2.2 BE IT FURTHER RESOLVED, that Caltrans shall provide an annual report to the Commission on the active airspace leases authorized pursuant to section 2.1c.ii above.
 - 2.3 BE IT FURTHER RESOLVED, that Caltrans may enter into airspace leases with public mass transportation agencies at fair market value lease rates less a twenty percent (20%) discount, subject to specific Commission approval;

- 2.4 BE IT FURTHER RESOLVED, that when it is determined that park or recreational use is appropriate, Caltrans may use, as all or part of the consideration for a lease for park or recreational purposes, any substantial benefits Caltrans derives from the local agency's maintenance or landscaping costs which would otherwise be the obligation of Caltrans whenever Caltrans finds:
- a. That the lessee is a municipality or other local agency as defined in the Government Code.
 - b. That the use is for park or recreation purposes only.
 - c. That the lease is for public access.
 - d. That the lessee agrees that whenever the leased land is needed for transportation purposes the lease shall terminate.
- 2.5 THEREFORE BE IT FURTHER RESOLVED, that this resolution supersedes and replaces Resolution G-19-43.