PURPOSE/BACKGROUND

This manual change revises Right of Way Manual Chapter 11, Section 11.04.01.01 to eliminate the provision for tenant to request “valuation summary” as this is not a requirement of the new emergency regulations. Further, the change eliminates a description of the procedures for rental rate increases concerning amount of increase based on whether tenants are near market or 25% below market. The procedure is addressed in the emergency regulations under California Code of Regulations (CCR), Title 21 Public Works, Division 2 Department of Transportation, Chapter 24 Right of Way, Article 1 Affordable Rent Program.

EFFECTIVE DATE

Immediately.

MANUAL IMPACT

• Remove the superseded pages and insert the attached pages in the Manual.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

REVISION SUMMARY

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Remove Old Pages</th>
<th>Insert New/Revised Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 - Sections</td>
<td>11.04.00.00 (REV 7/2005)</td>
<td>Replace with the following in its entirety: 11.04.00.00 (REV 2/2013)</td>
</tr>
</tbody>
</table>
11.04.00.00 - RENTAL RATES

11.04.01.00 General

Our policy is to charge fair market rent and to rent only to tenants willing and able to pay fair market rent. Fair market rent is the amount of rent that a parcel would command in the open market if offered under the terms and conditions typical of the market for similar properties. Exceptions are made for:

1) Tenants whose rental rates are established by Right of Way Contract.

2) Residential tenants who originally qualified for affordable rent status prior to March 3, 1981, and who still meet the income requirements. (See Exhibit 11-EX-3, Affordable Rent Tenants.)

3) Local rent control (see Section 11.04.05.00).

4) Social, environmental, or economic purposes or nonproprietary government use with FHWA’s prior written approval.

The district shall set up all state-owned properties that are suitable for renting and are proposed for occupancy as rental accounts and shall charge rent as follows:

- **Property Improved with an Owner-Occupied Residential Unit** - Grantor’s rental shall commence on the 16th day after the close of escrow or the day after the Order of Possession becomes effective.

- **Property Occupied by a Business** - A rental grace period (maximum of 60 days) may be granted to the tenant (former owner, inherited tenant) if circumstances warrant. The grace period may commence on the day after the close of escrow, or the day after the Order of Possession becomes effective, or at some other time during the lease term, depending on whether or not the business has a commitment to pay rent on a replacement site. See Relocation Assistance Chapter, Section 10.05.24.00, for further details.

- **All Other Classes of Property, Including Property Partially Tenant-Occupied** - Rentals shall commence on the day following close of escrow or the day after the Order of Possession becomes effective.

- **Exceptional Cases** - Adherence to rental rates established by executed R/W Contracts is required. Lease purchase sale of excess land to a tenant-buyer will provide for a lease at above market rate. See Excess Land Chapter, Section 16.05.14.00, for further details.

These provisions do not preclude longer free occupancy periods where necessary or desirable with the DDC-R/W’s approval. The terms of either the R/W Contract or the transmittal memorandum must indicate, however, that the state is receiving a consideration for the extended rent-free occupancy.

The initial rental rate for all improved properties and rented unimproved properties is in the appraisal report.

- **Tenant-Occupied Properties** - The actual existing rental rate and the estimated fair market rental rate are shown.

- **Owner-Occupied Properties** - Only the fair market rental rate is shown. The rentals of similar properties shall be the basis for estimating the fair market rental rate.
**11.04.01.01 Rental Rate Increase Policy**

Department policy is to review rental rates annually and make the appropriate adjustments keeping in mind that a 60-day notice is required prior to raising rents. This applies to residential and nonresidential properties.

**11.04.02.00 Rent Determinations**

Property Management is responsible for establishing fair market rent determinations on residential properties. Property Management may request assistance from Appraisals, but must provide Appraisals with detailed information about the subject properties. For information and responsibilities for rent determinations on nonresidential properties, see Section 11.05.01.00 for guidance.

A fair market rent determination is an estimate of the amount of rent, which a parcel would command in the open market, if offered under the terms and conditions typical of the market for similar properties.

The rent determination shall be based on current rents being paid in the area for comparable property. An analysis of the comparable rental and other market data such as size, location, condition of property (exterior and interior), etc., will be completed. The subject properties and comparable data shall be viewed in the field and the comparable property will be inspected if available. Exhibit 11-EX-46, Documentation of Residential Fair Market Rental Rate, will be used for all rent determinations. The rent determination includes a signed statement that the agent has personally viewed and inspected the parcel. The rent determination shall also be signed by a Property Management Senior and placed in the rental file.

At minimum, a 48-hour notice will be given to the tenants prior to inspecting the property for rent determinations.

**11.04.02.01 Changing the Rental Rate Shown in the Appraisal**

Although Property Management will normally use the rental rate shown in the appraisal, it has the right to revise the rate if justified by more recent market data. If a change in the rental rate for residential properties is proposed, the Agent shall complete Exhibit 11-EX-46, Documentation of Residential Fair Market Rental Rate, and submit to the Property Manager or designee for approval. For nonresidential properties, the agent will complete Exhibit 11-EX-53, Nominal Value Nonresidential Rental Appraisal, and submit to the Property Manager or designee for approval. (See Section 11.05.04.00 for additional information in regard to nonresidential properties.) All documentation shall be filed in the rental folder.
11.04.03.00 Lease Term

At its discretion, the district may set the length of lease terms up to five years, provided rate adjustments are incorporated and 90-day (or less) cancellation clauses are included. Suggested guidelines are as follows:

- **The Property Is in an Active Market, Subject to Recent or Anticipated Property Value Increases** - Consideration should be given to keeping the term short (e.g., one year). The advantage is that the rent can be reappraised and adjusted with market changes; the disadvantage is that a yearly reappraisal and renewal are required.

- **Properties Are of Relatively Low Value (e.g., Agricultural and Nominal Leases) and the Market Is Stable** - Consideration should be given to a longer-term lease (e.g., 3-5 years). This reduces the need for annual reappraisal and lease renewal where little or no rental change is likely. In such a case, a rental adjustment lease clause may be omitted.

- **Other Leases (e.g., Commercial and Industrial) in a Stable Market** - Consideration should be given to a longer-term lease (e.g., 3-5 years). To keep up with the rental market, the lease should contain a provision for annual rental escalation. Examples include level or graduated rental step raises (based on projected market trends) and raises tied to a Consumer Price Index. (See page 9 of Exhibit 11-EX-B, Lease Agreement, for standard rent escalation clauses.)
  
  Use of a flat rate must be justified and documented in the file or preapproved in writing by the DD or authorized delegate.

Where possible, all leases should be written with a short termination time (e.g., 90 days or less) to provide maximum flexibility. Leases with terminations longer than 90 days should be written on an exception basis only and must not conflict with project certification schedules. Similarly, multiyear leases must be written to avoid such conflict.

11.04.04.00 Escalation Clauses

The assigned Agent shall annually review each lease agreement containing a rental escalation clause. The Agent shall adjust the lease rate according to the terms of the agreement and notify the lessee. The rental file and the RWPS shall be appropriately documented. The Property Manager shall be responsible for reviewing the rental files and the RWPS to ensure compliance.

11.04.05.00 Local Rent Control

Occasionally, the rental rate policy that calls for rental increases under certain situations may be in conflict with local rental control. If the existing rental rate is substantially below the market rate and the proposed rate of increase exceeds the limits provided in a local rent control ordinance, the district should contact the local agency:

- To explain the need for bringing rents to market rate.

- To explain that once rents are at market rate, the limitations prescribed in the rent control ordinance will be observed.

- To attempt to get the local agency’s concurrence.

If the local agency does not concur, the district shall comply with the local ordinance.
11.04.06.00 Owners Retain Improvements

If the R/W Contract requires the owner to remove retained improvements within a short time period (e.g., 90 days), a rental rate providing a current market return on the acquired property is charged. The rental rate shall not include a return on retained improvements. If the acquired land is of such size and irregular shape (e.g., narrow strips) that the market rental rate cannot be readily determined, the monthly rental rate may be set at one percent (1%) of the payment for the acquired property.

After the close of escrow, if any structural improvement retained by the grantor remains on the acquired property past the term agreed to, the district shall charge fair market rent for the use of the property purchased from the grantor. The agent should also check the Right of Way Contract for clauses pertaining to provisions agreed upon if such issue occurred. (For example, the right of the Department to sell or demolish the improvements remaining on State property.)