

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

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POLICY MATTERS
Leases of Airspace to Public Entities
for Mass Transit Facilities
Information Item

CTC Meeting: December 5-6, 2000

Agenda Item: 4.8

Original Signed By _____
W. J. EVANS, Deputy Director
Finance
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LEASES OF AIRSPACE TO PUBLIC ENTITIES FOR MASS TRANSIT FACILITIES

The purpose of this item is to inform the California Transportation Commission (Commission) of the Department of Transportation's (Department) intentions to implement Streets and Highways Code Section 104.12(b) pertaining to the lease of airspace sites to public entities for new mass transit facilities. The Airspace Advisory Committee (AAC) reviewed this matter at its October 11, 2000, meeting and recommended that all such leases be first reviewed and approved by both the AAC and CTC before executed by the Director of Transportation or delegatee. The Department concurs with the AAC's recommendation.

Background

Chapter 513 of the 1992 Statutes, effective January 1, 1993, added Section 104.12(b) to the Streets and Highways Code:

"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 nonhighway public mass transit facilities, the department may make the land or airspace available, with or without charge, to a public entity for those purposes, subject to any reservations, restrictions, 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 Efficiency 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, the Department has allowed public mass transit agencies to place fixed guideways within state highway rights of way under encroachment permit, 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 does, however, give the Department broad discretion regarding mass transit-related facility leases with or without charge to public entities. Therefore, in keeping with the

Department's continuing and growing efforts to relieve congestion and improve mobility on the State Highway System, we believe it is incumbent upon the Department to further encourage the development and usage of public mass transit systems by providing airspace sites for new mass transit facilities at a nominal rental rate or a less than market rental rate.

Discussion

There are numerous types of mass transit facilities that could be placed within the right of way of any federal-aid highway pursuant to state and federal statutes and regulations. These facilities include, but are not limited to:

- fixed guideways
- park and ride lots for patrons of mass transit systems
- downtown commuter bus parking during the work day
- storage and/or parking of buses or rolling stock
- bus or rolling stock waiting facilities
- bus or rolling stock maintenance and/or rehabilitation yards
- bus or rail terminals, transit malls, centers, transfer facilities and intermodal facilities with ancillary facilities such as ticket machines, wheelchair lifts, telephones, newsstands, vending machines, security cameras
- mass transit passenger shelters

The Department proposes that a process be initiated, wherein a public entity will apply to use a specific airspace site for a specific mass transit use. The public entity's application will be reviewed by a departmental District Airspace Review Committee (DARC) in the same manner as the review of other proposed airspace uses. Those proposed mass transit facilities that can be safely accommodated within the airspace will be approved by the Department and submitted, where necessary, to the Federal Highway Administration (FHWA) for its review and concurrence.

It is proposed that a lease or other written agreement be entered into between the Department and the applicant public entity as to approved facilities. Such written agreements will include any and all reservations, restrictions, or conditions that the Department determines necessary to ensure adequate protection of the Department's highway facilities and abutting or adjacent land uses. The rental rate charged by the Department will be as follows:

- The lease rate will be a nominal annual amount, sufficient to cover the Department's lease administration costs, for those proposed mass transit facilities which will result in direct and positive congestion relief, such as a new fixed guideway, a new bus route, a new or expanded park and ride lot for patrons of mass transit, or a downtown commuter bus parking facility.
- The lease rate will be less than of appraised fair market rent for those proposed mass transit facilities which will result in indirect congestion relief but are a necessary part of the mass transit agency's overall operations, such as a bus storage yard, or a maintenance and/or rehabilitation facility.

After approval by the Department and FHWA, each application and proposed lease of an airspace site to a public entity for a mass transit facility for less than fair market rent will be submitted by the Department to the AAC and CTC for review and approval.