



INSPECTOR GENERAL

California Department of Transportation

Airspace Program (Part I):

**Audit of the California Department of Transportation's Oversight
of an Airspace That Caught Fire Underneath Interstate 10
in Los Angeles on November 11, 2023**



Independent Office of Audits and Investigations

Bryan Beyer, Inspector General
Diana Antony, Chief Deputy

May 2024
24A.PROG03



For questions or assistance concerning the contents of this report, please contact (916) 323-7111 or email ioai.reports@dot.ca.gov. Alternative format reports available upon request.

Cover photo source: California Department of Transportation.



Inspector General

California Department of Transportation

Bryan Beyer, Inspector General

Diana Antony, Chief Deputy

May 30, 2024

Tony Tavares
Director
California Department of Transportation
1120 N Street
Sacramento, CA 95814

Final Report — Airspace Program (Part I): Audit of the California Department of Transportation's Oversight of an Airspace That Caught Fire Underneath Interstate 10 in Los Angeles on November 11, 2023

Dear Director Tavares:

The Independent Office of Audits and Investigations completed its audit of the California Department of Transportation's (Caltrans') oversight of the airspace property, located at and around 14th and Lawrence streets, in Los Angeles, California. This report represents the first report, in a series of reports, that we anticipate releasing related to Caltrans' oversight of the airspace program.

Enclosed is our final report, which includes your response to the draft report. The final report is a matter of public record and will be posted to our website.

A Corrective Action Plan (CAP) addressing the recommendations is due from Caltrans 60 days from receipt of this letter. Thereafter, we ask that you provide us with an update every six months and one year from the report issuance date, until all findings have been addressed. The CAP should be sent to ioai.reports@dot.ca.gov.

If you have any questions regarding this report, please contact Juanita Baier, Audit Chief, at (916) 764-4609.

Sincerely,

Bryan Beyer, CIG
Inspector General

Gavin Newsom, Governor

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Tony Tavares
May 30, 2024
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Terms Used in Report

Term/Acronym	Definition
Agent	Right-of-way agent
CalSTA	California State Transportation Agency
Caltrans	California Department of Transportation
Commission	California Transportation Commission
FHWA	Federal Highway Administration
I-10	Interstate 10 (stretch of highway in Los Angeles, California)
Lawrence Airspace	Airspace property, located at and around 14th and Lawrence streets, in Los Angeles, California
Lessee/Tenant/Subtenant	A lessee is the person to whom a lease is made and is responsible for adhering to the terms and conditions of the agreement. A lessee is also known as a tenant. A subtenant is one who leases all or part of the rental property from the lessee for a term less than that held by the lessee.

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Summary

The California Department of Transportation (Caltrans) is responsible for, among other things, administering the airspace program. Generally speaking, an airspace is the land underneath state highways and overpasses that can be used for other purposes. Caltrans leases the airspace land to public or private entities for specified uses, such as for parking and open storage. The revenue Caltrans receives from airspace leases gets deposited into the State Highway Account, which is used to fund other transportation-related programs and projects.

In the early morning hours of November 11, 2023, a massive fire broke out at an airspace under an overpass on Interstate 10 (I-10), at and around 14th and Lawrence streets, in Los Angeles, California (hereinafter referred to as the Lawrence Airspace). The fire shut down a stretch of the freeway where an estimated 300,000 vehicles drive every day. The fire burned for approximately three hours before it was contained, but not before it ripped through numerous wooden pallets, flammable solvents, oils, fuels, trailers, and vehicles purportedly stored within the leased site. Immediately following the fire, Caltrans crews, along with two contractors, worked 24 hours a day to clear leftover debris from the damaged site and shore up the support pillars for the overpass. Caltrans reopened the freeway on November 19, 2023, just eight days after the fire started and expects additional repair work to continue for several more months.

This report serves as the first in a series of audit reports that we anticipate publishing on the airspace program and focuses only on Caltrans' oversight of the Lawrence Airspace. Subsequent reports will address Caltrans' oversight of the program at a statewide level. In this audit, however, we found numerous problems concerning Caltrans' oversight and lease management practices, spanning a period of approximately 15 years, coinciding with this property's latest rental period. The most serious concerns we present in this report include:

- Caltrans did not conduct required annual inspections of the property nor did it fully document inspection-related activity in its filing system. Caltrans conducted annual inspections in only five of the 15 full years of the rental period, leaving the equivalent of a 10-year gap without having performed any meaningful oversight.
- Of the inspections Caltrans did conduct, it failed to rectify numerous potential lease violations and other serious safety conditions that it had identified, involving unauthorized subtenants, unallowable business activity, improper storage of materials, rent delinquency, and the absence of adequate liability insurance; any of which, according to the terms of the lease agreement, could have potentially been grounds for its termination well before the fire. Based on these conditions, Caltrans had ample opportunities over the years to consider taking various forms of legal action but neglected to do so.

- Caltrans failed to react to previous warning signs, including two fires that broke out underneath freeway structures: one in Atlanta, Georgia, in 2017, and another one adjacent to the Lawrence Airspace, in 2022. These fires should have prompted Caltrans to take the risk of fire more seriously than it did. For example, it took Caltrans more than three years to conduct its next inspection following the fire in 2017 and nearly four months to conduct its next inspection following the fire in 2022. Although Caltrans developed a new structure policy in 2018 that, among other things, prohibited the storage of flammable materials, this policy did little to alleviate the safety conditions it had identified thereafter.
- Caltrans did not collect \$293,325 of unpaid rent or assess more than \$30,000 in late fees, penalties, and interest associated with untimely rent payments. Presently, Caltrans is seeking to collect only one year of the unpaid balance in court. However, Caltrans risks not being able to collect a portion of the remaining amount because it is running up against a four-year statute of limitations.
- Caltrans failed to execute a new written lease agreement following the expiration of the prior lease in 2016. Although Caltrans held an auction for the Lawrence Airspace in 2016, it did not update its records or create a new written lease to reflect the winning bid and inexplicably continued on a fixed-rate, month-to-month rental agreement for the next seven years, resulting in an extraordinary monetary benefit for the Tenant. We estimate Caltrans lost nearly \$500,000 in potential lease revenue by not executing a new agreement. This action may have violated the law requiring competitive bidding for this type of property and the State's Constitution, which prohibits state entities from gifting public funds to private individuals, such as the Tenant. These funds, had they been assessed and collected properly, would have been deposited into the State Highway Account for use on other transportation projects, but the equivalent monetary benefit of these funds remained with the Tenant, instead.

Moreover, we believe Caltrans must consider whether it can effectively manage these types of airspace leases while adequately protecting the public from the potential fire danger that some of them may present. Caltrans contends that it is somewhat limited to act on its own when necessary due to various landlord-tenant laws and its own limited expertise. When Caltrans identifies potentially dangerous materials and the occupants of a leased property are unresponsive or unwilling to remove them, Caltrans believes that, absent an emergency or a court order, it does not have the legal authority to enter the property and remove the dangerous materials on its own.

Notwithstanding these potential limitations, Caltrans did not always follow its own procedures that were designed to protect its interests and keep the public safe. As a result, Caltrans left the public more vulnerable than

it otherwise would have been to the risk of fire. Caltrans could have—and should have—done more to make this property safer for the motoring public who traveled above it. Although we do not believe Caltrans was directly responsible for the November 2023 fire, it nevertheless could have played a larger role in its prevention.

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Introduction

Background

Pursuant to Government Code, section 14461, and at the request of the director of Caltrans, the Independent Office of Audits and Investigations initiated an audit of Caltrans' airspace program.

On November 11, 2023, a large fire broke out from underneath I-10 in Los Angeles, California. The source of the fire was reportedly from a Caltrans' airspace, which is a plot of land generally found underneath freeways. Caltrans is authorized to lease airspaces to public and private entities. Following the fire, the Governor directed Caltrans to perform a comprehensive review of its airspace program. Toward that end, when announcing the results of Caltrans' initial assessment of its airspace program in November 2023, the director of Caltrans stated that he had asked the inspector general to conduct an independent audit of the program, as well. Among the statements in the announcement, the director highlighted the importance of safety, stating:

“Safety is Caltrans' top priority. The department is conducting this urgent safety review of our leased Airspace properties across the state to assure the public that these spaces pose no threat to their safety or the integrity of our state's critical infrastructure. The Caltrans independent Inspector General's audit of the Airspace program — initiated at our request — will also provide further transparency and build public trust and confidence.”

This report is the first in what we anticipate in a series of potential audit reports related to the airspace program. This report focuses on the Lawrence Airspace said to be the source of the fire, which was located at and around 14th and Lawrence streets, in Los Angeles, California, and the circumstances leading up to the fire, which shut down the freeway for several days.

Overview of the airspace program.

The Streets and Highways Code authorizes Caltrans to lease the use of airspace above or below state highways to private or public entities in accordance with procedures prescribed by the California Transportation Commission (Commission) and various sections of the Code of Federal Regulations. The Division of Right of Way within Caltrans' Headquarters manages the statewide airspace program and is responsible for developing policies and procedures governing all aspects of airspace leases. The Divisions of Right of Way at the 12 district offices are responsible for initiating, administering, and managing all airspace leases in their respective areas.

Specifically, district offices are responsible for, among other things, drafting and negotiating airspace leases (auction or direct negotiation), conducting inspections on leased properties, collecting rent payments from tenants, and filing notices of unlawful detainer in court for eviction (if warranted). Caltrans' Right of Way Manual provides guidance and contains templates with the required provisions for the various types of leases. There are several types of airspace leases, including the following:

- **Rental Agreement** – used for interim uses such as Christmas tree sales, radio frequency testing, and construction staging. The term is limited to six months.
- **Parking and Open Storage Agreement** – used when the airspace site is already improved. The term is normally for two years but can be for five years, depending on the need of the lessee.¹ This type of lease is usually awarded via a competitive bid process.
- **Nondevelopmental Agreement** – similar to the parking and open storage agreement, however, the lease term is beyond five years but not more than 15 years. This agreement is usually the result of negotiations and requires the Commission's approval.
- **Developmental Agreement** – long-term developmental use for more than five years (including options) involving major construction. Usually the result of direct negotiations.
- **Marier Johnson Park Agreement** – used by local agencies for public parks or recreational facilities.
- **Park and Ride Agreement** – used on a month-to-month basis to enhance lot occupancy by providing security and maintenance.
- **Three-year Directly Negotiated Nondevelopmental Agreement** – used when there is only one potential lessee and the site has been unsuccessfully bid. The term of this type of lease cannot exceed three years.
- **Telecommunications Wireless License Agreement** – used by wireless communications carriers to install and operate a wireless facility on any Caltrans-owned property.
- **Tieback Agreement and Tower Crane Agreement** – used for temporary tiebacks which are de-tensioned when no longer needed for structural support and for tower cranes under specific conditions.

The District Airspace Review Committee is responsible for reviewing all proposals to lease an airspace site. The Committee reviews all proposed leases when they are at the conceptual, preliminary, and final phases to ensure previous concerns have been addressed. Certain leases require the Commission's and the Federal Highway Administration's (FHWA's) approvals.

¹A lessee is the person to whom a lease is made and is responsible for adhering to the terms and conditions of the agreement. A lessee is also known as a tenant. A subtenant is one who leases all or part of the rental property from the lessee for a term less than that held by the lessee.

Overview of the November 2023 fire, which occurred underneath I-10 at the Lawrence Airspace.

In the early morning hours of November 11, 2023, a massive fire broke out at the Lawrence Airspace under I-10. The fire shut down a stretch of I-10, which is considered one of the most congested interstates in Southern California, with an estimated 300,000 vehicles driving on it every day. The fire burned for approximately three hours before it was contained. The fire was first reported as a 200-square-foot storage yard fire, but it quickly spread over what authorities described as the equivalent of six football fields and ripped through numerous wooden pallets, trailers, and vehicles stored in the leased site. Figure 1, below, shows firefighters attempting to control the fire.

Caltrans started work immediately to clean up the area and repair approximately 100 columns damaged by the fire. Caltrans crews, along with two contractors, started working 24 hours a day to clear leftover debris from the repair site and shore up the support pillars. Crews safely removed approximately 264,000 cubic feet of hazardous material and debris, along with more than two dozen burned vehicles (refer to Figure 2, on the following page, for two images of the aftermath). It was originally estimated that the I-10 would be closed for three to five weeks. However, Caltrans reopened the I-10 on November 19, 2023, eight days after the fire started. Although repairs are expected to continue for months, some or all lanes are closed at night for continued repairs.

Figure 1. The image shows firefighters attempting to control the fire underneath the I-10 freeway structure.



Source: Still image taken from video footage from ©RMG News 2023.

Figure 2. Images of the property after the fire.



Source: Images provided by Caltrans, dated November 11 and 13, 2023, respectively.

Overview of Caltrans’ inspection and oversight process of airspace properties.

Each district airspace office is responsible for the security and maintenance of leased airspace sites in their area. Caltrans’ right-of-way agents (agents) are responsible for regularly inspecting sites to ensure lessees are maintaining sites according to the terms of the lease. The agents are required to inspect developed leased sites quarterly and nondeveloped sites annually. Caltrans’ Right of Way Manual also states that lessees are considered in default if they have violated any of the lease provisions, and Caltrans has given them proper notice and an opportunity to correct the problem. Generally speaking, a default is an omission or failure by either party to meet a provision of the lease. Typical defaults include:

- Delinquent account
- Insurance certificate not current
- Failure to maintain site to current standards
- Current use not authorized
- Subleasing the site without proper approvals

Caltrans’ Right of Way Manual recommends that its agents notify lessees in writing, via certified mail, when they have determined that lessees have violated their lease agreements. The notification should include the type of violation the agents found, the remedial actions that must be taken, and the number of days to take the necessary actions, typically ranging between three and 30 days.

During an inspection, if an agent discovers that a condition of the property violates a term of the lease and that condition is curable (or correctable), the manual recommends the agent give the lessee a 30-day notice to correct the problem. If the condition poses a more serious public safety concern, such as the presence of flammable materials, the agent can opt

to give the lessee a three-day notice to correct the deficiency, instead of a 30-day notice. If the condition is not corrected within the time afforded in the notice, the agent must declare the lessee in default and then issue the lessee a three-day notice to correct the condition or vacate the property. If the lessee has not corrected the condition or vacated the property following the three days, Caltrans can, in consultation with its legal team, begin eviction proceedings through an unlawful detainer action. If the condition is incurable (or uncorrectable), the agent should issue the lessee a three-day notice to vacate the property. If the lessee fails to vacate after the three days, Caltrans can proceed with an unlawful detainer action.

Furthermore, if the violation is because the lessee failed to pay rent, the manual recommends the agent send the lessee a written notice that they are in default and that they must pay their past due amount by a certain time frame. If the lessee does not pay after the expiration of the time frame, the agent should send the lessee a 3-day Notice to Pay Rent or Quit letter. If the lessee has not paid after the three days, Caltrans can begin eviction proceedings. Caltrans may also seek to recover up to one year of unpaid rent using an unlawful detainer action. If appropriate, Caltrans can consider other actions, such as a breach of contract lawsuit, if it determines that it should recover damages (such as unpaid rent) for a period of up to four years.

Overview of Caltrans' recent review of the airspace program.

Following the fire, Governor Newsom directed Caltrans to conduct a top-to-bottom review of the airspace program. In response, Caltrans, through the California State Transportation Agency (CalSTA), published the results of its initial review on November 22, 2023. In this review, Caltrans examined the inventory of its airspaces to identify locations, potential concerns, proximity to sensitive infrastructure, tenancy status, site use types, and inspection status. At the time of its assessment, Caltrans reported that it had 601 active airspace leases. Of those, Caltrans identified 38 sites, or 6 percent of the total, that had some type of risk that warranted further inspection. However, it stated that only a limited number of those 38 sites presented a specific fire or safety risk.

On February 6, 2024, Caltrans and CalSTA provided a follow-up to its review. Of the 38 sites that it previously identified as presenting a risk, Caltrans reported that it inspected all but one of them. For each site that it had identified problems, Caltrans reported that it has taken some type of action, including communicating with the tenants to address the safety risks, serving notifications, and initiating legal action. The follow-up report provided a number of recommendations in the areas of lessee vetting, lease terms, subleasing, inventory, inspection cadence, and enforcement actions. We plan to review these recommendations and assess their potential impact on the program as part of our future audit work.

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Audit Results

Finding 1. Caltrans Conducted Only a Few of Its Required Inspections of the Lawrence Airspace; of Those It Did Conduct, It Failed to Address a Number of Serious Safety Conditions That It Had Identified

Caltrans' Right of Way Manual outlines the responsibility for inspections of leased airspace sites. Inspection of all nondeveloped airspace sites, such as the one subject to this audit, located at and around 14th and Lawrence streets, in Los Angeles, California, is required annually.² Among other responsibilities, the Division of Right of Way in each district is required to perform these inspections and record all of its oversight activity in diary entries, such as when its staff conduct site visits, send letters and notifications to lessees, and take pictures of the sites. The purpose of providing inspections is to ensure lessees are maintaining sites in compliance with the terms and conditions of their lease agreements and to ensure protection of the airspace property as well as to enhance public safety.

Caltrans' Right of Way Manual also sets forth its process for holding lessees accountable if they do not comply with the terms and conditions of their lease agreement. Generally speaking, when agents conduct inspections and find adverse conditions, the manual suggests they provide a written letter (or notice) to the lessee describing the identified conditions. The letter should direct them to cure the adverse conditions within a certain period of time. Depending on the severity of the condition, that time frame can range between three and 30 days. If the problem has not been cured within that time frame, the manual suggests the agent provide another notice to the lessee stating that they are in default and must either cure the condition or vacate the property, typically within three days from the date of the notice of default. If the lessee has not cured the condition or vacated the property after being served this latter type of notice, the manual recommends Caltrans pursue appropriate legal remedies, such as filing lawsuits for breach of contract (to terminate the contract and to recover any applicable monetary damages) or for unlawful detainer (to evict the tenant), or both.

We found that Caltrans did not conduct its required inspections annually or fully document the inspections it did conduct. More importantly, however, we found that Caltrans failed to follow through after it had identified numerous safety conditions on the property. Additionally, Caltrans did not seem to react to the potential danger following two similar, under-bridge fires that occurred in Atlanta, Georgia, and in a Caltrans' airspace in Los Angeles, California. These two previous fires should have heightened its awareness of potentially dangerous storage conditions involving airspace properties and, in turn, increased its scrutiny over them. Ultimately, we believe Caltrans could have done more to protect the public from the threat of the November 2023 fire.

²The annual requirement to conduct inspections of airspace properties has been in place since at least 2007, covering the entirety of our audit period.

Infrequent inspections and sparse inspection-related recordkeeping elevated the potential risks to public safety.

The Lawrence Airspace lease was executed on June 18, 2008, covering an initial five-year lease period of September 1, 2008, to August 31, 2013. Caltrans extended the lease for another three years, which ended August 31, 2016, and finally carried it over for another seven years on a month-to-month basis, for a total of 15 full rental years. Caltrans required an inspection on this property at least once every year; however, it failed to do so in 10 of the 15 full years of the rental period.

Table 1. Caltrans did not conduct annual inspections throughout most of the rental period.

Inspections Conducted by Caltrans, Organized by Rental Year													
Rental Year (RY)*	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Annual Inspection?
2008-09 (RY 1)	--	--	--	--	--	--	--	--	--	--	--	--	No
2009-10 (RY 2)	--	--	--	--	--	--	--	--	--	--	--	--	No
2010-11 (RY 3)	--	--	--	--	--	--	--	--	--	--	--	--	No
2011-12 (RY 4)	--	--	--	--	--	--	--	--	--	--	--	--	No
2012-13 (RY 5)	--	--	--	--	--	--	--	--	--	--	--	--	No
2013-14 (RY 6)	--	🔍	--	🔍	--	--	--	--	--	--	--	--	Yes
2014-15 (RY 7)	--	--	--	--	--	--	--	🔍	🔍	--	🔍	--	Yes
2015-16 (RY 8)	--	--	--	--	--	--	--	--	--	--	--	--	No
2016-17 (RY 9)	--	--	--	--	--	--	🔥	--	--	--	--	--	No
2017-18 (RY 10)	--	--	--	--	--	--	--	--	--	--	--	--	No
2018-19 (RY 11)	--	--	--	--	--	--	--	--	--	--	--	--	No
2019-20 (RY 12)	--	--	--	--	--	🔍	--	--	--	--	--	🔍🔍	Yes
2020-21 (RY 13)	--	--	--	--	--	--	--	--	--	--	--	🔍	Yes
2021-22 (RY 14)	🔍	--	--	--	--	--	--	🔥	--	--	--	🔍🔍	Yes
2022-23 (RY 15)	--	--	--	--	--	--	--	--	--	--	--	--	No
2023-24 (RY 16) ⁺	--	🔍	🔥🔥	■	■	■	■	■	■	■	■	■	n/a
Total number of rental years Caltrans met annual inspection requirement													5
Total number of rental years Caltrans did not meet annual inspection requirement													10

 Inspection
  Fire in Los Angeles, California (April 2022)

 Fire in Atlanta, Georgia (March 2017)
  Fire at Lawrence Airspace (November 2023)

Source: Analysis by the Independent Office of Audits and Investigations of Caltrans' inspections records.

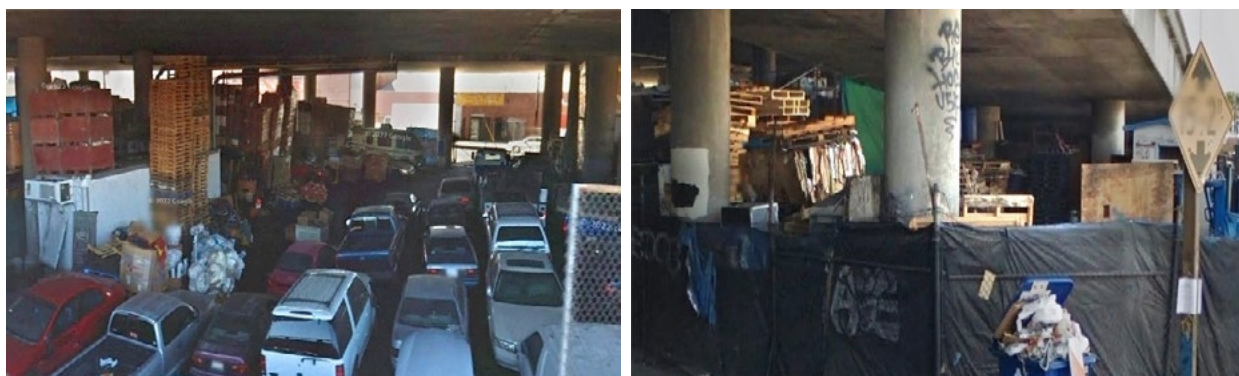
*Rental year coincides with the lease period, beginning September 1 thru August 31.
⁺ Due to the November fire, we did not consider Rental Year 16 as a full year for compliance purposes.

In fact, Caltrans failed to conduct any inspection activity until the sixth year of the lease, and from there, it conducted inspections seemingly haphazardly. Furthermore, it did not always prepare reports following inspections; we only found accompanying inspection reports in 2020 and 2022. More importantly, even when it did conduct inspections and found serious safety conditions, Caltrans failed to follow through on them, which perpetuated the potential risks to public safety.

From the beginning of the lease, Caltrans exhibited minimal oversight over the property by regularly skipping its required annual inspections and failing to fully document its inspection-related activity. This lack of oversight continued throughout most of the 15-year rental period. As shown in Table 1, on the previous page, it took Caltrans more than five years to enter its first diary entry in October 2013, indicating that it had conducted any type of inspection-related activity. Its next inspection-related activity was noted two months later in December 2013. Caltrans then waited 16 months to note—in relatively quick succession—inspection-related activity on three more occasions in April 2015, May 2015, and July 2015. The diary notations in all these instances, however, merely stated “no violations.” In addition, the agents who performed the inspections did not include any photographs or any other type of accompanying inspection reports in the respective files. Unfortunately, the lack of any meaningful description of the condition of the property during these inspections or supporting documents limited the usefulness of whatever inspection activity actually took place.

Due to the significant lapse in time between the beginning of the lease and these inspection activities, we performed our own search for photographic images of the conditions at the site at various points in time. The images we found by using Google Street View revealed strong indications that the conditions on the property may have been out of compliance. For example, as shown on Figure 3, below, and in Appendix B, the images revealed a site overwhelmed with various items and materials—some of which appear potentially flammable—and other visible clues that could arguably have been violations of the lease. Several of the pictures reveal the existence of various business activities, wooden pallets, and signs advertising “for rent.” Importantly, the presence

Figure 3. Google images we found showing multiple stacks of wooden pallets.



Source: Map data: ©April 2015 Google, ©August 2016 Google, respectively.

of any of these conditions during an inspection should have been cause for some level of concern. If Caltrans had performed even a perfunctory level of on-site activity or inspections at these times, it seems reasonable that it would have—at a minimum—identified some of the issues that were visible in the photographic images and required the Tenant to address them.

Caltrans should have taken the under-bridge fire in Atlanta, Georgia, in March 2017, more seriously.

In March 2017, construction materials³ stored beneath an overpass in Atlanta, Georgia, were set on fire. In just over an hour, a 92-foot-long elevated span of the interstate had collapsed. This incident caused the FHWA to notify transportation departments and agencies in the United States that “this event highlights the need for concern about storing materials under bridges. FHWA encourages bridge owners to direct inspectors, during their routine inspections, to be mindful of materials stored under bridges and, if concerns exist, to communicate those appropriately to the bridge inspection program manager.” In January 2018, Caltrans put in place a “Structure Policy Directive,” which, among other things, prohibited flammable materials from being stored under bridges without the prior approval of the State Bridge Maintenance Engineer. However, flammable materials were already prohibited according to the lease at the Lawrence Airspace. Moreover, Caltrans stated in its new policy that it “recognized that although a low probability, an event similar to the Georgia I-85 failure could occur in California and took the opportunity to review its under bridge material storage policies.” However, this fire should have served as a more significant warning to Caltrans about flammable materials under bridges. In hindsight, the risk turned out much greater than Caltrans had previously predicted.

Despite this warning and the new policy directive, there were no other inspection-related activities at the Lawrence Airspace until February 2020, which was approximately five years from its last inspection and more than three years from the date of the fire in Atlanta. The agent, who inspected the Lawrence Airspace on this date, noted in a diary entry that it contained wooden pallets and had subtenants; he took two photographs (as shown in Figure 4, on the following page) and included them in the file. One photograph, in particular, clearly revealed the presence of countless stacks of wooden pallets. However, in conflict with its guidelines, Caltrans did not provide the Tenant with a letter or notice informing him of the potentially dangerous storage practices nor of the presence of subtenants. This lack of action was a missed opportunity to potentially make the property safer.

Six months later, Caltrans documented two additional inspections of the site in August 2020. Notably, these inspections were the first with inspection reports. Caltrans conducted two different types of

³According to the National Transportation Safety Board, the construction materials consisted of 76 reels of high-density polyethylene conduit and nine racks of fiberglass conduit.

Figure 4. Two photographs taken by a Caltrans agent while performing an inspection; the photograph on the right shows multiple stacks of wooden pallets.



Source: Caltrans' spot inspection, dated February 2020.

inspections at this time: a Storm Water Inspection and a Developmental Inspection. For the latter inspection, we were told that the agent used the wrong inspection form; he should have documented the inspection using a Parking and Open Storage form. By using the wrong form, the agent limited the inspection's usefulness since he was "checking" for compliance using an unrelated development site tool, as opposed to a parking and open storage site tool. Surprisingly, despite having found subtenants and wooden pallets six months earlier, both inspections resulted in no findings necessitating corrective action. However, at least one photograph included with the reports revealed the presence of wooden pallets, whereas others revealed stacks of boxes, stacked plywood, and vehicles and related parts.

The next inspection-related activity purportedly occurred approximately one year later, around August 2021. We discovered this activity only because it was referenced in a letter (not from a diary entry or a report), dated August 17, 2021, informing the Tenant that, as a result of a spot inspection,⁴ Caltrans found flammable liquids being stored in close proximity to flammable materials and the materials were not stored in storage cabinets that had been approved by the State Fire Marshal. The letter instructed the Tenant to correct what it called "major deficiencies" no later than September 1, 2021. Caltrans informed the Tenant that if he failed to correct the deficiencies, it would engage the assistance of a number of state agencies to deal with the hazardous materials. The letter also informed the Tenant that the actions of other state agencies could result in the immediate closure of the Tenant's operations on the state-owned property.

⁴There is no inspection activity documented, such as a diary entry, in any of Caltrans' systems or files. Therefore, we do not know on what date this inspection actually took place.

Caltrans followed up with another spot inspection on September 14, 2021, and found the conditions on the property had not changed. According to notes in the file, the agent verbally gave the Tenant's foreman yet another deadline of October 31, 2021, to remove the flammable materials from the area. However, after this deadline expired, Caltrans once again did not appear to follow its guidelines: It had no record of whether it had followed up with the Tenant in writing nor did it have any documentation indicating that the Tenant had removed the flammable materials from the site. The lack of follow-through on these potentially dangerous conditions represented another missed opportunity to make the property safer. Instead, Caltrans demonstrated that its demands had no real consequences.

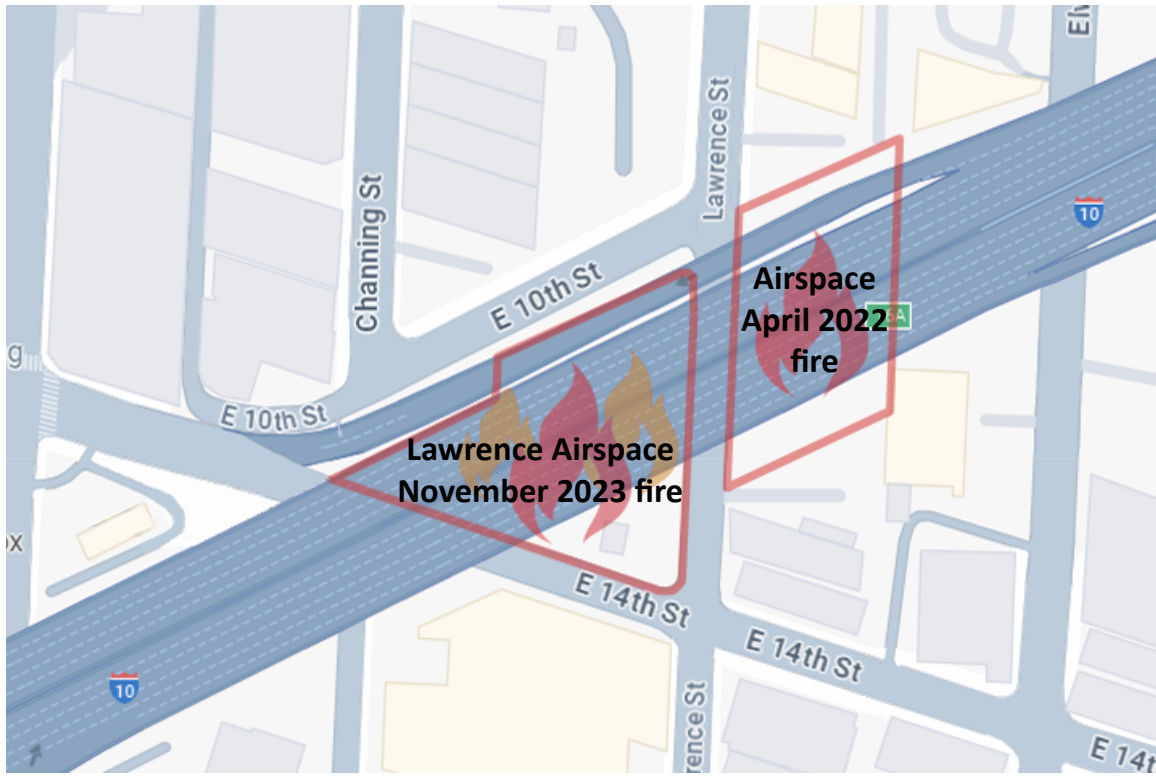
In early 2022, internal communications revealed growing tension among Caltrans' staff and management about trying to evict the Tenant; staff expressed frustration in various emails about the lack of support they were receiving from their district management and headquarters. Generally, staff complained that the process for getting approval from management to proceed with eviction was taking too long. Staff believed, in part, that Caltrans had more interest in protecting the subtenants from displacement than protecting the public. One former agent, whom we interviewed during our audit, told us that he and his supervisor struggled to get their management's approval to take legal action against the Tenant. According to the former agent, he warned his management about the wooden pallets and that "their people-first approach was putting the motoring public in danger." In January 2022, district staff requested management approval for an unlawful detainer (or eviction), but this particular request was never given to the district director to sign.⁵

The under-bridge fire at another airspace site, in April 2022, just adjacent to the Lawrence Airspace, was yet another warning sign of potential danger; Caltrans did not react to the fire as urgently as it should have.

On April 24, 2022, a large fire broke out at a Caltrans' airspace site next to the Lawrence Airspace (refer to Figure 5, on the following page). The fire temporarily shut down the I-10 freeway while more than 80 firefighters quelled the blaze. Based on the investigation conducted by fire inspectors from the Office of the State Fire Marshal afterward, the fire burned wooden pallets and other flammable materials that had been stored under the freeway. It also affected a small portion of the freeway structure within the burned site near the Lawrence Airspace, causing some damage to the concrete supports. Luckily, the materials stored at the Lawrence Airspace did not also catch fire; however, this incident represented yet another major warning of the potential danger of storing flammable materials at these types of sites. This fire, just as with the previous fire in Atlanta, Georgia, in 2017, did not seem to trigger a notable response from Caltrans nor did it elicit any sign of urgency to prevent another fire from happening.

⁵Caltrans ultimately filed an unlawful detainer lawsuit, seeking to evict the Tenant for failing to pay rent, in September 2023. We discuss this in more detail in Finding 2.

Figure 5. Google Maps image showing the close proximity of the Lawrence Airspace to the airspace property that had a large fire on April 24, 2022.



Source: Map data ©2024 Google.

For instance, instead of immediately inspecting the Lawrence Airspace following the April 2022 fire, it took Caltrans nearly four months—until August 2022—to conduct its next set of inspection-related activities. Toward that end, Caltrans, along with the assistance of an inspector from the Office of the State Fire Marshal, conducted three different types of inspections: a Storm Water Inspection, a Parking and Open Storage Inspection, and a Priority Inspection. These inspections, like the ones conducted in August and September in 2021, found numerous and potentially significant violations, including the presence of dogs, solvents, oils, fuels, multiple high piles of wooden pallets, and other unspecified items prohibited by the lease. In the Storm Water Inspection Report, the agent identified violations that would negatively affect stormwater runoff, as well as generically commenting “lease violations.” The report noted that there were hazardous materials being improperly stored and that “Best Management Practices” were not being followed. Although the agent recommended no corrective actions in his report, he noted in the comments field, “Evict tenant and start over.” The agent’s supervisor also signed the report. Furthermore, in the Parking and Open Storage Inspection Report, the agent indicated that eight of the nine areas he reviewed were unsatisfactory, pertaining to areas such as litter, fencing, and graffiti (to name a few examples).

The most serious concerns, however, were raised in the third inspection, which was conducted by the Office of the State Fire Marshal in its "Priority Inspection Report." Notably, the State Fire Marshal's inspector concluded that the inspection "failed" and cited, among other items, numerous violations of the State's Fire Code, including storage of wooden pallets under a freeway overpass, improper storage of liquid propane containers, storage of waste tires under elevated roadways, high-piled stock greater than 12 feet, drums of used waste oil, and used oil filters stored on-site.

These three inspections resulted in Caltrans sending a "Notice to Cure Breach of Lease Agreement" to the Tenant on September 16, 2022. The letter directed the Tenant to correct the violations identified in the inspections within 30 days and threatened that if the conditions were not cured within that time frame, Caltrans would exercise all legal remedies available. Inexplicably, after the 30-day time frame expired, Caltrans once again did not conduct any immediate follow-up activity, nor did it document whether the conditions on the property had been adequately resolved, as there were no corresponding records or notices in its files or in diary entries. In addition, Caltrans did not pursue any legal remedies at the time, either. This represented yet another missed opportunity for Caltrans to address the serious safety concerns that it had identified. Had Caltrans followed through, it might have had a chance to break another link in the chain of causation that resulted in the fire the following year. Caltrans instead demonstrated that its threat of exercising legal remedies carried little weight.

About one year later, on September 13, 2023, Caltrans filed an unlawful detainer with the Los Angeles Superior Court seeking to evict the Tenant—and all subtenants—from the property. In this legal filing, Caltrans claimed the Tenant had not paid the base rent required by the terms and conditions of the lease.⁶ However, instead of addressing the aforementioned safety-related conditions that Caltrans' claimed were lease violations, the lawsuit focused solely on unpaid rent. As of this report date, the matter remains pending in court.

Caltrans missed another opportunity to protect the freeway structure and the motoring public just before the November 2023 fire.

Even though Caltrans filed a lawsuit to evict the Tenant in September 2023, it had one more chance to intercede in October 2023, the month before the fire, during its last documented inspection-related activity on the site. In this instance, the agent merely noted in a diary entry that he had performed a "spot inspection" and found "numerous lease violations." The agent took several pictures that, in hindsight, served as an ominous reminder of how dangerous the conditions really were on the property at that time.

⁶We focus on the issue of unpaid rent in Finding 2 of this report.

We show one of those pictures in Figure 6, below. In this particular picture, the presence of wooden materials, stacked nearly to the ceiling of the freeway structure, should have been taken more seriously.

However, if it were not for these pictures, it would have been impossible to determine the severity of the aforementioned “lease violations” or any other problems the agent found, since he did not include any more written descriptions of his inspection in the diary entry. Yet, despite the presence of potentially dangerous and flammable materials, Caltrans once again appeared to have ignored the conditions, since it had no record of having provided a notice to the Tenant or having followed up on the agent’s noted lease violations.

Caltrans may have had some options to remove the potentially flammable materials it found on the property.

The Legislature provided Caltrans with the discretion to lease airspaces on the condition it ensures adequate protection and safety of the highway facilities. For airspaces it chooses to lease, Caltrans finds itself in a rather unique position: as both a landlord and a public entity. As a landlord, Caltrans has an obligation to follow various landlord-tenant laws, but unlike other landlords, Caltrans—as a public entity—also has an obligation to protect the transportation system and the traveling public. Caltrans established procedures in its Right of Way Manual, which guides staff on how to manage airspaces and what steps they must take to protect its properties while administering the program.

Figure 6. Photograph taken by a Caltrans agent while performing an inspection, showing multiple stacks of wooden materials partially concealed behind a large tarp.



Source: Caltrans’ spot inspection, dated October 5, 2023.

Similar to any landlord-tenant relationship, Caltrans enters into lease agreements with lessees, setting forth the rights of each party within the context of each type of airspace. With respect to the Lawrence Airspace, one of the terms and conditions of the lease agreement provided some indications when Caltrans could enter the property, and even take possession of it:

Landlord further reserves the right of entry for the purpose of inspecting the premises, or the doing of any and all acts necessary or proper on said premises in connection with the protection, maintenance, reconstruction, and operation of the freeway structures and its appurtenances; provided, further, that [Caltrans] reserves the further right, at its discretion, to immediate possession of the [premises] in case of any national or other emergency, or for the purpose of preventing sabotage, and for the protection of said freeway structures...⁷

On its face, the language of this article appears to allow Caltrans some latitude in determining when it can enter the leased property “for the purpose of inspecting” or the “doing of any and all acts necessary... in connection with the protection, maintenance, reconstruction, and operation of the freeway structures...” The language also provides Caltrans with an avenue for taking possession of the property “at its discretion...in case of any national or other emergency...”⁸

We asked Caltrans about this lease clause, including whether it believes it has the right to enter a leased property and remove a lease-occupant’s personal property without their permission, if the purpose is to protect the freeway structure from imminent danger. We interpreted from Caltrans’ response that it does have the right if there is an emergency, as defined under the Public Contract Code, section 1102, meaning a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, or section 10122 (a), meaning a failure or threat of failure of any bridge or other highway structure. In simpler terms, Caltrans stated that “if there is an emergency or apparent danger, Caltrans can go into the property to take immediate possession of the property and remove personal property, if necessary...”

However, Caltrans qualified its response by saying that its right-of-way staff “are not experts in ascertaining what is or is not an emergency in terms of the storage or use of hazardous materials as defined in [the lease].” Caltrans stated that it “relies on the tenant to remove those materials, or, if the tenant refuses to remove those materials, Caltrans

⁷Lease Agreement, Article 11. Right of Entry.

⁸As a result of the November 2023 fire, the Governor declared a state of emergency and Caltrans did in fact take physical possession of the property to effectuate the necessary cleanup and repair efforts.

will utilize experts.” For instance, it told us that its agents “must rely on the expertise of the State Fire Marshal, the local health and safety departments and other experts to determine whether such an emergency situation exists.” Caltrans continued that “once [it] gets that expert information, it can seek a temporary restraining order directing the removal or remediation of the defective conditions with 24 hours-notice but it must make a showing of imminent harm.”

Yet, we believe Caltrans had several opportunities over the years to seek outside expertise following its own identification of serious lease violations as well as from those identified by the Office of the State Fire Marshal, in August 2022. As we stated earlier, Caltrans had been put on notice by the FHWA of the danger of storing potentially flammable materials underneath bridges as well as by the adjacent fire that occurred only four months prior to the Office of the State Fire Marshal’s inspection in August 2022. Because of these events, we believe Caltrans should have been well aware of the apparent danger of flammable materials, especially wooden pallets, and arguably had multiple opportunities to consider declaring an emergency to protect the freeway structure.

Caltrans also reiterated its role under the lease, absent an emergency, when any of its inspections had identified “non-emergency or non-apparent dangerous conditions.” Specifically, Caltrans pointed out some of the steps in its Right of Way Manual, stating that it “was required to give the tenant 30 days’ written notice to correct the defective condition.” Caltrans went on to state that “if the tenant failed to timely correct the defective condition or was unwilling to do so, Caltrans would have to seek and obtain a court order to either compel the tenant to correct the defective condition and/or go onto the property to make the correction itself.” Caltrans stated that it “would have to bring a breach of contract/ covenant action through a regular civil action or unlawful detainer action to obtain possession in order to take those actions.” However, as we described earlier in this finding, Caltrans did not adequately follow these steps; it also did not seek a court order at any point in time to compel the Tenant to correct any of the deficiencies it found, either.

Moreover, Caltrans elaborated—somewhat illogically—that although it recognized that it could have sought a temporary restraining order to have the personal property removed, it did not want the materials replaced with new hazardous materials. Caltrans continued “For example, there were wooden pallets placed near a highway structure in clear violation of the Lease; however, once they were removed, they could be replaced with other wooden pallets.” That reasoning, however, makes very little sense: by this logic, there would be no point in seeking compliance with any perceived lease violation if Caltrans believed the noncomplying party would simply repeat the violation. It is this type of reasoning, however, that may have put Caltrans at its greatest risk. Arguably, had Caltrans promptly sought and subsequently succeeded in obtaining a temporary restraining order, the outcome on November 11, 2023, might have been different.

Among our recommendations in this area, we believe Caltrans should consider developing a comprehensive lease-management training program and process for its staff. This program should focus on a number of essential topics, many of which are already contained within its existing Right of Way Manual, including but not limited to, inspection frequency and documentation protocols, verbal and written communication techniques, and enforcement actions. Perhaps most pressing, given its response to our questions, is the need for Caltrans to develop in-house expertise on identifying when conditions on a property rise to the level of a potential emergency or threat of one and how to communicate these conditions up the chain of command for appropriate resolution. Additionally, Caltrans should also consider how and when to consult with outside experts, as needed, and develop guidelines on how to mitigate any dangerous conditions as quickly as possible. Finally, Caltrans should follow its notification protocols and take legal action as soon as it realizes there is no safe alternative.

Recommendations

To address the concerns raised in our audit, we recommend Caltrans do the following:

- 1.1 Develop a comprehensive training program for all staff involved with the airspace program in lease management practices. At a minimum, the training program should focus on the following topics:
 - a. How to identify potential lease violations through inspections, including what types of materials are and are not allowed to be stored at the property under the terms of a lease.
 - b. How to communicate with a lessee/tenant, including the circumstances for providing violation notices and the number of days the lessee/tenant should have to cure said violation.
 - c. How to elevate unresolved violations to upper management and/or to their legal team to determine when to pursue legal actions.
- 1.2 Streamline the approval process for determining when to file legal actions so the department can act nimbler when presented with potentially serious safety concerns.
- 1.3 Ensure inspections are actually conducted on an appropriate cycle, based on the type of lease and/or level of risk associated with the property.
- 1.4 Hold lessees/tenants accountable when they are found to be in violation of the lease. When warranted, this includes taking any and all appropriate legal actions in a timely manner.

- 1.5 For potentially serious safety concerns that may pose a threat to a freeway structure or to the public, Caltrans should develop a process to obtain expert advice promptly and decide under what circumstances it, or another agency, should declare an emergency in order to take possession of a leased property.

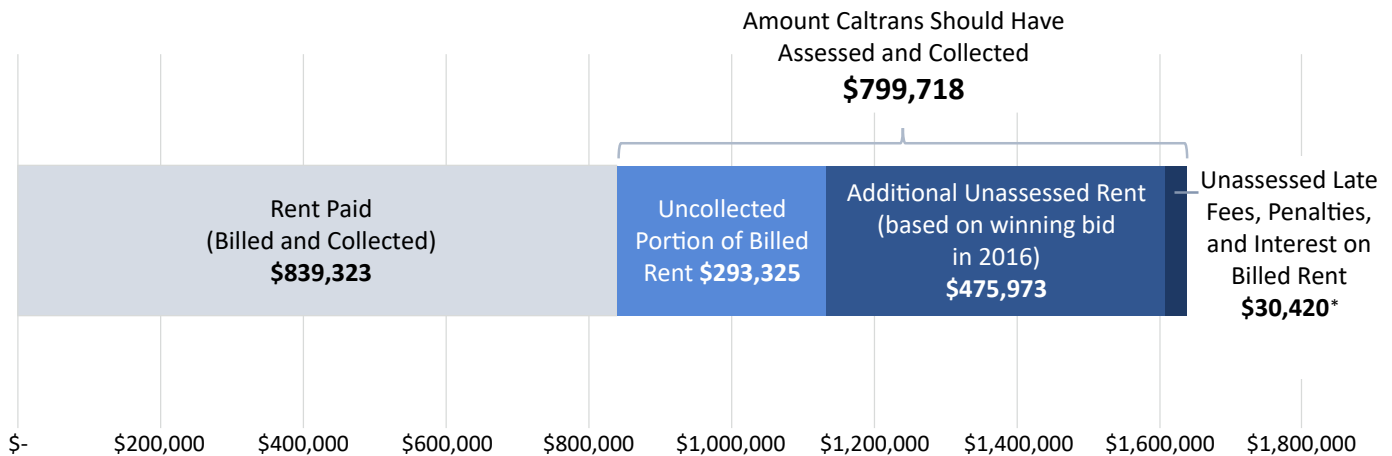
Finding 2. Caltrans Failed to Assess and/or Collect Nearly \$800,000 in Rent Payments and Related Charges

State law allows Caltrans to lease airspace properties, which are areas located under freeways and bridges throughout the State. The rent money Caltrans receives from these leased properties is supposed to return to the State Highway Account, where the money can be invested into the State’s transportation system. However, with respect to the Lawrence Airspace, we found that Caltrans failed to properly assess and collect approximately \$800,000 in potential rent payments, including appropriate late fees, penalties, and interest (refer to Figure 7, below). Not only was this amount of money significant, but some of the problems we found may have even been considered a violation of law, which requires competitive bidding and a violation of California’s Constitution, which prohibits public entities from gifting public funds to private individuals, such as the Tenant.

Caltrans failed to execute a new written lease in 2016 after it auctioned off the Lawrence Airspace for a significantly higher monthly rate; had it done so, we estimate that it would have been entitled to an additional \$475,973 in rent payments.

Caltrans’ lease with the Lawrence Airspace was originally established for a period of five years, expiring in August 2013. The lease agreement was then extended for an additional three years, expiring in August 2016. From that point, the lease converted to a month-to-month rental agreement, consistent with the terms and conditions of the original lease.

Figure 7. Caltrans failed to assess and/or collect nearly \$800,000 in additional rent payments and related charges.



Source: Analysis by the Independent Office of Audits and Investigations of Caltrans’ accounting records and lease agreement.

* We excluded from our calculation the time frame between March 2020 and January 2023, when the City of Los Angeles restricted landlords from charging their tenants late fees, penalties, and interest.

However, we found that Caltrans held a public auction on Thursday, October 6, 2016, at 11:00 A.M., where this property, along with other airspace properties, went up for bid. According to Caltrans' records, the opening bid for the Lawrence Airspace began at \$7,700 per month and up to three individuals were involved with the bidding; the winning bid closed at \$11,000 per month. According to Caltrans' records, the winning bidder, who was labeled "Paddle #6," happened to be the existing Tenant.

However, instead of executing a new written lease with the Tenant with the new monthly rate from the auction, Caltrans inexplicably continued with the month-to-month rental agreement for the next seven years, fixed at the Tenant's prior monthly rate of only \$6,518 per month. As shown in Table 2, below, we calculated the difference between these two scenarios to be \$475,973, assuming that a new written lease would have had a similar annual escalation clause of 3 percent. Caltrans' decision represented an extraordinary financial benefit to the Tenant; a decision that also unfairly harmed the other two bidders of the auction.

When we asked Caltrans for an explanation, an official from the district confirmed with us that the auction took place and stated that the district did not have a record of why a new written lease was not created to reflect the winning bid amount. The official further stated that the lack of

Table 2. Comparison of rent amounts: Actual monthly rate vs. monthly rate from the winning auction bid in 2016.

Month-To-Month Rental Agreement Period	Actual Monthly Rent	Winning Bid Amount (with 3% escalator clause)	Applicable Months	Annual Base Amount (rounded)	Annual Adjusted Amount (rounded)	Additional Uncharged Rent
November 1, 2016 to August 31, 2017*	\$ 6,518.33	\$ 11,000.00	10	\$ 65,183	\$ 110,000	\$ 44,817
September 1, 2017 to August 31, 2018	6,518.33	11,330.00	12	78,220	135,960	57,740
September 1, 2018 to August 31, 2019	6,518.33	11,669.90	12	78,220	140,039	61,819
September 1, 2019 to August 31, 2020	6,518.33	12,020.00	12	78,220	144,240	66,020
September 1, 2020 to August 31, 2021	6,518.33	12,380.60	12	78,220	148,567	70,347
September 1, 2021 to August 31, 2022	6,518.33	12,752.01	12	78,220	153,024	74,804
September 1, 2022 to August 31, 2023	6,518.33	13,134.58	12	78,220	157,615	79,395
September 1, 2023 to November 30, 2023 [†]	6,518.33	13,528.61	3	19,555	40,586	21,031
					Total	\$475,973

Source: Analysis by the Independent Office of Audits and Investigations of Caltrans' accounting records and Lease Agreement.

* We based our calculation under the assumption that a new lease, if executed following the October 2016 auction, would cover the 10-month period in the first year, ending August 31, 2017.

[†] Due to the fire, we based our calculations on the first three months of the period.

a new or amended lease was an error. Nevertheless, Caltrans' decision to proceed on a month-to-month basis without executing a new written lease may have violated California's Constitution, which prohibits state entities from gifting public funds to private individuals, such as the Tenant. Had Caltrans properly executed a new written lease and collected the additional amount of money, it would have deposited the amounts into the State Highway Account for use on other transportation projects, but the equivalent monetary benefit remained with the Tenant, instead.

Moreover, we believe this action may have also violated State law because Caltrans was required to competitively bid this property upon the expiration of the lease. For instance, the Streets and Highways Code, section 104.12 (a), states:

The department may lease to public agencies or private entities for any term not to exceed 99 years the use of areas above or below state highways...The leases shall be made in accordance with procedures to be prescribed by the commission, except that, in the case of leases with private entities, **the leases shall only be made after competitive bidding** unless the commission finds, by unanimous vote, that in certain cases competitive bidding would not be in the best interests of the state [*emphasis added*].

The lease effectively ended on August 31, 2016, and even though Caltrans placed the property up for public auction, it never executed a new written lease. Caltrans instead continued—without approval from the Commission—on a month-to-month basis, effectively ignoring the results of the auction (as well as the bids from the two other bidders). As a result, Caltrans' appears to have circumvented the competitive bidding requirements for leases to private entities.

Given that the Commission has an oversight role over Caltrans' airspace program, we asked the Commission about the duration of this month-to-month rental agreement and whether it believed Caltrans had followed the Commission's procedures. The Commission stated that "based on the Commission's knowledge of the facts and review of the relevant law and agreements, it is the Commission's position that Caltrans did not act in accordance with the Commission's Resolution G-02-14 when it extended airspace leases beyond the timeframes authorized by the Resolution. The Commission will work with Caltrans to ensure that their airspace leases comply with all legal requirements and resolutions."⁹

⁹The Commission's Resolution G-02-14, titled "Procedure for Leasing Airspace to Private Entities," was passed on June 13, 2002.

Caltrans has not yet collected \$293,325 in rent payments; it also neglected to assess or collect more than \$30,000 in late fees, penalties, and interest associated with untimely rent payments.

The lease agreement required the Tenant to pay rent to Caltrans on a monthly basis. Following the first year, the monthly amount of rent was supposed to increase by 3 percent per year. According to the lease agreement, rent payments were due by the 10th day of the month and any payments received after that day would be considered late and subject to late fees, penalties, and interest. Specifically, the lease agreement entitled Caltrans to collect late charges of 1.5 percent of the unpaid amount, plus \$100, after 10 days such amount became due. The agreement also entitled Caltrans to charge interest on any amount not paid when due at a rate of 1 percent above the discount rate of the Federal Reserve Bank of San Francisco from the due date.

When we spoke to staff in Caltrans' accounting department, they informed us that the responsibility for imposing late fees and penalties falls under each district's right-of-way division. Accounting staff also informed us that they send each district an "aging" report that identifies each tenant that has an outstanding balance of between zero and 120 days. District staff are then supposed to calculate and manually enter the respective late fees and penalties into the right-of-way system for each tenant that is past due. However, we found that this never happened for this particular airspace lease. Despite Caltrans' records showing payments being made late or not at all on 116 and 45 occasions, respectively, during the 15-year rental period, Caltrans never calculated a single late fee or penalty, nor did it apply any interest on past due amounts. Put another way, Caltrans' records show payments being made late or not at all in 161 out of a total 183 monthly rent payment periods, or in 88 percent of the time. This payment history should have generated a more significant reaction from Caltrans sooner than it did, even prior to March 2020, when Covid-19 began and, according to Caltrans' records, it stopped receiving any more payments of rent.

During the Covid-19 pandemic, the City of Los Angeles restricted landlords between March 2020 and January 2023 from charging late fees, penalties, and interest. Taking this restriction into account in our analysis, we estimate Caltrans still should have charged the Tenant more than \$30,000 in late fees, penalties, and interest. When we asked Caltrans for an explanation, it stated that this account was set up without late fees in error. From March 2020 forward (representing 45 months), Caltrans' records show that it did not receive any rent payments. In September 2020, Caltrans sent what appears to be the first letter to the Tenant, reminding him that his rent payments were overdue. The letter asked the Tenant to pay his total amount due immediately and informed him that, during the pandemic, the "State will not be evicting tenants or charging a late fee, but [the] rent payment is still due each month. [Caltrans is] offering deferred payment plans to tenants who have been financially impacted due to [the] Covid-19 pandemic." The letter concluded with an

offer to enroll the Tenant in a payment plan. Attached to the letter was a schedule of amounts due. The total amount due for this property was listed as \$45,653 (as of September 2020). According to Caltrans, it never received a response from this letter.

On March 16, 2021, Caltrans sent the Tenant a “3-Day Notice to Pay Rent or Quit.” In this letter, which indicated the past due amount was \$84,763, Caltrans stated:

YOU ARE HEREBY REQUIRED, within three (3) days after service of this notice upon you, to pay said rent or to remove from said premises and deliver up to the State of California, Department of Transportation (Department), the possession of the said premises within said three (3) days. If you fail to do so, the Department will institute legal proceedings against you to recover possession of the premises, and to seek judgement for the rent owed through the expiration date of this notice, with damages for each day of occupancy after that date plus costs and attorney’s fees.

YOU ARE FURTHER NOTIFIED that by this notice, the Department elects to and does hereby declare a forfeiture of said agreement if said rent is not paid in full within the said three (3) days.

According to Caltrans’ records, it did not receive any payments following this notice and, contrary to its demands, it did not receive possession of the property, either. However, Caltrans did not seem to immediately react by taking any additional action even though its attempts to gain compliance seemingly had no effect. Similar to the notices Caltrans provided for non-rent-related deficiencies (as we described in Finding 1), this notice also appeared to have had no immediate consequences.

Caltrans’ next formal action related to this issue occurred almost two and one-half years later, on August 24, 2023, when Caltrans provided the Tenant with another 3-Day Notice to Pay Rent or Quit. Then, in September 2023, Caltrans filed an unlawful detainer with the Los Angeles Superior Court seeking to evict the Tenant—and all subtenants—from the property. In this legal filing, Caltrans claimed the Tenant had not paid the base rent required by the terms and conditions of the lease and was seeking \$78,220 in unpaid rent. The Tenant, in response to this legal filing, denied the substantive allegations made by Caltrans. As of this report date, the matter remains pending in court.

Notwithstanding the outcome of the pending lawsuit on this matter, the amount Caltrans is currently pursuing represents only 27 percent of the total amount of the Tenant’s outstanding balance (as of November 30, 2023). According to Caltrans’ records, as of November 30, 2023, the

outstanding balance of past due rent was \$293,325 (before consideration of late fees, penalties, and interest that may have applied). Therefore, Caltrans must act soon to collect any amounts nearing four years past due, as those amounts might become uncollectible due to the statute of limitations.¹⁰

Recommendations

To address the concerns raised in our audit, we recommend Caltrans do the following:

- 2.1 Develop a comprehensive training program for all staff involved with the airspace program that focuses on the fiscal aspects of lease management. At a minimum, the training program should include the following topics:
 - a. How to charge late fees, penalties, and interest, when appropriate.
 - b. How to communicate with a lessee/tenant about delinquent balances, including the circumstances for providing notices and the number of days the lessee/tenant should have to cure said delinquency.
 - c. How to elevate unresolved delinquencies to upper management and/or to their legal team to determine when to pursue legal actions.
 - d. How to auction properties and ensure the result is properly documented and incorporated into a new lease agreement.
- 2.2 Review all month-to-month rental agreements and determine whether they are appropriate under its authority and the law. This should include working with the California Transportation Commission regarding the usage and duration of month-to-month rental agreements.
- 2.3 Follow competitive bidding practices at all times, unless expressly exempted under the law.

¹⁰ With respect to Covid-19, the California Judicial Council amended its “Emergency Rule 9,” related to tolling of the statute of limitations for civil causes of action. In this amendment, the Judicial Council stated: “Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.”

Finding 3. Caltrans Seemingly Ignored Other Significant Types of Potential Lease Violations Over the Years

Caltrans neglected to follow through on several other possible and potentially serious lease violations. From the beginning of the lease, Caltrans seemed to be aware that the Tenant may have sublet portions of the property to others and operated various types of businesses that, without prior permission from Caltrans and the FHWA, were prohibited by the lease agreement. Furthermore, Caltrans failed to ensure that the Tenant had proof of adequate liability insurance, as required under the terms and conditions of the lease. Caltrans could have addressed these potential violations with the Tenant soon after the lease began or at many other times throughout the 15-year duration of the lease, but its lax oversight practices essentially allowed these purported conditions to persist for many years without any consequences.

Caltrans appeared to have allowed various subletters and potentially unauthorized businesses on the property, in conflict with the lease agreement.

Under the terms of the lease agreement, the Tenant was not allowed to sublet any portion of the airspace property without first obtaining permission from Caltrans and the FHWA. Specifically, the lease states:

Tenant shall not voluntarily assign or transfer its interest in this Lease or in the premises, or sublet all or any part of the premises, or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the premises without first obtaining [Caltrans'] written consent and the concurrence of the Federal Highway Administration...

...Tenant's failure to obtain Landlord's required written approval of any assignment, transfer, or sublease shall render such assignment, transfer, sublease, or encumbrance void. Occupancy of the leased premises by a prospective transferee, sublessee or assignee before approval of the transfer, sublease or assignment by Landlord shall constitute a breach of this Lease. (Article 16.1 Voluntary Assignments, Subleases)

According to Caltrans, however, the Tenant appeared to have rented out portions of the airspace property to several other persons or businesses and there is no record or evidence of the Tenant having first obtained permission from either Caltrans or, in turn, the FHWA. As previously discussed, the unlawful detainer filed by Caltrans in September 2023, lists several subtenants as defendants in the case. It even refers to them in the filing as "unauthorized subtenants." Yet, despite having no record of prior permission, Caltrans did not take any action at any point in time

to address their authorization status. It is unknown when Caltrans first learned of the Tenant's alleged subleasing activities; however, when we spoke to the district's right-of-way manager, she told us that she believed the Tenant began subletting at around the beginning of the lease, in 2008. The manager's statement can be partially corroborated with photos, where in February 2009 (six months after the effective start of the lease), the image in Figure 8, on the following page, shows a "For Rent" sign hanging on the property. Other Google Street View images we found revealed similar patterns of advertising and potential business activity throughout the years (refer to Appendix B).

Despite having knowledge of their presence, Caltrans denies ever having approved any of the subtenants and we found no record contradicting this position. However, we also did not find any record of Caltrans seeking concurrence from the FHWA, as it should have done once it learned of the alleged subtenants or of the potential business activities being conducted on-site. In addition, Caltrans had no other record or mention of the use of subtenants or these activities until February 2020 (approximately 12 years into the rental period), when one of its agents recorded his observations in various diary entries, presumably following some type of on-site inspection. Specifically, in a series of entries on the same date, the Caltrans agent wrote:

"this site has multiple subtenants from washing machine appliances, car and truck parking, and wooden pallets storage."

"[Agent], posted a New PDF with a description [sic] of: 'wooden pallets storage' on 2/18/2020 for LAX010-0012-05."

"[Agent], posted a new New [sic] Image with a description [sic] of: 'car/equipment storage' on 2/18/2020 for LAX010-0012-05."

"This site has multiple subtenants that has car and truck parking to wooden pallets storage."

Figure 8. Google image we found showing advertisements of a recycling business and potential subletting.



Source: Map data: © February 2009 Google.

Moreover, there is some evidence suggesting the Tenant and at least some of the subtenants were operating various forms of business, which if true, would have been in violation of the lease agreement. The lease was expressly for parking of operational vehicles and for open storage; it was not for conducting various forms of business. In February 2009, the City of Los Angeles notified Caltrans that someone was operating a recycling center on the property without a permit, which if true, would have been in conflict with the lease agreement. Diary entries from Caltrans agents and photographic images over time also revealed the potential of other types of business operations at the property, including wooden pallet storage, washing machine repair, towing services, truck repair, distribution services, and stormwater services.

Although it appears Caltrans may have been aware of these purported business activities from the beginning of the lease, it seemingly ignored them throughout most of the 15-year rental period. We found no record of Caltrans communicating to the Tenant in writing or providing a notice to cure any of these conditions. This inaction was not only in conflict with its own guidelines, but also with its commitment to public safety.

Caltrans failed to require adequate proof of liability insurance coverage, which unnecessarily elevated the State's exposure to potential liability claims had someone been injured on the property.

Under the terms of the lease agreement, the Tenant was required to procure and keep in force liability insurance of not less than \$5 million for bodily injury and property damage, combined. Toward that end, the Tenant was required to furnish Caltrans with a Certificate of Insurance

of this amount or face the possibility of having the lease terminated at Caltrans' discretion. In pertinent part, Article 9 of the lease states that:

...if Tenant fails to procure or maintain the insurance required by this Article, Tenant shall cease and desist from operating any business on the premises and the improvements erected thereon an [sic] shall prevent members of the public from gaining access to the premises during any period in which such insurance policies are not in full force and effect.

As indicated above, the lease clearly emphasized the importance of having adequate liability insurance. However, based on our review of Caltrans' records, the Tenant provided Caltrans with evidence of having only \$2 million of applicable coverage. In fact, according to Caltrans' records, the Tenant provided a Certificate of Insurance for \$2 million of liability insurance coverage at two points in time: in 2008 and, separately, in 2020, but at no other points in between or afterward, as required. Despite being short of the required amount by \$3 million, Caltrans did not require the Tenant to obtain additional coverage and yet still allowed the Tenant—and by extension all subtenants—to have possession of the property. As such, Caltrans greatly increased the risk that the Tenant would not have been fully covered if anyone had been injured while on the property.

Recommendations

To address the concerns raised in our audit, we recommend Caltrans do the following:

- 3.1 Ensure lessees/tenants are using their leased spaces as specified in their lease agreement. Hold lessees/tenants accountable if they refuse to be compliant.
- 3.2 Review all leases and ensure all of them have proof of adequate liability insurance, as specified in their lease agreements. Hold lessees/tenants accountable if they refuse to be compliant.

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Appendix A. Scope and Methodology

The purpose of this audit was to provide independently developed and verified information related to the airspace program at Caltrans, with a focus on whether Caltrans provided adequate oversight of the Lawrence Airspace that caught fire on November 11, 2023. The airspace is located at and around 14th and Lawrence streets, in Los Angeles, California.

We conducted this audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We gained an understanding of Caltrans' policies, procedures, and operations, and assessed key internal controls significant to the audit's objectives. We also performed a risk assessment to identify and evaluate whether key internal controls relevant to our audit objectives were properly designed, implemented, and operating as intended. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Assessment of Data Reliability

Generally accepted government auditing standards require we assess the sufficiency and appropriateness of the computer-processed information that we use to support our findings, conclusions, or recommendations. In performing this audit, we relied on Caltrans' Right of Way Property Management System data to determine the amounts billed and paid as well as for property management activities related to the Lawrence Airspace from September 2008 through November 2023. We also relied on District 7's FileMaker Pro diary-entry data to identify property management activities at the same location for the period of September 2019 through October 2023. To assess the reliability of these data, we reviewed existing information about the data, interviewed key personnel, and performed data verification procedures.

To gain some assurance of the reliability of the billing and payment data, we reconciled Caltrans' Right of Way Property Management System billing and payment data to the year of unpaid rent Caltrans identified in its lawsuit against the tenant (filed in September 2023). We also matched the billed monthly rent to the rates in the lease agreement. In addition, we attempted to review inspection reports to corroborate diary entries. However, because Caltrans right-of-way agents did not always complete inspection reports, such as when performing a brief, high-level inspection of the property, it was not feasible to complete accuracy testing of these data. Caltrans provided four of the 12 inspection reports we requested based on our review of diary entries. We determined these data were of undetermined reliability for our audit purposes. Although this may impact the precision of the numbers we present in this report, there is sufficient evidence to support our overall audit findings, conclusions, and recommendations.

The table below details the methods we used to address the audit objectives.

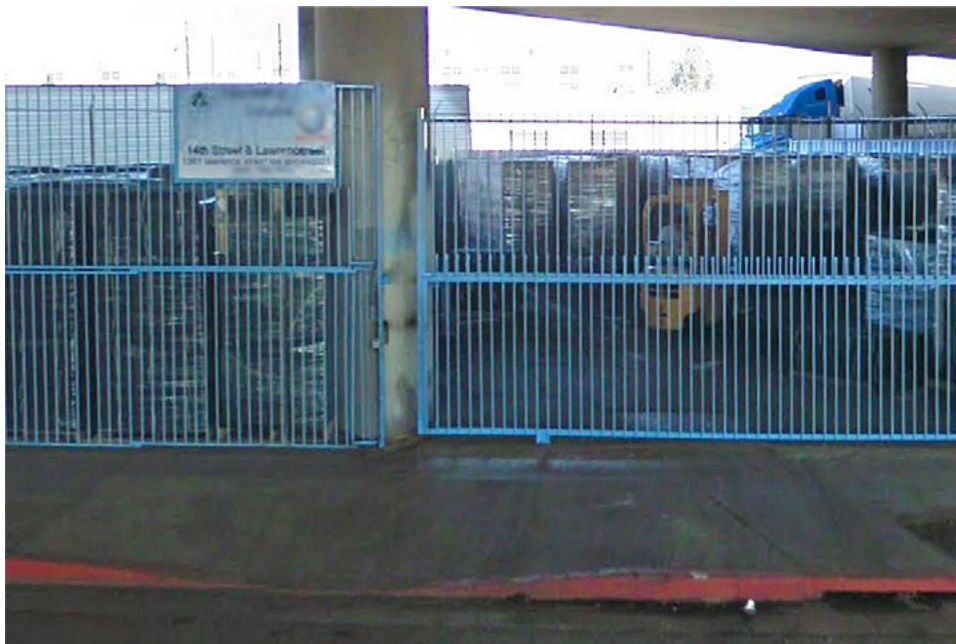
Audit Objective	Methods
<p>Objective 1 Review the laws, rules, and regulations governing airspace leases.</p>	<p>Reviewed and evaluated the following laws, rules, and regulations related to the airspace program. This included a review of:</p> <ul style="list-style-type: none"> • The California Constitution • The Streets and Highways Code • The Public Contract Code • The Health and Safety Code • The Code of Federal Regulations • California Transportation Commission Procedures • Caltrans Policies and Procedures • Lease Agreement between Caltrans and the Tenant of the Lawrence Airspace
<p>Objective 2 Determine whether Caltrans provided adequate oversight of the Lawrence Airspace, including the performance of any inspections or reviews it was obligated to perform.</p>	<p>General</p> <ul style="list-style-type: none"> • Interviewed key personnel from headquarters, District 7, and its legal office. • Reviewed the lease agreement to identify the terms and conditions relevant to the audit objectives. • Reviewed various legal filings between Caltrans and the Tenant of the Lawrence Airspace. • Reviewed various Covid-19 memorandums providing direction to state entities during the emergency. • Reviewed Caltrans Right of Way Manual. • Reviewed Caltrans’ accounting system for rent payments and related interest, late fees, and penalties. <p>Inspections</p> <ul style="list-style-type: none"> • Reviewed all inspection reports available in hard copy and in FileMaker Pro to determine whether inspections were conducted annually. • Reviewed all available inspection reports from the State Fire Marshal to determine the frequency and issues identified. <p>Diary Entries</p> <ul style="list-style-type: none"> • Reviewed diary entries (handwritten, Right of Way Property Management System, FileMaker Pro) for notes relating to lease expiration, renewal, extensions, appraisals, inspections, and auctions. • Reviewed diary entries for any other property management activities.

Audit Objective	Methods
	<p>Tenant Notices</p> <ul style="list-style-type: none"> • Reviewed all available tenant notices to determine whether the tenant was notified of the issues identified in the inspection reports. • Reviewed all available notices to determine whether the tenant was given proper notice to correct conditions that posed a risk to the traveling public. • Determined whether Caltrans took appropriate actions following any notices it provided to the Tenant.
<p>Objective 3 Review Caltrans’ assessments of its leased airspace properties.</p>	<p>Reviewed Caltrans’ November 2023 and February 2024 reports to the Governor’s Office.</p>

Appendix B. Google Street View Images of the Lawrence Airspace, Over Time

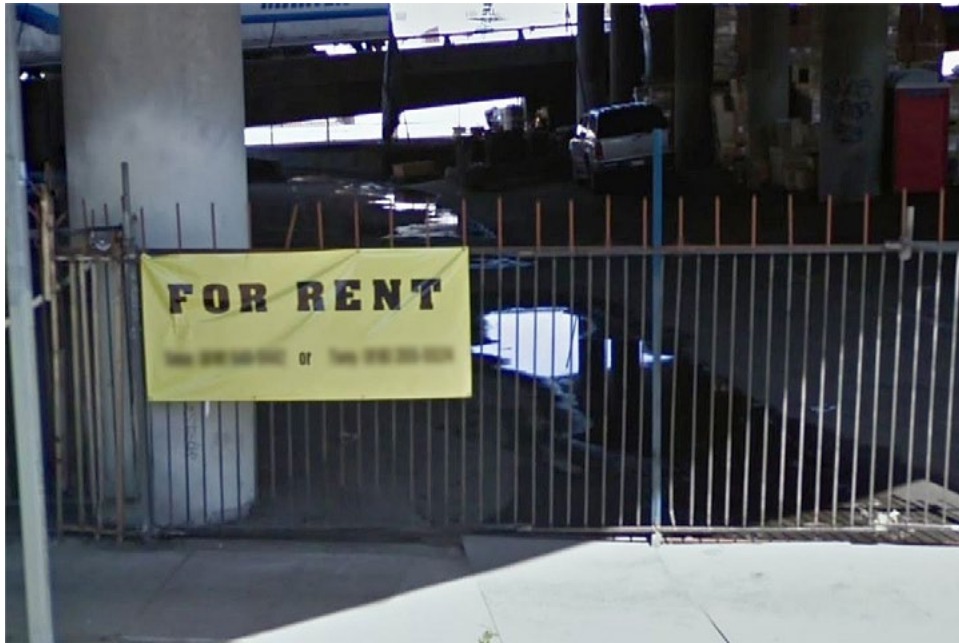
Using Google Street View, we searched for images of the Lawrence Airspace between February 2009 and March 2022. As we discussed in Finding 1, the images we found strongly suggest at certain points in time the presence of various forms of business activities, possible subletting, and large quantities of wooden pallets. For privacy considerations, we blurred out portions of the images depicting people as well as any readable names and phone numbers. In some instances, the Google images display an embedded copyright year that may be inconsistent with the date Google reported the image as captured. We are using the latter for the purposes of this audit. Here are the images presented in chronological order:

Photo 1. The image shows an advertisement for a business that appears to have been operating on the property.



Source: Map data: ©February 2009 Google.

Photo 2. The image shows a “FOR RENT” sign, signaling that at least a portion of the property may have been available for subletting.



Source: Map data: ©February 2009 Google.

Photo 3. The image shows an advertisement for truck repair services, with a mechanic on duty 24 hours per day, seven days per week.



Source: Map data: ©April 2009 Google.

Photo 4. The image shows a “FOR RENT” sign, signaling that at least a portion of the property may have been available for subletting.



Source: Map data: ©June 2011 Google.

Photo 5. The image shows a “SPACES FOR RENT” sign, signaling that at least a portion of the property may have been available for subletting.



Source: Map data: ©June 2011 Google.

Photo 6. The image shows an advertisement for towing services for “junk cars.”



Source: Map data: ©August 2012 Google.

Photo 7. The image shows two handwritten advertisements for two types of business activities.



Source: Map data: ©September 2012 Google.

Photo 8. The image shows stacks of wooden containers and plywood along the fence at the property.



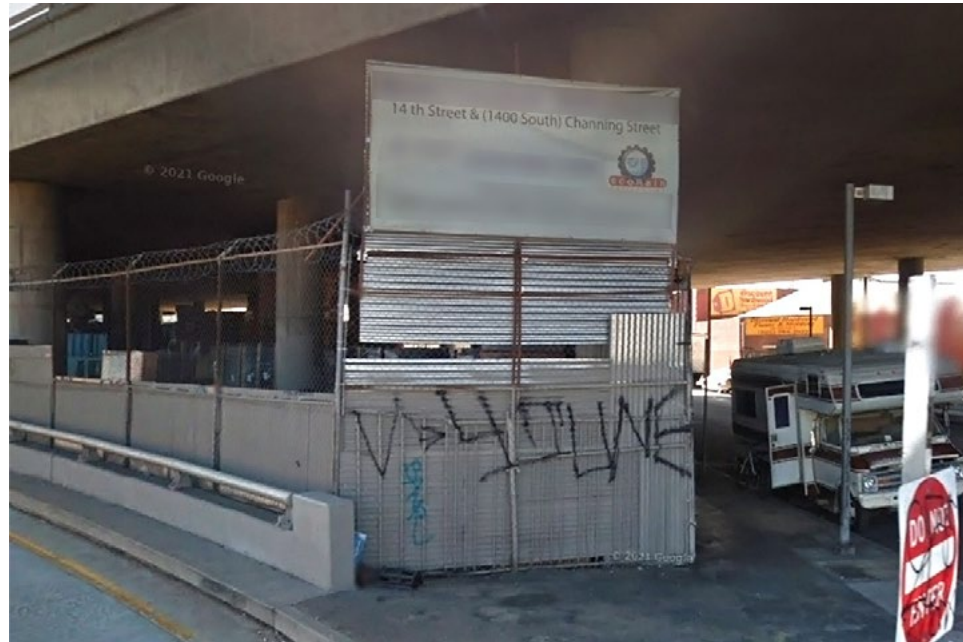
Source: Map data: ©September 2014 Google.

Photo 9. The image shows a “YARD FOR RENT” sign, signaling that at least a portion of the property may have been available for subletting. The image also shows high stacks of wooden pallets stored underneath the freeway structure and close to freeway columns.



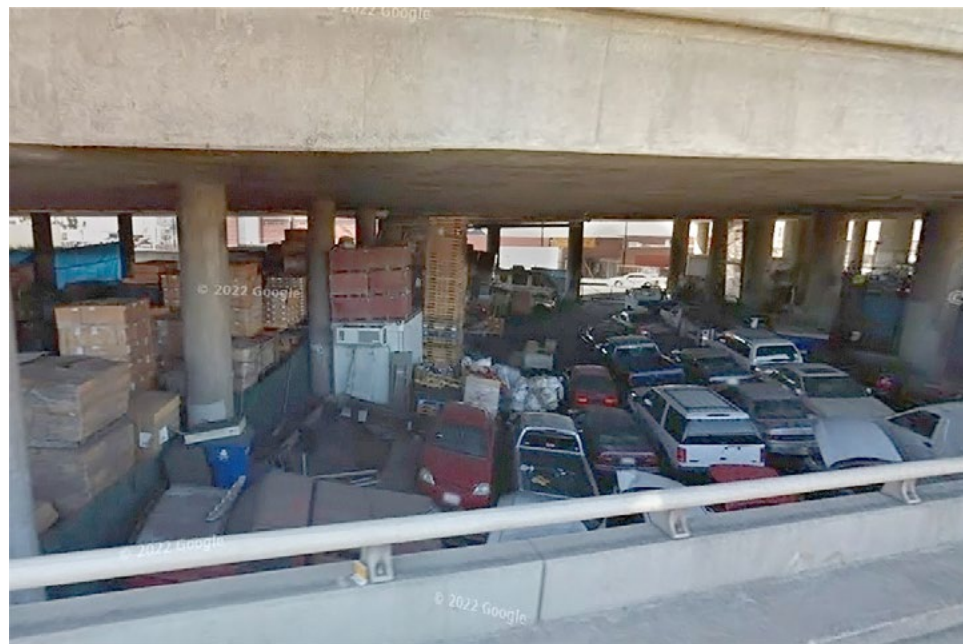
Source: Map data: ©January 2015 Google.

Photo 10. The image shows an advertisement that appears to belong to a business that was purportedly operating on the property.



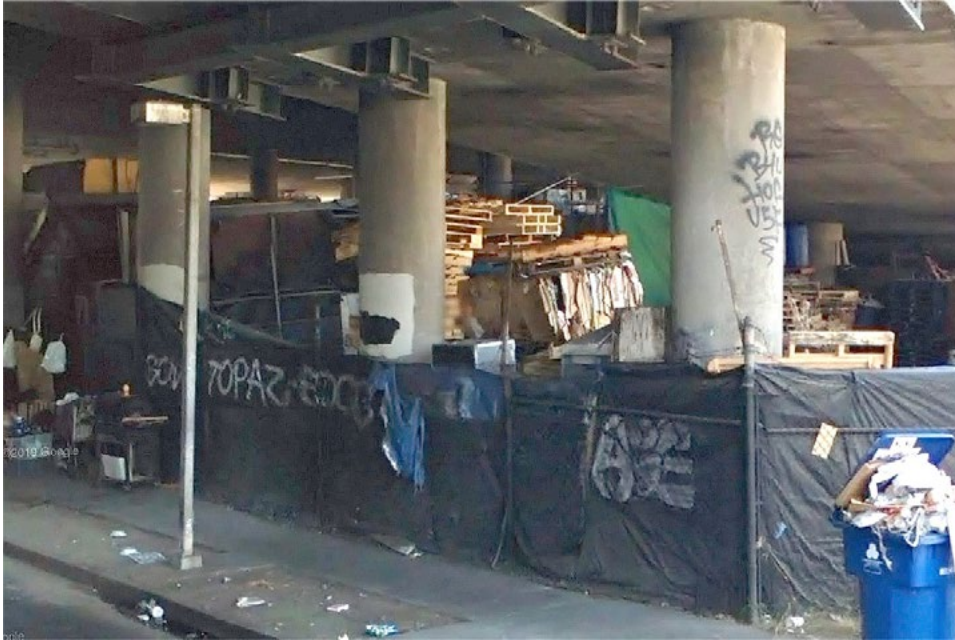
Source: Map data: ©April 2015 Google.

Photo 11. The image shows high stacks of boxes and wooden pallets stored underneath the freeway structure.



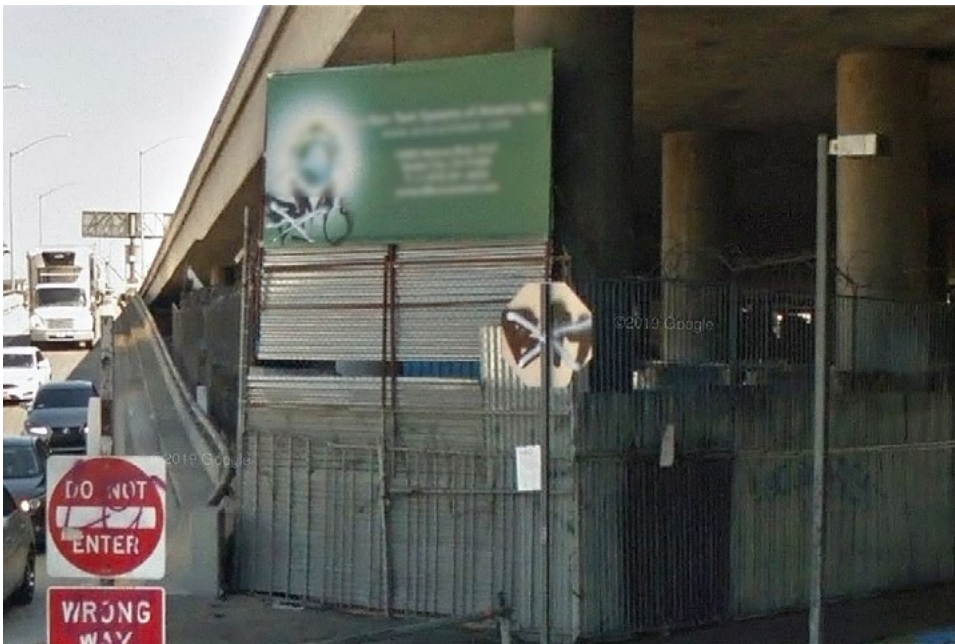
Source: Map data: ©April 2015 Google.

Photo 12. The image shows high stacks of wooden pallets stored underneath the freeway structure.



Source: Map data: ©August 2016 Google.

Photo 13. The image shows an advertisement belonging to an alleged subtenant that was purportedly operating a business on the property.



Source: Map data: ©October 2016 Google.

Photo 14. The image shows piles of wooden materials stored underneath the freeway structure.



Source: Map data: ©February 2017 Google.

Photo 15. The image shows high stacks of wooden pallets stored underneath the freeway structure.



Source: Map data: ©October 2017 Google.

Photo 16. The image shows high stacks of wooden pallets stored underneath the freeway structure and possibly on the street.



Source: Map data: ©March 2018 Google.

Photo 17. The image shows high stacks of wooden pallets stored underneath the freeway structure. The image also shows stacks of wooden pallets possibly on the street.



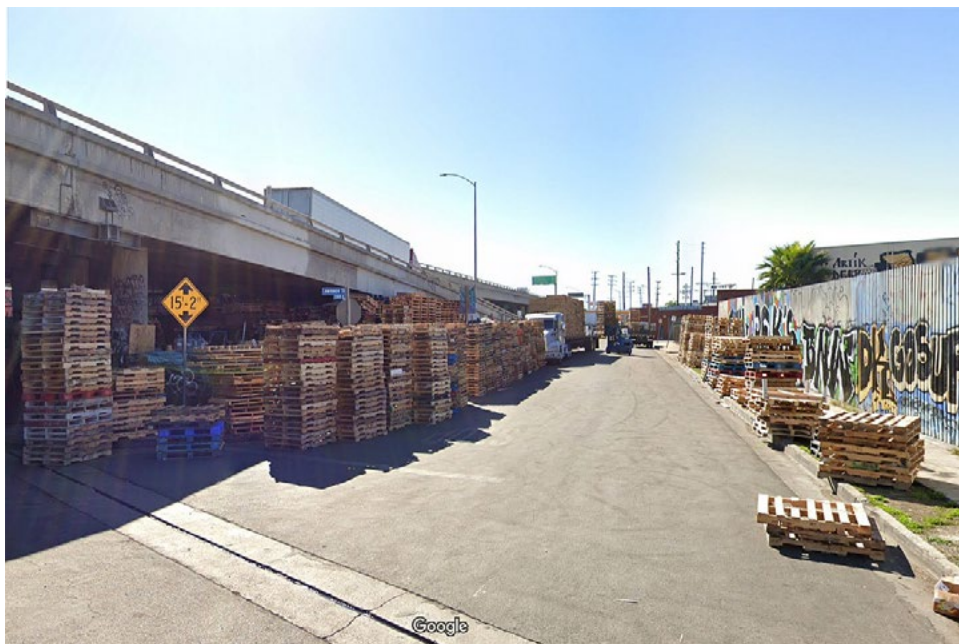
Source: Map data: ©February 2019 Google.

Photo 18. The image shows a large quantity of washers and dryers from an alleged subtenant who was purportedly operating a business on-site.



Source: Map data: ©March 2020 Google.

Photo 19. The image shows a large number of wooden pallets stacked along the property, including the sidewalk and street.



Source: Map data: ©February 2021 Google.

Photo 20. The image shows an advertisement for an alleged subtenant who was purportedly operating a business on-site.



Source: Map data: ©February 2021 Google.

Photo 21. The image shows high stacks of wooden pallets stored on the property.



Source: Map data: ©March 2022 Google.

Auditee's Response

CALIFORNIA STATE TRANSPORTATION AGENCY

GAVIN NEWSOM, GOVERNOR

California Department of Transportation

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May 24, 2024

Mr. Bryan Beyer
Inspector General
Independent Office of Audits and Investigations (IOAI)
P.O. Box 942874, MS-2
Sacramento, CA 94274-0001

Dear Mr. Beyer:

The Department of Transportation (Caltrans) is providing a response to the draft audit report of the Airspace Property, located at 14th and Lawrence Streets, Los Angeles, California dated May 13, 2024. In general, Caltrans concurs with the recommendations. Caltrans' current proposed remediations with new leases and renewals, storage of prohibited items, open storage use, and subleasing are in a continuous review. This audit will be helpful for Caltrans' future.

Additionally, after conducting a detailed review of its inventory since November 2023, Caltrans is taking the following actions to improve its airspace leasing program (not including wireless, broadband, utility, construction-dependent leases, etc.):

- Surveying existing leases for compliance with subleasing requirements.
- Pausing renewals of most long-term leases including those under facilities, until broader decisions about approvable lease uses are finalized.
- Surveying lessee compliance with insurance requirements and coverage limits.
- Implementing a policy requiring all prospective non-governmental airspace lessees to complete an application and credit check before doing business with Caltrans.
- Implementing a policy prohibiting leases for applicants with a history of bankruptcy or unlawful detainer (within the past 10 years).
- Reducing delegation for the approval to pursue unlawful detainers to vacate leases, to expedite action taken to address compliance issues.
- Meeting regularly with the California Office of the State Fire Marshal to review the airspace inventory.

"Provide a safe and reliable transportation network that serves all people and respects the environment"

Mr. Beyer, Inspector General
May 24, 2024
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Caltrans thanks IOAI for the time and opportunity they have taken to create this report. If you have any questions, please contact Ben Shelton, Audit Chief - Caltrans Internal Audits Office, at (916) 858-9694 or by email at ben.shelton@dot.ca.gov.

Sincerely,



TONY TAVARES
Director

c: Mike Keever, Chief Deputy Director
Donna Berry, Deputy Director, Project Delivery
Kimberly Erickson, Division Chief, Right of Way and Land Surveys
Gloria Roberts, District Director, District 7
Dan Murdoch, Deputy District Director, Right of Way, District 7
Ben Shelton, Audit Chief, Caltrans Internal Audits Office

"Provide a safe and reliable transportation network that serves all people and respects the environment"



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