ADDENDUM TO INITIAL STATEMENT OF REASONS

INTRODUCTION:

The Initial Statement of Reasons (ISR) was published and released for public comment on February 27, 2015 (Register Z2015-0217-10). The public comment period closed on April 13, 2015. Public hearings were held on April 20, April 21, 2015, and May 12, 2015, in Pasadena, Los Angeles, and the El Sereno area of Los Angeles, and comments were accepted at those hearings.

On December 24, 2015, the Department submitted the Final Rulemaking File, including the ISR, to the Office of Administrative Law (OAL). The OAL disapproved the ISR for failure of the ISR to comply with Government Code section 11346.2(b)(1), because certain terms and provisions lacked the agency's rationale for the determination that each was reasonably necessary, as detailed in the Decision of Disapproval (OAL File No. 2015-1224-02S).

After considering the decision and discussion detailed in the Decision of Disapproval, Caltrans prepared this Addendum to the Initial Statement of Reasons (Addendum). Modifications described in this Addendum relate to the third paragraph on page 2, sections 1476(l), 1476(t), 1476(y), 1480, 1481, 1483 and 1486(c), and 1491(b) in the "Necessity" section; and the "Public Outreach" subsection beginning on page 6 of the ISR, described below.

NECESSITY:

The statements in paragraph 5, page 2, of the ISR notwithstanding, the Department did not rely upon comments received from the October 23, 2013 and October 24, 2013 pre-notice workshops; the May 30, 2014 through September 2, 2014 written comment period; and the July 15, 2014, July 17, 2014, and August 21, 2014 public hearings related to the proposed regulations published in the California Regulatory Notice Register on May 30, 2014 (OAL notice Z-2014-0520-05). The above referenced oral and written comments were submitted for a proposed rulemaking which was subsequently withdrawn. Further, the comments did not include data or other factual information; technical, theoretical, or empirical studies or reports which the Department relied upon for the proposed Affordable Sales Program regulations published in the California Regulatory Notice Register on February 27, 2015 (OAL notice Z-2015-0217-10).

Section 1476(l)/"Fair market value" – The definition of "Fair market value" is required to describe how the sales price will be determined for former owners/current occupants, current tenants who are not affordable buyers, and affordable buyers who elect to purchase surplus residential property at fair market value. The definition refers to all conditions requisite to a fair sale under all conditions requisite to a fair sale in accordance with Government Code section 54236(f). The definition is also used to calculate the distribution of proceeds upon resale of

a property initially purchased from the Department at an affordable or reasonable price. The definition used in section 1476 (l) is most applicable to the proposed regulations, as it is consistent with the definition of "market value" used by federal housing authorities, U.S. Housing and Urban Development (HUD)/Federal Housing Administration (FHA). This definition derives from "fair market value" applicable to professional appraisal practice through the Uniform Standards of Professional Appraisal Practice. Moreover, this fair market value definition must be used for all appraisals performed for FHA-insured mortgages and is the standard applied in the appraisal industry:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. The buyer and seller are typically motivated.

2. Both parties are well informed or well advised, and each is acting in what they consider their best interest.

3. A reasonable time is allowed for exposure in the open market.

4. Payment is made in terms of cash in United States Dollars or in terms of a financial arrangement comparable thereto.

5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions".

The phrase "in accordance with Government Code section 54236(f)" was added to the definition of "fair market value" in section 1476 (l) to ensure that the definition is consistent with the aforementioned provision of the Act. The Department added the last sentence to this definition: "For transfer from the Department, the date of value is the date the offer of sale is made by the selling agency." This additional provision unambiguously identifies the "consummation of a sale as of a specified date" in a manner consistent with the date of value stated in Government Code section 54236(f).

Section 1476(t)/"Minimum Property Standards – The definition of "Minimum Property Standards" (formerly section 1476(u) in the text filed with the OAL on December 24, 2015) is now subsection (t) due to deletion of subsection (o), "Good cause." This definition is necessary to establish standards for repairs of property sold to an affordable buyer, as required in Government Code section

54237(b) which states in part: "The selling agency shall provide repairs required by lenders and government housing programs." The definition of "Minimum Property Standards" used in subsection 1476 (u) (now subsection (t)) is most applicable to the Affordable Sales Program (ASP) regulations, as it is based on the HUD Minimum Property Standards. HUD, whose mission is to "create strong, sustainable, inclusive communities and quality affordable homes for all," developed these Minimum Property Standards to establish certain minimum standards for buildings constructed under HUD housing programs. These can be found in Section C of the HUD Handbook 4000.1. Standards pertaining to Section 1 Termite Inspection were added to the Minimum Property Standards definition to be consistent with customary Section 1 repairs made by the sellers in California residential transactions.

Section 1476(y)/"Principal Place of Residence" – The definition of "Principal Place of Residence" (formerly section 1476(z) in the text filed with the OAL on December 24, 2015) is now subsection (y) due to deletion of subsection (o), "Good cause." This definition is necessary because the Act gives purchase priority to affordable buyers who meet certain criteria. The Department researched definitions and use of the terms "principal place of residence," "main residence," and "primary home" and methods used by various federal and state agencies to verify a buyer's occupancy. These agencies included the Internal Revenue Service (IRS), the Franchise Tax Board, (FTB) and the California Department of Veterans Affairs (Cal-Vet). Ultimately, the Department identified the definition from Cal-Vet found in 12 CCR section 343 as the most applicable to the regulations because Cal-Vet's home loan program, similar to the ASP, requires that the veteran purchaser or family actually reside in or on the property and maintain it as their principal place of residence.

One of the factors involved in determining purchase priority at an affordable price is tenure of occupancy. In order to clarify the ways in which tenure of occupancy will be determined in a way that is easily understood by those persons directly affected by the regulation, several examples of the elements used for verification of tenure of occupancy were included in the definition of "Principal Place of Residence." These examples are listed in section 1476 (y).

Section 1480 – This section specifies the term and time period in which a prospective buyer may reply to a Conditional Offer Prior to Purchase (Conditional Offer). The Department relied upon the time provisions recommended by the California Department of Housing and Community Development and the California Housing Finance Agency to determine a reasonable amount of time necessary to respond to a Conditional Offer. Generally, response provisions can range from 30 to 120 days. One hundred twenty days (or 4 months) allows buyers sufficient

time to consider a Conditional Offer, collect necessary income, tenure and other information and respond to the Conditional Offer. This deadline is necessary to determine which buyers are interested and potentially qualified, in accordance with proposed regulations, to purchase the subject property.

Section 1481 – See explanation for Section 1480 above. This section specifies when and how a prospective buyer must accept the Conditional Offer described in section 1480: by certified mail, postmarked no later than 120 days from the postmarked mailing date of the Conditional Offer. This section establishes a record of 1) the date the Conditional Offer has been made; 2) the date the 120-day period expires; and 3) the date a buyer must respond to the Conditional Offer, thereby minimizing any potential for dispute concerning a valid, timely response to the Conditional Offer.

Section 1483 – This section grants the Department 30 days to review a prospective buyer's documentation submitted in response to a Conditional Offer. Essentially, this provision gives a prospective buyer another fair opportunity to submit complete, additional information and documentation should the Department deem their submittal incomplete. The Department must notify the prospective buyer of an incomplete or insufficient submittal no later than 30 days after receipt of the buyer's initial response to the Conditional Offer. This section then gives the buyer another opportunity to augment their response within an additional 60 days. If the buyer encounters problems or delays in obtaining or assembling the additional income, etc. documents, the buyer may request an extension for an additional 40 days.

These time deadlines and extensions were based on recommendations from the California Department of Housing and Community Development and the California Housing Finance Agency. According to these agencies, the 60- day and additional 40- day extension (100 days) provide adequate time for potential buyers to request, obtain and submit a complete response package to the Department. In totality, prospective buyers have up to 250 days maximum to fully respond to a Conditional Offer and submit complete and sufficient documentation. Expiration dates are necessary to prevent open-ended offers and stagnant transactions so that offers may be made to other prospective buyers under the Act.

The 250-day maximum period constitutes the sum of all time periods, including the 40-day extension (120 days to respond to Conditional Offer + 30 days for Department to review and respond + 60 days to submit additional information + 40 day extension = 250 days).

Section 1486(c) – This section acknowledges that prospective buyers may want assistance and advice from a licensed real estate broker, agent or attorney of their choice throughout the purchase transaction. Accordingly, and based on recommendations from the California Department of Housing and Community Development and the California Housing Finance Agency, the Department will reimburse an affordable buyer those broker, agent or attorney's fees spent on the transaction, not to exceed $3,000.

This amount is not the typical commission provided to a buyer's agent, as the services performed would likely be limited to document review, and representing and advising the buyer on the purchase. The buyer's agent would not perform several of the services a buyer's agent would typically provide in a property transaction, such as providing access to the marketplace that prospective buyers would not otherwise have, locating properties, and showing properties to prospective buyers. The Department estimated that a buyer's costs for such services in these types of transactions should not exceed $3,000. This amount is based on a reasonable range of 10 to 20 hours the licensed professional will spend representing and advising the buyer throughout the transaction.

Section 1491(b) – This section is necessary to establish an appropriate account (Affordable Housing Trust Account) to which funds from subsequent sales, transfers or conveyances will be deposited.

This section is necessary to clarify that:

> If California Housing Finance Agency (CalHFA) purchases loans or otherwise finances purchases by occupants purchasing at affordable prices, it is necessary that all proceeds to which CalHFA is entitled from subsequent sales, transfers foreclosures, insurance claims or condemnations related to such properties be paid on condition that CalHFA establish a designated account (the Affordable Housing Trust Account) for such proceeds to be used as specified in 1491(b)(1)(A), (B), and (C) in order to preserve, upgrade and expand the supply of housing available to persons and families of low or moderate income in accordance with the Act.
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> If CalHFA purchases loans or otherwise finances purchases by occupants purchasing at affordable prices, it is necessary that the use and resale restrictions provide that in the event of any transfer, any outstanding loan balance, penalties, fees, interests and costs associated with collecting on such amounts owed to CalHFA shall be paid to CalHFA prior to determination of any net proceeds due to the CalHFA in order to induce CalHFA to participate in the ASP and protect CalHFA's funds.

If CalHFA purchases loans or otherwise finances purchases by occupants purchasing at affordable prices, it is necessary that use and resale restrictions are enforceable by CalHFA because CalHFA shall agree to monitor the occupancy restrictions under the use and resale restrictions as part of its participation in the ASP and any such net proceeds shall be due, in part, to CalHFA in the event of future transfers and/or resales.

PUBLIC OUTREACH

This addendum deletes the "Public Outreach" subsection beginning on page 6 of the ISR. The statements made in this subsection of the ISR notwithstanding, the Department did not rely upon comments received from the October 23, 2013 and October 24, 2013 pre-notice workshops; the May 30, 2014 through September 2, 2014 written comment period; and the July 15, 2014, July 17, 2014, and August 21, 2014 public hearings related to the proposed regulations published in the California Regulatory Notice Register on May 30, 2014 (OAL notice Z-2014-0520-05). The above referenced oral and written comments were submitted for a proposed rulemaking which was subsequently withdrawn. Thus, they were not added to this rulemaking file. Further, the comments did not include data or other factual information; technical, theoretical, or empirical studies or reports which the Department relied upon for the proposed Affordable Sales Program regulations published in the California Regulatory Notice Register on February 27, 2015 (OAL notice Z-2015-0217-10), and all outreach referenced in this subsection was for the withdrawn proposed regulation.