

TITLE 21. PUBLIC WORKS
Division 2. Department of Transportation

NOTICE OF PROPOSED RULEMAKING

The Department of Transportation (Caltrans) proposes to adopt the proposed regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

Caltrans will hold public hearings at the time and place listed below. The meeting facilities are wheelchair accessible. At the hearings, any person may present statements orally, or in writing relevant to the proposed action described in the Informative Digest.

April 20, 2015 6:00 p.m. – 8:00 p.m.
Pasadena Convention Center
Conference Center, Lower Level, Rm. 107
300 East Green Street
Pasadena, CA 91101

April 21, 2015 6:00 p.m. – 8:00 p.m.
California State University, Los Angeles
Golden Eagle Building
Golden Eagle Ballroom
5151 State University Drive
Los Angeles, CA 90032

WRITTEN COMMENT PERIOD

Any interested persons, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to Caltrans. Comments may also be submitted by facsimile (fax) at (916) 654-6378, or by e-mail to Affordable_Sales_Program@dot.ca.gov. The written comment period closes at 5:00 PM on April 13, 2015. Caltrans will consider only comments received by that time.

Please submit comments to:

Jennifer S. Lowden
Assistant Chief, Division of Right of Way and Land Surveys
ATTN: Affordable Sales Program
California Department of Transportation
1120 N Street, MS 37
Sacramento, CA 95814

AUTHORITY AND REFERENCE

Sections 118 through 118.6 of the Streets and Highways Code authorizes Caltrans to dispose of real property no longer required for transportation uses. Caltrans is implementing, interpreting, and making specific Sections 54235 through 54238.7 of the Government Code which requires that certain properties owned by state agencies be disposed in a manner that will preserve, upgrade, and expand the supply of housing available to affected persons and families of low or moderate income.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Caltrans acquires real property necessary for state transportation purposes, and must, by law, attempt to dispose of properties no longer required for those purposes (Streets and Highways Code section 118.6). Government Code sections 54235 through 54238.7 (the “Roberti Act”) sets forth the priorities and procedures for disposing of surplus residential property for State Route 710 (SR 710) in Los Angeles County.

In 1979, the Legislature reaffirmed its findings that there exists within the urban and rural areas of the state a serious shortage of decent, safe, and sanitary housing which persons and families of low or moderate income can afford, and consequently a pressing and urgent need for the preservation and expansion of the low and moderate income housing supply. The Legislature further reaffirmed its findings that highway and other state activities have contributed to the severe shortage of such housing, and that provision of decent housing for all Californians is a state goal of the highest priority. The Legislature stated that actions of state agencies including the sales of surplus residential properties which result in the loss of decent and affordable housing for persons and families of low or moderate income is contrary to state housing, urban development, and environmental policies and is a significant environmental effect, within the meaning of Article XIX of the California Constitution, which will be mitigated by the sale of surplus residential property pursuant to the provisions of Government Code sections 54235 through 54238.7.

Additionally, the Legislature stated that the sale of surplus residential property pursuant to the provisions of the Roberti Act will directly serve an important public purpose. Accordingly, the Legislature intends by the Roberti Act to preserve, upgrade, and expand the supply of housing available to persons and families of low or moderate income. (Government Code section 54235.)

The Los Angeles Superior Court declared in *City of South Pasadena v. The California Department of Transportation* (Super. Ct. Los Angeles County, 2007, No. BC331628) that legal title to all State Route 710 (SR 710) parcels of real property shall remain vested in Caltrans until adoption of an appropriate regulation under the Administrative Procedures Act for their disposal pursuant to Government Code sections 54235 through 54238.7.

After conducting an evaluation for any related regulations, Caltrans has concluded that these are the only regulations concerning the use of surplus transportation property for affordable housing. Therefore, the proposed regulation is not inconsistent or incompatible with existing state regulations or statutes, and do not differ substantially from existing comparable federal regulations or statutes.

The proposed regulation sets forth the procedures that will allow Caltrans to dispose of surplus residential properties originally acquired for the SR 710 extension in the cities of Los Angeles, South Pasadena, and Pasadena in accordance with the Roberti Act. The proposed regulation will increase the number of low and moderate income homeowners by allowing qualified tenants and occupants to purchase homes on the basis of affordability under the program, and will provide a benefit to purchasers by setting forth the standards used to calculate the appropriate purchase prices to fulfill the state's mission of providing affordable home ownership to Californians. The proposed regulation will provide the public with guidelines to determine the income levels used to qualify for the program, which in turn promotes fairness and social equity to the buying public. The proposed regulation will provide a non-monetary benefit by setting the guidelines and timelines applicable, which promotes openness and transparency in business and government.

The Regulation proposed in this rulemaking action will:

Section 1475 – Implement Senate Bill 86 known as the “Roberti Act”. This section defines the purpose and scope of the proposed “Affordable Sales Program” regulation.

Section 1476 – Define the terms used in the proposed regulation. This section is needed to provide additional detail and further clarify certain words or phrases as they were used in the “Roberti Act” and are used in the proposed regulation.

Section 1477 – Specify the order of priority for the Conditional Offer Prior to Sale. This section is needed to make specific Government Code sections 54237(a) and (d).

Section 1478 – Set forth the criteria for Conditions of Offer Prior to Sale. This section is needed to implement, interpret, and make specific the conditions for sale of residential properties including sales price determination, repair requirements, occupancy requirements, and restrictions properties sold at less than fair market value will contain.

Section 1479 – Set forth the notices for Conditional Offer Prior to Sale. This section is needed to make specific who will receive and how written notice of the Conditional Offer Prior to Sale shall be delivered.

Section 1480 – Set forth the term of the Conditional Offer Prior to Sale. This section is needed to make specific the term the Conditional Offer Prior to Sale shall remain open.

- Section 1481 – Set forth the terms of acceptance for the Conditional Offer Prior to Sale. This section is needed to make specific the method of acceptance of the Conditional Offer Prior to Sale.
- Section 1482 – Specify the burden is on the prospective buyer to show eligibility for purchase at an affordable price. Required documentation to provide evidence of income, tenure, real property ownership interest, and household size are made specific.
- Section 1483 – Provide grounds for denial based on insufficiency or incompleteness of response to Conditional Offer Prior to Sale. This section is needed to define response time for receipt of incomplete or insufficient financial documentation and required action.
- Section 1484 – Specify that failure to respond will be deemed a rejection of the Conditional Offer Prior to Sale. This section is needed to define the time period for rejection due to lack of response. The Department will notify respondents of rejection.
- Section 1485 – Establish the eligibility for buyers and sets forth priority for purchase. This section is needed to define the Department’s review of documentation and define the priority for more than one equally eligible respondent.
- Section 1486 – Specify the response time for buyers for entering into a Contract for Sale. This section is needed to define the term for acceptance of a Contract for Sale. This section also makes clear the costs for the transaction to be paid by the Department and the costs to be paid by the Buyer. This section also provides for the Department to reimburse the Buyer up to \$3,000 for an agent to facilitate and advise on the purchase transaction.
- Section 1487 – Specify time for close of escrow and the Department’s authority to extend. This section is needed to define the time period allowed for close of escrow and the Department’s discretion to grant an extension.
- Section 1488 – Provide the duty of the buyer upon noncompliance. This section is needed to identify specific noncompliance provisions the Department may pursue due to buyer noncompliance and define the payment amount.
- Section 1489 – Specify the monitoring requirement to ensure compliance with the terms of sale. This section is needed to ensure such properties remain available to persons and families of low or moderate income.
- Section 1490 – Specify no lender may gain financially from the surplus residential property other than the mortgage lender.

Section 1491 – Specify the role California Housing and Finance Agency (CalHFA) will provide in developing and administering the proposed “Affordable Sales Program” and identify how the Affordable Housing Trust Account, to be established by CalHFA, will be used in furthering affordable housing in the Pasadena, South Pasadena, Alhambra, LaCanada Flintridge, and 90032 postal ZIP code.

The adoption of the proposed regulation will increase the openness and transparency in government regarding the sale of property pursuant to the Roberti Act. Adoption of the proposed regulation will not affect: 1) the protection of public health and safety, worker safety, or the environment; and 2) the prevention of discrimination. Adoption of the proposed regulation will: 1) increase openness and transparency in business and government; and 2) promote fairness and social equity because they make residential properties available to low or moderate income people that would otherwise be unaffordable.

DISCLOSURES REGARDING THE PROPOSED ACTION/RESULTS OF THE STANDARIZED REGULATORY IMPACT ASSESSMENT (SRIA)

Caltrans has made the following determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: An estimated \$25 million savings in the current state fiscal year based on no regulation versus the regulation being adopted.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary costs or savings imposed on local agencies: Los Angeles county annual savings are estimated to be \$1 million in property tax revenue.

Costs or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business or the ability of California businesses to compete with businesses in other states: None.

Cost impacts on representative private person or businesses: Caltrans is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of this regulation:

- (a) will affect the creation of jobs within California and it will not affect the elimination of jobs in California.
- (b) will not affect the creation of new businesses or the elimination of existing businesses within California.
- (c) will not affect the competitive advantage or competitive disadvantages of businesses currently doing business within California.
- (d) will increase the investment in the state buy selling 412 properties.
- (e) will not provide incentives for innovation in products, materials, or processes
- (f) will not affect the benefits of the regulation to worker's safety, and the state's environment but will benefit the health and welfare of California residents by providing affordable home ownership to low and moderate income households and the employment from construction in the local area.

Department of Finance had four comments concerning the SRIA. They were concerned with the expected lack of participation by affordable purchasers because available financing may be limited due to the 30 year deed restriction as proposed in a previous version of the draft regulations, they recommended Caltrans adopt an equity sharing model, they expressed concerns with the possible lack of restrictions on the lenders in case of non compliance and finally they wanted Caltrans to address the impact on the general fund with the selling of the properties and the rent that would no longer be collected.

Caltrans responded that the regulations now include an equity sharing model, so the concern over financing was no longer an issue. The lenders do have the same restrictions that the original purchasers have and finally, Caltrans estimates the rental revenue loss to the general fund would have a minimal impact on the state. The \$4.8 million gross loss per year from the sale of homes would be minimized through increased employment opportunities and goods purchased within the region.

Significant Effect on Housing Costs: None.

Caltrans has determined that the proposed regulation does not affect small businesses because the proposed regulation applies only to certain state-owned properties, not small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a) (13), Caltrans must determine that no reasonable alternative that is considered or that has otherwise been identified and brought to the attention of Caltrans would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The May 30, 2014 proposed regulation proposed a 30-year deed restriction and 100% of the proceeds at the end of the 30-year period would be due to the purchaser of the surplus residential property. From comments received, and in consultation with California Housing and Finance Agency (CalHFA) and Housing and Community Development (HCD), another alternative has been proposed. This regulation proposes an Affordable Housing Trust Account to be created and managed by CalHFA. Proceeds deposited to the Affordable Housing Trust Account will be used to carry out any activity authorized under CalHFA's implementing statutes for the benefit of persons or families of low and moderate income residing exclusively in the Pasadena, South Pasadena, Alhambra, LaCanada Flintridge, and the 90032 ZIP code including any arrangement for the financing of multifamily developments or the purchase of loans made to effectuate the purpose of the Roberti Act. Upon subsequent sale, the difference between the less than fair market value price and the appraised value at the time of the sale from Caltrans would be due to the Affordable Housing Trust Account or split with the Affordable Housing Trust Account and the entity. Any appreciation would be based on an equity sharing model. The appreciation in value upon subsequent sale would be split between the Affordable Housing Trust Account and the persons or families or affordable housing entity that purchased the property from Caltrans based on a sliding scale growing 20% each year after the end of the first year of ownership and ending after the end of the fifth year.

Caltrans invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action during the written comment period and during any of the scheduled public hearings.

CONTACT PERSONS

Inquiries concerning the proposed regulatory action may be directed to:

Jennifer S. Lowden
Assistant Chief, Division of Right of Way and Land Surveys
California Department of Transportation
1120 N Street, MS 37
Sacramento, CA 95814
916-654-4790
Affordable_Sales_Program@dot.ca.gov

Alternate contact person:

Kimberly Erickson
Senior Right of Way Agent, Division of Right of Way and Land Surveys
California Department of Transportation
1120 N Street, MS 37
Sacramento, CA 95814
916-654-4790
Affordable_Sales_Program@dot.ca.gov

Please direct requests for copies of the text of the proposed regulation, the initial statement of reasons, or other information upon which the rulemaking is based to Kimberly Erickson at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION AND RULEMAKING FILE

Caltrans will have the entire Rulemaking File available for inspection and copying throughout the rulemaking process at its office at the above address during regular business hours. As of the date this notice is published in the Notice Register, the Rulemaking File consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Kimberly Erickson at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all written comments received timely, as well as comments received at the scheduled public hearings, Caltrans may adopt the proposed regulation as described in this notice. If Caltrans makes substantive modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before Caltrans adopts the regulation as revised. Copies of any modified regulation may be obtained by contacting Kimberly Erickson at the address or phone number listed above. Caltrans will accept written comments on any modified regulation for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Kimberly Erickson at the above address or by visiting Caltrans' Web site listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout if applicable can be accessed through Caltrans' Web site at: <http://www.dot.ca.gov/regulations.htm>.