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Thursday, July 31, 2014

Mr. Brent L. Green  
Chief, Division of Right of Way and Land Survey  
State of California, Department of Transportation ("Caltrans")  
ATTN: Affordable Sales Program  
1120 'N' Street, MS 37  
Sacramento, California 95814

Re: **Comments on Proposed Property Sales Regulations, SR 710 Corridor**

Dear Mr. Green and Caltrans:

This office represents the Caltrans Tenants of the 710 Corridor and other commercial and non-profit entities, all renting properties from Caltrans within the SR 710 corridor in the cities of Los Angeles, South Pasadena, and Pasadena. The below comments are submitted pursuant to Government Code § 11346 - 11348 within the California Administrative Procedures Act, and the Notice published by Caltrans.

1. **Failure to Declare all 485 Properties Surplus**

Caltrans owns approximately 485 separate properties in the SR 710 corridor. All should be declared "surplus" immediately. All "surplus" properties need to be listed in the final regulations, and distinguishing which will be sold under the Roberti Act and which will be sold under a different law or procedure.

2. **Lack of Caltrans Director Malcolm Dougherty's Approval of Limited List of 53 Occupied Residential Properties**

On July 3, 2014, Caltrans made a *de facto* amendment to these proposed regulations by publishing at its web site a list of 42 occupied residential properties and 11 vacant land properties. There has been no documentation or evidence that this list was produced in a manner which followed the California Administrative Procedures Act or that Caltrans Director Malcolm Dougherty approved the list in the manner contemplated in Bayside Auto & Truck Sales, Inc. v. Department of Transportation (1993) 21 Cal.App.4th 561. The list of proposed surplus properties must be considered and approved in a manner consistent with the California Administrative Procedures Act and the holding in City of South Pasadena v. Department of Transportation, L.A. Superior Court case number BC331628, judgment entered against Caltrans on April 5, 2007 (copy attached).

**3. Failure to List Each Property and its Status in the Proposed Regulations**

There are at least three distinct categories of occupied residential properties owned by Caltrans within the SR 710 corridor:

- (1) Single family residences occupied by residential tenants
- (2) Multiple family structures wholly or partially occupied by residential tenants
- (3) Duplex and triplex structures wholly or partially occupied by residential tenants

These regulations should be limited to these three categories of residential properties currently occupied as residences as provide in the Roberti Act.

There are at least nine distinct categories of non-occupied and non-residential properties owned by Caltrans within the SR710 corridor:

- (4) Un-occupied residential properties, that comply with housing habitability codes
- (5) Un-occupied residential properties, not complying with habitability code
- (6) Former residential properties occupied by businesses and non-profit entities
- (7) Former residential properties occupied by governmental entities
- (8) Non-residences, garages, storage buildings, occupied and un-occupied
- (9) Vacant land occupied by businesses and non-profit entities
- (10) Vacant land occupied by governmental entities
- (11) Stand alone vacant land not occupied
- (12) Remnants or parts of land previously attached to adjoining private land

Since these are not occupied residential properties, the regulations should clearly state that these will not be sold under the Roberti Act, but sold under a different statutory process.

**4. Failure to Extend Comment Deadline After Caltrans' Violations of California Public Records Act**

Caltrans has repeatedly failed to comply with requests under the California Public Records Act in regard to background documents on the development of these regulations and the list of 43 surplus properties released on July 3, 2014. As such, the deadline for comments must be extended to 45 days after Caltrans provides the withheld documents, but must be extended to 45 days after the July 3, 2014, release of the 43 property list, that is until August 18, 2014.

**5. Failure to Comply With State and Federal Fair Housing Laws**

The propose regulations fail to commit Caltrans to compliance with state and federal fair housing laws barring discrimination based on race, color, religion, national origin, gender, marital status, gender preference, gender identity, or disability.

**6. Failure to Comply With State and Federal Disabled Persons Protections**

The proposed regulations fail to provide a procedure to accommodate persons with disabilities, which could delay their responding to due dates or delay their ability to obtain financing for a purchase. There must be a flexible method to accommodate disabled persons.

**7. Failure to Include an Appeals Process**

The proposed regulations need an appeals process to seek a higher level decision on issues of eligibility, purchase price, text and duration of covenants, level of needed repairs, cost of repairs, and other terms of sale.

**8. Failure to Allow Owners to Purchase Back Their Partially Taken Land**

Many of these parcels were back yards and side yards of properties that remain in private ownership. The regulations should exclude these parcel from the Roberti Act reduced price provisions, but allow the adjoining private owners to buy back their previously severed back yards, side yards, and front yards.

**9. Failure to Prohibit Speculative and Specious Non-Profit Entities**

In the past, Caltrans has sold groups of residences to non-profits entities with no track record. In some instances these entities purchased property at an extreme discount and then saddled the properties with questionable or fraudulent loan debts, and raising rents above the low and moderate income guidelines. Caltrans has failed to take action against these entities. The proposed regulations need to impose more stringent limits and tests on such entities and limit the amount of liens which such entities place on the properties.

**10. Failure to List Historic Properties and Nature of Historic Covenants**

The proposed regulations need to list the historic properties by address and set forth the terms of the historic preservation covenants that will be required for a sale.

**11. Imposition of 30-Year "Suicide Covenants" Prevents Lender Financing**

The 30-year "suicide covenants" imposed in the past by Caltrans violate the Roberti Act by making lending from financial institutions difficult if not impossible.

**12. Preferable Use of "Silent Second" Trust Deeds Will Allow Lender Financing**

Instead of the "suicide covenants" Caltrans should employ "silent second" trust deeds, with balances reducing over a 15-year period.

**13. Failure to Allow for Caltrans Seller Financing**

Caltrans has provided seller financing in the past, and should do so with these properties, with the final regulations reflecting a seller financing option.

**15. Caltrans Staff in Los Angeles Has a Practice of Undermining Department Goals**

Caltrans local staff in Los Angeles has undermined past property sales programs. A clear sales schedule for each one of the SR 710 properties, by address, needs to be included in the regulations.

**16. The Proposed Regulations as Written Undermine the Goal of Community Preservation**

The Roberti Act contained a goal of community preservation and not simply affordable housing. This goal needs to be reflected in the regulations by ensuring that no present occupant will be evicted or asked to leave any property in the SR 710 corridor, and that each present occupant will be given a priority consideration as the purchaser.

**17. The Proposed Regulations Fail to Override Conflicting Provisions of the Caltrans Right-of-way Manual**

The proposed regulations do not follow and conflict with Caltrans' operating rules in its "Right of Way Manual." The regulations need to clearly state that they prevail in every instance.

**18. The Proposed Regulations Fail to Provide Adequate Time for a Tenant to Respond to a Caltrans Offer to Sell**

The regulations need to provide 180 days to respond to a Caltrans offer to sell.

**19. The Proposed Regulations Fail to Protect the Right of Buyers to Repair and Improve the Property After it is Purchased**

Buyers need to have an absolute right to repair and improve their properties in the future, and the regulations need to state this.

20. The Proposed Regulations Fail to Protect the Right of Buyers to Re-Finance the Primary Loan in the Future

Buyers need to have an absolute right to re-finance their loans on their properties in the future, and the regulations need to state this.

21. The Proposed Regulations Fail to Protect the Right of Buyers to Pass Ownership via an Estate Planning Document or Probate

Buyers need to have an absolute right to pass ownership by probate or an estate plan, and the regulations need to state this.

22. The Proposed Regulations Need a Flexible 'Rule of Reason' To Meet Unforeseen Circumstances

There needs to be a flexible "rule of reason" to encourage the goal of every tenant being able to purchase where they are occupants.

23. The Proposed Regulations Need to Establish a Clear Line of Responsibility Between Caltrans Personnel for Decision-Making on These Sales

Caltrans needs to establish a clear line of authority for making decisions on these sales. Without a clear line of authority, excluding other Caltrans personnel, the sales process will be bogged down with internal Caltrans in-fighting, as it was during the 1996-2006 sales process.

Conclusion

This office will be glad work with Caltrans to provide effective regulations to implement the Roberti Act and all other state laws for the sale of Caltrans properties.

Sincerely,

  
Christopher Sutton