

City of Alhambra

Office of the City Manager

Mr. Brett L. Green, Chief
Division of Right of Way and Land Surveys
ATTN: Affordable Sales Program
California Department of Transportation
1120N Street MS37
Sacramento, CA 95814

April 13, 2015

E mail Delivered

RE: RESUBMITTED COMMENTS ON CALTRANS PROPOSED REGULATIONS GOVERNING SR 710 PROPERTY SALES; "The AFFORDABLE HOUSING SALES PROGRAM"

Dear Mr. Green,

The City of Alhambra participated in the February 27, 2015 teleconference announcing and reviewing changes to the above proposed regulations. We understand the regulations have been reissued in their entirety and, thus it is appropriate to resubmit comments appropriate to the reissued proposed regulations. We thank you for the opportunity to participate.

Alhambra remains supportive of the Roberti and Liu legislation pertaining to these property sales and believe CalTrans has a win win opportunity to realize statewide housing goals to increase affordable housing while moving forward concurrently with the 710N Gap Closure Project EIR/EIS review and future selection of a preferred alternative; anticipated to be sometime in mid to late 2016 (per Metro and CalTrans public notices). We appreciate the careful and parallel phasing approach Cal Trans has developed to release surplus properties as the environmental and discretionary decision processes continue.

Our comments will be summarized first and then the remainder of this letter will more fully put forth our analyses. We have numbered the comments and the subsequent analysis paragraphs for ease of review:

1. Sections 1477(4) and 1490: Expand CalTrans monitoring of property sales (both vacant land and existing units) to Housing Entities to include oversight, if not permit approval, for new construction and/or rehabilitation permits to provide affordable housing.
2. Section 1477: Add a new provision that any properties declared surplus but not sold as described in this section be offered to public entities such as cities, school districts, transportation agencies etc. before being released to the public at large and private speculators through the auction process.



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- 3 Section 1478: Add a new provision that all buyers of surplus 710N properties sold through these processes must agree to a covenant running with the land which prohibits the filing or joining in any lawsuit of any kind intending to stop a 710N Gap Closure project, including the environmental clearance documents
- 4 Sections 1477, 1478, 1479: Add a new provision setting forth a timing mechanism in the final surplus property sale that requires the Draft 710N Gap Closure Project EIR/EIS must be a complete Draft (or Final)) released, noticed, issued with public review completed in accordance with CEQA and NEPA. The document that meets this requirement must contain a selected preferred alternative as required by CEQA and NEPA (including appendices and engineering drawings).
- 5 Section 1487: Add a new provision that sets a condition of escrow to be certification and issuance of the NOD and ROD for the FINAL 710N Gap Closure project EIR/EIS concurrently or before the close of escrow .
- 6 Suggested CalTrans action (not a part of the regulations): CalTrans should consider making a motion to dissolve the Federal Court injunction currently in place. This action should happen before or concurrently with the first surplus property's close of escrow, or upon certification and filing of the 710N Gap Closure Project EIR/EIS NOD and ROD.

1A. EXPANDED STATE OVERSIGHT: The Affordable Sales program, in implementing various existing State laws including the subject specific Roberti and Liu bills, would benefit from maximum State oversight to ensure that not only deed restrictions are enforced but to assist in the timely completion of new and rehabilitated construction as a part of the implementation process. We believe the uniqueness of the opportunity to maintain and create affordable housing in this program warrants such state involvement; perhaps with other state department's assistance to streamline permits and expedite construction.

2A. EXPAND PURCHASE OPPORTUNITIES TO ADDITIONAL PUBLIC ENTITIES: The subject properties were originally taken for a public purpose and, once tenants, previous tenants, previous owners, housing entities etc have been offered the opportunity to purchase these publically held properties, it only seems reasonable that other public entities such as school districts, cities, transportation agencies, etc should have an opportunity for purchase before the general public and private land speculators are permitted to be involved.

3A. REQUIRE A RECORDED PROMISE FROM BUYERS: A covenant running with the land promising not to sue any future 710N Gap Closure project in return for the opportunity to purchase publically held land and/or improvements is a reasonable and not unprecedented technique used by the state to further state goals. Requiring a covenant further protects a possible future expenditure of public funds that would have to be spent defending a known, disclosed existing condition in the vicinity of the released surplus properties (i.e. the completion of the 710N EIR/EIS and a possible future gap closure construction project). The nexus here is the fact that the subject properties were taken with the intent

to close the Gap and, their release for sale now should not impede the continued public interest in pursuing the Gap Closure Project EIR/EIS and ultimate project construction and operation.

At least since 1973 there have been lawsuits seeking to enjoin the completion of the 710 Gap. Without discussing the merits of those lawsuits, they have stalled the process for completion of the Gap for these many years. Because of probable future lawsuits, as well the possible creation of new parties of interest (i.e. buyers), we believe CalTrans has a responsibility to stop the unending lawsuits whenever possible. In this case, this can be accomplished by requiring buyers of all properties declared surplus to the 710N Gap Closure Project to agree to a covenant which runs with the land and shall be recorded. The covenant shall prohibit a buyer from filing or joining in a lawsuit of any kind which is related in any way to the completion of the Gap Closure, or after the 710N Gap Closure construction is completed.

4A and 5A: TIMING MECHANISMS: We understand the proposed regulations governing the sales of surplus property from the 710N gap closure project are but one part of the regulatory process setting forth Chapter 9.5. in Title 21 of the Public Works State Code. The supplemental information (i.e. Property Sales Information for the SR 710 Corridor brochure, a News Release and a 3 page Q & A sheet) issued by CalTrans on May 30, 2014 and the parcel identification list of 42 improved properties and 11 vacant lots issued less than 10 days ago, are easily understood and provide transparency in what CalTrans is proposing to do to both implement the Roberti and Liu subject legislation and maintain the integrity of the 710N Gap Closure Project EIR/EIS process, including the selection of a preferred alternative.

Our review of the entirety of the proposed Affordable Sales Program has not yet yielded any evidence of the codification of the statements made as to the relationships between the 710N Gap Closure EIR/EIS final results and the declaration and subsequent release of parcels "surplus" to the alternatives in the EIR/EIS and potential final project implementation.

No one wants to be in a position of premature release of even one parcel that could be needed for either a hybrid alternative identified in the upcoming formal EIR/EIS public review process, the preferred alternative not yet selected or ultimate project construction. The materials we have reviewed do not contain the criteria used by CalTrans for surplus parcel identification nor do they recognize the current status of the 710N Gap Closure EIS/EIR or the inherent relationship of the action of releasing parcels for sales and the 710N "project" under CEQA and NEPA environmental regulations.

We agree CalTrans is the best agency to make these determinations, given its internationally recognized transportation accomplishments; we only hesitate and request codification of a timing mechanism as described because of the following set of facts germane to this discussion as of the date of this writing:

- a. In March, 2011, CalTrans issued a Notice of Intent and a Notice of Preparation for the "710N Gap Closure Project" (SCH NO.: 1982092310 and Caltrans Project No.: 0700000191 (EA: 187900)) initiating a comprehensive, transparent work effort (the EIS/EIR work effort and some products are sometimes identified informally as the "SR710 North Study" or the "710 Study")

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- b. In December 2012, Metro and CalTrans issued the "SR 710N Alternatives Analysis Report" for the 710N EIR/EIS which states on page ES 25 "it is possible to combine components of transit and Bus Rapid Transit Alternatives within a Tunnel ". Preliminary engineering updates and alternatives analysis updates were provided to the TAC and SOAC (both of which Alhambra is a member) throughout 2013 up until early 2014.
- c. As of May 2014 preliminary engineering on alternatives was still underway; as of this writing, to the best of our knowledge, preliminary engineering is not complete. No preliminary engineering report has been issued or is available.
- d. The Draft 710N Gap Closure Project EIR/EIS was released on March 6, 2015. The public comment period ends July 12, 2015.
- e. CEQA and NEPA both require responses to these public comments and possible additional work to a Draft EIR/EIS and ultimate project design when the public and reviewing agencies bring pertinent factors to the attention of the document preparers through the formal circulation and review processes. This process of incorporating public comment and the subsequent decision making process of preferred alternative selection could yield additional or "hybrid" alternatives.
- f. It would be difficult to assess and certify whether or not potential future alternatives and the actual yet to be selected preferred alternative would have property needs of the CalTrans owned properties UNLESS there is a timing mechanisms requiring the completion of such alternatives analysis through the public comment and certification stages per federal and state environmental laws.
- g. Any proposed Mitigated Negative Declaration and/or any anticipated Environmental Impact Report as well as all environmental clearance documents for the vacant properties will be encumbered (and open to possible challenge) by this exact same issue UNLESS there are codified timing mechanisms in the Affordable Sales Program that can then be cited in these subsequent environmental documents.

We feel, for all of the reasons above and for the mutual goals of all parties for continued transparency of the 710N Gap Closure project, that the inclusion of a timing mechanism, as described on page one of

this letter, in the proposed regulations governing the sale of SR 710 property sales is an essential piece of the regulations that needs to be added to the Final regulations for the Affordable Sales Program.

6A. DISSOLVE INJUNCTION: The preparation of the SR 710N Gap Closure EIR/EIS included a lengthy alternatives screening process which started with over 100 project alternatives identified in public scoping sessions, then reduced to 42, then after much analysis and technical study was reduced to 12; then to the four alternatives currently under study. The screening process included the old 710N Extension surface freeway that was enjoined from construction in the 1970's in the early stages of potential alternatives; it was screened out unequivocally early in the process.

Important to this discussion is the fact that the 2012 Alternatives Report and the Gap Closure EIR/EIS under preparation since 2011 do NOT include a surface route of any kind or partial use of any surface route to close the 710N gap. Since the properties being considered for release are "surplus" to the current 710N Alternatives being studied, as attested to by CalTrans, then the Injunction as well as the case that led to the Injunction are both moot.

Thus, we request Cal Trans consider making a motion to dissolve the Federal Court injunction. Taking this action would frame the release and declaration of surplus 710N properties in the appropriate context and give assurance of CalTrans' commitment to completing the ongoing 2011 710N Gap Closure Project EIR/ EIS. In other words, if we are releasing properties originally taken for an alternative all parties agree will not EVER happen, then the current actions should be cleared of past, moot actions first.

In conclusion, we wish to thank CalTrans for developing a process and program that will finally allow positive steps towards ultimate construction of a 710N Gap Closure Project. The parallel approach to simultaneously declare and release parcels surplus to a project while environmental and engineering analysis is ongoing and the public review process not yet started is both creative and achievable with the regulations amended as described above. We thank you, in advance, for your attention and consideration of our comments and suggestions for the Affordable Sales Program.

Any questions or requests for further discussion may be directed to the undersigned at 310 977 7704 or to Alhambra City Manager Mary Swink at 626 290 7400.

Sincerely,



Leland C. Dolley

Special Consultant to the City of Alhambra

CC: Alhambra City Manager Mary Swink