

Erickson, Kimberly E@DOT

From: Christopher Sutton <christophersutton.law@gmail.com>
Sent: Sunday, April 24, 2016 4:45 PM
To: Erickson, Kimberly E@DOT; Lowden, Jennifer S@DOT; Affordable Sales Program@DOT
Subject: Comments and Objections to Revised Draft Regulations

Dear Ms. Erickson, Ms. Lowden, and Caltrans:

General Comment: These draft regulations ignore the requirements of Streets and Highways Code section 118.6, which reads as follows in its entirety (emphasis supplied):

"118.6. The department shall, to the greatest extent possible, offer to sell or exchange excess real property within one year from the date that it is determined by the department to be excess.

"Excess real property," for the purposes of this section, means all land and improvements situated outside of calculated highway right-of-way lines not needed or used for highway or other public purposes, including, but not limited to, those leased to public agencies pursuant to Section 104.15, and available for sale or exchange.

The department shall adopt rules and regulations to determine which real property outside of calculated right-of-way lines is no longer needed or used for highway or other public purposes, and which is available for sale or exchange. The department is authorized to lease all real property not presently needed or used for highway purposes pending the sale or exchange of such property.

Excess real property which consists of lands of notable environmental value, such as, but not limited to, lands of extraordinary scenic beauty, lands fronting on waterway, lakes, and marshes, lands within the boundaries of parks, recreational areas, wildlife preserves or refuges, and lands providing wildlife habitat shall first be offered for sale or exchange to public agencies operating parks and recreational areas as follows:

- (a) To any park or recreation department of any city within which the land may be situated.
- (b) To any park or recreation department of the county within which the land is situated.
- (c) To any regional park authority having jurisdiction within the area in which the land is situated.
- (d) To the State Resources Agency or any agency which may succeed to its powers.

The public agency desiring to purchase such land for park or recreation use shall notify the department within 60 days of its intent to purchase the land after receipt of the department's notification of intent to sell the land. If the public agency desiring to purchase the land and the department are unable to arrive at a mutually satisfactory sales price for the land during the 60-day period, the land may be disposed of in the normal manner.

The failure of the department to first offer excess real property which consists of lands of notable environmental value to public

agencies operating parks and recreational areas shall not affect the validity of any conveyance of such excess real property to any person or entity unaware of the failure of the department to do so; however, this shall in no way be construed as releasing the department from its responsibility in offering such property to such public agencies first."

Comment 1: The draft rules fail to provide a schedule for the sale of each of the approximate 500 excess properties within the SR 710 corridor. This violates the first sentence of section 118.6, since no reason is given why these properties cannot be sold within one year.

Comment 2: The draft rules fail to describe how individual properties have been or will be selected for sale and how the order of sale was or will be determined. Caltrans previously announced and posted at its Affordable Sales Program website a list of 42 single family residences and eleven vacant land parcels that it intended to first offer for sale. Without valid regulations these listing of properties was a violations of Section 118.6 and the Administrative Procedures Act ("APA"). The draft rules need to **specify how properties will be selected for sale**, and they do not. In fact, in early 2016 Caltrans sold a parcel of vacant land in Pasadena prior to the completion of the APA process to adopt the rules required by Streets and Highways Code section 118.6, third paragraph (highlighted above). That parcel carries Caltrans parcel number DD046819-01-01, located at Caltrans site 09-07-LA-710-PM 32.2. It is near the end of Waverly Drive at the western side of southbound exit ramp from the 710 stub to California Boulevard and Saint John Ave. Caltrans is selling properties without complying with the APA and Section 118.8.

Comment 3: Section 1476(l) (lower case L): The draft regulations continue the prior dishonest and inconsistent provisions that define "area median income" on a county-wide basis, but which define "fair market value" on a local neighborhood basis. This will have the effect of excluding from the purchase process the majority of existing tenants in the Caltrans-owned residential properties. People who are above the income level of 150 percent of "area median income" (a county-wide definition) will be disqualified from purchasing the property at an "affordable price" and will be required to pay "fair market value" (a neighborhood defined formula). If "fair market value" were also required to be based on a county-wide median of value, more tenants would qualify to purchase at an "affordable" price. Thus many tenants will be "too middle class" and disqualified. This impact conflicts with the goals of community preservation in the Roberti Law.

Comment 4: Sections 1479, 1480, 1481, 1483: Certified Mail does not serve the interests of the recipient, but is intended to provide the sender with notice of receipt. Most people refuse to sign for certified mail because they believe it is a sales or marketing scam. Notice should be given by both Certified and First Class mail to ensure that the tenant actually receives the notice. Certified Mail is a trick used by public entities to make them appear to be giving actual notice, when in fact it is less reliable notice than First Class Mail, which is more likely to be delivered.

Comment 5: Section 1480 and 1487: The reply period is too short at 120 days if the buyers are required to obtain third party financing. The additional 120 days to close escrow is also too short, because bank or lender financing will be needed to close escrow. Caltrans is treated with suspicion by most lenders. Caltrans has a known track record of foreclosing on its affordable housing covenants for purely personal or corrupt reasons.

Banks and lending institutions cannot rely on Caltrans personnel not to foreclose on the covenants for random and unpredictable reasons, such as seeking to repair a porch, seeking to refinance a prior loan, seeking upgrade air conditioning, or obtain insurance proceeds from a homeowner's insurance policy after a fire or other event. The statement that the California Housing Finance Agency ("CHFA") says that 120 days is "sufficient" does not account for the extremely bad reputation Caltrans has with lenders and the difficulty in obtaining financing when Caltrans is the seller.

Of the forty-six (46) properties sold by Caltrans under the Roberti Law between 1995 and 2006 (within the SR 710 corridor), the average time to obtain financing was over six months from the start of escrow, and some buyers required over three years to obtain financing. Caltrans is known to be an unpredictable and unreliable administrator of the affordable housing covenants and not worth the risk for lenders. Caltrans has failed to adopt regulations on how the affordable housing covenants will be administered.

In fact, starting in 1983, Caltrans removed itself and its so-called "Right of Way Manual" from the entire APA process. Most of the rules in the various Caltrans books and manuals were never approved by the Office of Administrative Law and are illegal "underground regulations." This is why lenders will refuse to lend to buyers when Caltrans is the entity administering the affordable sales covenants, and why it will take more than 120 days to obtain financing during escrow. CHFA has no experience with Caltrans-sold properties, and its experience is with entities governed by formal regulations. Caltrans operates almost entirely without formal regulations.

Given Caltrans' unique bad reputation with lenders, 120 days during escrow is not enough time to obtain financing. This period should be increased to 365 days or allow for extensions of time when the buyer cannot obtain financing readily.

- - - Christopher Sutton 4-24-2016
Attorney for Caltrans Tenants in the 710 Corridor