State of California | Business, Transportation and Housing Agency

Memorandum

To: ALL REGIONS/DISTRICTS

Date: July 6, 2009

Attention: Region/District Division Chiefs & RAP Senior Right of Way Agents

File: RELOCATION ASSISTANCE Reference File 2009-01

From: **DEPARTMENT OF TRANSPORTATION**
DIVISION OF RIGHT OF WAY
MAIL STATION 37

Subject: Temporary Programmatic Waiver: Waiver of 49 CFR 24.401(b)(1) – Calculation of Replacement Housing Payment for Negative Equity

On April 7, 2009, the Federal Highway Administration (FHWA) issued a Memorandum entitled, "Temporary Programmatic Waiver: Waiver of 49 CFR 24.401(b)(1) – Calculation of replacement Housing Payment for Negative Equity". The California Department of Transportation (Department) requested and received a programmatic waiver for calculating maximum replacement housing payments based upon the initial written offer of just compensation rather than the administrative settlement amount as follows:

- The waiver shall be used in instances where an Administrative Settlement is appropriately justified and;
- The real property is encumbered by a mortgage (or other qualified lien) that exceeds the current market value of the property, and;
- The owner/displacee is not in default and could continue to meet their monthly payment obligations in a timely manner, except for the compulsory sale for a transportation project.

Retroactive to April 7, 2009, and continuing until expiration of the temporary waiver on January 31, 2011, the Department shall follow the guidelines set forth below when they encounter displacees affected by this waiver.

The District/Region Relocation Assistance Senior will contact the Senior Statewide Relocation Assistance Liaison (HQ RAP Senior) for review and approval of the Waiver calculation of replacement housing payment (RHP). At a minimum, the District/Region will provide documents substantiating that the displacee is in a negative equity situation, and that they are not in default on their payments. A copy of the appropriate Administrative Settlement will be included with the pertinent relocation information. Once approved, the District/Region will calculate the RHP based on the fair market value established as just compensation in the First Written Offer (FWO), utilizing the process outlined in the Right of Way Relocation Assistance manual, Table 10.04-A. Owners/displacees must meet all other requirements of the regulations, including but not limited to, U. S. legal residency, time frames and spend-to-get criteria. See examples below:

Example 1:

An owner owes $200,000 for a home purchased 3 years ago. The real estate market has rapidly declined over the last several months. The Department needs the property for a project, appraises the property and presents the owner a FWO of just compensation in the amount of $150,000. The Department finds a comparable replacement dwelling on the market for $170,000 because of the market decline. The maximum price differential (PD) payment eligibility is $20,000. The owner and Department agree to a settlement of $200,000 for the purchase of the property. Normally the $20,000 PD eligibility is zeroed, per the regulations, because the appropriately justified $50,000 administrative settlement exceeds the PD eligibility. However, this Waiver allows the Department to pay $200,000 to the owner to acquire the property *and* allows the owner to retain the $20,000 replacement housing payment (RHP) as down payment on the comparable, provided the remaining requirements of the regulations are met.

$170,000 (Comparable Replacement Dwelling)

- $150,000 (*First Written Offer*)

$20,000 (Maximum PD Eligibility)

Normal RHP Determination
$50,000 (Increase – Administrative Settlement) is greater than the $20,000 (PD Eligibility) resulting in a $0 RHP Payment

$200,000 (Agreement Amount)

- $150,000 (*First Written Offer*)

$50,000 (Administrative Settlement)

Waiver RHP Determination
$50,000 (Increase – Administrative Settlement) is greater than the $20,000 (PD Eligibility) so the Waiver allows a $20,000 RHP Payment

Example 2:

An owner owes $300,000 for a home purchased 2 years ago. The real estate market has rapidly declined over the last several months. The Department needs the property for a project, appraises the property and presents the owner a FWO of just compensation in the amount of $225,000. The Department finds a comparable replacement dwelling on the market for $260,000 because of the market decline. The PD payment eligibility is $35,000. Because a comparable replacement dwelling is not available within the specified limits of 49 CFR 24.401, the comparable is made available under Last Resort Housing (LRH). The owner and Department agree to a settlement of $300,000 for the purchase of the property. Normally the $35,000 PD eligibility is zeroed, per the regulations because the appropriately justified $75,000 administrative settlement exceeds the PD eligibility. However, this Waiver allows the Department to pay $300,000 to the owner to acquire the property *and* allows the owner to retain the $35,000 RHP as a down payment on the comparable, provided the remaining requirements of the regulations are met.

$260,000 (Comparable Replacement Dwelling)

- $225,000 (*First Written Offer*)

$35,000 (Maximum PD Eligibility)

$300,000 (Agreement Amount)

- $225,000 (*First Written Offer*)

$75,000 (Administrative Settlement)

Normal RHP Determination
$75,000 (Increase – Administrative Settlement) is greater than the $35,000 (PD Eligibility) resulting in a $0 RHP Payment

Waiver RHP Determination
$50,000 (Increase – Administrative Settlement) is greater than the $20,000 (PD Eligibility) so the Waiver allows a $35,000 RHP Payment

The Mortgage Differential and Incidental Expenses components of the Replacement Housing Payment continue to be administered as detailed in the Right of Way Relocation Assistance manual, Chapter 10, section 4.

The FHWA Memorandum issued April 7, 2009, may be viewed at:
http://www.fhwa.dot.gov/realestate/tempprogwaiv.htm

Sincerely,

Sunny Softon
for DONALD E. GREBE
Office Chief
Right of Way Project Delivery

c: TCraggs, LLee, RMacpherson, SKarimbakas, ANierenburg, SHatt, RRodrigues, JSchaffer, SLofton,