

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2019-0521-01E
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For use by Office of Administrative Law (OAL) only

2019 MAY 21 A 8:42
OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

Department of Transportation

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Affordable Sales Program - Minimum Sales Price	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1476
	REPEAL
TITLE(S) 21 Division 2	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON

Carolyn Dabney

TELEPHONE NUMBER

(916) 654-5863

FAX NUMBER (Optional)

E-MAIL ADDRESS (Optional)

carolyn.dabney@dot.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Laurie Berman

DATE

5-14-19

TYPED NAME AND TITLE OF SIGNATORY

Laurie Berman, Director, California Department of Transportation

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TITLE 21 PUBLIC WORKS
DIVISION 2. DEPARTMENT OF TRANSPORTATION
CHAPTER 9.5. AFFORDABLE SALES PROGRAM

§1476 Definitions

- (a) **"Affordable housing cost"** shall be calculated in a manner consistent with the provisions of Health and Safety Code section 50052.5 as implemented by California Code of Regulations, Title 25, section 6924. For purposes of this chapter, "affordable housing cost" shall not exceed the following:
- (1) With respect to lower income households, housing costs up to 25 percent of gross income;
 - (2) With respect to moderate income households, housing costs up to 30 percent of gross income;
 - (3) With respect to households whose gross income is above low or moderate income but does not exceed 150 percent of the area median income, housing costs up to 30 percent of gross income.
- (b) **"Affordable price"** means the maximum price at which the housing cost to be paid by the prospective buyer would not exceed the affordable housing costs for such buyers while applying the market interest rate over a fully amortized 30-year term. In the case of a buyer that is a lower income household, the price for residential property shall not be greater than the amount that would result in the buyer's monthly payments exceeding that portion of the buyer's household adjusted income, as determined in accordance with the regulations of the United States Department of Housing and Urban Development issued pursuant to Section 8 of the United States Housing Act of 1937. The affordable price shall not be less than the price paid by the agency for original acquisition, unless the acquisition price was greater than the current fair market value, and shall not be greater than fair market value.
- (c) **"Affordable rent"** means rent calculated in a manner consistent with the provisions of Government Code section 54236 (g) and California Code of Regulations, Title 25, section 6922.
- (d) **"Area median income"** shall have the same definition as set forth in Health and Safety Code, section 50093.
- (e) **"CalHFA"** means the California Housing Finance Agency, a public instrumentality and political subdivision of the State of California created by the Zenovich-Moscone-Chacon Housing and Home Finance Act, division 31 of the California Health and Safety Code.
- (f) **"Conditional Offer Prior to Sale"** means the manner in which all surplus residential property is offered for sale in accordance with this chapter.
- (g) **"Designated housing-related public entity"** means a housing-related public entity designated by the legislative body of the city in which a surplus residential property is located. Such designation shall be made by the legislative body pursuant to resolution and sent to the Department within the time frames set forth in this chapter.
- (h) **"Date the offer of sale is made"** means the date stated in the Conditional Offer Prior to Sale or publication, as applicable.

- (i) **"Decent, Safe, and Sanitary"** means the condition of a replacement dwelling as defined and described in California Code of Regulations, Title 2, section 1872.
- (j) **"Department approved appraised fair market value"** means the fair market value as determined by a licensed appraiser, and reviewed and accepted by the Department to be compliant with the Uniform Standards of Professional Appraisal Practice.
- (k) **"Displaced"** means a condition when a person is subject to displacement pursuant to Government Code section 54236(e) or 54238.3(b).
- (l) **"Fair market value"** means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale in accordance with Government Code section 54236(f), the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
 - (1) The buyer and seller are typically motivated;
 - (2) Both parties are well informed or well advised, and each is acting in what they consider their best interest;
 - (3) A reasonable time is allowed for exposure in the open market;
 - (4) Payment is made in terms of cash in United States Dollars or in terms of a financial arrangement comparable thereto;
 - (5) The price represents the normal consideration for the property sold unaffected by special or creative financing, sales concessions, or the use and resale restrictions; and

For transfer from the Department, the date of value is the date the offer of sale is made by the selling agency.

- (m) **"Forced to relocate"** means a condition when a displaced person has vacated the surplus residential property not later than ninety (90) days after transfer from the Department to a new owner pursuant to a legal written notice to vacate, excluding notices for cause.
- (n) **"Former tenants in good standing"** means tenants who were current in rent obligations, in full compliance with the terms and conditions of the lease or rental agreement at the time of vacancy, and whose tenancy was not terminated for cause.
- (o) **"Good standing"** means a condition when tenants or occupants who are current in rent obligations, and in full compliance with the terms and conditions of the lease or rental agreement as of the date the tenant or occupant responds to the Conditional Offer Prior to Sale and at time of transfer from the Department.
- (p) **"Historic home"** means a residential surplus property identified by address in section 1478.2.
- (q) **"Housing cost"** of a prospective buyer purchasing a surplus residential property shall be calculated in accordance with the provisions of California Code of Regulations, Title 25, section 6920.
- (r) **"Housing-related private entity"** means any individual, joint venture, partnership, limited partnership, trust, corporation, cooperative, or other legal entity, or any combination thereof, approved by the Department as qualified to either own, construct, acquire, or rehabilitate a housing development, or a residential structure other than an owner-occupied single unit whether for profit, non-profit, or limited profit.

(s) **"Housing-related public entity"** means any county, city, city and county, the duly constituted governing body of an Indian reservation or Rancheria, or housing authority organized pursuant to the Health and Safety Code, division 24, part 2, chapter 1, and also includes any state agency, public district or other political subdivision of the state, and any instrumentality thereof, which is authorized to engage in or assist in the development or operation of housing for persons or families of low or moderate income. Housing-related public entity also includes two or more housing-related public entities acting jointly.

(t) **"Limited equity cooperative housing"** means a corporation as defined in Civil Code section 817.

(u) **"Minimum Sales Price"** means the result of this calculation: $AP_{Orig} \times (CPI_{CY} / CPI_{PY})$. If the current fair market value is less than the minimum sales price, then the minimum sales price shall be the current fair market value. Neither an affordable price nor a reasonable price shall be less than the minimum sales price for Remaining Phase 1 Properties.

(1) The California Department of Industrial Relations publishes the California Consumer Price Index (C-CPI) with values starting in 1955.

(2) AP_{Orig} means the price the Department paid to acquire the property.

(3) CPI_{CY} means the most recently published annual C-CPI value for All Urban Consumers as of the last day of the 120-day term of the Conditional Offer Prior to Sale.

(4) CPI_{PY} means the annual C-CPI value for All Urban Consumers for the year when the Department most recently recorded title for the property. Any property acquired before 1955 shall use the 1955 value.

(v)(u) **"Nonprofit private entity dedicated to rehabilitating and maintaining the historic home for public and community access and use"** means an entity that meets all of the following criteria:

(1) Is a private entity.

(2) Is recognized by the California Secretary of State as an active, nonprofit organization.

(3) Intends to purchase, rehabilitate, and maintain the historic home for public and community access and use.

(w)(v) **"Minimum Property Standards"** means meeting the following minimum acceptable criteria for existing surplus residential properties.

(1) Real Estate Entity. The property must comprise a single readily marketable real estate entity.

(2) Party or Lot Line Wall. A building constructed on or to a property line must be separated from the adjoining building, by a wall extending the full height of the building from the foundation to the ridge of the roof. The wall can separate row type townhouses or semi-detached units. There must be adequate space between buildings to permit maintenance of the exterior walls.

(3) Service and Facilities.

- (i) Trespass. Each living unit must be able to be used and maintained individually without trespass upon adjoining properties. Any easement required must run with the land.
 - (ii) Utilities must be independent for each living unit except that common services, such as water, sewer, gas and electricity, may be provided for living units under a single mortgage or ownership. Separate utility service shut-off for each unit shall be provided. For living units under separate ownership, common utility services may be provided from the main to the building line when protected by easement or covenant and maintenance agreement acceptable to the Department. Individual utilities serving a living unit shall not pass over, under, or through another living unit, unless provision is made for repair and maintenance of utilities without trespass on adjoining properties or legal provision is made for permanent right of access for maintenance and repair of utilities.
 - (iii) Other facilities must be independent for each living unit, except that common services, such as laundry and storage space or heating, may be provided for in two-to-four living unit buildings under a single mortgage.
- (4) Each living unit must contain the following:
- (i) A continuing supply of safe and potable water.
 - (ii) Sanitary facilities and a safe method of sewage disposal.
 - (iii) Heating adequate for healthful and comfortable living conditions. The Department may determine that climatic conditions are such that mechanical heating is not required. Dwellings with wood burning stoves or solar systems used as a primary heat source must have permanently installed conventional heating systems that maintain at least 50 degrees Fahrenheit in areas containing plumbing systems.
 - (iv) Domestic hot water.
 - (v) Electricity for lighting and for equipment used in the living unit.
- (5) Access.
- (i) Each property must be provided with a safe and adequate pedestrian or vehicular access from a public or private street.
 - (ii) All streets must have an all-weather surface.
 - (iii) Access to the living unit must be provided without passing through any other living unit.
 - (iv) Access to the rear yard must be provided without passing through any other living unit. For a row-type dwelling, the access may be by means of alley, easement, passage through the dwelling, or other acceptable means.
- (6) Defective Conditions. Defective construction, poor workmanship, evidence of continuing settlement, excessive dampness, leakage, decay, termites, or other conditions impairing the safety, sanitation or structural soundness of the defects or conditions have been remedied and the probability of further damage eliminated.

- (7) Space Requirements. Each living unit must be provided with space necessary to assure suitable living, sleeping, cooking and dining accommodations and sanitary facilities.
- (8) Mechanical systems must be safe to operate, be protected from destructive elements, have reasonable future utility, durability and economy, and have adequate capacity and quality.
- (9) Ventilation. Natural ventilation of structural space such as attics and crawl spaces, must be provided to reduce the effect of conditions of excess heat and moisture which are conducive to decay and deterioration of the structure.
- (10) Roof covering must prevent entrance of moisture and provide reasonable future utility, durability and economy of maintenance. When reroofing is needed for a defective roof, already consisting of three layers of shingles, all old shingles must be removed prior to re-roofing.
- (11) Hazards. The property must be free of hazards which may adversely affect the health and safety of the occupants or the structural soundness of the improvements, or which may impair the customary use and enjoyment of the property by the occupants. The hazards can be subsidence, flood, erosion, defective lead base paint (24 CFR Part 35) or the like.
- (12) Crawl Space
 - (i) Must be adequate access to the crawl space.
 - (ii) The floor joists must be sufficiently above the highest level of the ground to provide access for maintenance and repair of ductwork and plumbing.
 - (iii) The crawl space must be clear of all debris and properly vented.
 - (iv) Any excessive dampness or ponding of water in the crawl space must be corrected.
- (13) Drainage. The site must be graded so as to provide positive, rapid drainage away from the perimeter walls of the dwelling and prevent ponding of water on the site.

(x)(w) "Multifamily property" means property that consists of two or more dwelling units.

(y)(x) "Nonresidential Property" means property, whether improved or unimproved, that is used primarily for a nonresidential purpose that is fully compliant, properly permitted, and licensed under local ordinances and state licensing requirements as of the effective date of these regulations if applicable.

(z)(y) "Occupant" notwithstanding any other provision of law, means a person or persons who lives in the surplus residential property as their principal place of residence, is of majority age, and is listed on the lease or rental agreement prior to the date a prospective buyer responds to a Conditional Offer Prior to Sale.

(aa)(z) "Persons or families of low or moderate income" shall have the same meaning as set forth in Health and Safety Code section 50093.

(bb)(aa) "Principal place of residence" means the place where one actually lives for the greater part of time, or the place where one remains when not called elsewhere for some special or temporary purpose and to which one returns frequently and periodically, as from work or vacation. There may be only one principal place of residence for any individual. Evidence that a location is the individual's "principal place of residence" includes, but is not limited to, the following elements, a compilation of which lends

greater credibility to the determination that a particular place is the principal place of residence, whereas the presence of only one element may not support such a determination:

- (1) The subject premises are listed as the individual's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including federal, state and local taxing authorities.
- (2) Utilities are billed to and paid by the individual at the subject premises.
- (3) All of the individual's personal possessions have been moved into the subject premises.
- (4) A homeowner's tax exemption for the individual has not been filed for a different property.
- (5) The subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, travel necessitated by employment or education, or other reasonable temporary periods of absence.

(cc)(bb) "Prospective buyer" means an occupant who lives in the surplus residential property as their principal place of residence for at least ninety (90) days prior to the date the property was declared surplus and who shall occupy the surplus residential property as their principal place of residence after transfer by the Department.

(dd)(ee) "Reasonable price" means the price which is best suited to the economically feasible use of the property as decent, safe, and sanitary housing at affordable rents and affordable prices established by the entity in accordance with section 1478(c).

(ee) "Remaining Phase 1 Properties" means the real property located at:

5506 Atlas Street, Los Angeles, CA
5512 Atlas Street, Los Angeles, CA
5513 Atlas Street, Los Angeles, CA
5501 Berkshire Avenue, Los Angeles, CA
5524 Kendall Avenue, Los Angeles, CA
268 Waverly Drive, Pasadena, CA
2028 Berkshire Avenue, South Pasadena, CA
705 Bonita Drive, South Pasadena, CA
773 Bonita Drive, South Pasadena, CA
801 Bonita Drive, South Pasadena, CA
815 Bonita Drive, South Pasadena, CA
816 Bonita Drive, South Pasadena, CA
823-825 Bonita Drive, South Pasadena, CA
901 Bonita Drive, South Pasadena, CA
1109 Grevelia Street, South Pasadena, CA
535 Meridian Avenue, South Pasadena, CA
1707 Meridian Avenue, South Pasadena, CA
1821 Meridian Avenue, South Pasadena, CA
863 Monterrey Road, South Pasadena, CA
885 Oneonta Drive, South Pasadena, CA
530 Orange Grove Avenue, South Pasadena, CA
534 Orange Grove Avenue, South Pasadena, CA

1101 Pine Street, South Pasadena, CA
511 Prospect Avenue, South Pasadena, CA
529 Prospect Avenue, South Pasadena, CA
533 Prospect Avenue, South Pasadena, CA
540 Prospect Avenue, South Pasadena, CA
626 Prospect Avenue, South Pasadena, CA
400 Prospect Circle, South Pasadena, CA
495 Prospect Circle, South Pasadena, CA
808 Valley View Road, South Pasadena, CA
822 Valley View Road, South Pasadena, CA

(ff)(dd) “Surplus residential property” means land and structures owned by the Department determined to be excess pursuant to Streets and Highways Code section 118.6, and determined to be no longer necessary for the Department’s use, and that are developed as single-family or multifamily housing, but does not include property being held by the Department for the purpose of exchange.

(gg)(ee) “Transfer” means any sale, assignment, or conveyance, voluntary or involuntary, of any interest in the property. Without limiting the generality of the foregoing, transfer shall include (i) a transfer by devise, inheritance or intestacy to a party who does not meet the definition of persons or families of low or moderate income, (ii) a lease or occupancy agreement of all or any portion of the property unless due to hardship or otherwise approved by the Department, (iii) creation of a life estate, (iv) creation of a joint tenancy interest, (v) execution of a land sale contract by which possession of the property is transferred to another party and title remain in the transferor, (vi) a gift of all or any portion of the property, or (vii) any voluntary conveyance of the property.

Transfer shall not include conveyance by devise, inheritance, or intestacy to a spouse, a conveyance to a spouse pursuant to the right of survivorship under a joint tenancy, conveyance to a revocable trust, or a conveyance to a spouse in a dissolution proceeding, however, any subsequent conveyance shall be subject to the use and resale restrictions.

(hh)(ff) “Tenure” means the longest uninterrupted term of occupancy attributable to each prospective buyer.

(ii) (gg) “Use and resale restrictions” means any and all terms, conditions and restrictions recorded against the surplus residential property or otherwise made pursuant to this chapter and which shall be enforceable pursuant to the Act and this chapter.

Note: Authority cited: Sections 54235, 54236, 54237, 54237.5, 54238, 54238.3 and 54238.4, Government Code; and Section 118.6, Streets and Highways Code. Reference: Sections 54236, 54237, 54237.5, and 54238, Government Code; Section 118.6, Streets and Highways Code; 24 C.F.R. Section 5.100; Sections 34240, 50052.5, 50076.5, 50079.5, 50093 and 50900, Health and Safety Code; 25 CFR 700.55; and Section 817, Civil Code-; Article XIX, section 2, California Constitution; and 92 Ops.Cal. Atty. Gen. 73 (2009).

FINDING OF EMERGENCY

The Department of Transportation (Caltrans) finds that an emergency exists and that this proposed emergency regulation is necessary to address a situation that calls for immediate action to avoid serious harm to the public peace, health, safety or general welfare.

Specific Facts Showing the Need for Immediate Action

The Roberti Act (Government Code Sections 54236 through 54238.9) requires surplus residential properties owned by Caltrans to be offered for sale to eligible low-and-moderate-income tenants at an affordable price. The Affordable Sales Program regulations (21 CCR §§ 1475 et. seq) were adopted in 2016 setting forth the priorities and procedures for disposal of the surplus properties. Caltrans began implementing Phase 1 Sales, consisting of 42 properties in late 2016. In early 2018 Caltrans offered Phase 1 properties for sale to current tenants, setting the sales price of the properties at the original acquisition price adjusted for inflation. Caltrans used the California Consumer Price Index (C-CPI) to calculate the adjustment.

Subsequently, the United Caltrans Tenants Association (UCT) objected to the inflation adjusted price and challenged Caltrans' authority to adjust its original acquisition price for inflation and the use of the C-CPI for that adjustment in Superior Court. UCT asserted the inflation adjustment was illegal. Caltrans contends the adjustment for inflation is required by Article XIX, section 2 of the California Constitution. A hearing was held on December 21, 2018, in the Los Angeles Superior Court (*UCT vs. Department of Transportation*, Case No. BS173007) and the court found the adjustment of the original acquisition price and the use of the C-CPI was not supported by the Affordable Sales Program regulations. The court nullified the inflation adjusted acquisition prices and indicated amendments to the regulations are necessary to permit such adjustments.

The proposed emergency regulation is the immediate action necessary to avoid serious harm to the general welfare. The court ruling impacts real estate transactions that were in progress prior to the final court ruling. While contract law obligates Caltrans to complete the sales, emergency regulations will serve to ratify the sales prices. Timelines associated with the regular rulemaking process are not conducive to the closing of current transactions. Such a process would likely result in a breach of the Phase 1 sales contracts due to the "Time is of the Essence" contractual clause. Emergency regulations are necessary to promote legitimacy of the sales, to demonstrate Caltrans' commitment to operating with transparency and integrity, and to avoid lawsuits seeking completion or rescission of the pending sales contracts.

Pursuant to Gov. Code § 11342.545, this situation calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. Delaying the sales of Phase 1 properties harms the general welfare of the community. The Legislature has expressed a need for urgency in selling the surplus properties. As part of the Roberti Act the Legislature made findings and declarations, wherein the Legislature described "a pressing and urgent need for the preservation and expansion of the low- and moderate-income housing supply." (Gov. Code, § 54235.) The Legislature also reaffirmed that "the provision of decent housing for all Californians is a state goal of the highest priority." (*Ibid.*) This emergency regulatory action is immediate and necessary to facilitate the sale of Phase 1 transactions.

Authority and Reference Citations

Authority cited: Sections 54235, 54236, 54237, 54237.5, 54238, 54238.3 and 54238.4, Government Code; and Section 118.6, Streets and Highways Code.

Reference: Sections 54236, 54237, 54237.5 and 54238, Government Code; Section 118.6, Streets and Highways Code; 24 C.F.R. Section 5.100; Sections 34240, 50052.5, 50076.5, 50079.5, 50093 and 50900, Health and Safety Code; 25 CFR 700.55; Section 817, Civil Code; Article XIX, section 2, California Constitution; and 92 Ops. Cal. Atty. Gen. 73 (2009).

Informative Digest/Policy Statement Overviews

The Roberti Act sets forth the priorities for disposing of surplus residential property for State Route 710 (SR 710) in Los Angeles County. In 1979, the Legislature reaffirmed its finding 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 Affordable Sales Program regulations became effective July 26, 2016 and Caltrans began the unique process of selling the properties as prescribed by the Roberti Act and implementing the Affordable Sales Program regulations. Adoption of these proposed emergency regulations will allow Caltrans to continue the disposal of the surplus properties and assist Caltrans in its efforts to meet the intended goal of the Legislature of preserving and expanding the availability of low- and moderate-income housing supply.

Article XIX, section 2 of the California Constitution restricts the use of gas tax revenue and establishes the State Highway Account (SHA) as a trust account. Because the SHA is a trust account, properties purchased with SHA money but not used for transportation purposes are included in the trust. (See 92 Ops. Cal. Atty. Gen. 73 (2009).) Likewise, when those properties are sold, the appreciation of value is part of the trust. (*Id.*) The properties along the SR 710 were purchased with gas tax money and are part of the SHA trust account. While the Roberti Act authorizes the sale of these properties for less than fair market value (Gov. Code § 54235)—which deprives the SHA of the appreciation of value—it does not provide clear authority to return to the SHA less purchasing power than was expended to originally buy the properties. Caltrans believes, without clear authority to the contrary, it must adjust its original purchase price for inflation to establish a minimum sales price to prevent unlawful diversions from the SHA.

Furthermore, even if not mandated by the California Constitution, Caltrans has authority to clarify the intent of the Legislature regarding the Roberti Act. Although it is clear the Legislature intended for there to be a minimum sales price, it is not clear if the Legislature intended for it to be the historic purchase price or the dollar amount representing the purchasing power of the SHA. The Roberti Act uses the phrase “price paid...for original acquisition.” (Gov. Code, §§ 54237 & 54237.5.) This phrase could mean either the historic purchase price or the dollar amount representing the purchasing power of the SHA.

Amend:

Section 1476

- (u) **“Minimum Sales Price”** means the result of this calculation: $AP_{\text{Orig}} \times (CPI_{\text{CY}} / CPI_{\text{PY}})$. If the current fair market value is less than the minimum sales price, then the minimum

sales price shall be the current fair market value. Neither an affordable price nor a reasonable price shall be less than the minimum sales price for Remaining Phase 1 Properties.

(1) The California Department of Industrial Relations publishes the California Consumer Price Index (C-CPI) with values starting in 1955.

(2) AP_{Orig} means the price the Department paid to acquire the property.

(3) CPI_{CY} means the most recently published annual C-CPI value for All Urban Consumers as of the last day of the 120-day term of the Conditional Offer Prior to Sale.

(4) CPI_{PY} means the annual C-CPI value for All Urban Consumers for the year when the Department most recently recorded title for the property. Any property acquired before 1955 shall use the 1955 value.

This subsection defines the minimum sales price of the surplus properties and identifies how the minimum sales price is calculated.

The effect of this subsection is to fully inform and clarify how the sales price of a surplus property is determined.

The proposed emergency regulations are limited to the properties listed below and are identified under section 1476 (ee) of the proposed regulations.

(ee) **"Remaining Phase 1 Properties"** means the real property located at:

5506 Atlas Street, Los Angeles, CA
5512 Atlas Street, Los Angeles, CA
5513 Atlas Street, Los Angeles, CA
5501 Berkshire Avenue, Los Angeles, CA
5524 Kendall Avenue, Los Angeles, CA
268 Waverly Drive, Pasadena, CA
2028 Berkshire Avenue, South Pasadena, CA
705 Bonita Drive, South Pasadena, CA
773 Bonita Drive, South Pasadena, CA
801 Bonita Drive, South Pasadena, CA
815 Bonita Drive, South Pasadena, CA
816 Bonita Drive, South Pasadena, CA
823-825 Bonita Drive, South Pasadena, CA
901 Bonita Drive, South Pasadena, CA
1109 Grevelia Street, South Pasadena, CA
535 Meridian Avenue, South Pasadena, CA
1707 Meridian Avenue, South Pasadena, CA
1821 Meridian Avenue, South Pasadena, CA
863 Monterrey Road, South Pasadena, CA
885 Oneonta Drive, South Pasadena, CA
530 Orange Grove Avenue, South Pasadena, CA
534 Orange Grove Avenue, South Pasadena, CA
1101 Pine Street, South Pasadena, CA
511 Prospect Avenue, South Pasadena, CA
529 Prospect Avenue, South Pasadena, CA
533 Prospect Avenue, South Pasadena, CA
540 Prospect Avenue, South Pasadena, CA
626 Prospect Avenue, South Pasadena, CA

400 Prospect Circle, South Pasadena, CA
495 Prospect Circle, South Pasadena, CA
808 Valley View Road, South Pasadena, CA
822 Valley View Road, South Pasadena, CA

Mandate on Local Agencies or School Districts

The proposed regulations do not impose a mandate on local agencies or school districts.

Cost Estimate

The regulations involve no costs or savings to any State agency, no discretionary costs or savings to school districts, no reimbursable costs or savings to school districts under Section 17561 of Government Code, and no costs or savings in federal funding to the State. Local governments may see an increase in real property tax revenues as a result of increased sales prices of the surplus residential properties.