

July 17, 2014

Brent L. Green
Chief, Division of Right of Way and Land Surveys
ATTN: Affordable Sales Program
California Department of Transportation
1120 "N" Street, MS 37
Sacramento, CA 95814

Dear Mr. ~~Brent~~: 

I am writing you about the long-standing policy of the Department of Transportation requiring a thirty year restrictive covenant which imposes upon a buyer of surplus residential property the obligation to maintain the affordability of the property for future buyers of low and moderate income. This covenant for so long a period while consistent with the low and moderate income aspects of Government Code Sections 54235-54238.7—known informally as the Roberti Bill—departs from the purposes of those very same Code Sections designed to “preserve, upgrade, and expand the supply of housing” and to “mitigate significant environmental effects” caused by “displacement of large numbers of persons” which are the neighborhood preservation aspects of the legislation.

These problems came to light especially when viewed from the perspective of a tenant resident in a property that should have been declared surplus long before the Department actually did so. The on-again-off-again history of the 710 is a case in point. Numbers of people have eagerly anticipated being able to buy their homes, some over a period of three to four decades, only to be thwarted as the Department administrators or the CTC appointees or elected officials change and with them policy changes, as well. If thirty year restrictive covenants are added on too, lifetimes will come and go before buyers own their property free and clear.

The provisions of the Roberti Bill which call for the supply of housing to be preserved and upgraded and for governmental effects to be mitigated presumes that the actors will be full fledged homeowners. They have a vested interest to keep the property up, to invest money into their property without fear that an improvement might be “too much” or that a preemptive right to purchase might be effectuated. With the exception of Historic covenants, there should be nor restrictions on an owner’s ability to repair and improve his/her property.

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Sometimes buyers purchase property with the thought that their heirs will reap the greater benefit. This does not turn out to be the case if the heir has to turn his or her life upside down either to live in the house—which at one time was Department policy—or, at the minimum, to become a property manager supervising the property over a protracted period of time. A restrictive covenant makes sense but the length of it has to have some sort of balance.

In California, since the passage of the Roberti Bill, property values have increased dramatically at far greater levels than even inflation or other gauges of wealth. Upgrading a neighborhood or even maintaining it may necessitate levels of improvement not contemplated when the original Purchase Agreement was signed. If a spike in property evaluation should come over a very short span of time, the need to “upgrade” the property may come very shortly after the Purchase Agreement has been signed. The policy factors which were present at the time of the inclusion of the restrictive covenant regarding low and moderate income housing could be hopelessly yet suddenly out of date. With personnel changes occurring, often rapidly, at the Department, a homeowner who owns the home or a tenant who plans to but one may be very hesitant to make any kind of long-lasting commitment to improve or to own, not knowing what the final policy position is going to be.

As author of the Roberti Bill, I may appear to be a strange advocate for a change in the covenants requiring low or moderate income aspects to surplus property purchase agreements. But neighborhood preservation was always an equal aspect of that legislation. Allowing residents and families, who have a history in the neighborhood to stay a homeowners caring for the property with no more restrictions than other homeowners is what the Roberti Bill was about. If change in a neighborhood is to come about, as it inevitably does, the change would take place gradually and not suddenly. The intent of the Roberti Bill was not to turn the Department of Transportation away from its primary role into a long term housing agency. The thirty year restrictive covenant is not a part of the statute. It is policy imposed by the Department to further the low and moderate income aspects of the Roberti Bill. As such, it sees only a part of the bill. In a letter to Caltrans dated July 23, 2003, I advocated for covenants of fifteen years. We are now eleven years beyond that time with no apparent change. Therefore, I would change my recommendations for the fair implementation of the Roberti Bill.

Many of these properties have been available at affordable rates for years or decades. The date at which the term affordability commences should be measured from the start of affordability in the past under original Caltrans ownership. Affordability should have an offset from a thirty year covenant of one year for each year the property has been rented at an affordability rate. Additionally, elderly persons should not have to live under thirty years of covenants especially when as tenants they have complied with the affordability covenants for lengthy periods of time. There are tenants who have anticipated buying their homes from Caltrans for over forty years. Had they bought in the private sector, their retirement would now be secure. They should not have to structure their remaining years and finances around thirty year restrictive covenants.

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Affordability should not preclude bank loans to purchase. In the past, tenants have been unable to obtain private sector funding due to the onerous terms of affordability covenants. Banks will not loan if making the money owed to the bank a lower priority in recouping its funds. The tenant's right to buy his home and the tenant's ability to maintain his home are both rendered almost impossible, thereby rendering almost moot both the right to purchase an affordable house and the neighborhood preservation aspects of the statute, the reasons for the statute in the first place.

Government Code Section 54237 (b) does not mandate the Department of Housing and Community Development's recommendations. In fact, it is understandable that the Department's recommendations would center on affordability only and not other purposes of the Roberti Bill. Housing affordability is what the Department does. But housing affordability is not what the Roberti Bill was exclusively intended to do. Any Caltrans policy to be consistent with the purposes of the Roberti Bill must take into account the need to "upgrade" housing and to "mitigate certain environmental effects" cause by displacement.

In conclusion, Government Code Section 54238 states, *"This article is intended to benefit persons and families subject to displacement and persons and families of low and moderate income. This article should be liberally construed to permit such persons or families to enforce the rights, duties and benefits created in the article."*

The language was a deliberate reference to the purpose of the bill which is to maintain the fabric of the community while creating safe, affordable housing for its residents.

Sincerely,

David A. Roberti