

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: December 10-11, 2008

Reference No.: 4.3
Action Item

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Subject: **ROBERTI BILL PROPERTY RE-PURCHASE – CAPITAL ALLOCATION LINE ITEM**

RECOMMENDATION:

The California Department of Transportation (Department) recommends that the California Transportation Commission (Commission) authorize the creation of a new line item in the annual right of way (R/W) capital lump sum allocation for the re-purchase of properties sold under Government Code Section 54235, et seq., commonly referred to as the Roberti Bill. All properties re-purchased are to be re-sold under the Roberti provisions, and any revenues received from the resale would offset expenditures incurred.

ISSUE:

The Department will need to re-purchase residential properties previously sold under the provisions of Government Code Sections 54235, et seq. Currently, the Department's annual lump sum allocation does not provide a separate line item to specify the amount needed for these re-purchases. The Department is seeking Commission approval to add a separate line item to the annual lump sum allocation book item starting in FY 2009-10.

BACKGROUND:

Government Code Sections 54235, et seq., were added in 1979 pursuant to Senate Bill 86 (Roberti). These statutes require the Department to dispose of surplus residential property in accordance with provisions meant to:

- Preserve, upgrade and expand the supply of housing available to persons and families of low and moderate income.
- Mitigate environmental effects, within the meaning of Article XIX of the California Constitution caused by highway activities.

The Roberti provision (54237(b)) requires that if a residential property is sold "at a price, which is less than fair market value, the selling Agency shall impose such terms, conditions, and restrictions to assure that such housing will remain available to persons and families of low and moderate income." The Department sells properties under the Roberti provision using a Right to Purchase Agreement (RPA), which is reviewed and approved by both the Department of Housing and Community Development and the United States Department of Housing and Urban

Development. The RPA contains restrictive covenants, which place limitations on the owner for a 30 year period. The RPA is placed against the property title and compels the Department to re-purchase the property if the owner violates provisions of the sales agreement. Breaches of the Roberti provisions could be:

- Sale of the property at full market value.
- Converting the property to a use other than residential.
- Refinancing the property without prior Department approval.
- Improving the property substantially without prior Department approval.
- Renting the property at greater than low and moderate rents.

The Department has sold surplus residential properties under the Roberti provisions for the following highway projects:

Route	County
Route 143 and 244	Sacramento
Route 92 between 17 & 238	Alameda
Route 2 and 710	Los Angeles

The Department still retains 417 residential parcels for the Los Angeles 710 project, which, if declared surplus, are required to be sold under Roberti provisions for low and moderate income housing. Properties re-sold under the Roberti provisions netted the Department approximately ten cents to the dollar of market value.

There have been very few RPA breaches in years past. In most previous cases, the Department was able to enforce the Roberti provisions through negotiations, not repurchasing the property. Earlier this year, however, the Department determined that Esperanza Charities, a non-profit affordable housing provider, which purchased multiple properties from the Department under the Roberti provisions, had sufficiently breached the RPA. A lawsuit was filed by the City of South Pasadena against the Department, Esperanza Charities, and Beacon Housing Inc. challenging the sale of properties under the Roberti provisions. A judgment was issued by the court, which requires that the Department re-purchase the property located at 1010 Hope Street in Pasadena. The re-purchase at a price of \$319,157.53 needs to be concluded by December 31, 2008, otherwise additional expenses will be incurred. This re-purchased property will be sold under the Roberti provisions to an established low and moderate-income housing provider. In addition, four other properties in the Los Angeles Route 2 corridor are under investigation and may need to be re-purchased.

The Department anticipates an increase in RPA breaches for a variety of reasons. Many of these properties are now beginning to be transferred to the next generation, which either do not understand the obligations of the RPA or simply desire to cash out. Current owners see their property as a source of income and have over encumbered it with new debt. Others have borrowed against the property to make unapproved major improvements that removes the property out of the affordable category.

The creation of a line item in the annual R/W capital allocation for the re-purchase of the properties under the Roberti provisions will allow the Department greater flexibility in meeting its

legal obligations. Each transaction will be open, transparent and subject to Commission oversight. All re-sales will be subject to Commission approval.

The Department will re-purchase the Esperanza Charities parcel with the current annual R/W capital plan and seek a supplemental allocation in the spring of 2009.