

(916) 323-7715

March 28, 1983

Mr. S

Dear Mr. S :

This is in response to your February 10, 1983, letter to Mr. Verne Walton wherein you requested that we review the following documents pertaining to construction of the Century Freeway and to the Century Freeway Housing Replenishment Program:

1. The Department of Housing and Community Development's Century Freeway Housing Replenishment Program Description
2. The Department's Right to Purchase Agreement, and
3. The Amended Final Consent Decree in Keith, et al. v. Volpe, et al., United States District Court, Central District of California, No. 72-355-HP

and that we advise whether certain housing to be developed and sold at "affordable" prices in accordance with the terms, conditions and restrictions required by the Decree as set forth in the Agreement is subject to land use restrictions within the meaning of Revenue and Taxation Code Section 402.1 such that valuation of the housing for assessment purposes should be based upon actual sales prices.

Among other things, the Decree and Agreement provide that certain housing must be offered to designated persons in a specified manner at "affordable" prices, prices below fair market

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value, and terms, conditions, and restrictions set forth in the Agreement assure that the housing will remain available to specified persons over the next 30 years. Buyers agree that the Department may retain a pre-emptive right to purchase their respective properties during the 30-year period, and upon execution, Agreements are to be recorded with the County Recorder.

This Decree and the terms thereof are comparable to SB 86/Stats. 1979, Ch. 1116, which required state agencies to dispose of surplus residential properties at prices which might be less than market value, subject to similar terms, conditions and restrictions. In addition, this Agreement is similar overall and in many places identical to that Right to Purchase Agreement Between Caltrans and Buyer which was prepared to implement the 1979 legislation.

Upon review of the 1979 legislation, its provisions, and Right to Purchase Agreement Between Caltrans and Buyer, it was concluded that that Agreement, when executed, subjected the property to which the Agreement pertained to land use restrictions within the meaning of Section 402.1:

"The section (402.1) specifically includes:

(b) recorded contracts with governmental agencies other than those provided in Section 422. Since the latter applies only to open-space land and the document on its face, as well as in substance, is an agreement between Caltrans and the buyer, it certainly falls within the statute."

and that valuation of the property for assessment purposes should be based upon the property's sales price. See the July 7, 1981, Letter to Assessors No. 81/74, Valuation of Single-Family Residential Property Subject to Agreement Between Caltrans and Buyer, copy enclosed.

Accordingly, we have concluded in this instance also that upon executions of this Agreement, properties sold pursuant thereto will be subject to land use restrictions within the meaning of Section 402.1, and that valuation of properties subject to it should be based upon the respective properties' sales prices.

However, Section 402.1 requires only that the county assessor consider the effect upon value of any enforceable

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restrictions; it does not require him to automatically conclude that said restrictions have resulted in a diminution of value. Thus, the county assessor pursuant to applicable statutes must exercise appraisal judgment when determining full cash values, and it is he who must ultimately determine whether assessments and, ultimately, taxes pertaining to these properties when sold at prices below fair market value will be based upon actual sales prices.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr
Enclosure
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