



# RIGHT OF WAY MANUAL DIRECTIVE

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**RWMD NUMBER:**

24-02

**ISSUANCE DATE:**

07-02-2024

**EFFECTIVE DATE:**

Immediately

**APPROVED BY:**

*Kimberly Ellis Erickson*

KIMBERLY ELLIS ERICKSON

Division Chief

Division of Right of Way and Land Surveys

**SUBJECT:**

Identify and expedite the disposition of excess land for affordable housing development if there is no conclusive evidence of state gas tax or federal funds involved in the acquisition.

**PURPOSE:**

This RWMD is necessary to support and maximize the Governor's affordable housing development goals and comply with Government Code Section 14684.3 by leveraging Caltrans' excess land inventory to the maximum extent possible.

**REFERENCES:**

- [Right of Way Manual](#), Chapters 7 and 16
- [Government Code \(GOV\) Section \(§\) 14684.3](#), related to [Executive Order \(EO\) N-06-19](#)
- [California Constitution, Article XIX](#)
- [23 Code of Federal Regulation \(CFR\) §710.403\(e\)](#)

**RIGHT OF WAY MANUAL DIRECTIVE (Cont.)**

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**BACKGROUND:**

In January 2019, Governor Newsom signed EO N-06-19 to address California's housing crisis by directing the Department of General Services (DGS), in consultation with the Department of Housing and Community Development (HCD), to identify and prioritize State excess land for affordable housing development. The EO was subsequently codified as GOV §14684.3.

Pursuant to GOV §14684.3, Caltrans is expected to coordinate with DGS to identify and expedite the transfer of excess land, suitable for affordable housing development, to state or local agencies, while complying with Article XIX and 23 CFR §710.403(e), as applicable. Article XIX protects the use of state gas tax funds<sup>1</sup> for transportation purposes, which obligates Caltrans to sell excess land at fair market value, unless an alternate use meets strict exceptions of Article XIX. Affordable housing is not an exception under Article XIX. Similarly, at the federal level, 23 CFR §710.403(e) also requires that "*current fair market value must be charged for the use or disposal of all real property interests if those real property interests were obtained with title 23...*" unless an alternate use of the excess land meets the exceptions listed in 23 CFR §710.403(e) or a Public Interest Finding is approved by the Federal Highway Administration (FHWA).

While state constitutional and federal regulations limit Caltrans' ability to leverage all properties for affordable housing under GOV §14684.3, Caltrans is committed to identifying excess land where state gas tax and federal funds were not involved in the acquisition. This may provide Caltrans an opportunity to dispose of excess land below fair market value to advance affordable housing development. Caltrans is querying all available files and databases for (1) the date of acquisition; and (2) funding records involved in the acquisition. Caltrans will conduct research using *Exhibit 16-EX-01, Funding Record Search Checklist*, and other reasonable means available.

For federal-aid properties without Article XIX constraints, Caltrans intends to pursue a Public Interest Finding approval to waive fair market value when determined appropriate.

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<sup>1</sup> California passed the first state gas tax in 1923.

## **RIGHT OF WAY MANUAL DIRECTIVE (Cont.)**

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### **EXISTING POLICY OR PROCEDURE:**

The existing policies in various sections of Chapter 7 (Appraisals) and Chapter 16 (Excess Land) of the Right of Way Manual require disposition of excess land at fair market value pursuant to Article XIX and 23 CFR §710.403(e), unless qualified for specific exceptions authorized by law.

### **NEW POLICY OR PROCEDURE:**

Compliance with Article XIX and 23 CFR §710.403(e) remains in place, where applicable. In cases where a thorough record search does not uncover evidence of state gas tax or federal funds involved in the original acquisition, Caltrans may proceed with transfer to DGS or HCD at below fair market value to support affordable housing development in accordance with GOV §14684.3.

### **RESPONSIBILITIES:**

#### ***District RW:***

- For excess land determined to be suitable for affordable housing, conduct a thorough record search of funding sources using the **Funding Record Search Checklist**, including other reasonable means available.
- Document the findings at the completion of the record search and upload the Checklist (Exhibit 16-EX-01) and related files into ROWMIS II.
- Notify HQ Division of Right of Way and Land Surveys (RWLS), Affordable Housing Implementation Manager, of the findings.

#### ***HQ RWLS:***

- Update the relevant Right of Way Manual Sections and Exhibits referenced in this RWMD.
- Coordinate with DGS on a list of excess land properties that can be disposed at below fair market value for affordable housing development.
- Communicate status of disposition of excess land transfer with Districts on a routine basis.

### **DISTRIBUTION LIST:**

- District RPRR Committee
- Right of Way Management Board
- Subscribers to the Right of Way Manual Update List