Delivering the Promise of Transit:  
How Transit Agencies Can Increase Ridership—and Clean Air—by Discounting Land for Affordable Housing  
The Neighborhood-Based CDC Coalition

Growing numbers of studies indicate that locating affordable housing near transit can increase ridership, ease traffic congestion, and reduce greenhouse gas emissions. Meanwhile, failing to ensure affordability near transit can have the opposite effect. This is because core transit riders tend to be lower income and working people, who cannot necessarily afford to live near transit. But transit agencies can ensure that investments in transit actually increase ridership—easing traffic congestion and reducing air pollution—by adopting policies that encourage the use of transit-adjacent property for affordable housing development.

This paper examines the legal basis under California law for transit agencies to promote affordable housing by selling or leasing land at less than fair market value (FMV). With minor exceptions, state law does not present barriers to these sorts of transactions. Transit agencies generally have the authority—and opportunity—to facilitate the development of affordable housing near transit. In fact, the Legislature has encouraged it. By implementing policies to promote affordable housing, transit agencies can increase ridership, decrease traffic congestion, and help the state achieve environmental goals.

1 The following sources were reviewed in drafting this paper: California Constitution, California Government Code sections 54220-54232 (known as the Surplus Land Act); California Government Code sections 54235-54238.7 (known as the Roberti Law), California Health and Safety Code (Sections 34201, 34501, 37000-37001.5, and 50074), California Public Contract Code, California Public Utilities Code (Sections 30000-33021, 130000-130455, and 130521), and related case law and legislative history, including California Attorney General opinions. Note that property purchased with federal funds may be subject to additional restrictions. This paper does not examine federal law.
I. **Background: Locating affordable housing near transit achieves optimal transit use because low-income workers use transit more than others.**

While people of all income levels are more likely to use transit if it is proximate to their homes, low-income people use transit much more often than others.\(^2\) For example, in Los Angeles, workers earning less than $25,000 take transit more than twice as much as higher earners.\(^3\) The region risks declines in transit ridership to the extent that core riders cannot afford to live near transit. A nationwide study has actually found declines in ridership after new stations open, finding that increased housing costs in station areas may drive away low-income families, who use public transit more frequently.\(^4\) This is why policies promoting affordable housing, such as selling or leasing land to affordable housing providers at less than FMV, are vital to achieving optimal transit service.

II. **California law does not present barriers to public agencies leasing land at less than FMV to promote affordable housing, except in limited circumstances.**

A. Selling or leasing land at less than FMV to facilitate affordable housing development does not violate the California Constitution’s prohibition against gifts of public funds because affordable housing serves a public purpose.

Article XVI, Section 6, of the California Constitution generally prohibits public entities from providing gifts of public funds, including property purchased with public funds.\(^5\) But public funds may be expended if a direct and substantial public purpose is served and any benefits to private parties are only incidental to that public purpose.\(^6\) Where private entities are involved, the benefit to the state from expenditures for a public purpose serves as consideration for the funds expended, so these funds are not a gift but are deemed consideration for a contract with the state.\(^7\)

---


\(^3\) CHPC at 5.


\(^5\) CAL. CONST. art XVI, § 6.

\(^6\) California Housing Finance Agency v. Elliott, 17 Cal. 3d 575, 583 (Cal. 1976).

\(^7\) County of Alameda v. Carleson, 5 Cal. 3d 730, 745-46 (Cal. 1971).
Whether a particular activity serves a valid public purpose is generally determined by the Legislature.\(^8\) The Legislature has affirmed numerous times that increasing the stock of affordable housing for low- and moderate-income residents is not only a valid public purpose, but a chief priority for the state.\(^9\) The California Court of Appeal has confirmed this understanding, even where private developers are involved. In *Winkelman v. City of Tiburon*, the court held that a below-market rate transfer of property to a private developer was not an impermissible gift of public funds because it promoted “the public purpose of encouraging the construction of moderate and low income housing.”\(^10\) Therefore, the state constitutional prohibition against gifts of public funds does not bar transit agencies from selling or leasing land at less than FMV for the public purpose of increasing the availability of affordable housing, whether the land is sold or leased to public agencies or private parties.

**B. In a highly limited exception, the California Constitution requires “surplus non-residential” property acquired with gas tax funds to be sold or leased at FMV.**

Article XIX of the California Constitution restricts the use of state “gas tax” funds—such as taxes on motor vehicle fuels, and fees and taxes imposed on the use of vehicles\(^11\)—to the planning, construction, maintenance, and improvement of streets, highways, and public mass transit.\(^12\) Article XIX declares these funds to be held in trust for the state, and restricts these funds solely for those purposes.\(^13\) However, as discussed below, the sale or lease of surplus *residential* real property acquired with gas tax funds at less than FMV is constitutionally permissible “if the property qualifies as surplus residential property under the affordable housing legislation known as the Roberti Law.”\(^14\) Otherwise, selling or leasing *non-residential* property acquired with gas tax funds for less than FMV is prohibited because it constitutes an impermissible use of the public trust. This limited exception applies only in unique scenarios.

**C. In another highly limited exception, California’s Roberti Law requires “surplus residential property” be sold for between the acquisition price and FMV.**

As indicated above, California’s “Roberti Law” outlines public agencies’ obligations regarding surplus residential property.\(^15\) Surplus residential property is property owned by a state agency that is surplus to that agency’s needs and developed as single-family or

---

\(^8\) See *Elliott*, 5 Cal. 3d at 583.
\(^12\) *Cal. Const.* art. XIX, §§ 2-3.
\(^13\) *Cal. Const.* art. XIX, §§ 2-3.
\(^15\) See *Cal. Gov’t Code* §§ 54235-54238.7
Selling and leasing land at less than FMV to facilitate the creation of affordable housing near transit is “consistent with the goals and objectives to achieve optimal transportation use.”

California’s Surplus Land Act\textsuperscript{18} describes local government agencies’ obligations related to land that is no longer necessary for an agency’s use, and outlines a priority of disposition for this land. A primary purpose of the Act is to increase the sites available for affordable housing, and to facilitate transactions involving these sites.\textsuperscript{19} The Act contains no requirement that property be sold or leased at FMV. In fact, Assembly Bill 2135\textsuperscript{20} (AB 2135), signed into law by the Governor in 2014, added language expressly prohibiting such a requirement, stating that the Act “shall not be interpreted to limit the power of any local agency to sell or lease surplus land at [FMV] or at less than [FMV], and any such sale or lease at or less than [FMV] consistent with this article shall not be construed as inconsistent with an agency’s purpose. . . .”\textsuperscript{21}

\begin{itemize}
\item \textsuperscript{16} CAL. GOV’T CODE § 54236(d).
\item \textsuperscript{17} CAL. GOV’T CODE § 54237. If a surplus residential property is a single-family residence, and is occupied by a former owner of the property, it must be first offered to the former owner at FMV, then to present occupants at an “affordable price,” which must fall between the agency’s original acquisition price and FMV. CAL. GOV’T CODE § 54237(b). All other properties—multifamily surplus residential properties and single-family properties not occupied by the former owner—must be offered at a “reasonable price” suited to housing at “affordable rents and affordable prices for persons and families of low or moderate income.” CAL. GOV’T CODE § 54237(d).
\item \textsuperscript{18} CAL. GOV’T CODE §§ 54220-54233.
\item \textsuperscript{19} See CAL. GOV’T CODE § 54220.
\item \textsuperscript{20} Assembly Bill No. 2135, 2014 Cal. Stats. ch. 677 (codified at CAL. GOV’T CODE §§ 54220-54233). AB 2135 was authored by Assembly Member Phil Ting (D-San Francisco) and sponsored by the Non-Profit Housing Association of Northern California.
\item \textsuperscript{21} CAL. GOV’T CODE § 54226.
\end{itemize}
The disposition process outlined in the Act requires that land that is no longer necessary for an agency’s use be offered to local public agencies and “housing sponsors” for the development of affordable housing.\(^{22}\) The Act requires the agency to give first priority to the entity that agrees to use the site for affordable housing and, if there are multiple offers, priority is given to the project that proposes the greatest number of units and deepest affordability.\(^{23}\) Agencies may also purchase the land and convey it to nonprofit or for-profit affordable housing developers.\(^{24}\) Once an agency receives notice from an entity that wants to buy or lease the land, it must enter into good faith negotiations to determine a mutually satisfactory sales price.\(^{25}\) Again, there is no requirement that this sales price approximate FMV; the Act’s procedure for transferring land leaves the sales price to the parties’ negotiating processes.\(^{26}\)

Finally, the Act explicitly recognizes the connection between affordable housing and transportation use. It declares that selling and leasing land at less than FMV to facilitate the creation of affordable housing near transit is “consistent with the goals and objectives to achieve optimal transportation use.”\(^{27}\) It also makes clear that sale or lease for less than FMV in this context “shall not be construed as inconsistent with an agency’s purpose.”\(^{28}\) Thus, transit agencies charged with achieving optimal transportation use are authorized to sell or lease property at less than FMV to facilitate the development of affordable housing near transit.

**IV. Conclusion**

State law generally supports the sale or lease of land by public agencies at less than FMV to facilitate the creation of affordable housing. And, with AB 2135, the Legislature has clearly declared the sale or lease of land at less than FMV to facilitate affordable housing near transit to be consistent with achieving optimal transportation use. Accordingly, transit agencies should follow the lead of the Legislature and develop policies to facilitate affordable housing development that will increase transit ridership.

Some agencies are already moving in this direction. In the Bay Area, the Metropolitan Transportation Commission (MTC) has contributed $20 million to a Transit Oriented

\(^{22}\) **CAL. GOV’T CODE** § 54222. Housing sponsors are entities qualified to own, construct, acquire or rehabilitate housing. **CAL. HEALTH & SAFETY CODE** § 50074.

\(^{23}\) **CAL. GOV’T CODE** § 54227. An exception applies if the land is designated or is being used as park land. *Id.* at § 54227(b).

\(^{24}\) **CAL. GOV’T CODE** § 54224.

\(^{25}\) **CAL. GOV’T CODE** § 54223.

\(^{26}\) See **CAL. GOV’T CODE** § 54227.

\(^{27}\) **CAL. GOV’T CODE** § 54220(c) (“Studies of transit ridership in California indicate that a higher percentage of persons who live or work within walking distance of major transit stations utilize the transit system more than those living elsewhere, and that lower income households are more likely to use transit when living near a major transit station than higher income households. . . .”).

\(^{28}\) **CAL. GOV’T CODE** § 54226.
Affordable Housing (TOAH) Fund that ensures financing for affordable housing near transit. And Bay Area Rapid Transit (BART) is leasing land it owns to support several affordable housing projects. In Los Angeles, a recent motion approved by the board of the Los Angeles County Metropolitan Transportation Authority (Metro) ordered an assessment of policies to encourage affordable housing near transit. These policies included discounting Metro-owned property for affordable housing development, and the creation of a transit oriented affordable housing loan fund similar to the fund in the Bay Area. MTC, Metro, and other transit agencies around the state should continue the movement toward integrating transportation and affordable housing development. This should increase transit ridership and, ultimately, reduce traffic and air pollution, helping California meet environmental goals and become a healthier place to live.

29 For example, BART is leasing land to affordable housing projects near the San Leandro BART station and the Oakland – MacArthur BART station. The San Leandro project is also in the TOAH Fund pipeline. 30 Los Angeles County Metropolitan Transportation Authority, Executive Management Committee Meeting, Motion by Mayor Eric Garcetti, Supervisor Mark Ridley-Thomas, Director Mike Bonin, and Director Jacquelyn Dupont-Walker (Nov. 6, 2014); see also Los Angeles County Metropolitan Transportation Authority, Joint Development Policies and Procedures (revised Oct. 2009).
About the Authors

The Neighborhood-Based CDC Coalition is made up of community groups and advocates committed to building a better Los Angeles. The Coalition’s members work in neighborhoods impacted by the expansion of public transit. We know that those on the ground know what works to bring about neighborhood renewal.

The **Coalition for Responsible Community Development (CRCD)** is a neighborhood-based community development corporation in the Vernon-Central neighborhood of South LA. CRCD leads initiatives to foster a safe and economically vibrant neighborhood—a place where young people can thrive and contribute to neighborhood revitalization by providing neighborhood beautification; education, career-path training, and alternative sentencing programs for youth and young adults; affordable housing development; small business assistance; and operating a social enterprise to promote job creation for low-income youth. [www.coalitionrcd.org](http://www.coalitionrcd.org)

Founded in 1996, **East LA Community Corporation (ELACC)** is dedicated to harnessing housing and other community development resources for the benefit of low-income residents of Boyle Heights and Unincorporated East LA. ELACC has completed development of 12 projects totaling approximately 300 units of affordable housing and provides community organizing, tenant services, financial literacy and homeownership counseling programs. [www.elacc.org](http://www.elacc.org)

**Esperanza Community Housing Corporation (Esperanza)** was established in 1989 as the result of a four-year organizing campaign by residents of the Figueroa Corridor. In addition to the development of 165 units of affordable housing, Esperanza has completed the Mercado La Paloma, a 34,000 square foot community commercial facility housing 15 small business as well as seven nonprofit organizations. Esperanza also engages in community organizing, economic development, and health, educational, social service, art and cultural programming. [www.esperanzacommunityhousing.org](http://www.esperanzacommunityhousing.org)

Started as a neighborhood-based social service center in 1979, **Little Tokyo Service Center (LTSC)** Community Development Corporation has completed over 650 units of affordable housing and over 140,000 square feet of nonprofit commercial space. LTSC also serves people in need through social services, tenant services, childcare, small business counseling, community organizing and computer training. [www.ltsc.org](http://www.ltsc.org)

Founded in 1970, **Public Counsel** delivers free legal and social services to the most vulnerable members of our community. Public Counsel’s Community Development Project builds foundations for healthy communities by providing legal services and capacity building support to nonprofit organizations and micro businesses; engaging in affordable housing advocacy, education, and enforcement; and supporting and advancing quality early care and education. [www.publiccounsel.org](http://www.publiccounsel.org)