



U.S. Department
of Transportation
**Federal Highway
Administration**

California Division

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May 14, 2020

In Reply Refer To:
HDA-CA

Mr. Adetokunbo "Toks" Omishakin
Director
California Department of Transportation
P.O. Box 942873
Sacramento, CA 9427

Dear Director Omishakin:

I am writing to inform you of further considerations and actions by the Federal Highway Administration (FHWA) regarding temporary homeless shelters in California's highway rights-of-way (ROWs).

First, the National Environmental Policy Act (NEPA) determinations for the leases concerning the Beacon Street Park and Ride lot in Los Angeles, the 5th St. and Bryant St. location in San Francisco, and the 13th St. and Division St. location in San Francisco must be corrected. As noted in my May 7 letter, the California Department of Transportation (Caltrans) improperly issued the NEPA determinations for these three locations. FHWA will review these proposed projects to determine whether it is appropriate to ratify the NEPA approvals and validate the fair market value (FMV) exceptions for these locations. In the meantime, if Caltrans has more information or conducts additional analysis relevant to these NEPA determinations, please let us know at your earliest convenience.

Second, in light of the questions surrounding the other locations, we also have reexamined our approvals for the Sacramento location at Broadway and X Streets. Since it appears that this location could involve Interstate ROW and given the below concerns about the appropriate use of the Interstate ROW and application of the FMV exception, we are withdrawing our NEPA and FMV exception approvals for the Sacramento location.

Widespread use of the highway ROW for homeless shelters raises safety and operation concerns as well as concerns about the Federal transportation investment. There are a number of reasons for these concerns.

With respect to the Interstate ROW, there is a high bar for allowing non-highway uses. Due to the importance of the Interstate System to the Nation's mobility, it is FHWA policy to keep this ROW reserved for transportation purposes in order to ensure that traffic can flow as safely and efficiently as possible. This important purpose is why the FHWA has reserved its authority to make all determinations with respect to alternate uses of the Interstate ROW under 23 CFR 710.403(a). While case-by-case exceptions may be made, these exceptions should be rare.

Caltrans is using or planning to use its highway ROW for temporary homeless facilities in nearly two dozen locations throughout the State. In looking at these locations together, it appears that Caltrans is looking to dispose of its highway ROW for less than FMV on a programmatic basis. Such an extensive use of the FMV exception would undermine the Federal interest/investment that 23 U.S.C. 156 is trying to protect and that generates additional revenue for other eligible highway projects. The purpose of the FMV exception is meant to be limited and not used for the systematic disposal of highway ROW. Furthermore, in reviewing past precedent, there has generally been a transportation nexus to the rationale for granting the FMV exception.

We are aware that Caltrans has plans for at least 13 future locations, many of which are in the Interstate ROW. If Caltrans were to request FHWA approval(s) for any of these additional locations, based on our concerns, FHWA would need to scrutinize closely whether such requests are consistent with Title 23, United States Code.

If you have any questions, please contact me at (916) 498-5015 or by email at vincent.mammano@dot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Vincent Mammano", with a long horizontal flourish extending to the right.

Vincent Mammano
Division Administrator
Federal Highway Administration