

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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April 28, 2021

Robert Fabela, City Attorney
City of Anaheim
200 S Anaheim Boulevard
3rd Floor
Anaheim, CA 92805

Received By:
City of Anaheim

MAY 03 2021

**City
Attorney**

RE: HCD's Response to the City of Anaheim's Proposed Disposition of City-owned property at 2000 East Gene Autry Way and 2200 East Katella Boulevard

Dear Robert Fabela:

Thank you for submitting documentation for review by the Department of Housing and Community Development (HCD) regarding the property owned by the City of Anaheim (City) at 2000 East Gene Autry Way and 2200 East Katella Boulevard in Anaheim, CA (collectively, the Property). Based on HCD's review of that documentation, HCD has come to the preliminary conclusion that 1) the current version of the Surplus Land Act (SLA) applies to the proposed transaction, 2) the Property does not qualify as "exempt surplus land" pursuant to Government Code section 54221(f)(1)(G), and 3) the City may be in violation of the SLA.

Preliminary Conclusion #1: The Current Version of the Surplus Land Act applies.

In email correspondence sent to HCD on January 25, 2021, the City indicated that the Property is not subject to the current version of the SLA because the proposed disposition was entered into on December 20, 2019, which was prior to the January 1, 2020 effective date of Assembly Bill (AB) 1486 (Statutes of 2019, Chapter 664). However, in order for the proposed transaction to be subject to the prior version of the SLA the transaction must meet the requirements of Government Code section 54234(a)(1), which provides that "[i]f a local agency, as of September 30, 2019, has entered into an exclusive negotiating agreement or legally binding agreement to dispose of property, the provisions of this article [the SLA] as it existed on December 31, 2019, shall apply, without regard to the changes made to this article by the act adding this section." Accordingly, this statutory provision, by its terms, does not apply to legally binding agreements to dispose of property entered into *after* September 30, 2019. It therefore does not apply to the relevant documents underlying the City's proposed transaction, which were entered into after September 30, 2019. Therefore, the proposed disposition is subject to the current version of the SLA.

Preliminary Conclusion #2: The Property does not Qualify as Exempt Surplus Land.

In its January 25 email correspondence, the City also indicated that the Property constitutes “exempt surplus land” under Government Code section 54221(f)(1)(G) because the Property is subject to a restriction (*i.e.*, a lease between the City and the Angels) not imposed by the City. Government Code section 54221(f)(1)(G) exempts “[s]urplus land that is subject to valid legal restrictions that are not imposed by the local agency and that would make housing prohibited, unless there is a feasible method to satisfactorily mitigate or avoid the prohibition on the site.”

However, the documentation reviewed by HCD shows that the “restrictions” on the Property were voluntarily agreed to by the City pursuant to a lease agreement in which the City is the lessor. As a result, the claim that the City’s lease of the Property is not imposed by the City is not tenable. Further, the fact that the City reached a subsequent agreement to permit housing to be developed on the Property demonstrates that there was, in fact, a feasible method to satisfactorily mitigate or avoid any alleged prohibition of housing imposed upon the Property. For these reasons, Government Code section 54221(f)(1)(G) does not apply.

Preliminary Conclusion # 3: The City May Have Taken Actions in Violation and/or Be At Risk of Violation of the Declaration and Noticing Requirements of the SLA.

Government Code section 54221(b)(1) requires the City to take formal action in a regular public meeting declaring the property surplus or exempt surplus land, as supported by written findings. If the property is declared surplus, Government Code sections 54222 and 54230.5(b)(1) require that the City then send notices of availability to specific entities and submit information regarding the proposed disposition to HCD prior to agreeing to terms for the disposition of the Property. The City must take these actions before it may take any action to dispose of the property. (Gov. Code, § 54221, subd. (b).) None of the documents that the City has provided to HCD indicate that the City has declared the property surplus or exempt surplus, sent notices of availability to the required entities, or submitted the required information regarding the proposed disposition to HCD for review. The Purchase and Sale Agreement and the Disposition and Development Agreement (DDA) cumulatively show that the City has agreed to terms, and thus potentially taken steps, to dispose of the Property without first taking these necessary steps.

Preliminary Conclusion # 4: The City May Also Be At Risk of Violation of the Affordability Requirements of the SLA.

In Government Code section 54222.5, an entity proposing to use surplus land for low- and moderate-income housing must agree to make available not less than 25 percent of the total number of units developed at affordable housing cost or affordable rent to lower income households. Even surplus land that is disposed of after a local agency does not receive a response to its notice of availability, or does not agree to price and terms with an entity responding to its notice of availability, must still develop a minimum of 15 percent affordable units if ten (10) or more residential units are developed on the property. Moreover, an affordability covenant or restriction to this effect must be placed on the property. The City’s

DDA does not, however, require 25 percent of the total proposed units on the Property to be affordable. In addition, it is not clear, from the DDA or otherwise, that at least 15 percent of residential units to be developed on the Property are definitively allocated to affordable housing (as would have been required had the City sent a notice of availability and either did not receive a response or did not agree to price and terms with a respondent), or that a deed restriction or covenant imposing any affordability requirements will be recorded.

Next Steps

Based on Preliminary Conclusions #1, 2, and 3 above, the City may have failed to comply with the declaration and noticing procedures of the SLA. If the City proceeds with disposing of the Property under the current terms, it could risk violating the SLA's disposition and affordability requirements and be subject to assessment of a penalty.

HCD appreciates the City's cooperation and assistance in gathering information on the proposed transaction. HCD continues to welcome additional documentation from the City. HCD asks that the City provide, no later than May 28, 2021, a formal and complete submittal of all documents related to the proposed transaction. After those 30 days have passed, HCD will begin its formal review process related to the proposed transaction.

For reference, a complete submittal includes all of the following: i) a description of the notices of availability sent; (ii) a description of the negotiations conducted with any responding entities in regard to the disposal of the surplus land; and (iii) a copy of any restrictions to be recorded against the surplus land pursuant to Government Code section 54233 or 54233.5, whichever is applicable, in a form prescribed by HCD (see enclosure for prescribed form).

If the City or its representatives have any questions or additional documents that HCD staff has not yet reviewed that would fully address these preliminary conclusions, please also send these to publiclands@hcd.ca.gov by May 28, 2021.

Sincerely,



Sasha Wisotsky Kergan
Unit Chief
Housing Policy Development

Enclosure: Sample Covenant or Restriction to be Recorded

**Sample Covenant or Restriction to be Recorded
(per Government Code Section 54233 and/or 54233.5)**

If ten (10) or more residential units are developed on the Property, not less than 15 percent of the total number of residential units developed on the property shall be sold or rented at affordable housing cost, as defined in Section 50052.5 of the California Health and Safety Code, or affordable rent, as defined in Section 50053 of the California Health and Safety Code, to lower income households, as defined in Section 50079.5 of the California Health and Safety Code. Rental units shall remain affordable to and occupied by lower income households for a period of 55 years for rental housing and 45 years for ownership housing. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with the provisions of paragraph (2) of subdivision (c) of 65915 of the California Government Code. These requirements shall be covenants or restrictions running with the land and shall be enforceable against any owner who violates a covenant or restriction and each successor-in-interest who continues the violation by any of the entities described in subdivisions (a) to (f), inclusive, of Section 54222.5 of the California Government Code.

Date: _____

_____ [LOCAL AGENCY NAME]

By: _____

Name: _____

Title: _____