

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

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



March 24, 2020

Dave Rand, Esq.  
Partner  
Armbruster Goldsmith & Delvac LLP  
12100 Wilshire Boulevard, Suite 1600  
Los Angeles, CA 90025

Dear Dave Rand:

**RE: Application of Recent Amendments to the Surplus Land Act (Assembly Bill 1486)  
to the Plaza at Santa Monica Project**

Based on the facts and circumstances provided to HCD, it appears that the City of Santa Monica (City) qualifies for the following exemption from Government Code section 54234(a)(1):

“If 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 as it existed on December 31, 2019, shall apply, without regard to the changes made to this article by the act adding this section, to the disposition of the property to the party that had entered into such agreement or its successors or assigns, provided the disposition is completed not later than December 31, 2022.”

The City of Santa Monica, a “local agency” under the Surplus Land Act (“SLA”), previously entered into a written exclusive negotiating agreement (“Written ENA”) with multiple developers regarding land owned by the City. The parties subsequently agreed to an amendment to the Written ENA to briefly extend its term. The Written ENA subsequently expired by its terms. The City and the developers then proceeded for a number of years to continue exclusive negotiations regarding the real property but failed to further amend the Written ENA to memorialize those negotiations. In a telephone conversation with Dave Rand, attorney for the developers, Mr. Rand stated that on September 30, 2019 (the date listed above in the relevant statute) the City and the developers had a non-written (i.e. constructive) ENA in place. Furthermore, Mr. Rand informed HCD that the City, after the expiration of the Written ENA, has not negotiated with any other person or entity regarding the property. Lastly, Mr. Rand advised HCD that the only reason the parties recently stopped negotiations was because of HCD’s involvement in providing advice to the City on the SLA issues. These facts, taken together, strongly evidence the fact that the City and the developers had an exclusive negotiating agreement in place as of September 30, 2019.

The SLA does not define “exclusive negotiating agreement” and does not state that it must be in writing. Furthermore, the statute of frauds (which requires that certain contracts be in writing) does not appear to require the type of ENA discussed here to be in writing. The statute of frauds requires that the following real property transactions (neither of which apply here) be in writing: “an agreement to lease real property for a period longer than one year or for the sale of real property or an interest therein.” (1 Cal. Real Est. § 1:70 (4th ed.)) The ENA at issue here deals with exclusive negotiations regarding the possible long-term lease of real property but the ENA here does not itself constitute a lease or sale of the property so is not required to be in writing.

The SLA also does not explicitly prohibit an oral or constructive ENA. There also does not appear to be any case law prohibiting such an agreement.

To conclude, the City of Santa Monica qualifies for the exemption found in Government Code section 54234(a)(1).

Sincerely,

A handwritten signature in black ink, appearing to read "Zachary Olmstead". The signature is fluid and cursive, with a large initial "Z" and a long, sweeping underline.

Zachary Olmstead  
Deputy Director of Housing Policy