

**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



December 2, 2021

VIA ELECTRONIC MAIL

Robert Fabela, Esq.
City Attorney
City of Anaheim
200 South Anaheim Blvd
Anaheim, CA 92805
rfabela@anaheim.net

Allan Abshez, Esq.
Loeb & Loeb LLP
2 Embarcadero Center
San Francisco, CA 94111
aabshez@loeb.com

Amrit Kulkarni, Esq.
Meyers Nave
707 Wilshire Blvd Fl 24
Los Angeles, CA 90017
amrit@meyersnave.com

California Evidence Code section 1152 Communication**RE: Proposed Disposition of City-owned Property per “The Big A: 2050” —
HCD’s Response to Proposal for Resolution**

Dear Robert Fabela, Amrit Kulkarni, and Allan Abshez:

Thank you for your email dated November 11, 2021, confirming in writing the City of Anaheim (“City”) and SRB Management, LLC’s (“SRB”) proposal to resolve the parties’ respective positions pertaining to the proposed disposition of 2000 E. Gene Autry Way and 2200 East Katella Boulevard (collectively, “Angels Stadium Property”). The Department of Housing and Community Development’s (“HCD”) response to that proposal is presented below.

In general terms, the proposal made by the City, in coordination with SRB, increases the covenanted affordable units from 777 to 1,295. This proposal demonstrates a laudable effort to raise the City’s commitment to 1,295 restricted units, which we understand is intended to translate into an allocation of 25% of the total contemplated housing units for the project to affordable housing, purportedly in accordance with Government Code section 54222.5 of the Surplus Land Act. Upon review of the specifics of the proposal, however, HCD has serious concerns that the proposal’s significant divergence from the Surplus Land Act statute would not justify withholding the issuance of a Notice of Violation.

For example, both Government Code section 54222.5 and the “mixed-use exemption” in Government Code section 54221, subd. (f)(1)(F)(ii) include a benchmark of restricting at

least 25% of housing units developed on surplus land to lower-income households, as defined in Health and Safety Code section 50079.5. The proposal presented to HCD, on the other hand, contains no lower-income housing on site, and appears to rely solely on moderate-income housing units on the surplus land to ostensibly achieve that benchmark. Although undefined in the proposal, any “moderate-income” housing units, which are generally defined as housing units restricted to 80-120% area median income (AMI), would therefore exceed the lower-income AMI thresholds allowed under the law. And while HCD appreciates the City’s efforts to deliver affordable projects sooner rather than later, the proposal suggests that all of the lower-income units would be off-site and therefore not run with the disposed surplus land. This would not satisfy the Surplus Land Act’s requirement that the restrictive covenant be recorded against and run with the subject surplus land. And any potentially acceptable disposition of the surplus land here must include a covenant that is in full compliance with the applicable requirements of the Surplus Land Act and in the form specified in HCD’s Guidelines.

While HCD has previously expressed a willingness to be flexible in its consideration of proposals for substantial Surplus Land Act compliance here, in recognition of the parties’ respective legal positions and the uncertainties of potential litigation, as well as in furtherance of HCD’s and the Surplus Land Act’s foundational goals of maximizing affordable housing production, the current proposal is simply a bridge too far. For that reason, HCD must reject the City’s proposal and reiterate its position that the framework for any resolution here requires substantial compliance with the Surplus Land Act, such as, among other things and without limitation, applying a covenant to the disposed land conforming restricted housing units on site to the percentages of lower-income households set forth under section 54222.5 or under the “mixed-use exemption” provided by section 54221, subd. (f)(1)(F)(ii). If the City is willing to explore those options, HCD is prepared to provide technical assistance to help the City navigate and achieve compliance with the procedural and substantive requirements of the Surplus Land Act in doing so.

To understand HCD’s position, it may be useful to summarize the status of its investigation and the ongoing discussions the parties’ counsel have had over the last three months concerning the proposed disposition. On August 26, 2021, the parties’ counsel met via videoconferencing at HCD’s request to discuss HCD’s pending letter advising the City that, although it did not appear at that time that HCD had all the information necessary to complete its administrative investigation, it did appear that the proposed disposition would likely violate the Surplus Land Act. At the City’s and SRB’s counsel’s request, HCD agreed to withhold issuance of that letter and to have the parties’ counsel engage in candid discussions regarding their respective legal positions and explore possibilities for resolution.

Over the course of those discussions, HCD informed the City and SRB that the purpose of its reaching out and engaging in those discussions was to obtain as much information as possible to assist with HCD’s ongoing investigation and, to the extent the facts revealed it to be possible, explore any framework for a potential resolution given the uncertainty of litigation and the representation from the City that its current agreement with SRB was intended to comply with the spirit of the Surplus Land Act. These meetings have been somewhat productive, but positions have not changed. The City

and SRB have made clear their belief that the sale of the Angels Stadium Property did not implicate the Surplus Land Act, and that even if it did, the sale complied with the spirit of the Surplus Land Act. Meanwhile, although additional information and context behind the contemplated sale was provided during these discussions, HCD's position remains firm that any ultimate disposition of the Angels Stadium Property must achieve compliance with the Surplus Land Act or meet one of its statutory exemptions.

The parties' counsel all agreed that any resolution must fit within the parties' respective frameworks. For HCD, this means that any resolution must achieve substantial compliance with the Surplus Land Act, be justified by the Surplus Land Act's intent to maximize affordable housing opportunities on surplus public lands, and address the concerns of third parties that the ultimate disposition lacked transparency. For the City and SRB, it was represented to HCD that while the value proposition of the sale must remain constant, the City and SRB could otherwise be flexible enough to satisfy HCD's concerns. However, in light of the proposal submitted by the City and SRB and how far apart our respective positions are, it does not appear that the parties' respective frameworks are reconcilable.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Megan Kirkeby". The signature is fluid and cursive, with a small dot at the end.

Megan Kirkeby
Deputy Director, Division of Housing Policy Development