

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

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December 8, 2021

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

Dear Robert Fabela:

**RE: Notice of Violation of the Surplus Land Act Regarding Property Located at
2000 East Gene Autry Way and 2200 East Katella Boulevard in Anaheim, CA.**

The California Department of Housing and Community Development (HCD) hereby issues this Notice of Violation, pursuant to Government Code sections 54230.5 and 65585.1, to the City of Anaheim (City) regarding the City's disposition of the property owned by the City at 2000 East Gene Autry Way and 2200 East Katella Boulevard in Anaheim, CA (Property).

Violation #1: The City Violated the Surplus Land Act by Failing to Declare the Property as "Surplus Land" or "Exempt Surplus Land" pursuant to Government Code section 54221(b)(1), and HCD Finds the City's Exemption Claims invalid.

Government Code section 54221(b)(1) requires that a local agency declare land as either "surplus land" or "exempt surplus land," as supported by written findings, before a local agency may take any action to dispose of it.

Government Code section 54221(b)(1) states:

"Surplus land" means land owned in fee simple by any local agency for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency's use. Land shall be declared either "surplus land" or "exempt surplus land," as supported by written findings, before a local agency may take any action to dispose of it consistent with an agency's policies or procedures... (Emphasis added.)

To date, the City has not provided any documentation to HCD demonstrating that the City has declared the Property as either "surplus land" or "exempt surplus land" before it took action to dispose of it, including but not limited to negotiating and entering into Purchase and Sale Agreements and Disposition and Development Agreements with SRB Management, LLC.

Furthermore, the City has not established that the Property qualifies as “exempt surplus land” pursuant to any of the subdivisions set forth under Government Code section 54221(f)(1).

Argument for Constructive ENA and “Grandfathering” Exemption Found Invalid

HCD has considered the City’s arguments set forth in its June 14 letter that “the City and the principals of Angels Baseball were parties to an exclusive negotiating agreement prior to September 30, 2019” (pg. 3) and therefore met the “grandfathering” exemption provided in the statute, meaning that “the Amended SLA, including its notice, findings and procedural requirements, does not apply to the transaction.” (pg. 5).

Based on the evidence submitted by the City, HCD finds that no substantial evidence of any exclusive negotiating agreement with SRB Management, LLC existed prior to September 30, 2019. Most notably, (a) on January 15, 2019, Anaheim City Council Member Jose F. Moreno moved to require a binding ENA and the motion failed; (b) SRB Management, LLC was not formed until November 20, 2019; and (c) in prior correspondence from the City dated November 27, 2020, the City represented to HCD that there was no exclusive negotiating agreement prior to September 30, 2019.

Argument for “Valid Legal Restriction” Exemption Found Invalid

In its January 25, 2021 letter, the City argued that the Property constitutes exempt surplus land under Government Code section 54221(f)(1)(G) because the Property is subject to a lease between the City and the California Angels LP that constitutes a valid legal restriction. Government Code section 54221(f)(1)(G) provides that “surplus 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” constitutes “exempt surplus land.”

The existing lease is not a valid legal restriction for at least three reasons. First, the properties the City wishes to sell to SRB include more than just the property currently being leased. Second, even if the parcels surrounding the leased premises are subject to a license to use provision, the City has not shown that the lease would prohibitively restrict its ability to offer the site for housing development under the Surplus Land Act with the current lease in place. Most notably, the fact that the City reached an agreement to develop housing on the Property demonstrates that there was, in fact, a feasible method to satisfactorily mitigate any prohibition of housing on the site. Third, even if we assume that an existing lease qualifies as a “valid legal restriction” under Government Code section 54221(f)(1)(G), the fact that the City is a party to the lease and the owner of the leased Property makes any such restrictions “imposed” by the City.

Thus, the Property does not qualify as “exempt surplus land” under Government Code section 54221(f)(1)(G) as argued by the City in their June 14, 2021 letter.

Violation #2: The City Violated the Surplus Land Act by Failing to Send a Notice of Availability pursuant to Government Code section 54222.

Government Code section 54222 requires that a local agency, prior to disposing of property or participating in negotiations to dispose of that property, must send a written notice of availability to certain local public entities, CalHFA certified housing sponsors, and other local agencies.

Government Code section 54222 states, in relevant part, as follows:

[A]ny local agency disposing of surplus land shall send, prior to disposing of that property or participating in negotiations to dispose of that property with a prospective transferee, a written notice of availability of the property to all of the following:

- (a) (1) A written notice of availability for the purpose of developing low- and moderate-income housing shall be sent to any local public entity, as defined in Section 50079 of the Health and Safety Code, within whose jurisdiction the surplus land is located. Housing sponsors, as defined by Section 50074 of the Health and Safety Code, that have notified the Department of Housing and Community Development of their interest in surplus land shall be sent a notice of availability of surplus land for the purpose of developing low- and moderate-income housing. All notices shall be sent by electronic mail, or by certified mail, and shall include the location and a description of the property.

The City provided no evidence that it sent any notices of availability to the statutorily required entities.

Violation #3: The City Violated the Surplus Land Act by Failing to provide HCD the information and documents required by Government Code section 54230.5(b)(1) prior to agreeing to terms to dispose of the Property.

Government Code section 54230.5(b)(1) requires that a local agency, prior to agreeing to terms for the disposition of surplus land, “provide to the Department of Housing and Community Development a description of the notices of availability sent, and negotiations conducted with any responding entities, in regard to the disposal of the parcel of surplus land and a copy of any restrictions to be recorded against the property pursuant to Section 54233 or 54233.5, whichever is applicable, in a form prescribed by the Department of Housing and Community Development.”

The Purchase and Sale Agreement and Disposition and Development Agreement establish that the City has agreed to terms for the disposition of the Property. HCD never received a description of any notices of availability sent, negotiations conducted, or a copy of any restrictions to be recorded against the property.

Next Steps

Under Government Code section 54230.5(a)(1), the City has 60 days from the date of this notice of violation to cure or correct the alleged violation as follows:

1. Utilize the “Land transferred for affordable housing by a City or County” exemption per Government Code Section 37364 or 25539.4, including but not limited to the main actions below:
 - Set aside 80 percent or more of the area for development of housing
 - Affordability covenant of 30 years or more with 40 percent of the total number of those housing units affordable to lower-income households
 - Half of these affordable to very low-income households

2. Utilize the “Mixed-Use Exemption” per Government Code section 54221(f)(1)(F)(ii), including but not limited to the main actions below:
 - Declare the land “exempt surplus”
 - Put the site out for competitive bid with invitations to participate sent to all entities identified in Government Code section 54222(a)
 - Apply covenant requiring at least 25 percent affordability for lower-income households per Government Code Section 54221(f)(1)(F)(ii)

3. Follow standard Surplus Land Act protocols, including but not limited to the main actions below:
 - Declare the land “surplus”
 - Post a Notice of Availability for 60 days to entities listed in Government Code section 54222; HCD maintains a list of these entities on its website: <https://hcd.ca.gov/community-development/docs/AB1486DeveloperInterestList.xlsx>
 - Engage in good faith negotiations for 90 days with any entities that respond to Notice of Availability
 - Submit documentation to HCD prior to agreeing to disposition terms per Government Code section 54230.5(b)
 - Based on responses to Notice, apply applicable affordability covenant for lower-income households.

Sincerely,



Megan Kirkeby
Deputy Director, Housing Policy Development