

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

June 28, 2022

William R. Devine, Partner
Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, Fifth Floor
Irvine, CA 92614-7321

Dear William R. Devine:

RE: HCD's Review of the Applicability of Surplus Land Act Exemption in Government Code section 54221, subdivision (f)(1)(G), to the City of Anaheim's Intended Sale of the Property Located at 1855 South Harbor Boulevard, Anaheim, California.

Thank you for contacting the California Department of Housing and Community Development (HCD) regarding the City of Anaheim's (City) intended sale of the property located at 1855 South Harbor Boulevard, Anaheim, California (Property). HCD reviewed the letter, dated February 18, 2022, that you submitted in support of your belief that the Property qualifies as "exempt surplus land" pursuant to Government Code section 54221, subdivision (f)(1)(G), because the Property is subject to "valid legal restrictions" not imposed by the City. However, as explained in further detail below, HCD finds that the Property does not qualify as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(G), because the restrictions were imposed by the City.

According to Government Code section 54221, subdivision (f)(1)(G), "exempt surplus land" means:

"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. An existing nonresidential land use designation on the surplus land is not a legal restriction that would make housing prohibited for purposes of this subparagraph. Nothing in this article limits a local jurisdiction's authority or discretion to approve land use, zoning, or entitlement decisions in connection with the surplus land."

(emphasis added; see *also* Surplus Land Act Guidelines section 103(b)(3)(G).)

Based on the documentation provided, it appears that the Anaheim City Council adopted, pursuant to section 9214¹, subdivision (a), of the Elections Code (ELEC), an initiative measure, which "generally prohibits residential development in the area of the City of Anaheim designated as the Anaheim Resort" (Ordinance No. 6098). However,

1. Section 9214 was repealed, effective Jan. 1, 2018.

for Government Code section 54221, subdivision(f)(1)(G), to apply to the initiative measure, the “valid legal restriction” cannot be imposed by the local agency. In this case, the Anaheim City Council elected to adopt the initiative measure, pursuant to section 9214, subdivision (a), of the ELEC, instead of ordering a special election and submitting the initiative measure to the City’s voters, pursuant to Section 9214, subdivision (b), of the ELEC. As a result, HCD concludes that the restrictions (i.e., the initiative measure) were adopted, and therefore imposed, by the local agency. As a result, Ordinance No. 6098 does not qualify as a “valid legal restriction” under Government Code section 54221, subdivision, (f)(1)(G).

For this reason, HCD has determined that the Property does not qualify as “exempt surplus land” under Government Code section 54221, subdivision (f)(1)(G). Therefore, the City must follow standard Surplus Land Act protocols when disposing of the Property, including, but not limited to, the following:

1. Declare the land “surplus” (as supported by written findings) and not necessary for the City’s use at a regular public meeting.
2. Send a Notice of Availability via certified mail or email to the entities listed in Government Code section 54222 and allow each entity 60 days to respond; HCD maintains a list of Housing Sponsors that have notified HCD of their interest in surplus property on its website: <https://hcd.ca.gov/community-development/docs/AB1486DeveloperInterestList.xlsx>
 - a. Pursuant to Section 202(a)(2)(D)(iv) of the SLA Guidelines, “a local agency may provide entities with reasonable conditions or restrictions for the surplus land in question, which must be included in the NOA, and reviewed by HCD pursuant to Section 400 of the SLA Guidelines.”
3. Engage in good faith negotiations for 90 days with all entities that respond in a timely fashion to the Notice of Availability.
4. Submit documentation to HCD prior to agreeing to disposition terms per Government Code section 54230.5, subdivision (b).
5. Record the required affordability covenant on the Property.

If you have any questions or need additional technical assistance, please contact Public Lands at Publiclands@hcd.ca.gov.

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability