DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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November 16, 2022

Miranda Evans, Special Projects Manager
Administration/Economic Development
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

Dear Miranda Evans:

RE: HCD's Review of the Irrevocable Offer of Dedication of Fee Interest, recorded on August 27, 2014, and the Acceptance of Irrevocable Offer of Dedication of Fee Interest, recorded on May 12, 2022, for the Purpose of Determining Whether the Property Owned by the City of Chula Vista and Identified as APN 644-070-01 is Subject to the Surplus Land Act

Thank you for contacting the California Department of Housing and Community Development (HCD) regarding Assessor Parcel Number 644-070-01 (Property). HCD reviewed the Irrevocable Offer of Dedication of Fee Interest, recorded on August 27, 2014, and the Acceptance of Irrevocable Offer of Dedication of Fee Interest, recorded on May 12, 2022 (collectively, the Documentation). You requested that HCD provide guidance as to whether the Property qualifies as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(G) (hereinafter referred to as Valid Legal Restrictions). As explained below, HCD finds that the Property does not qualify as "exempt surplus land" under the Valid Legal Restrictions exemption.

Definition of Valid Legal Restrictions Exemption

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

> "Surplus land that is subject to valid legal restrictions that <u>are not imposed by the local agency and that would make housing prohibited</u>, 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…"

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

Background

According to the Documentation, Otay Land Company, LLC, a Delaware limited liability company (Grantor) offered the Property to the City of Chula Vista (City) for the following public purpose: "future university purposes." The Grantor offered the Property to the City pursuant to Government Code section 7050. The Documentation further provides that the City accepted the Irrevocable Offer of Dedication of Fee Interest for the Property, which was recorded in San Diego County's Office of the County Recorder on May 12, 2022.

Analysis

The City claims that the restriction found in the Documentation qualifies as a valid legal restriction not imposed by the City that would make housing prohibited.

However, the restrictive language found in the Documentation does not meet the requirements of the Valid Legal Restrictions exemption because it does not "make housing prohibited" on the Property. Instead, the restriction requires that the City use the Property for "future university purposes." The requirement to use the Property for university purposes does not necessarily exclude housing on the Property. Therefore, the restrictive language found in the Documentation does not qualify as a "valid" rationale for disallowing housing on the Property.

Additionally, because the City accepted the Irrevocable Offer of Dedication of Fee Interest of the Property, the City in part imposed the restriction on itself. Therefore, the claim that the obligation to use the Property for "future university purposes" is not imposed by the City is not tenable.

Conclusion

HCD finds that the restrictive language found in the Documentation does not qualify as a "valid legal restriction" not imposed by the City that would make housing prohibited. Therefore, HCD finds that the Property does not qualify as "exempt surplus land" under the Valid Legal Restrictions exemption.

Additionally, HCD concludes that the Property can be used for both university and housing purposes. As specified in Section 202(a)(2)(D)(iv) of the SLA Guidelines, the City may include a reasonable condition or restriction in the notice of availability (NOA) of the Property i.e., the City may include in the NOA that, because the Property was acquired for university purposes, the City envisions a development project on the Property that includes both housing and university uses.

Next Steps

The City must follow the standard Surplus Land Act (SLA) 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 pursuant to Government Code section 54221, subdivision (b)(1).
2. Send an NOA 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, the City may include reasonable conditions or restrictions in the NOA.
    b. If the City elects to include reasonable conditions or restrictions in the NOA, the NOA must be reviewed by HCD pursuant to Section 400 of the SLA Guidelines before it is issued.
3. Engage in good faith negotiations for 90 days with entities that respond in a timely fashion to the NOA pursuant to Government Code section 54223.
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.
    a. If the City does not receive any notices of interest in response to the NOA, the City may dispose of the property without further regard to the SLA, provided a covenant or restriction is recorded against the property pursuant to Government Code sections 54233 or 54233.5.

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

Sincerely,

Laura Nunn

Laura Nunn
Senior Manager, Housing Accountability Unit
Housing Policy Development