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 December 10, 2014, and the Acceptance of Irrevocable Offer of Dedication of Fee Interest, recorded on June 23, 2015, for the Purpose of Determining Whether the Property Owned by the City of Chula Vista and Identified as APN 644-080-17 is Subject to the Surplus Land Act

Thank you for contacting the California Department of Housing and Community Development (HCD) regarding Assessor Parcel Number 644-080-17 (Property). HCD reviewed the Irrevocable Offer of Dedication of Fee Interest, recorded on December 10, 2014, and the Acceptance of Irrevocable Offer of Dedication of Fee Interest, recorded on June 23, 2015 (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, SSBT LCRE V, LLC, a Delaware limited liability company (Grantor), offered the Property to the City for the following uses:

(i) higher education and related compatible uses,
(ii) active public recreation,
(iii) quasi-public, and
(iv) all other uses including residential uses, industrial and commercial. (Emphasis added).

The Grantor offered the Property to the City pursuant to Government Code section 7050. According to the Documentation, 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 June 23, 2015.

Analysis

The City claims that the restrictions found in the Documentation qualify as valid legal restrictions not imposed by the City that would make housing prohibited.

HCD, however, finds that the restrictions found in the Documentation do not meet the requirements of the Valid Legal Restrictions exemption because, as stated above, the City is allowed to use the Property for residential uses. Therefore, the claim that the restrictions found in the Documentation qualifies as "valid legal restrictions" not imposed by the City that would make housing prohibited is unsupported.

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 restrictions found in the Documentation are 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.

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 a Notice of Availability (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