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

November 9, 2022

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

Dear Miranda Evans:

RE: HCD's Review of the Land Offer Agreement, dated March 7, 2000, First Amendment to Land Offer Agreement, dated August 7, 2001, and Grant Deed, recorded on December 31, 2001, for the Purpose of Determining Whether the Property Owned by the City of Chula Vista and More Particularly Described in Exhibit A of the Grant Deed is Subject to the Surplus Land Act

Thank you for contacting the California Department of Housing and Community Development (HCD) regarding the property owned by the City of Chula Vista (City) and more particularly described in Exhibit A of the Grant Deed, recorded on December 31, 2001 (Property). HCD reviewed the Land Offer Agreement (Agreement), dated March 7, 2000, First Amendment to Land Offer Agreement (First Amendment), dated August 7, 2001, and the Grant Deed (Grant Deed) (collectively, the Documentation) and other documentation you provided. 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 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…"

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

Background

The City, NM Homes Two, Inc., a Delaware corporation, B III Capital Partners L.P., a Delaware limited partnership, Otay Land Holdings, LLC, a Delaware limited liability company, Pearl Tech, LLC, a Delaware limited liability company, and M/O Holdings, LLC, a Delaware limited liability company (collectively, Original Owners) entered into the Agreement for the purpose of transferring the Property to the City. Subsequently, the City and Brookfield Shea Otay, LLC, a California limited liability company (Owner) entered into the First Amendment, which was recorded on August 28, 2001. According to the First Amendment, the Owner is the successor in interest to the Original Owners.

According to the Documentation, the City is required to use the Property for higher education, active public recreation, and all other uses (Permitted Uses), except non-university related residential uses.

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.

However, the restrictions found in the Documentation do not meet the requirements of the Valid Legal Restrictions exemption because the Documentation only prohibits “non-university related residential” uses. The Documentation do not prohibit all housing on the Property. This demonstrates that residential development is feasible on the Property. Therefore, the restrictive language in the Documentation does not qualify as a “valid” rationale for disallowing housing.

Additionally, the fact that the City is a party to the Agreement makes any such restrictions in part “imposed” by the City. Therefore, the claim that the obligation to use the Property only for Permitted Uses 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 concludes 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 uses, the City envisions a development project on the Property that includes both housing and university uses.

Next Steps

The City must follow the standard 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 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