DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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December 16, 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 Documentation Regarding the City of Chula Vista's Determination of APN 644-080-09 as "Exempt Surplus Land"

Thank you for contacting the California Department of Housing and Community Development (HCD) regarding the property identified as APN 644-080-09 (Property). HCD reviewed the Final Order of Condemnation from the Superior Court of the State of California for the County of San Diego (Court) filed on March 18, 2004 (Final Court Order), and the Judgment in Condemnation, filed on January 29, 2004 (Judgment).

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) (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

According to the Final Court Order, the Property is "condemned to become the property of City (referring to the City of Chula Vista) for open space preservation for off-site environmental requirements of Otay Ranch final maps." The Final Court Order was issued in response to the "Complaint in Eminent Domain," filed on September 16, 2002 (Complaint)." According to Code of Civil Procedure section 1230.050, "a court in which a proceeding in eminent domain is brought has the power to . . . (b) Enforce any of its orders for possession by appropriate process. The plaintiff is entitled to enforcement of an order for possession as a matter of right."

According to the Judgment, after the payment of the total just compensation award to Otay Land Company, LLC, a Delaware Limited Liability Company; et. al., (Defendant), the City will acquire the Property in fee simple absolute. The Judgment further provides that the City intends to take the Property for "open space preservation, a public use, which is authorized by law, and the taking of the property is necessary for such public use."

Analysis

The City claims that the Property is subject to valid legal restrictions not imposed by the City that would make housing prohibited.

After reviewing the Final Court Order and Judgment (collectively, the Documentation), HCD finds that the Court understood that the City acquired the Property from the Defendant for open space preservation for off-site environmental requirements of Otay Ranch final maps. However, HCD also finds that the Documentation does not state that the City must use the Property *exclusively* for open space preservation for off-site environmental requirements of Otay Ranch final maps. Therefore, HCD finds that the Documentation does not necessarily exclude housing on the Property.

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. For this reason, HCD concludes that the Property does not qualify as "exempt surplus land" under the Valid Legal Restrictions exemption.

Next Steps

HCD finds that, because the City acquired the Property for open space preservation for off-site environmental requirements of Otay Ranch final maps, the City can either:

1. Declare the Property as "surplus land[1]" and include a reasonable condition in the Notice of Availability[2] that the Property will not be used for development and instead be dedicated for open space preserve purposes, or
2. Declare that the Property is necessary for open space preservation purposes (agency's use) pursuant to the Otay Ranch Preserve Management Plan, and the disposition of the Property is not subject to the Surplus Land Act.

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

Sincerely,

Laura Nunn
Senior Manager, Housing Accountability Unit
Housing Policy Development

[1] See Appendix A for information on the standard process of the Surplus Land Act.
[2] The City will have to send the NOA for the Property to entities in Government Code section 54222, subdivisions (a) and (b).

Appendix A: Standard Process of the Surplus Land Act

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.