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 Land Offer Agreement between the City of Chula Vista and JJJ&K Investments Two, LLC and OV Three Two, LLC for the Purpose of Determining Whether the Property Identified in the Land Offer Agreement as Portions of Villages 3, 8, 9, and 10 of the Otay Ranch Project is Subject to the Surplus Land Act

Thank you for contacting the California Department of Housing and Community Development (HCD) regarding the property identified in the Land Offer Agreement (Agreement) between the City of Chula Vista (City) and JJJ&K Investments Two, LLC and OV Three Two, LLC (collectively, the Owners) as portions of villages 3, 8, 9, and 10 of the Otay Ranch Project (Property). HCD reviewed the Agreement 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 <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

The City and Owners entered into the Agreement, which was recorded on September 1, 2010. According to Section 2.2 of the Agreement, the "Owners concurrently with the execution of the First Land Offer Agreement, submitted to the City an Irrevocable Offer(s) of Dedication (IROD), for the University Property that allowed for the use of the University Property for… all other uses, including residential, industrial and commercial" (Permitted Uses)."

Section 2.2 of the Agreement further provides that if the City uses the Property, or any portion of the Property, for any Permitted Uses other than (i) higher educational uses, (ii) university related housing (student and/or faculty housing), (iii) a regional technology park or campus, (iv) uses ancillary to a university such as a bookstore, coffee house or copy center; or other accessory land uses commonly associated with higher educational institutional (collectively, University Uses), the Owners have the right to exercise the Repurchase Right provision (Repurchase Right Provision).

According to the Repurchase Right Provision, which is found in Sections 2.2 and 2.3 of the Agreement, the City is required to offer the Property, or the portion proposed for non-University Uses, to the Owners.

Analysis

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

However, the restrictions found in the Agreement do not meet the requirements of the Valid Legal Restrictions exemption because the restrictions do not "make housing prohibited" on the Property. Instead, HCD finds that the IROD allowed the City to use the Property for residential purposes. Further, the Agreement allows the City to use the Property for university-related housing (student and/or faculty housing). Therefore, the restrictive language found in the Agreement does not necessarily exclude housing on the Property.

Additionally, the claim that the Property is subject to "valid legal restrictions," not imposed by the City that would make housing prohibited is not tenable because (i). the fact that the City is a party to the Agreement makes any such restrictions in part "imposed" by the City, and (ii). the fact that university related housing (student and/or faculty housing) is permitted on the Property demonstrates that housing development is feasible 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. 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 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
Senior Manager, Housing Accountability Unit
Housing Policy Development