

**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](http://www.hcd.ca.gov)



June 16, 2021

Penny Maus  
Director, Real Estate Assets  
City of San Diego  
1200 Third Avenue, Suite 1700  
San Diego, CA 92101

**RE: HCD's Response to the City of San Diego's Proposed Disposition of City-owned property at 3220, 3240, 3250, 3340, and 3500 Sports Arena Blvd**

Dear Penny Maus:

Thank you for submitting documentation for review by the Department of Housing and Community Development (HCD) regarding the real property owned by the City of San Diego (City) at 3220, 3240, 3250, 3340, and 3500 Sports Arena Blvd in San Diego, CA (collectively, the Property). Based on HCD's review of that documentation, HCD has come to the preliminary conclusion that the current version of the Surplus Land Act (SLA) applies to the proposed transaction and the City may be in violation of the SLA.

**Preliminary Conclusion #1: The City Has Not Demonstrated That It Has Declared the Property "Surplus Land" or "Exempt Surplus Land"**

In email correspondence sent to HCD on May 4, 2021, the City provided documentation indicating that on February 7, 2020 it issued a request for proposals (RFP) to attempt to dispose of the Property. Assembly Bill (AB) 1486 (Statutes of 2019, Chapter 664) was in effect when the City issued this RFP. Relatedly, Government Code section 54221(b)(1) requires that land be declared either "Surplus Land" or "Exempt Surplus Land," as supported by written findings, before a local agency may take any action to dispose of it consistent with an agency's policies or procedures. Based on the information the City has submitted to HCD to date, it does not appear that the City has declared the Property "Surplus Land" or "Exempt Surplus Land."

To address Preliminary Conclusion #1, the City must declare the Property "Surplus Land" or "Exempt Surplus Land" and provide HCD documentation of the declaration; or provide HCD documentation showing that action has already occurred.

## **Preliminary Conclusion # 2: The City Has Not Demonstrated Compliance with the Noticing Requirements of the SLA**

If the Property is, in fact, “Surplus Land” pursuant to Government Code section 54221(b), Government Code section 54222 obligates the City to send notices of availability to specific entities prior to disposing of the Property or participating in negotiations to dispose of the Property. However, none of the documents that the City has provided to HCD to date indicate that the City has sent notices of availability to the required entities.

HCD and City staff have also previously discussed that the definition of “Exempt Surplus Land” in Government Code 54221(f)(1)(F)(ii) for a mixed-use development that meets certain criteria and that restricts at least 25 percent of the residential units to lower income households as specified may apply to this proposed transaction. If the Property is, in fact, “Exempt Surplus Land” pursuant to Government Code section 54221(f)(1)(F)(ii), the City must invite the entities identified in Government Code section 54222(a) to participate in a competitive bid process. However, none of the documents that the City has provided to HCD to date indicate that the City has invited the required entities to participate in a competitive process.

To address Preliminary Conclusion #2, the City must follow the noticing procedures for “Surplus Land” per Government Code 54222 and described on pages 14 and 15 of the Surplus Land Act Guidelines, or the noticing procedures for “Exempt Surplus Land” per Government Code 54221(f)(1)(F)(ii) and described on pages 11 and 12 of the Surplus Land Act Guidelines, as applicable; or provide HCD documentation showing that action has already occurred.

## **Preliminary Conclusion # 3: The City May Be at Risk of Violating the Affordable Housing Requirements of the SLA**

Under Government Code section 54222.5, an entity proposing to use “Surplus Land” (or “Exempt Surplus Land” pursuant to Government Code section 54221(f)(1)(F)) for low- and moderate-income housing must agree to make available to lower-income households at least 25 percent of the total number of units developed at affordable housing cost or affordable rent. The only exception to this is for “Surplus Land” that is (1) disposed of after a local agency either does not receive a response to its notice of availability, or does not agree to price and terms with an entity responding to its notice of availability, and (2) still subject to development of a minimum of 15 percent affordable units if ten (10) or more residential units are developed on the Property. It does not appear that this exception applies requiring a minimum of 15 percent affordable units.

Moreover, an affordability covenant or restriction to this effect must be placed on the Property for the disposition to comply with the relevant affordability requirement(s) of the Surplus Land Act. However, the proposal that appears to be under consideration by the City, which the City described and linked to in its April 29, 2021 email, does not require 25 percent of the total proposed units to be affordable and does not require recordation of an affordability deed restriction or covenant.

To address Preliminary Conclusion #3, the City must record a covenant requiring at least 25 percent of the total number of units developed at affordable housing cost or affordable rent to lower income households.

### **Next Steps**

Based on Preliminary Conclusions #1 and 2 above, the City may have improperly followed the SLA's declaration and noticing procedures. Based on Preliminary Conclusion #3, the Property may not be planning for sufficient affordable housing and may not be applying the proper covenant or restriction. If the City does not take corrective actions, as described, proceeding with a disposition could risk violating the SLA and subject the City to assessment of a penalty.

HCD appreciates the City's cooperation and assistance in gathering information on the proposed transaction. HCD continues to welcome additional documentation from the City. HCD asks that the city provide, no later than July 16, 2021, any other documentation relevant to the preliminary conclusions set forth above, including documentation to show that the City has declared the Property "Surplus Land" or "Exempt Surplus Land", complied with the noticing or competitive bid invitation requirements of the SLA, and that the proposed project will include 25 percent affordability; or documentation that the Property meets another exemption of the Surplus Land Act, as described on pages 10 through 13 of the Surplus Land Act Guidelines.

If the City or its representatives have any questions or documents that HCD staff has not yet reviewed that would address the above preliminary conclusions, please send these to [publiclands@hcd.ca.gov](mailto:publiclands@hcd.ca.gov) by July 16, 2021.

Sincerely,



Sasha Wisotsky Kergan  
Unit Chief  
Housing Policy Development