



City of Anaheim
OFFICE OF THE CITY ATTORNEY

December 8, 2021

VIA ELECTRONIC MAIL

Megan Kirkeby
Deputy Director
Division of Housing Policy Development
Department of Housing and Community Development
2020 El Camino Avenue, Suite 500
Sacramento, CA 95833

Re: City Response to HCD December 2nd Letter

Dear Ms. Kirkeby:

We are in receipt of your letter dated December 2, 2021, and now your Notice of Violation (NOV) received this morning at 6:47am. This letter is not a formal response to the NOV, which will instead be provided pursuant to the timelines set forth in the Surplus Land Act.

We are surprised by what seems to be a sudden reluctance by HCD to continue to engage in what had been prior to your letter cordial and good faith settlement negotiations between HCD, the City and SRB. Furthermore, we do not believe, as suggested by your December 2nd letter, that the only acceptable resolution of our negotiations must be an agreement that the Angel Stadium Property must be developed in accordance with the “mixed-use” exemption of the Surplus Land Act as amended by AB 1486 effective January 1, 2020, a position that was never taken by the Attorney General’s Office or your staff in the many months of discussions we have had. For all the reasons discussed below, the City respectfully requests that the parties resume and continue their confidential good-faith negotiations without delay.

It is clear that the parties have a *bona fide* disagreement about the reach of the Surplus Land Act and how it may or may not apply to Angels Stadium deal. Notwithstanding this disagreement, the parties have spent the better part of the last several months in what we thought were good faith negotiations regarding ways to resolve this dispute in a manner that would allow for both the completion of the transaction and an increased commitment to affordable housing. The City and SRB have in good faith attempted to respond for months to HCD’s reasonable questions, concerns and suggestions. In addition to providing information and documentation to help HCD better understand the proposed transaction, the City and SRB, at HCD’s urging, have presented a proposal, subject to City Council approval, to

increase the amount of affordable housing from 777 to 1,295 affordable units, which would equate to increasing the affordable set aside from 15% to 25% of the total Project.

Moreover, the City and SRB also discussed providing 518 low and very low income units on an accelerated basis (within 10 years instead of 25 years as contemplated by the pending transaction) if HCD agrees that those units can be provided or developed on infill sites nearby to the Angel Stadium Property. The proposal to accelerate the delivery of low and very low income off-site was intended to reflect the fact that such units might be delivered more quickly through the construction of new buildings on nearby infill sites that are supported by existing infrastructure, and that would not necessitate the construction of replacement stadium parking. The effort to accelerate also goes beyond the requirements of the Surplus Land Act, which contains no requirements that housing actually be developed on any schedule.

Contrary to the assumption reflected in your December 2nd letter, the delivery of any off-site affordable housing would have been secured by a continuing condition of the Angel Stadium Development Agreement (which will be recorded against the Angel Stadium Property), and its maintenance would also be secured by affordability covenants recorded against each of the off-site properties where the 518 units would be provided. While the City assumed based on your staff's statements that HCD would find the City's willingness to accelerate the delivery of low and very housing above and beyond the requirements of the Surplus Land Act, if HCD is not open to this idea, the City and SRB are willing to continue to explore other alternatives.

During discussions, these proposals to increase the affordable housing commitment were received favorably by both your staff and the Attorney General's Office. Indeed, terms such as "promising," "encouraging," and "positive step" were consistently made by your side in response to these types of proposals. As late as mid-November, your team indicated that it would make a counter-proposal within days and that the parties should consider a mediation shortly thereafter in order to complete a possible settlement by the end of the year. That is what the City and SRB were expecting when we instead received your December 2 letter which seemed completely oblivious (both in tone and content) to the parties' seemingly promising prior discussions.

We find HCD's new hardened position especially troubling in light of the uncertainty of the legal positions that HCD maintains, as well as HCD's core purpose of seeking to expand affordable housing in California. In light of the indisputable facts underlying the City's pending disposition of the Angel Stadium Property to SRB, the City has consistently maintained that HCD's preliminary conclusion that the pending transaction violates the Surplus Land Act is fundamentally in error. More importantly though, HCD's threat to engage in actions calculated to frustrate or delay the pending transaction seems fundamentally at odds with HCD's mission of "increasing the supply of affordable places to live in California" as explained below.

Without repeating or belaboring the details previously discussed with your staff, the pending transaction was approved by the City in 2019, before the effectiveness of AB 1486's amendments to the Surplus Land Act. Therefore, the limitations and requirements introduced by

AB 1486 do not apply to the pending transaction. But even if the AB 1486 amendments were to be considered, the pending transaction would still be exempt from the Surplus Land Act.

As explained in the September 10th correspondence provided to HCD by Allan Abshez, SRB established that by virtue of the 1996 Lease (the current version of a lease arrangement for the Angel Stadium Property that has been continuously in place since 1964), Angels Baseball will retain exclusive control of the Angel Stadium Property effectively through December 31, 2038. Because of SRB's decades-old lease rights, the City has no legal ability to allow for the development of housing at the Angel Stadium Property – even though the City's planning and zoning regulations have long allowed, and indeed promoted, housing there.

Because the City has no ability “to satisfactorily mitigate or avoid” continuing, and long-term, SRB's leasehold rights, which include the right to prohibit housing at the Property, it falls within the definition of “exempt surplus land” within the fair meaning of Government Code Section 54221(f)(1)(G). Significantly, in all of our communications with your staff and the Attorney General's office, HCD has failed to provide any legislative history¹ or legal analysis that takes the 1996 Lease into account which would support any other conclusion. Thus, the City has always been confident that a court would agree with the City's well-reasoned and factually supported position that the pending transaction is exempt from the Surplus Land Act.²

Moreover, from the standpoint of its core mission of “increasing the supply of affordable place to live in California,” HCD must consider its threat to frustrate the pending transaction in the context of two alternative real-world scenarios:

- Forced Maintenance of the Status Quo: If HCD should frustrate the pending disposition of the Angel Stadium Property no housing of any kind will be developed for the next 20 years. The Property will continue to be utilized through December 31, 2038 only for stadium events and surface parking.
- Completion of the Pending Transaction: As documented in the informational materials we provided to HCD on October 11th, if the pending transaction is completed, not only will Major League Baseball be retained in Anaheim, but with full buildout:
 - 750 residential units will be developed at the Angel Stadium Property in 10 years (10% of which must be low/very low);

¹ The legislative history of the Surplus Land Act and AB 1486 clearly establishes that the legislature recognized that there would be many fact-based-circumstances, including but not limited to previously existing local agency contracts and commitments, that could not be precisely described in the statute that would render proposed dispositions “exempt surplus lands.” The broad language of Section 54221(f)(1)(G) reflects that recognition.

² The City need not restate, and reserves, all of its other arguments at law and equity, including without limitation the use of the Economic Opportunity statute as an alternative basis to dispose of local public lands, that were previously shared with HCD, all of which are expressly reserved.

- 1,280 residential units will be developed in 15 years (15% of which must be affordable, (including 10% low/very low);
- 3,600 residential units will be developed in 20 years (15% of which must be affordable, including 10% low/very low);
- 4,105 residential units will be developed in 25 years (15% of which must be affordable, including 466 low/very low units)
- 5,175 residential units will ultimately be developed (15% of which must be affordable, including 518 low/very low units)

The contrast, viewed only through the approximately 20-year period through which the 1996 Lease will continue, is stunning:

If the pending transaction is consummated, Anaheim will benefit from the development of 3,600 new residential units (15% of which must be affordable, including 10% low/very low) at the Angel Stadium Property within 20 years (and ultimately 5,175 new residential units)

Vs.

*If HCD frustrates the pending transaction, **ZERO** residential units will be developed*

For these reasons, the City has consistently cautioned HCD against pursuing what would only be seen as a legally tenuous and counter-intuitive application of the Surplus Land Act; and attempt to frustrate the actual – and currently contracted – delivery of 3,600 new residential units (including affordable housing) over the next 20 years that our City desperately needs at a site that will otherwise remain a surface parking lot for the same period.

The City continues to believe that the pending transaction is not only exempt from the Surplus Land Act, but also that it strikes the right public policy balance for the City given all of the facts and considerations in play (e.g., ensuring the delivery of 5,175 housing units (including affordable housing) for the Anaheim community, retaining Major League Baseball in Anaheim, delivering new public parks, settling public liability associated with the 1996 Lease; all of which remain important objectives of the City in the pending transaction).

Because the parties have a bona fide dispute regarding whether the Surplus Land Act applies at all, the City believes that a negotiated good faith compromise and settlement does not limit the parties to the single solution of proceeding under the “mixed-use exemption” of the Surplus Land Act as suggested in HCD’s December 2nd letter. It should go without saying that proceeding under the “mixed-use exemption” does not represent a compromise on behalf of HCD at all, because the exemption is available without HCD’s consent or involvement.

Megan Kirkeby
December 8, 2021
Page 5

For all these reasons, the City respectfully requests that the parties resume and continue their confidential good-faith negotiations, which both HCD and the Attorney General's Office were encouraging and optimistic about in our many meetings preceding your December 2nd letter. We would encourage HCD to return to showing a willingness to discuss the different options that would help ensure the delivery of 3,600 new residential units (including affordable housing) over the next 20 years that our City desperately needs at a site that will otherwise remain a surface parking lot for the same period.

Sincerely,

ROBERT FABELA, CITY ATTORNEY

By:



Robert Fabela
City Attorney

cc: Allan Abshez
Amrit Kulkarni

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