

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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October 18, 2023

Steven B. Quintanilla, Interim City Attorney
City of Moreno Valley
14177 Frederick Street
P.O. Box 88005
Moreno Valley, CA 92552

Dear Steven B. Quintanilla:

RE: City of Moreno Valley's Disposition of the Property at the Northwest Corner of Alessandro Boulevard and Nason Street – Notice of Violation

The California Department of Housing and Community Development (HCD) issues this Notice of Violation regarding the City of Moreno's (City) proposed disposition of 56.42 acres of public land, located at the northwest corner of Alessandro Boulevard and Nason Street in Moreno Valley, Assessor's Parcel Numbers (APNs) 487-470-030 and 487-470-031 (Property).

HCD must notify a city if HCD finds that the city has taken an action in violation of the Surplus Land Act (SLA), and HCD may notify the California Office of the Attorney General that a city is in violation of the SLA. (Gov. Code, § 65585.1, subd. (a).)

The City has 60 days from the date of this Notice of Violation to cure or correct the violations noted herein. If the City does not cure or correct all such violations by December 17, 2023, and elects to proceed with the disposition of the Property, it will be assessed a penalty equal to 30 percent of the final sales price. (Gov. Code, § 54230.5, subd (a)(1).) HCD may also pursue additional remedies authorized under Government Code sections 65585 and 65585.1.

Background

On September 26, 2023, HCD received the City's Resolution No. 2023-63 (Resolution). The Resolution claims that the City's disposition of the Property under the SLA would conflict with Government Code section 52201, which allows a city to sell or lease property to create an economic opportunity. Prior to receiving the Resolution, HCD provided technical assistance (TA) to the City on April 12, May 5, and June 16, 2023. HCD also sent the City a formal TA letter, dated July 6, 2023 (incorporated here by reference), explaining that there is no conflict between the SLA and Government Code section 52201. HCD concluded the TA letter with next steps the City must take to

remain in compliance with the SLA. To date, the City has failed to show the existence of any statutory conflict between the Economic Opportunity Law and the SLA. Accordingly, HCD finds that the City's proposed disposition of the Property violates the SLA.

The City's Violation of the SLA

In the City's April 10, 2023, letter to HCD, the City states that "[i]n November of 2019, the City prepared and distributed a Request for Proposals (RFP) for the development of the Town Center Project. The RFP was distributed to more than 9,000 developers. Lewis Acquisition Company, LLC was selected as the 'Developer' in March of 2020. Thereafter, in October of 2020, the City entered into a Purchase and Sale Agreement ('PSA') with the Developer regarding the Subject Property."

In March 2020, when the City selected the Developer, Government Code section 54221, subdivision (b)(1), stated that "[l]and shall 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." Furthermore, as of March 2020, Government Code section 54222 stated that any local agency disposing of surplus land shall send, prior to disposing of that property or participating in negotiations to dispose of that property with a prospective transferee, a written notice of availability of the property to HCD, affordable housing sponsors, and public entities. In addition, the SLA required that the City provide, at minimum, 60 days for letters of interest (Gov. Code, § 54222, subd. (e)) and 90 days for good-faith negotiations (Gov. Code, § 54223, subd. (a)). As a result, at least as early as March 2020, the City violated the SLA by selecting a developer and then subsequently entering into the PSA, without first complying with the SLA.

Economic Opportunity Law Does Not Conflict with the SLA

The City claims that "[t]he application of the Surplus Land Act conflicts with the City's sale of the [Property] under Government Code section 52201 to create economic opportunity." (Resolution, pg. 15.) Government Code section 52201 states, in relevant part, that "[a] city, county, or city and county **may** sell or lease property to create an economic opportunity" (emphasis added). The Legislature's use of the word "may" (instead of "shall") indicates that a city has discretion – i.e., is not required – to utilize the Economic Opportunity statutes. On the other hand, the SLA includes *mandatory* requirements for local agencies, including: "Land **shall** 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." (Gov. Code, § 54221, subd. (b)(1), (emphasis added).)

The City has not provided HCD with any legal authority supporting the proposition that a permissive statute can conflict with, or otherwise exempt the City from, mandatory statutory obligations. And even if a permissive statute could conflict with a mandatory statute in some circumstance, the substance of the statutes here are fully compatible:

the SLA does not prevent a city or county from creating economic opportunity or require them to dispose of property for less than fair market value. The City has not pointed to any specific provision of the Economic Opportunity statute that conflicts with any specific provision of the SLA.

Housing Element Law Does Not Conflict with the SLA

In its Resolution, the City claims that “[i]f the Surplus Land Act disposition procedures are applied under the specific circumstances, it would conflict (e.g., undermine, defeat and frustrate) with the City’s MOVAL 2040 General Plan’s Housing Element that was recently certified by the California Department of Housing and Community Development on or about October 11, 2022.” (Resolution, pg. 12, emphasis added.) The City also claims that “[t]he application of the Surplus Lands Act conflicts with the State Housing Laws that the City relied upon for developing its Housing Element that was Certified by HCD in October 2022, and obtaining the designation as a Prohousing jurisdiction from HCD.” (Resolution, pg. 15, emphasis added.)

Complying with the SLA does not conflict with the City’s housing element. Indeed, the SLA applies whether or not a property is included in a housing element’s site inventory and regardless of zoning designation, and nothing in Housing Element Law permits cities to claim exemption from the SLA by virtue of having a certified housing element.

The City’s bald assertion that the SLA conflicts with “State Housing Laws” fares no better. To show that a conflict exists, the City would have to establish a conflict between a *specific* provision of the SLA and a *specific* provision of “State Housing Laws.” The City has failed to do this. To the extent that the City is referring to Housing Element Law (Gov. Code, § 65580 et seq.) when it mentions “State Housing Laws,” there is no conflict between the SLA and State Housing Element Law.

The SLA’s Exception Under “Agency’s Use” is Not Applicable Here

The City also claims that the SLA is not applicable to the Project since the land is still necessary for the agency’s use. The City acknowledges in its letter that the Project “will include entertainment, hospitality, restaurants, shops, office buildings....” However, the SLA’s definition of “agency’s use” specifically excludes “commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development.” (Gov. Code, § 54221, subd. (c)(2)(A).) Therefore, any component that includes any of the latter uses would not be considered “agency’s use” and are therefore subject to the SLA.

As HCD shared during TA calls with the City, the City has the option to include new city facilities and other uses as reasonable conditions in a Notice of Availability pursuant to Government Code section 54222, or in an RFP pursuant to Government Code section 54221, subdivision (f)(1)(F)(ii).

Conclusion and Next Steps

As explained above, HCD finds the City has not identified any conflict between the SLA and other relevant statutory law. HCD finds that the City violated the SLA by, among other things, selecting a developer in 2020 and entering into a PSA on October 20, 2020, without first complying with the SLA. Since then, the City has failed to take the necessary steps to come into compliance with the SLA, instead proposing to move forward with a disposition in continued violation of the SLA.

As discussed above, under Government Code section 54230.5, subdivision (a)(1), the City has 60 days from the date of this Notice of Violation to cure or correct the violations noted herein. The City may have multiple avenues it can pursue to comply with the SLA, and HCD invites the City to discuss further. In the meantime, HCD urges the City to suspend any further actions to dispose of the Property.

If the City or its representatives have any questions or need additional TA regarding the applicability of the SLA, please contact Lisa Krause, Senior Housing Policy Specialist, at lisa.krause@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Zisser", with a long horizontal flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability