

LEGAL SERVICES
of
NORTHERN CALIFORNIA

January 4, 2022

Mayor Susan Seaman
Councilmembers
City Council
City of Eureka
531 K Street
Eureka, CA 95501

Pam Powell, City Clerk
City of Eureka
531 K Street
Eureka, CA 95510

Re: Comments on Item H.1, City Council Meeting, January 4, 2022
Notice of Intent to Enforce Surplus Lands Act

Dear Honorable Mayor, Councilmembers, and Ms. Powell:

On behalf of our clients Vernon Price and Coalition for Responsible Transportation Priorities, we write to urge the City to reject the proposed land swap on tonight's agenda. As we explained in our December 21, 2021, letter, the proposal violates the Housing Element Law, the Surplus Lands Act, and the No-Net-Loss law. The City is inviting litigation with its action, and its Memorandum of Understanding with the developer puts the City on the hook for the developer's legal fees. Whatever the City now thinks is the best use of the parking lots it identified for development of affordable housing, the City must first amend its Housing Element and comply with the Surplus Land Act before abandoning the promises it made.

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Housing Element Law

The City's proposal is a clear violation of the Housing Element Law. Very simply, the City cannot change course before amending the document. Tonight's proposed decision is inconsistent with Program H-34, which has committed these sites for the development of affordable housing. (See Gov. Code, §§ 65860, 65863, sub. (a), 65587, sub. (b)(1), 65583, subd. (c).) Moreover, tonight's decision results in the substantial delay of implementation of Program H-24, opening the City to a claim of failure to implement its Housing Element. (See Gov. Code, §§ 65583, subd. (h); 65587, sub. (b).) Finally, as the City has recognized, tonight's proposed decision comes at the behest of concerned business owners, when the Housing Element Law requires the City to seek and consider the opinions of all economic segments of the community. (See Gov. Code, §§ 65583, sub. (c)(9); 65585, subd. (b)(2).)

No-Net-Loss Law

As we explained in our December 21, 2021, letter, the City is falsely claiming that the proposal results in an overall increase in affordable housing. By comparing the minimum numbers of affordable units required on the existing sites with the potential numbers from the new sites, the City champions the proposal as one that brings more housing. This assertion is false. Consequently, the proposal violates the No-Net-Loss Law. Indeed, the City must start by amending the sites inventory in its Housing Element. (See [HCD's October 2019 guidance memo](#).)

Surplus Lands Act

The SLA requires local agencies seeking to dispose of land not necessary for the agency's work or operations to declare the land either "surplus" or "exempt surplus" before it disposes of the property. (Gov. Code, § 54221, subd. (b)(1).) The City did not make either of these determinations prior to the proposed site transfer. It instead seems to take the position that the sites are not surplus because they will be exchanged for property on which a private developer will construct some affordable housing which will accommodate the portion of the City's lower income Regional Housing Needs Assessment allotment it had previously identified for accommodation in its housing element by the sites proposed for exchange. But neither the current use as public parking nor the proposed affordable housing development on the sites to be received in exchange qualify as "agency use" under the SLA. Accordingly, the City may not dispose of the sites without first making them available for affordable housing development as required by the SLA.

HCD's Surplus Land Act Guidelines confirm that the proposed property exchange is subject to and not exempt from the SLA land disposition requirements. (See [Surplus Land Act Guidelines](#) (ca.gov).)

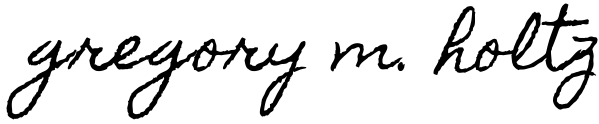
Section 102(d) of the Guidelines define “Agency Use” as a use that includes, but is not limited to, “land that is being used, or is planned to be used pursuant to a written plan adopted by the local agency’s governing board for agency work or operations” The City’s planned property exchange is not one that facilitates is governmental work or operations. First, the sites proposed for transfer are not being used for the City’s work or operations. They are in use as public parking for private businesses, not for City employees.

Second, the development of privately owned affordable housing, even if the private owner is a nonprofit developer, is not use “for agency work or operations.” The construction or operation of privately owned affordable housing, therefore, is not an agency use. Consequently, because the City proposes an exchange of its publicly-owned parking sites for the development of privately-owned affordable housing, the action violates the SLA.

If HCD finds that a disposition of surplus land violates the SLA, it must impose an administrative penalty of 30% of the final sales price. (Gov. Code, § 54230.5, HCD Guideline 501(b)(3).) Private enforcement is also authorized, including enforcement by any beneficially interested person or entity. (HCD Guideline 502(a).) This letter is intended as the notice of intent to enforce the SLA, required by Government Code section 54230.5, on behalf of our clients and community.

The City is embarking on a perilous and costly path by accommodating the requests of private businesses without first making the requisite amendments to its planning documents after public hearings and proceeding as required by the Surplus Land Act. Approving tonight’s proposal is inconsistent with the City’s housing element and in violation of the Surplus Land Act, and it could result in HCD administrative action and litigation by the state and interested private parties. The City was on course to fulfill the program action requirements of its HCD-approved housing element by making its publicly owned sites available to affordable housing development, but now it risks substantial delay in achieving the promised development. Perhaps that is the intention of the private business owners pushing this plan, but it belies the public statements made by every member of this Council about our housing crisis. Approving this proposal is bad for our clients and bad for the City of the Eureka, and should be stopped in its tracks tonight.

Sincerely,



Gregory M. Holtz
Managing Attorney
Legal Services of Northern California



Michael Rawson
Director
Public Interest Law Project

cc: Robert Black, City Attorney, City of Eureka
Robin Huntley, California Department of Housing & Community Development