CC 2-26-2026

#1

2026 Cupertino State of the City

Written Communications

From:	Santosh Rao
To:	Lauren Sapudar; City Council; Floy Andrews; City Attorney"s Office; Tina Kapoor; Luke Connolly; City Clerk; Chad Mosley
Subject:	Re: Informational Memo Clarifying Procedural Sequence in Right-of-Way Vacation and Surplus Land Processes
Date:	Thursday, February 26, 2026 8:19:51 AM

Good Morning Lauren,

In that case can you please submit for today for items on agenda as the item is city business and is a reflection of the state of the city.

Thanks,
Santosh Rao

On Thursday, February 26, 2026, 8:06 AM, Lauren Sapudar <LaurenS@cupertino.gov> wrote:

> Good morning, San,
>
> Thank you for your recent submission for Oral Communications.
>
> I wanted to let you know that Oral Communications is not required for special meeting agendas and will not be part of tonight's State of the City agenda.
>
> However, your written communication will be included in the Written Communications section of the next regular City Council meeting on March 3rd.
>
> Regards,

Lauren Sapudar
Acting City Clerk
City Manager's Office
LaurenS@cupertino.gov
(408) 777-1312

From: Santosh Rao <santo_a_rao@yahoo.com>
Sent: Thursday, February 26, 2026 7:48 AM
To: City Council <citycouncil@cupertino.gov>; Floy Andrews <floya@cupertino.gov>; City Attorney's Office <cityattorney@cupertino.gov>;

Tina Kapoor <tinak@cupertino.gov>; Luke Connolly <lukec@cupertino.gov>; City Clerk <cityclerk@cupertino.gov>; Public Comments <publiccomment@cupertino.gov>; Chad Mosley <chadm@cupertino.gov>
Subject: Informational Memo Clarifying Procedural Sequence in Right-of-Way Vacation and Surplus Land Processes

Dear City Clerk,

Please include the below in written communications for items not on the agenda for the upcoming State of the City council meeting today. In addition please include as written communications for the next upcoming city council meeting.

[Writing on behalf of myself only as Cupertino resident]

Subject: Request for Informational Memo Clarifying Procedural Sequence in Right-of-Way Vacation and Surplus Land Processes

Dear Mayor Moore, City Manager Kapoor, Attorney Andrews, and Honorable Cupertino City Council Members,

I am writing to respectfully request that the City publish an informational memorandum clarifying the City's interpretation and procedural rationale regarding the sequencing of steps involved in actions such as: vacation of public right-of-way, deeming of land as surplus, notification to the Department of Housing and Community Development (HCD), issuance of an RFP, bid evaluation, selection of a proposal, or determination that a property is surplus-exempt.

Specifically, I request that the memo address why the City believes it is not required under state or local law to maintain sequentiality in these steps, and that it describe the criteria used to determine surplus exemption and related procedural pathways.
In addition, I would appreciate clarification on how the City Council determined and signed findings of General Plan conformance prior to the Planning Commission conducting its own hearing on that matter. It would be helpful for residents and stakeholders to understand the legal and procedural basis for Council's authority to certify such conformance before the Commission's review occurred.

To avoid future misunderstandings and ensure transparency, I ask that this informational memo include a detailed explanation and rebuttal of any suggestions of procedural noncompliance with state-defined sequential steps.

Note that deeming land as exempt surplus is a very narrowly defined qualification criteria. Please publish the state defined qualification criteria for exempt surplus and why the city believes it qualifies to deem this land as exempt surplus. Further single party negotiation must not occur prior to deeming land as exempt surplus. A RFP must not occur on public right of way land before the city has heard evidence that the land can be vacated and heard from the community. Running a RFP prior to these steps indicated pre-biased positions by the city and lack of a fair adjudication of the process to vacate, process to deem surplus, process to deem exempt surplus as the city already ran a RFP and enacted next steps with a single party. Council is expected to take no positions ahead of council hearings whereas the actions of this RFP process indicate council assumes it is already acceptable to vacate land, deem surplus or exempt surplus, assumes no interest from other HCD notification list parties and gives preference unduly to a single party prior to any of those steps. If the RFP has a single bidder the RFP must be rerun.

If the City identifies any curative measures that may be appropriate, I urge that they be implemented proactively to maintain compliance and public confidence.

Given the City's fiscal constraints, prudence would suggest minimizing exposure to potential litigation costs through full procedural transparency and adherence to defined statutory processes. I believe that publishing such a memo will help reaffirm the public's trust in the City's governance and procedural integrity.

Thank you for your attention to this request and for your continued service to the community. I look forward to your response and the City's informational clarification on these important matters.

Sincerely,
San Rao (writing on behalf of myself only as a Cupertino resident)

Begin forwarded message:

On Tuesday, December 2, 2025, 11:46 PM, Santosh Rao <santo_a_rao@yahoo.com>

wrote:

[Writing on behalf of myself only as a Cupertino resident, taxpayer, voter]

Dear City Clerk,

Please include this letter in written communications for agenda item 12 for 12/2/25 council meeting and for the next upcoming council meeting.

Subject: Request to Halt Negotiations or Disposition until SLA Process Is Completed in Accordance with 2025 HCD Precedent

Dear Mayor Chao, Vice-Mayor Moore, Council Members, Attorney Andrews, CAO, CM Kapoor,

Please note the precedent in the below and attached HCD notice of violation to the city of Ontario dated June 18 2025. The precedent directly applies to the actions in progress currently in the city of Cupertino attempting to move forward with appointing a negotiator. take steps towards disposition and engaging in exclusive negotiations with a pre-determined buyer without first completing the SLA process and required notices and noticing period.

I write to respectfully urge the Council to **pause any efforts to approve a negotiator, enter into negotiation, or take any steps toward disposition or sale of public land** until the city has fully satisfied the notice, findings, and waiting-period requirements of the Surplus Land Act (SLA), including providing required documentation to HCD and observing the legally mandated notice/negotiation windows.

Background — Relevant Legal Obligation

Under the SLA (Gov. Code §§ 54220–54234), a local agency must first declare property "surplus" (not needed for public use), adopt a resolution to that effect, and then issue a formal Notice of Availability (NOA) to: (1) HCD; (2) any local public entities within the jurisdiction; and (3) developers on HCD's list of those interested in surplus public land for affordable housing. California Housing Dept.+2Banning, CA+2 After that NOA is issued, the city must allow a minimum statutory waiting period (60 days for responses) and, if any eligible entities respond, a mandated 90-day good-faith

negotiation period before disposing of the land. Banning, CA+2California Housing Dept.+2

Furthermore, under recent amendments to the SLA (2024), if a local agency receives a Notice of Violation (NOV) from HCD for noncompliance, the agency is required to hold an open public meeting to evaluate the NOV — and the agency may not proceed with any disposal until that process is complete. Allen Matkins - Allen Matkins+2California Housing Dept.+2

Precedent — HCD's 2025 Finding Against City of Ontario

In a September 22, 2025 Follow-Up Notice of Violation addressed to Ontario's City Manager, HCD found that Ontario had violated the SLA by disposing of a 2.368-acre parcel (APN 0218-111-12-0000) without first declaring the land surplus and without issuing the required notices. California Housing Dept.+1

HCD concluded that the disposition and the fact that the City had "exclusively negotiated with the Developer" prior to complying with SLA requirements—constituted a clear SLA violation. California Housing Dept.+1 HCD also invoked applicable statutory penalties under Gov. Code § 54230.5 for the first-time violation (30 % of the disposition value) and warned that future violations would trigger even higher penalties (50 % of the disposition value). California Housing Dept.+1

The Ontario case demonstrates that **HCD is actively enforcing SLA compliance** including penalizing cities that attempt to circumvent the required surplus-land process by negotiating in advance with a favored developer, or disposing of land without the required surplus declaration and notice.

Risk of Noncompliance and Fiscal/Legal Consequences

Given the recent Ontario finding:

- Proceeding with negotiations, designating a "negotiator," or otherwise taking substantive steps toward disposition before completing the full SLA process would risk very likely violation of state law.
- Noncompliance may expose the City to substantial financial penalties (per SLA enforcement provisions) and reputational risk.
- Such action may also frustrate the primary public-purpose objective of the SLA: to give first priority to affordable-housing proponents or other public entities, rather than to private developers selected in advance.

Pause and Complete SLA Process Before Any Further Action

In light of the above, I respectfully request that the Council adopt a temporary moratorium on any of the following steps until the SLA-required process has been fully observed and documented, and until any required findings and waiting periods have been completed:

- Appointment of a negotiator or negotiation team
- Entering into or approving formal negotiations with any private developer
- Any pre-disposition activity regarding sale or lease of the land (including drafting term sheets, letters of intent, exclusivity agreements, or similar)
- Any vote toward approval of disposition, transfer, or sale of the land

At minimum, the city should first:

1. Declare the parcel "surplus" or exempt surplus after written findings with evidence via a formal Council resolution;
2. Issue a NOA to HCD, local public entities, and certified developers per SLA requirements;
3. Observe the 60-day notice period, await any responses, and if responses are received allow full 90-day good-faith negotiations;
4. Submit documentation of the notice and negotiation process, and any recorded restrictions or covenants, to HCD for review per SLA guidelines. California Housing Dept.+2Banning, CA+2

Conclusion

The state's recent 2025 decision in the Ontario case makes clear that SLA compliance is no longer optional, and that state enforcement can and will penalize cities that attempt to circumvent the process.

Given the potential legal and financial risks, and the public's interest in transparent, fair, and affordable-housing–oriented land disposition, I strongly urge the Council to suspend any further steps toward negotiation or sale until full compliance with SLA has been completed and documented.

Thank you for your consideration of this request.

Respectfully,

San Rao (writing on behalf of myself only as a Cupertino resident, taxpayer, voter)

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
651 Bannon Street, Suite 400, Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

June 18, 2025

Scott Ochoa, City Manager
City of Ontario
303 E. B Street
Ontario, CA 91764

SENT VIA EMAIL TO: sochoa@ontarioca.gov

Dear Scott Ochoa:

RE: City of Ontario's Surplus Land Disposition of a 2.368-Acre Portion of the Property Located at the Southeast Corner of East Riverside Drive and Ontario Avenue (APN 0218-111-12-0000) – Notice of Violation

The California Department of Housing and Community Development (HCD) hereby issues this Notice of Violation, pursuant to Government Code sections 54230.5, 65585, and 65585.1, to the City of Ontario (City) regarding the City's disposition of a 2.368-acre portion of the property located at the southeast corner of East Riverside Drive and Ontario Avenue in the City of Ontario, with Assessor's Parcel Number (APN) 0218-111-12-0000 (Property).

Pursuant to Government Code section 65585.1, subdivision (a), HCD must notify a local agency if it finds that the local agency is in violation of the Surplus Land Act (SLA), and HCD may notify the California Office of the Attorney General that a local agency is in violation of the SLA.

The City has 60 days from receipt of this letter to cure or correct the violations noted herein.[1] If the City does not cure or correct all such violations by August 18, 2025, a penalty will be assessed to the City equal to 30 percent of the disposition value.[2] In the event of a sale, the disposition value is the greater of the final sale price of the land or the fair market value of the surplus land at the time of the sale.[3] HCD may also pursue additional remedies authorized under Government Code sections 65585 and 65585.1.

[1] Gov. Code, § 54230.5, subd. (a)(1).
[2] *Ibid.*
[3] Gov. Code, § 54230.5, subd. (a)(2).

Background

HCD initially received a Notice of Alleged Violation (enclosed) pursuant to Section 502 of the SLA Guidelines on March 14, 2025, from UNITE HERE Local 11 (Local 11) regarding the City's approval of a Disposition and Development Agreement (DDA) for sale of the Property. Local 11 provided prior correspondence, including a letter to the City requesting information on how the action complied with the SLA, prior to the City Council taking action to authorize the sale and disposition of the Property at a public meeting on February 18, 2025.

On March 21, 2025, HCD requested a meeting with the City to discuss the alleged violations. On April 8, 2025, HCD met with City staff, who asserted that disposition was undertaken pursuant to the Economic Opportunity Law.[4] The City is also in the process of developing this Property in addition to 190 acres of adjacent City-owned lands for the Ontario Regional Sports Complex. The City shared during the conversation that close of escrow and disposition of the Property to Ontario Ranch Hotels, LLC (Developer) was completed on April 4, 2025.

On April 10, 2025, the City provided HCD documentation regarding the disposition, which includes the City Council's action to approve the DDA between the City and the Developer at a public meeting on February 18, 2025. The documentation includes a resolution describing the City's "exclusive negotiations" with the Developer for sale and development of the Property as a "luxury 5-star hotel" with 227 guest rooms. The terms and conditions of the DDA also require the Developer to convey to the City approximately 25,489 square feet area of easements for right-of-way and temporary construction purposes. While the documentation included a summary report of written findings claiming that the disposition met the statutory requirements of the Economic Opportunity Law, no such findings or statements were made with respect to meeting the statutory requirements of the SLA. The City further confirmed details of the disposition during a follow-up conversation with HCD on May 5, 2025 and by providing the close of escrow documentation on May 13, 2025. The additional documentation notes an approximate net payment of $979,219.51 to the City, based upon the easements value and closing costs being credited against the Property's fair market value.

Analysis

Based on a review and analysis of the City's documentation and subsequent disposition of the Property, HCD finds that the City violated the SLA, as discussed below.

[4] Gov. Code, § 52201.

The City Did Not Make the Land Available Pursuant to the SLA

Government Code section 54221, subdivision (b)(1) states:

> "'***Surplus land' means land owned in fee simple by any local agency*** for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency's use. ***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.*** A local agency, on an annual basis, may declare multiple parcels as 'surplus land' or 'exempt surplus land.'" (Emphasis added.)

In addition, Government Code section 54222 requires the following:

> "[A]ny local agency disposing of surplus land… ***shall send, before 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 all of the following: (a)(1) ***A written notice of availability for developing low- and moderate-income housing*** shall be sent to any local public entity, as defined in Section 50079 of the Health and Safety Code, that has jurisdiction where the surplus land is located. Housing sponsors, as defined by Section 50074 of the Health and Safety Code, that have notified the Department of Housing and Community Development of their interest in surplus land shall be sent a notice of availability for the purpose of developing low- and moderate-income housing. All notices shall be sent by electronic mail, or by certified mail, and shall include the location and a description of the property." (Emphasis added.)

Government Code section 54230.5, subdivision (b)(1) further states:

> ***"Before agreeing to terms for the disposition of surplus land, a local agency shall provide to the Department of Housing and Community Development a description of the notices of availability sent, and negotiations conducted with any responding entities, in regard to the disposal of the parcel of surplus land and a copy of any restrictions to be recorded against the property*** pursuant to Section 54222.5, 54233, or 54233.5, whichever is applicable, in a form prescribed by the Department of Housing and Community Development." (Emphasis added.)

The City's approval of a DDA between the City and the Developer for sale and development of the Property as a hotel on February 18, 2025, and close of escrow on

April 4, 2025, qualify as a disposition of surplus land under the SLA. When the Property qualifies as surplus land, then the City must send notices of availability (NOA) for developing low- and moderate-income housing to all entities required under Government Code section 54222 prior to disposing of or participating in negotiations to dispose of the Property. The City must also provide to HCD a description of the NOAs sent and negotiations conducted with any of the responding entities above, in addition to a copy of any restrictions to be recorded against the property, pursuant to the above requirements. Similarly, the SLA also requires that exempt surplus land determinations be supported by written findings and documentation. All local agency reporting requirements for surplus land and exempt surplus land are described further in Section 400 of the SLA Guidelines.[5]

However, the City has not provided any such documentation to HCD regarding this transaction prior to exclusively negotiating with the Developer, entering into a subsequent DDA with the Developer, and closing escrow. The documentation provided to date, including the public meeting held on February 18, 2025, makes no reference of the Property as surplus land or exempt surplus land and does not include any written findings pursuant to the SLA. Thus, the City has not complied with these key provisions of the SLA prior to disposing of the Property.

Economic Opportunity Law Does Not Relieve the City of SLA Requirements

During the meeting on April 8, 2025, the City claimed that it met statutory requirements by disposing of the Property under the Economic Opportunity Law, or Government Code section 52201. The City's documentation includes written findings, stating that the disposition will "(i) [strengthen] the City's land use and social structure, (ii) [alleviate] economic and physical blight on the Property and in the surrounding community, (iii) generate property tax revenue, (iv) produce new jobs, (v) stimulate economic vitality and (vi) continue to inspire additional investment within the Ontario Sports Empire."

The Economic Opportunity Law, in relevant part, states that "[a] city, county, or city and county ***may*** sell or lease property to create an economic opportunity."[6] (Emphasis added.) The use of the word "may," instead of "shall," indicates that the City is not required to utilize the Economic Opportunity statutes, whereas the SLA includes mandatory requirements for local agencies, stating: "Land ***shall*** be declared either 'surplus land' or 'exempt surplus land,' as supported by written findings, before a local

[5] Updated Surplus Land Act Guidelines available at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/final-updated-surplus-land-act-guidelines-2024.pdf.
[6] Gov. Code, § 52201, subd. (a)(1).

agency may take any action to dispose of it consistent with an agency's policies or procedures."[7] (Emphasis added).

Notably, the City was aware of HCD's position on this precise issue before finalizing the disposition of the Property. Local 11's March 14, 2025 Notice of Alleged Violation, which was provided to the City, references a similar letter that HCD issued to the City of Moreno Valley.[8] As Local 11 points out, "HCD rejected the claims that the SLA conflicts with the Economic Opportunity Law...." HCD reached out to the City just a week later, on March 21, 2025, but the City disposed of the Property on April 4, 2025,just days before meeting with HCD on April 8, 2025. The City should have paused and consulted with HCD upon receipt of Local 11's letter and again when HCD reached out to schedule a meeting. Instead, the City moved forward with the disposition.

Further, HCD is not aware of, nor has the City provided, any statutory or decisional authorities standing for the proposition that disposition of the Property under Economic Opportunity Law excuses or exempts the City from complying with SLA requirements. As such, HCD finds that disposition of the Property and any surplus land under the Economic Opportunity Law is in violation of the SLA.

Conclusion and Next Steps

Based on the information provided, HCD finds that the City's disposition of the Property is in violation of the SLA because the City failed to make the surplus land available for affordable housing, and the City has not provided any documentation demonstrating compliance with, or exemption from, the SLA before disposing of the Property. The City further violated the SLA by exclusively negotiating with the Developer and by subsequently moving forward with a disposition and sale of the Property.

As discussed above, under Government Code section 542320.5, subdivision (a)(1), the City has 60 days following receipt of this letter, or August 18, 2025, to cure or correct the violations noted herein, or it will be assessed a penalty equal to 30 percent of the disposition value. The City may have few options to cure or correct the violations, and HCD invites the City to discuss further. Pursuant to Section 502 of the SLA Guidelines, HCD has informed Local 11 of the violations noted herein.

Furthermore, should the City proceed to dispose of additional surplus land or exempt surplus land that would constitute subsequent violations of the SLA, including under the Economic Opportunity Law, the City will be assessed a penalty equal to 50 percent of the applicable disposition values.[9]

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[7] Gov. Code, § 54221, subd. (b)(1).
[8] City of Moreno Valley Notice of Violation available at https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/moreno-valley-nov-101823.pdf.
[9] Gov. Code, § 54230.5, subd. (a)(1).

If the City or its representatives have any questions or need additional technical assistance regarding the SLA, please contact Linda Ly, Senior Housing Policy Specialist, at Linda.Ly@hcd.ca.gov.

Sincerely,

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability

Enclosure

cc: Jennifer McLain Hiramoto, Executive Director, Economic Development Agency
Rudy Zeledon, Executive Director, Community Development Agency
Ruben Duran, City Attorney, Best Best & Krieger LLP

LAW OFFICE OF JORDAN R. SISSON

LAND USE, ENVIRONMENTAL & MUNICIPAL LAW

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March 14, 2025

VIA U.S. MAIL, EMAIL & ONLINE PORTAL: https://calhcd.service-now.com/csp?id=sc_cat_item&sys_id=91e19b8ac31955109a97251ce0013105

Department of Housing and Community Development (HAUPortal@hcd.ca.gov)
Division of Housing Policy Development
Housing Accountability Unit
651 Bannon Street, Suite 400
Sacramento, CA 95811

RE: POTENTIAL VIOLATION OF SURPLUS LAND ACT;
ITEM 12, CITY OF ONTARIO CITY COUNCIL MEETING FEBRUARY 18, 2025;
DDA FOR 2.3-ACRE PROPERTY LOCATED AT E. RIVERSIDE DR./VINEYARD AVE.

Dear Housing Accountability & Enforcement Unit ("HAU"):

On behalf of UNITE HERE Local 11 ("Local 11"), this office respectfully writes to the California Department of Housing and Community Development ("HCD") requesting its investigation of a potential violation of the Surplus Land Act (Gov. Code §§ 54220–54234) ("SLA")[1] involving the City of Ontario ("City") disposition of a 2.368-acre property located at the corner of East Riverside Drive and Vineyard Avenue (i.e., APN 0218-111-12-0000) ("Property").

On February 18, 2025, the City Council approved a Disposition and Development Agreement ("DDA") for the sale of the City-owned Property to Ontario Ranch Hotels, LLC ("Developer"), citing the Economic Opportunity Law (Gov. Code §§ 52200-52201).[2] Before the City approved the DDA, Local 11 submitted written and verbal comments raising questions about whether the City complied with the SLA. (See Local 11 letter dated February 18, 2025 [attached hereto].) As raised in these comments, Local 11's research has not found any confirmation that the Property was first made available to housing sponsors via a written notice of availability ("NOA"). (See e.g., Gov. Code § 54222; HCD SLA Guidelines § 201.) Nor has Local 11's research found any confirmation that the City made appropriate exempt surplus land findings during a regular public meeting. (See e.g., Gov. Code § 54221(b)(1); SLA Guidelines §§ 103(c), 400(e).) These types of SLA issues, if verified, have been the subject of Notice of Violations ("NOV(s)") issued by HCD for other jurisdictions, including

[1] Inclusive of SLA Guidelines (8/1/24) https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/final-updated-surplus-land-act-guidelines-2024.pdf.

[2] See City Council Agenda (2/18/25) Agenda, Item 12, https://granicus_production_attachments.s3.amazonaws.com/ontarioca/8b1c31aa587d3d63597574d77713d4830.pdf; Id., Agenda Report, https://d2kbkoa27fdvtw.cloudfront.net/ontarioca/ccfc6d371db4ae6a268fd028108a650c0.pdf; Id., Resolution, https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/3152722/PH_13_Ontario_Ranch_Hotels_DDA_02_RESO_RM.pdf; Id., Summary Report, https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/3096019/Ontario_Ranch_Hotels_LLC_52201_Summary_Report_ED_Opp_03.pdf.

an NOV issued to the City of Moreno Valley, where HCD rejected the claims that the SLA conflicts with Economic Opportunity Law (Gov. Code §52200-52203).[3]

The City approved the DDA over objections made by the public, including Local 11's request that the City stay its action until after seeking technical advice from HCD. To date, we have yet to receive any legally sufficient explanation from the City of whether and how the City's DDA approval has complied with the SLA requirements to make land available for housing development or declared it properly exempt. Local 11 supports housing laws intended to promote genuine housing, particularly affordable housing projects. *Therefore, Local 11 respectfully requests that HCD review our attached comment letter and investigate whether the City's approval of the DDA complied with the SLA and HCD Guidelines*.

We thank you in advance for your consideration of this matter. Please do not hesitate to contact me directly if you have any questions regarding this matter.

Sincerely,

_____
Jordan R. Sisson, Esq.
Attorney for UNITE HERE Local 11

ATTACHMENT: UNITE HERE Local 11 Letter (2/18/24)

CC: (email only)

Sheila Mautz, City Clerk (SMautz@ontarioca.gov)
Scott Ochoa, City Manager (sochoa@ontarioca.gov)
Jennifer McLain Hiramoto, Exec. Director Econ. Dev. (JHiramoto@ontarioca.gov)

[3] City of Moreno Valley (10/18/2023) Notice of Violation RE Northwest Corner of Alessandro Boulevard and Nason Street, https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/moreno-valley-nov-101823.pdf; see also San Bernardino (5/24/2023) Notice of Violation RE 295 Carousel Mall, https://www.hcd.ca.gov/ sites/default/files/docs/planning-and-community/HAU/San-Bernardino-Carousel-Mall-Follow-Up-Letter-052423.pdf; Roseville (12/4/2023) Notice of Violation RE 6382 Phillip Road, https://www.hcd.ca.gov/sites/ default/files/docs/planning-and-community/HAU/roseville-nov-sla-120423.pdf; Anaheim (12/8/21) Notice of Violation RE 2000 East Gene Autry Way, https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/anaheim-surplus-land-act-nov-120821.pdf.

LAW OFFICE OF JORDAN R. SISSON

LAND USE, ENVIRONMENTAL & MUNICIPAL LAW

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February 18, 2025

VIA EMAIL:

City Council, City of Ontario
303 East B Street, Ontario, CA 91764
publiccomments@ontarioca.gov

RE: Item 12, City Council Meeting February 18, 2025;
Disposition and Development Agreement for Land Sale and 227-Room Hotel;
UNITE HERE Local 11 Comments

Dear Mayor Leon and Honorable City Councilmembers:

On behalf of UNITE HERE Local 11 ("Local 11"), this office respectfully provides the following comments[1] to the City of Ontario ("City") regarding the proposed Disposition and Development Agreement ("DDA") between the City and Ontario Ranch Hotels, LLC ("Developer"). The DDA would allow for the sale of a 2.368-acre City-owned property located at the corner of East Riverside Drive and Vineyard Avenue (i.e., APN 0218-111-12-0000) ("Site" or "Property") in anticipation of a 227-room, 5-star luxury hotel ("Project"). According to the staff report for the above-referenced item,[2] the Project was considered in the Ontario Regional Sports Complex ("ORSC") Environmental Impact Report (i.e., SCH No. 2023110328) ("EIR"),[3] which was certified and approved by the City Council on July 16, 2024. (Agenda Report, p. 2.)

Upon review of the relevant documents, Local 11 has several concerns with the DDA, including several live issues with the DDA and the proposed 227-room hotel's compliance with the Surplus Land Act ("SLA"), the California Environmental Quality Act ("CEQA"),[4] and the City's zoning code. As further explained below, it is unclear if the City has complied with the SLA requirement to make land available for housing development or declared it properly exempt. Additionally, it seems that the prior EIR only considered a 100-room hotel in a different location. So too, the significantly larger hotel is likely to exacerbate vehicle miles traveled ("VMT") and associated greenhouse gas ("GHG") impacts, which could be further mitigated through feasible mitigation measures not considered. Furthermore, the staff report fails to provide and/or explain critical information about key financial aspects of the DDA or explain why the City does not require a hotel-specific conditional use permit ("CUP") at this time, as required under the City's zoning code.

For these reasons, Local 11 respectfully asks the City to stay action on the DDA until all SLA requirements have been satisfied, a CEQA-compliant review has been conducted, a hotel-specific mandatory commuter trip reduction program is added, and there is an opportunity for the public to vet key financial studies associated with the DDA along with all entitlements for the hotel Project.

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[1] Herein, page citations are either the stated pagination (i.e., "p. #") or PDF-page location (i.e., "PDF p. #").
[2] Inclusive of the "Agenda Report" dated 2/18/25, "Summary Report" regarding the DDA, "Exhibit A" Property view, DDA, and the proposed "DDA Resolution".
[3] Inclusive of the Draft EIR ("DEIR"), Final EIR ("FEIR"), and Mitigation Monitoring Requirements Program ("MMRP").
[4] Including "CEQA Guidelines" codified at 14 Cal. Code. Regs. § 15000 et seq.

I. LOCAL 11'S STANDING

Local 11 represents more than 25,000 workers employed in hotels, restaurants, airports, sports arenas, and convention centers throughout Southern California and Phoenix—including approximately 450 members who live and/or work in Ontario. The union has a First Amendment right to petition public officials in connection with matters of public concern, including compliance with applicable zoning rules and CEQA, just as developers, other community organizations, and individual residents do. Protecting its members' interest in the environment, including advocating for the environmental sustainability of development projects and ensuring the availability of housing and hotels (in compliance with state and local rules), is part of Local 11's core function. Recognizing unions' interest and union members' interest in these issues, California courts have consistently upheld unions' standing to litigate land use and environmental claims. (See *Bakersfield Citizens v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1198.) Furthermore, Local 11 has public interest standing to challenge the Project Approvals given the City's public duty to comply with applicable zoning and CEQA laws, which Local 11 seeks to enforce. (See e.g., *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 914-916, n.6; *La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2018) 22 Cal.App.5th 1149, 1158-1159; *Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194, 205-206; *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166, 169–170.)

II. SPECIFIC ISSUES WITH THE DDA & PROJECT

1. IT IS UNCLEAR IF THE CITY HAS COMPLIED WITH THE SURPLUS LAND ACT

The Surplus Land Act (Gov. Code §§ 54220–54234)("SLA"), inclusive of its guidelines ("SLA Guidelines") prepared by the Department of Housing and Community Development ("HCD"), aims to make local public land that is no longer needed for government purposes available for building affordable homes.[5] The SLA applies to all cities, including charter cities. (See *Anderson v. City of San Jose* (2019) 42 Cal.App.5th 683.) Generally, before disposing of surplus land, a local agency must send a written notice of availability ("NOA") of the property to HCD, any local public entity within the jurisdiction where the surplus local land is located, and affordable housing sponsors who have notified HCD. (See Gov. Code § 54222; HCD SLA Guidelines §201.) While there are exceptions to this requirement, a local agency's determination that land is exempt surplus land must be supported by written findings during a regular public meeting of the agency, with those findings sent to the HCD. (See Gov. Code § 54221(b)(1); SLA Guidelines §§ 103(c) and 400(e).)

Here, the City is proposing the disposition of the City-owned Property, but the available documentation reviewed by Local 11 does not mention whether the Property was subject to a NOA or declared exempt. Nor is it clear whether the Property falls within any of the categories of "exempt surplus land" under Gov. Code § 54221(f)(1). While subdivision (c) notes an exemption for land exchanged for "another property necessary for the agency's use", it is unclear how and whether that exemption would apply to the DDA, which references a proposed exchange of 25,489 square feet (0.585 acres) non-exclusive, right-of-way remained owned by the land owner (i.e., 7-25

[5] See HCD Public Lands for Affordable Housing Development (identifying land acquisition as one of the biggest challenges to new affordable housing, and outlining several actions taken by the state to enhance the SLA, such as Executive Order N-06-19 [Gov. Newsom, 2019], AB 1486 [Ting, 2019], AB 1255 [Robert Rivas, 2019]), https://www.hcd.ca.gov/planning-and-community-development/public-lands-affordable-housing-development.

feet adjacent to dirt sidewalk area) and temporary construction easement would apply.[6] The sidewalk is less than one-fourth the size of the 2.368-acre Property,[7] and there appears to be ample space within existing rights-of-way (i.e., dirt side walk and road) to access existing utility lines along Riverside Drive.[8] Furthermore, future street improvements (e.g., street, sewer, traffic signal, utility lines, etc.) are already anticipated along Vineyard right-of-way (i.e., five-lane with 8-foot multi-use trail) as subject to the previously approved ORSC.[9]

In sum, it is unclear how this significantly smaller temporary construction easement is necessary here to qualify as exempt, which would nevertheless have to be declared exempted at a regular public meeting.

2. THE DDA'S PROPOSAL OF A 227-ROOM HOTEL WAS NOT ANALYZED UNDER THE PRIOR EIR

Under CEQA, once an EIR has been prepared, a subsequent or supplement EIR is required for granting a later discretionary approval when there have been: (i) substantial changes to the project, (ii) substantial changes in the circumstances involving the project, or (iii) significant new information involving the project. (See Pub. Res. Code § 21166; CEQA Guidelines § 15162.) Projects not contemplated or not within the geographic area may require additional CEQA analysis.[10] Here, the DDA contemplates a 227-room hotel, which the staff report suggests was covered by the previously certified EIR.[11] However, the EIR does not mention the DDA or the proposed 227-room hotel Project. Instead, the EIR contemplated a mere 100-room hotel located in planning area ("PA") 3, and anticipated retail uses within PA2 (i.e., where the City-owned Property is located).[12] It is unclear if the City is now contemplating a single larger hotel in a different location (i.e., a 227-room hotel in PA2) or is considering two hotels (i.e., 227-rooms in PA2 plus the 100-room hotel in PA3). As disucssed below, even a single larger hotel would likely have exacerbated impacts not analyzed or mitigated under the certified EIR. Therefore, the proposed 227-room hotel development appears

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[6] See Agenda Report, p. 2; Exhibit A (area generally located along sidewalk area); DDA, PDF p. 7, 59, 78 (section 1.1.49, Exhs. A-1 & D-1).

[7] For example, this SLA exemption has been cited by other agencies exchanging relatively comparable properties. (See e.g., Capitola Planning Commission Agenda Report (4/4/24), p. 1 [5,592-sf property [Soquel Union Elementary School District] in exchange for 4,284-sf property [City of Capitola]), https://mccmeetingspublic.blob.core.usgovcloudapi.net/capitolaca-meet-7a1699cfde7f4d0f8d2bce5df22a5e22/ITEM-Attachment-003-fa130eb7dab849d0a07fab4d3f57eaa1.pdf.

[8] See GoogleMaps, https://www.google.com/maps/place/S+Vineyard+Ave+%26+E+Riverside+ Dr,+Ontario, +CA+91761/ @34.019553,-117.6108423,3a,60y,275.55h,90.32t/data=!3m7!1e1!3m5! 1sg62gK6vh1vo5 oTVRplSt-w!2e0!6shttps:%2F%2Fstreetviewpixels-pa.googleapis.com%2Fv1%2 Fthumbnail%3Fcb_client% 3Dmaps_sv.tactile%26w%3D900%26h%3D600%26pitch%3D-0.31853410523336834% 26panoid%3Dg62g K6vh1vo5oTVRplSt-w%26yaw%3D275.5462992542434! 7i16384!8i8192!4m6!3m5!1s0x80c334cd1f399d7 b:0x14ca414b23038095!8m2!3d34.0195981!4d-117.610924!16s%2Fg%2F11gdzt7tpb?entry=ttu&g_ep= EgoyMDI1MDIxMi4wIKXMDSoJLDEwMjExNDU1SAFQAw%3D%3D.

[9] See DEIR, PDF p. 101, 117, 127-136, 151-159, 692; see also Agenda Report (7/16/24, Item 20, p. 4.

[10] See e.g., *Concerned Citizens of Costa Mesa, Inc. v 32nd Dist. Agric. Ass'n* (1986) 42 C3d 929, 937 (plans for approved amphitheater project changed to increase seating significantly, expand the site, and reorient the stage to face nearby residences); *Save Berkeley's Neighborhoods v Regents of Univ. of Cal*. (2020) 51 CA5th 226, 237 (claim that university changed project described in campus long-range development plan by approving increases in student enrollment well beyond development plan and EIR projections, without considering whether further CEQA review was required, alleged violation of CEQA).

[11] See Summary Report, p. 1; Agenda Report, p. 2; DDA, PDF p. 60 [Exh. B Scope of Development].

[12] DEIR, PDF pp. 32, 41-43, 114-117 (project components and planning areas), 176-178 (listing the project approvals); MMRP, PDF p. 7.

to reflect substantial changes to the project, meaning that further CEQA review should be required before the City approves the DDA.

3. EXACERBATED GHG/VMT IMPACTS CAN BE FURTHER MITIGATED

As mentioned above, the staff report suggests the proposed action was covered by the prior FEIR, including the Council finding that "all environmental impacts" have been addressed within the prior EIR and that "no new or additional mitigation measures or alternatives are required." (Proposed Resolution, p. 3.) However, the prior EIR contemplated only a 100-room hotel, including assessing VMTs and GHGs associated with the hotel use.[13] By more than doubling that size, the anticipated Project would possibly significantly increase the amount of VMTs and GHGs (including those deriving from mobile emissions) associated with the hotel use (i.e., new or exacerbated impacts). These are impacts going above and beyond those previously found significant and unavoidable.[14] As it relates to hotel-related development within PAs 2 and 3, the EIR largely relies on mitigation measures GHG-4 (i.e., point system under City's Community Climate Action Plan ("CCAP")) and TRAF-1a (development of Transportation Demand Management ("TDM")).[15] (See excerpts below.)

> *GHG-4 The City of Ontario shall require applicants to design and construct buildings in Planning Areas 2, 3, and 4 to achieve a 100-point score with the 2022 Community Climate Action Plan (CCAP), Table 6, "Screening Table for Implementing GHG Performance Standards for Commercial, Office, Medical, Hotel, Industrial, and Retail Development, 2030." Alternatively, the analysis of development projects can be done through emissions calculations to demonstrate equivalent reductions using CalEEMod or a similar tool. Projects that do not use the CCAP Screening Tables to demonstrate consistency with the 2022 CCAP must demonstrate that they will generate annual GHG emissions that do not exceed the following emission screening thresholds from the CCAP:*
>
> 1. *For residential development completed between 2020 and 2030, the project shall not produce GHG emissions greater than 5.85 MTCO 2e/dwelling unit.*
> 2. *For residential development completed after 2030, the project shall not produce GHG emissions greater than 1.53 MTCO 2e/dwelling unit.*
> 3. *For nonresidential developments of all types completed between 2020 and 2030, the project shall not produce GHG emissions greater than 8.84 MTCO2e/2,500 square feet of conditioned space.*
> 4. *For nonresidential developments of all types completed after 2030, the project shall not produce GHG emissions greater than 3.61 MTCO 2e/2,500 square feet of conditioned space.*
>
> *For projects that include both residential and nonresidential space, the residential and nonresidential components must be assessed separately against their respective applicable thresholds*
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> *###*

[13] DEIR, Appendix D1 (Air Quality GHG Modeling), PDF pp. 4, 31, 683; DEIR, Appendix L1 (VMT Memorandum), PDF pp. 9, 34; FEIR, PDF p. 171.
[14] See e.g., CEQA Findings of Fact and Statement of Overriding Considerations, pp. 105-109, 115-119, 137, 141-142.
[15] Ibid., see also MMRP, pp. 23, 30,

> *TRAF-1a Commercial/Hospitality TDM Measures. Applicants for commercial and hotel development in Planning Areas 2, 3, and 4 shall prepare Transportation Demand Management (TDM) measures analyzed under a VMT-reduction methodology consistent with the California Air Pollution Control Officers Association's (CAPCOA) Final Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity (2021) and approved by the City of Ontario. Measures shall include but are not limited to:*
>
> - *Implement a voluntary commute trip reduction program for employees.*
> - *Implement an employee parking cash-out program for employees.*
> - *Collaborate with the City to support transit service expansion.*
> - *Comply with requirements detailed in the Parking Management Plan, including providing parking validation for retail and hospitality visitors.*
>
> (See ORSC EIR, MMRP, pp. 23, 30.)

While the ORSC EIR stated there were no other feasible mitigation measures,[16] additionally feasible mitigation measures do seem available to reduce the impacts <u>*exacerbated*</u> by the larger hotel Project[17]—especially measures that can minimize VMTs and associated GHG mobile emissions recommended by the California Air Pollution Control Officers Association ("CAPCOA") and other public agencies (e.g., Governor's Office of Planning and Research ("OPR"), the Southern California Association of Governments ("SCAG"), South Coast Air Quality Management District ("SCAQMD"), and the California Air Resources Board ("CARB")).[18] For example, the City could require a mandatory rather than merely voluntary commute trip reduction program ("CTRP"), provide subsidized transit passes, include bike/scooter-share facilities, and other strategies.[19] CAPCOA estimates that a mandatory CTRP is more than six times more effective at reducing GHG impacts (i.e., up to 26%) as compared to a voluntary CTRP (i.e., up to 4%).[20] Furthermore, it is unclear why some of the 227 rooms could not accommodate some form of on-site housing, such as affordable or

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[16] Ibid., 109, 119

[17] To the extent impacts are part of the existing baseline conditions, it is nevertheless proper to evaluate a development's <u>*exacerbating effects*</u> on existing impacts. (See *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 194 [quoting *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 377, 388].)

[18] See CAPCOA (Dec. 2021) Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity, pp. 31-32, 73, 76, 80-96, https://www.airquality.org/ClimateChange/Documents/Final%20Handbook_AB434.pdf; CAPCOA (Aug. 2010) Quantifying GHGs and Mitigation, pp. 64-74, https://www.contracosta.ca.gov/DocumentCenter/View/34123/CAPCOA-2010-GHG-Quantification-PDF; OPR (Dec. 2018) Technical Advisory, pp. 27, https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf; SCAG (Dec. 2019) Final Program EIR, pp. 2.0-18 – 2.0-71 (see project-level mitigation measures for air quality, GHG, and transportation impacts), https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocal_complete.pdf?1607981618; SCAG (Apr. 2024), Program EIR, pp. A-7 – A-48, https://scag.ca.gov/sites/main/files/file-attachments/exhibit_a_mmrp_508_final.pdf?1712003625; CARB 2022 Scoping Plan, 4, 7, 24, 29 & Appendix D, pp. 23, https://ww2.arb.ca.gov/our-work/programs/ab-32-climate-change-scoping-plan/2022-scoping-plan-documents; CARB's 2017 Scoping Plan, Appendix B-Local Action, pp. 1-8, 7-9 & Appendix D, p. 2, https://www.arb.ca.gov/cc/scopingplan/app_b_local_action_final.pdf.

[19] See e.g., CAPCOA (Dec. 2021), supra fn. 16, pp. 83; CAPCOA (Aug. 2010), supra fn. 16, p. 66.

[20] CAPCOA (Dec. 2021), supra fn. 16, at pp. 83, 86.

work-force housing. Therefore, we urge the City to consider a more robust, hotel-specific mandatory commuter reduction program that could include:

- Specific performance level to be reached (e.g., specific VMT or average daily trip reduction or both);
- Specified participation level (e.g., 100% of employees);
- Participation in guaranteed ride programs for employees who need to respond to emergencies arising when normal public transit is infeasible;
- Incentivize employee carpool/vanpool access to preferential parking spaces or hotel valet service or both;
- Subsidized transit passes for hotel workers and patrons;
- Provide end-of-trip facilities; and
- Dedicated shuttle service for hotel patrons toward nearby destinations.[21]

4. MISSING INFORMATION AND PROJECT PIECEMEALING

The staff report also fails to explain and/or provide other key information. For example, the staff report cites a Thompson & Thompson Real Estate Valuation and Consulting, Inc. appraisal, which is not included. (See Summary Report, p. 3.) This is significant because the staff report does not explain to the public numerous key issues with the DDA, for example: (1) how was the fair market value of the City-owned property determined to be "$14.00 per square foot"; (2) what is the difference between the City's purchase price (i.e., $1.4 million) and the estimated reuse value of the Property to the Developer, which is admittedly valued "significantly higher"; and (3) how much increased "revenue" is the City expecting from the new hotel (e.g., property tax, TOT, etc.). (Id.) Furthermore, as part of the City's action in July 2024, the Property was rezoned CCS,[22] which requires a hotel CUP under section 5.03.250 of the City's Development Code, which requires (among other things) a market feasibility study[23]—also not mentioned or provided in the staff report.

Additionally, the increased hotel component and failure to consider the CUP here raises the concern of whether the City is improperly piecemealing the Project and project approvals. Under CEQA, the City must assess "the whole of an action" and not improperly piecemeal a project's analysis whereby the full impacts of a development are masked by chopping up the overall project into smaller development projects. (CEQA Guidelines §§ 15003(h), 15378(a).[24]) This analysis must include all phases of the project and all reasonably foreseeable consequences of the project. (Id., § 15126.[25]) This analysis should be prepared as early as feasible in the planning process and before the City commits to any action. (Id., § 15004(b).) Here, the prior EIR looked at only a 100-room hotel—not a 227-room hotel—and the City seems to be considering committing to the larger hotel Project without conducting a subsequent CEQA analysis and evaluating a CUP.

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[21] See e.g., Santa Monica Municipal Code § 9.5.130(B)(2)(b); https://www.octa.net/getting-around/rideshare/oc-rideshare/employers/guaranteed-ride-home-program/; https://www.ci.healdsburg.ca.us/AgendaCenter/ViewFile/Item/3098?fileID=21731.
[22] see July Resolution, PDF pp. 1-2.
[23] Dev. Code, PDF p. 17, 44, 54, 130-132.
[24] See also *Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454; *San Joaquin Raptor/Wildlife Rescue Center v. Cnty. of Stanislaus* (1994) 27 Cal.App.4th 713, 730.
[25] See also *Laurel Heights Improvement Ass'n v Regents of Univ. of Cal*. (1988) 47 Cal.3d 376, 396-398; *City of Santee v County of San Diego* (1989) 214 Cal.App.3d 1438, 1454.

III. CONCLUSION

In sum, Local 11 is concerned that the City may not be following normal SLA rules that would make the City Parcels available to housing developers. Local 11 is also concerned about the City's reliance on an inadequate CEQA review and mitigation that seems to have never contemplated the DDA or a 227-room hotel at the Property (among other concerns). Local 11 respectfully urges the City to stay action on the DDA until the issues mentioned above are adequately addressed.

Local 11 reserves the right to supplement these comments at future hearings and proceedings for this Project. (See *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120 [CEQA litigation not limited only to claims made during EIR comment period].) This office requests, to the extent not already on the notice list, all notices of CEQA actions and any approvals, Project CEQA determinations, or public hearings to be held on the Project under state or local law requiring local agencies to mail such notices to any person who has filed a written request for them. (See Pub. Res. Code §§, 21092.2, 21167(f) and Gov. Code § 65092.) Please send notice by electronic and regular mail to the address identified on page one of this letter.

Thank you for consideration of these comments. We ask that this letter is placed in the administrative record for the Project.

Sincerely,

Jordan R. Sisson, Esq.
Attorney for UNITE HERE Local 11