

HCD Draft Updated SLA Guidelines

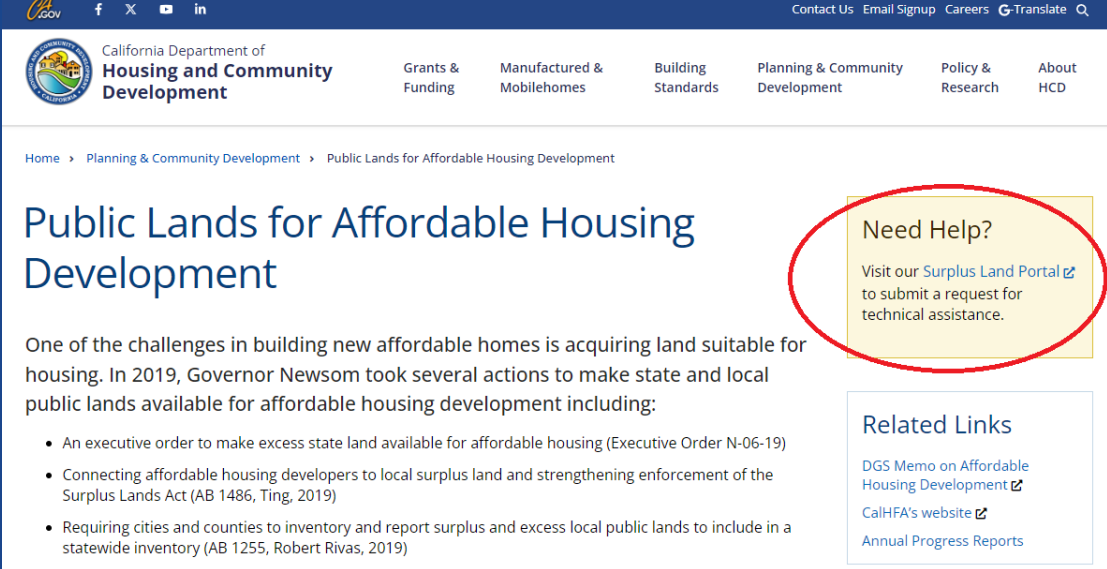
Webinar

March 6, 2024

Public Comment Agenda

Draft Updated Surplus Land Act Guidelines

- Brief background, HCD implementation, and current Guidelines
- Guidelines update process
- Overview of draft Updated SLA Guidelines
- Receive and record public comment



The screenshot shows the website for the California Department of Housing and Community Development. The page title is "Public Lands for Affordable Housing Development". The main content area includes a "Need Help?" section with a link to the "Surplus Land Portal" and a "Related Links" section with links to "DGS Memo on Affordable Housing Development", "CalHFA's website", and "Annual Progress Reports". A red circle highlights the "Need Help?" section.

California Department of Housing and Community Development

Grants & Funding | Manufactured & Mobilehomes | Building Standards | Planning & Community Development | Policy & Research | About HCD

Home > Planning & Community Development > Public Lands for Affordable Housing Development

Public Lands for Affordable Housing Development

One of the challenges in building new affordable homes is acquiring land suitable for housing. In 2019, Governor Newsom took several actions to make state and local public lands available for affordable housing development including:

- An executive order to make excess state land available for affordable housing (Executive Order N-06-19)
- Connecting affordable housing developers to local surplus land and strengthening enforcement of the Surplus Lands Act (AB 1486, Ting, 2019)
- Requiring cities and counties to inventory and report surplus and excess local public lands to include in a statewide inventory (AB 1255, Robert Rivas, 2019)

Need Help?
Visit our [Surplus Land Portal](#) to submit a request for technical assistance.

Related Links
[DGS Memo on Affordable Housing Development](#)
[CalHFA's website](#)
[Annual Progress Reports](#)



Brief History

- 1968 – originated as the Surplus Unimproved Land Act
- 1979 – prioritized housing
- 1980s – notices required to housing authorities, RDAs, and housing sponsors that requested notification
- 2019 – HCD given role in SLA compliance and oversight (AB 1486)
 - Technical assistance, Notices of Availability, provide materials, and Guidelines
 - Reporting and monitoring



Outcomes of the Surplus Land Act

Since January 2021, surplus and exempt surplus land dispositions tracked by HCD have resulted in 16,926 housing units, including over 10,535 units of housing affordable to lower-income households, entering the development pipeline.



A rendering shows a new 100-unit multi-family housing development scheduled for construction in 2024 near the Beyer Boulevard...



Renderings of housing developments on surplus land in the cities of San Diego, Pasadena, and Sacramento

SLA Implementation

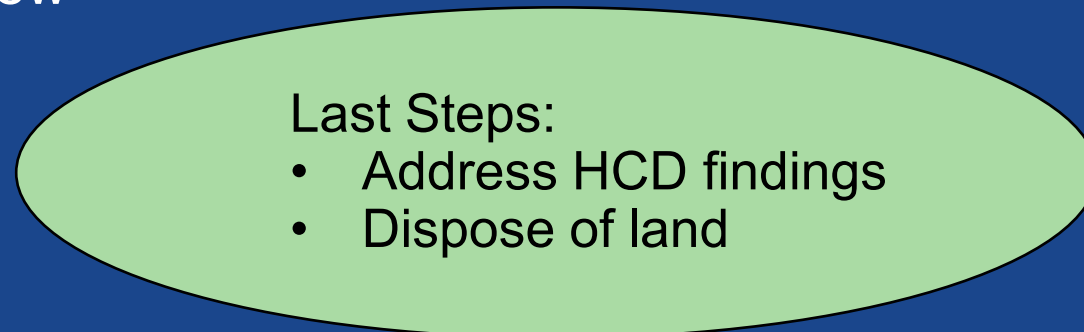
Surplus land: Land owned in fee simple by any local agency for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency's use.

Standard Surplus Process

- Declare land "surplus" by adopting resolution at public meeting
- Issue NOA to required entities (60 days)
- Negotiate in good faith (90 days) and prioritize affordability
- Submit info on proposed disposition with required level of project affordability and/or covenant to HCD for review

Exempt Surplus Process

- Declare land "exempt surplus" pursuant to applicable Government Code section
- Submit exemption declaration and supporting materials to HCD for review



SLA Implementation

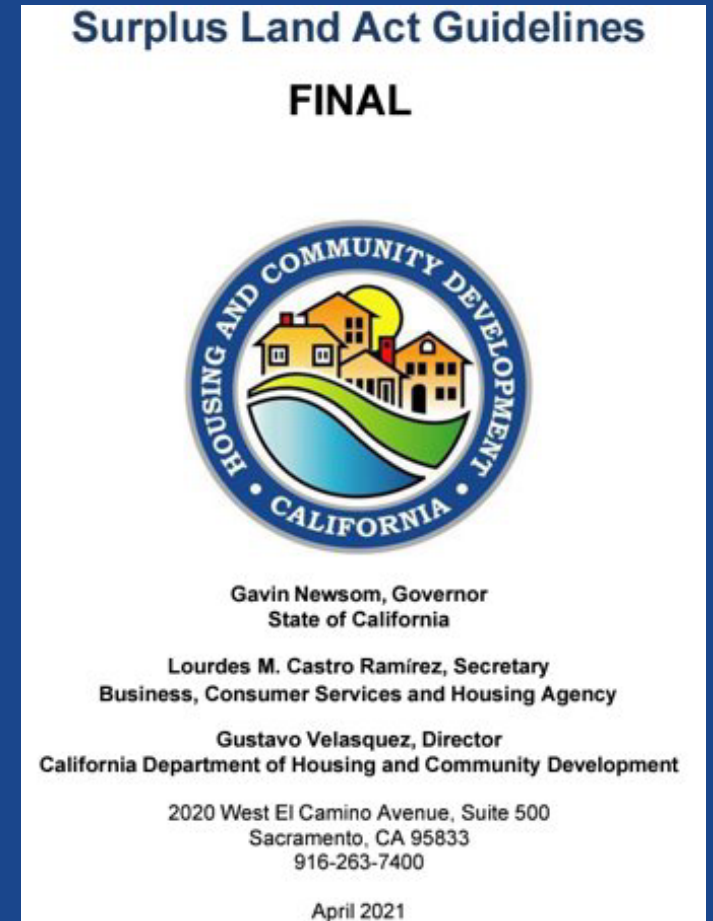
In addition to declaring land "surplus" or "exempt surplus," local agencies have two alternative pathways to dispose of property subject to the SLA.

Agency's Use	"Grandfathering"
Land that is being used or plans (w/written adopted plan) to use for agency work or operations	Surplus land that meets certain conditions are subject to the provisions of the SLA as it existed on December 31, 2019
May not include commercial or industrial uses or activities	Requires that disposition is completed by a certain date
Unique exceptions for local agencies that are districts, excepting public transportation	HCD has no authority to waive or amend requirements and deadlines specified in statute for this provision

The Current HCD SLA Guidelines

The SLA specifically authorizes HCD to adopt Guidelines to enforce the SLA.

- Adopted in April of 2021.
- Developed to implement, interpret, and make specific the text of the SLA.
- Provide guidance on terms used, forms, and procedures for the proper identification and disposition of various types of surplus land.
- Explain how local agencies can ensure SLA compliance.



The Need to Revise the Current Guidelines



- After over three years of implementation of the SLA, HCD identified the need for additional guidance for leases, Agency's Use, valid legal restrictions, among other topics.
- The Legislature passed numerous laws since the adoption of the April 2021 Guidelines.
- State Auditor's Office report (March 2022) recommendations



The Auditor's Report

In March 2022, the California State Auditor's Office issued a Findings Report suggesting that HCD make minor changes to procedures for enforcing the SLA. Those findings concluded that:

- The SLA Guidelines needed to specify that local agencies could still be subject to the enforcement provisions even if they do not submit disposition documentation prior to selling surplus land.
- The SLA Guidelines needed additional clarification on what constitutes “good faith negotiations.”


PUBLIC LETTER	SUMMARY	INTRO	AUDIT RESULTS	APPENDICES	RESPONSES
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reviewing records and resolving any mismatches in the year before each periodic review occurs.

To HCD

To better promote development of affordable housing on local surplus land, HCD should do the following by January 2023:

- Update its guidelines on the local surplus property law to indicate how it will respond to instances where local agencies do not notify it of their intention to sell property before disposing of it, and where DGS was unable to issue a notice of violation before the sale. Further, HCD should seek legislative changes to the extent it believes they are needed to clarify its authority or the law.
- Update its guidelines related to the local surplus property law to provide information on how it will assess and support good faith negotiations to mitigate the risk that local agencies may negotiate with developers in bad faith.
- Increase outreach as planned to local agencies and interest groups to advise them of the notice requirements of the local surplus property law.



March 22, 2022

[DGS's Identification of Affordable Housing Opportunities Will Benefit Thousands of Californians.](#)

[DGS Identified 92 State Properties to Be Used For Affordable Housing Development](#)

[Without Changes to State Law, the State May Lose the Executive Order's Focus on Affordable Housing](#)

[PDF](#) | [Fact Sheet](#)



Updating the SLA Guidelines

Revisions are based on:

- Input from stakeholder discussions
 - HCD staff review
 - HCD legal review
-

Public Outreach

- HCD engaged in a series of broad-based, regionally diverse Listening Sessions with local partners and housing related associations.
- Goal: Collect firsthand feedback from entities on the ground navigating and implementing the SLA.

22

**Listening
Sessions**

Between June and September of 2022, HCD hosted 22 listening sessions with representatives from cities, counties, special districts, law firms, housing advocates, and housing developers.

50

**Suggested
changes**

Listening sessions resulted in over 50 suggested changes to the Guidelines, many of which are reflected in the Draft Updated Guidelines.

Proposed Changes to the SLA Guidelines

On February 23, 2024, HCD released draft Updated Surplus Land Act Guidelines for a 30-day comment period.

Draft Updated Surplus Land Act Guidelines Released for Public Comment

30-Day comment period is open until March 25, 2024. Register now for a March 6 webinar.

[Learn More](#)



Proposed Changes – Article I. Program Overview

- ❖ Section 100 – Establishes date that Guidelines become applicable to disposition of surplus and exempt surplus land
- ❖ Section 101(b)(1)(C) – Local agencies must provide proof that Notices of Availability were sent to the required entities
- ❖ Section 101(b)(1)(D) – Local agencies may send affordability restrictions recorded or to be recorded on the surplus land
- ❖ Section 102(b) and (c) – Includes duration of affordability restrictions as amended by legislation and effective January 1, 2024
- ❖ Section 102(d) – "Agency's use" has been removed from the definitions section and added as a new, separate section in the Guidelines
- ❖ Section 102(g) – Provides guidance on what information is needed to evaluate "good faith negotiations"



Proposed Changes – Article I, cont.

- ❖ Section 102(i)(1) and (2) – Definition of "disposition" updated to reflect amended statute and define what does and does not constitute a disposition
- ❖ Section 102(i)(2)(B) – Provides guidance on determining what constitutes "development" and "demolition" for the purpose of defining "disposition"
- ❖ Sections 102(h), (o), (u), and (v) – Defines HCD's Determination Letter, Findings Letter, and Notice of Violation. Also defines Notice of Alleged Violation for written correspondence from a private entity alleging violations of the SLA
- ❖ Section 103(b)(1)-(7) – To reflect amendments to the statute, changes the deadline for disposition for the "grandfathering" exemptions from December 31, 2022 to December 31, 2027, and clarifies that certain agreements that were terminated pursuant to an earlier version of statute due to lapse of the disposition deadline may be revived. Clarifies that certain properties are subject to the SLA as it existed on December 31, 2019.
- ❖ Section 103(f) – Updates to reflect amended statute regarding what constitutes "participating in negotiations"
- ❖ Section 104 – New section to provide guidance on what may or may not qualify as "agency's use"



Proposed Changes – Article I, cont.

Exemptions

- ❖ Section 103(a) – Provides guidance on when guidelines apply or do not apply to surplus land or exempt surplus land
- ❖ Section 103(c)(1) – Clarifies that a declaration at a public meeting for exempt surplus land pursuant to subparagraphs (A), (B), (E), (K), (L), or (Q) is not required and instead a local agency may identify the land in a notice that is published and made available for public comment for 30 days
- ❖ Section 103(c)(2)-(5), (7)-(9), and (13)-(19) – Adds new exemptions and revised existing exemptions pursuant to amendments effective January 1, 2024. Clarifies existing exemptions, including "valid legal restrictions."
- ❖ Section 103(d) – Provides guidance that certain exemptions do not apply to surplus land in four locations and that a Notice of Availability must be sent for open space purposes in such cases



Proposed Changes – Article II. Surplus Land

- ❖ Section 200(a) – Provides guidance on what constitutes "participating in negotiations" to reflect amendments to statute
- ❖ Section 202(a)(1)(C)(i)-(v) – Further clarifies what constitutes "good faith negotiations"
- ❖ Section 202(b)(1)(A) – Clarifies that an affordability covenant is required in all dispositions of surplus land regardless of whether a local agency agrees to price and terms with an entity proposing affordable housing or the Notice of Availability does not result in responses
- ❖ Section 202(c) – Provides guidance regarding affordability covenant that must be recorded for disposition of multiple, contiguous parcels
- ❖ Section 202(d) – Provides guidance for the payment period for surplus land disposed of by sale



Proposed Changes – Article III. Requirements to be Placed on Surplus Land for Affordable Housing

- ❖ Section 300 – Provides guidance that affordable housing units must be built not later than the unrestricted housing units and non-residential portion of a mixed-use, mixed-income development



A conceptual site plan for the future of downtown Rohnert Park shows a mix of retail, housing and a hotel on the 30-acre site. Rohnert Park used a mixed-use SLA exemption in order to put out an RFP for this property. (Image credit: Slavik Design)



Proposed Changes – Article IV. Reporting Requirements

- ❖ 400(a) – Send Notices of Availability to HCD for review prior to issuing (advised)
- ❖ 400(b) – Clarifies 30-day review prior to the final disposition. Resolution, delivery proof, draft covenants are required. Appendix B – as applicable
- ❖ 400(b) – Provide HCD a copy of recorded restrictions upon sale.
- ❖ 400(c) – Submit after 60-day NOA (if applicable) or 90-day good faith negotiation period. Only once is necessary.
- ❖ 400(e)(1)-(3) – Exemptions: provide resolution declaring property exempt surplus land with written findings. HCD has at least 30 days to complete review. Send to the Portal.

The screenshot shows a software interface with a table. The table has columns for 'Status', 'Action', and 'Date'. A green arrow points from the text 'Appendix B – as applicable' to a highlighted row in the table. The table contains several rows of data, with some rows highlighted in yellow. The text in the table is partially obscured but appears to be related to the reporting requirements listed in the adjacent text.



Proposed Changes – Article V. Performance Monitoring and Penalties

- ❖ 500(c) – HCD's findings. 30-day response period *after* supporting documents received.
- ❖ 500(d) – Agencies respond by correcting or providing findings
- ❖ 500(e)(1)-(2) – Determination Letter or Notice of Violation. Open public meeting required for violations.
- ❖ 500(e)(3) – Orange County & OC cities requirements
- ❖ 501(a) – Remedies if agency disposes (or attempts) in violation of SLA
- ❖ 500(b)(1) and (2) – Penalties assessed, clerical errors, money deposited and used. Values for sales and leases.
- ❖ Section 502(b)-(c) – Guides public and private entities submitting Notices of Alleged Violation



30-Day Public Comment Period



- 30-day Public Comment period is now open. Comments will be accepted through Monday, March 25.
- To submit a written comment, please email SLAguidelines@hcd.ca.gov
- As a part of the release of the final guidelines, HCD will summarize how it addressed comments received during this period.



Public Comment

- Webinar attendees may use this time to provide public comment to HCD on the Draft Updated Guidelines.
 - Please use Zoom "raise hand" feature.
 - HCD staff will unmute your microphone.
 - You will have 1 minute to provide verbal public comment.
 - Please provide your name and relevant affiliation(s).
 - Please lower your hand after speaking.
 - Comments will be recorded as received by HCD staff.
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Public Comment

01:00

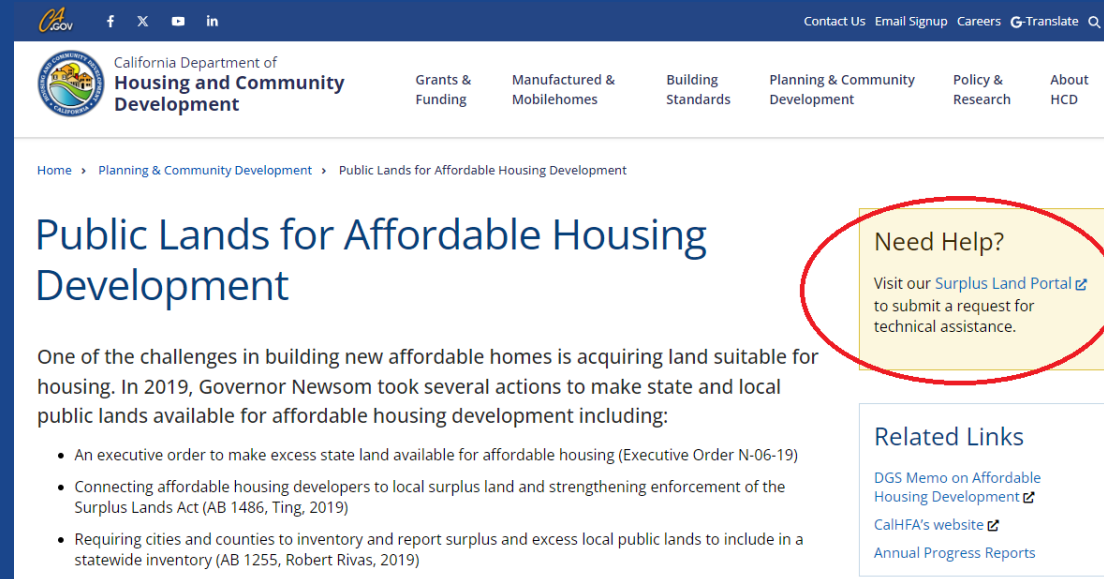
Public Comment

Your time is up, thank you
for your comment.

Thank you!

Reminder: Public comment period will conclude on **Monday, March 25**. Written comments may be submitted to: SLAguidelines@hcd.ca.gov.

If you are seeking support or technical assistance with the Surplus Land Act, please submit your request via HCD's Surplus Land Portal on HCD's Public Lands webpage.



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