

DRAFT Updated Surplus Land Act Guidelines
Statement of Reasons
February 23, 2024

This document describes the rationale behind significant proposed changes to the Surplus Land Act Guidelines developed by the California Department of Housing and Community Development (HCD) for the Surplus Land Act pursuant to Government Code, Title 5, Division 2, Part 1, Chapter 5, Article 8, Surplus Land.

The proposed changes are reflected in the draft Guidelines, available at www.hcd.ca.gov, with deviations from the previously adopted Guidelines shown in strikethrough and red underline format.

Article I. Program Overview

Section 100 – Applicability

Clarifies the date that the Guidelines become applicable to the disposition of surplus and exempt surplus land.

Section 101(b)(1)(C) – Notices of Availability

Clarifies that a local agency must provide proof that Notices of Availability were sent to the entities as required by Government Code section 54222, subdivision (a)(1).

Section 101(b)(1)(D) – Restrictions to be Recorded

Clarifies that local agencies may send restrictions recorded or to be recorded against the surplus land.

Sections 102(b) and (c) – Affordable Housing Cost and Rent

Revises the definitions of “affordable housing cost” and “affordable housing rent” to include the duration of affordability restrictions in statute as amended in 2023 and effective January 1, 2024.

Removal of Section 102(d) – Agency’s Use

Removes “Agency’s Use” from the definitions section and creates a new section, Section 104. Section 102(d) now defines “APR.”

Section 102(g) – Description of Negotiations

Adds a definition to clarify what information is needed to evaluate “good faith negotiations” as required by Government Code section 54223.

Section 102(i)(1) and (2) – Disposition of Surplus Land

Updates the definition of “disposition” to reflect amended statute and define what does and what does not qualify as a disposition pursuant to updates to Government Code section 54221, subdivision (d)(1).

Section 102(i)(2)(B) – Development and Demolition

Adds a definition of development and demolition pursuant to updates to Government Code section 54221, subdivision (d)(1).

Sections 102(h), (o), (u), and (v) – Letters and Notices

Adds definitions of HCD’s Determination Letter, Findings Letter, and Notice of Violation. Defines Notice of Alleged Violation for written correspondence from a private entity alleging violations of the SLA.

Section 103(a) – Exempt Surplus Land

Clarifies when guidelines apply or do not apply to exempt surplus land. Exempt surplus land is not subject to Articles II and III of the Guidelines as those articles pertain to the disposition of surplus land, not exempt surplus land.

Section 103(b)(1)-(7) – Land Disposed of by December 31, 2027

Reflects changes to Government Code section 54234 for land that meets certain criteria disposed of by December 31, 2027. Clarifies that certain properties are subject to the SLA as it existed on December 31, 2019. Clarifies that certain agreements that were previously terminated pursuant to an earlier version of statute due to lapse of statutory deadline may be revived, consistent with Government Code section 54234, subdivision (d).

Section 103(c)(1) – Exempt Surplus Land Public Noticing

Reflects changes to Government Code section 54221, subdivision (b)(4), that a declaration at a public meeting for exempt surplus land pursuant to subparagraphs (A), (B), (E), (K), (L), or (Q) is not required. 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) – Exemptions

Reflects changes in statute as amended in 2023 and effective on January 1, 2024, that added new exemptions and revised existing exemptions, consistent with Government Code section 54221, subdivisions (f)(1)(A)-(S).

Section 103(d) – Exemption Limitations

Clarifies that certain exemptions do not apply to surplus land locations in one of four location and that a Notice of Availability must be sent for open space purposes in such cases.

Section 103(f) – Surplus Land Determination Process

Clarifies what constitutes “participating in negotiations.” Reflects amended statute in Government Code section 54222, subdivision (f)(1)-(4).

Section 104 – Agency's Use

Adds Section 104 to the Guidelines to provide guidance on how land may, or may not, qualify as “agency’s use.” Clarifies what constitutes agency’s use and what does not, and describes the process for a local agency to demonstrate to HCD that a disposition meets the definition of agency’s use and is therefore not subject to the SLA.

Article II. Surplus Land

Section 200(a) – Surplus Land Determination Process

Clarifies what constitutes “participating in negotiations.” Reflects amendments in Government Code section 54222, subdivision (f)(1)-(4).

Section 202(a)(1)(C)(i)-(iv) – 90-Day Good Faith Negotiation Period

Further clarifies what constitutes “good faith negotiations” as required by Government Code section 54223.

Section 202(b)(1)(A) – Covenants to be Recorded

Clarifies that an affordability covenant must be recorded in all dispositions of surplus land regardless of whether a local agency agrees to price and terms with an entity for purposes of affordable housing or the Notice of Availability does not result in responses from interested entities. This is consistent with Government Code section 54223.

Section 202(c) – Contiguous Land

Clarifies that affordability covenants must be recorded against the entirety of the property when a local agency seeks to simultaneously dispose of multiple, contiguous parcels of surplus land such that it would reduce the capacity of individual parcels to support at least ten housing units. Clarifies that if the surplus land consists of multiple contiguous parcels or is one parcel that will be subdivided, the land can be treated as one parcel by a master developer for the purpose of applying the affordability covenant.

Section 202(d) – Payment Period

Clarifies the payment period for surplus land disposed of by sale.

Article 3. Requirements to be Placed on Surplus Land for Affordable Housing

Section 300 – Construction of Affordable Units in Mixed-Use, Mixed-Income Developments

Clarifies that affordable housing units must be built not later than the unrestricted housing units and the non-residential portion of a mixed-use, mixed-income development.

Article 4. Reporting Requirements

Section 400(a) – Conditions or Restrictions in a Notice of Availability

Revises language to advise local agencies to send Notices of Availability (NOAs) that contain conditions or restrictions to HCD for review prior to issuing the NOA to required entities.

Section 400(b) – Post-Negotiation Notice and Proposed Disposition Summary

Clarifies that local agencies must send a proposed disposition summary to HCD at least 30 days prior to the final disposition of the surplus land. Clarifies that not all sections of Appendix B are required to be filled out and that only the sections of the form that apply to the disposition are required to be completed. Details documents that must be submitted to HCD as a part of the proposed disposition summary.

Section 400(c) – Timing of Submission of Disposition Documents

Clarifies that a local agency may submit disposition documents to HCD any time after the 60-day Notice of Availability period or, if applicable, the 90-day good faith negotiation period, and that the local agency must submit disposition documents and receive a Findings Letter from HCD only once.

Section 400(e)(1)-(3) – Notice of Exemption Determination

Clarifies that a local agency must provide HCD with a copy of a resolution or other document recording formal action declaring property exempt surplus along with written findings describing which exemption applies and how the land meets the requirements of that exemptions. Clarifies that additional documentation may be necessary and that HCD requires at least 30 days to complete its review.

Article 5. Performance Monitoring and Penalties

Section 500(c) – HCD's Findings

Clarifies HCD's process to review, consider, and make findings regarding a local agency's proposed lease or sale of land. Clarifies when HCD shall send a Findings Letter if there is a determination that the proposed sale or lease will violate the SLA and when HCD's 30-day response period to a local agency's submittal of a proposed disposition commences.

Section 500(d) – Response to HCD's Findings

Clarifies that a local agency may respond to an HCD Findings Letter in two manners: by correcting any issues identified by HCD or by providing written findings explaining the reason(s) the disposition complies with the SLA.

Section 500(e)(1)-(2) – HCD's Final Determination

Clarifies HCD's process to provide a local agency with either a Determination Letter or a Notice of Violation after receiving a response from a local agency. Clarifies that a local agency must hold an open, public meeting to review a Notice of Violation and that a local agency is prohibited from finalizing a disposition of surplus land subject to a Notice of Violation until and open, public meeting is held, consistent with language in Government Code section 54230.7.

Section 500(e)(3) – Additional Requirements for County of Orange and Cities within the County of Orange

Reflects amendments to the statute in 2023 and effective on January 1, 2024 regarding requirements for Notices of Violation received by the County of Orange or any city within the County of Orange, consistent with Government Code section 54230.8, subdivisions (a)-(c).

Section 501(a) – HCD Enforcement of the SLA

Clarifies that HCD may seek to enforce and pursue all applicable remedies if a local agency disposes or attempts to dispose of land in violation of the SLA.

Section 501(b)(1) and (2) – Penalties

Clarifies that a local agency that disposes of land after receiving a Findings Letter or Notice of Violation without correcting all violations identified is liable for penalties of 30 percent of the applicable disposition value of the land for the first violation and 50 percent of the applicable disposition value for each subsequent violation. Clarifies what is meant by "applicable disposition value" for sales and leases of land. Clarifies that penalties do not apply to clerical errors or violations of the SLA that do not impact the availability, priority, or construction of affordable housing but that in no case are local agencies immune from penalties for failing to issue a Notice of Availability, notice required entities, provide at least 90 days of good faith negotiations, or provide a draft

and final recorded affordability covenant to HCD. Clarifies that the penalty funds must not be paid out of funds already dedicated to affordable housing, where the penalty funds must go, and how and by when the penalty funds must be used.

Section 502(b)-(c) – Notice of Alleged Violation

Clarifies that a public or private entity shall send a Notice of Alleged Violation to the local agency with a copy sent to HCD, provides 60 days for the local agency to respond to the Notice of Alleged Violation before the public or private entity may take further action, and provides information on HCD's review of and actions to respond to the Notice of Alleged Violation, consistent with Government Code section 54230.5.