



## Surplus Land Act Frequently Asked Questions (FAQs)

***This document provides answers to frequently asked questions about the Surplus Land Act (SLA) (Government Code sections 54220-54234) and the responsibilities of local agencies under the SLA. The Department of Housing and Community Development (HCD) reserves the right to update this document as needed in response to new facts, issues, or laws.***

### General Questions

#### 1. What is the Surplus Land Act (SLA)?

The SLA is a “right of first refusal” law that requires all local agencies to offer surplus land for sale or lease to affordable home developers and certain other entities before selling or leasing the land to any other individual or entity.

#### 2. When do I have to follow the SLA?

Any time a local agency disposes of land, it must follow the SLA unless the land qualifies as exempt surplus land. Dispositions include both sales and leases (unless the lease is less than five years or where no demolition or development will occur during the term of the lease).

#### 3. Is land ever exempt from the SLA?

Yes. There are many exemptions in the SLA. Most, but not all, are found in Government Code section 54221, subdivision (f)(1). Exemptions to the SLA can be generally summarized in the following four categories:

1. Those where the pre-AB 1486 version of the SLA applies because the local agency took action to dispose of the land prior to September 30, 2019 (“Grandfathering” exemptions) These dispositions are exempt from the current version of the SLA subject to the SLA as it existed on December 31, 2019.
2. Those where the disposition can be streamlined because the proposed development on the surplus land includes a certain percentage of affordable units (Affordable Housing exemptions)
3. Land that is disposed of or restricted for another public use under certain conditions (Public Use exemptions)
4. Land that is not suitable for housing because of size or other factors (Unsuitable Parcel exemptions)

#### 4. What is a disposition?

A disposition occurs when a local agency declares land to be surplus or exempt surplus and then sells or leases the land. All dispositions of surplus land must be approved by HCD before the sale or lease can be finalized. (Gov. Code, § 54230.5, subd. (b)(1).)



## 5. When do I need to contact HCD regarding a standard surplus land disposition?

The SLA requires local agencies to contact HCD twice.

First, when a local agency declares land surplus and issues a Notice of Availability (NOA), the local agency must send the NOA to HCD. (Gov. Code, § 54222, subd. (a)(1).) Second, the local agency must contact HCD again once at least 60 days have passed after the issuance of an NOA and any required 90-day good faith negotiations have concluded. At that time, the local agency must provide HCD with disposition documents that include the following: a copy of the Resolution declaring the land surplus, a copy of the NOA, a copy of the draft affordability covenant, proof of NOA delivery to all required entities per Government Code section 54222 (see Noticing Requirements below), and a description of any negotiations that have taken place. (Gov. Code, § 54230.5, subd. (b)(1).)

## 6. How do I contact HCD with questions about the SLA?

All correspondence with HCD should be sent to [PublicLands@hcd.ca.gov](mailto:PublicLands@hcd.ca.gov).

## Dispositions

### 1. Are leases subject to the SLA?

Yes. Leases are subject to the SLA in most cases. The only exceptions are leases that are less than five (5) years or where no demolition or redevelopment will occur (SLA Guidelines section 102(h)(1)).

### 2. Are easements subject to the SLA?

No. In almost all cases, easements are not subject to the SLA. However, if a purported easement substantively resembles a sale or lease, then we recommend you discuss with HCD.

### 3. When are affordability restrictions required?

All dispositions of surplus land require an affordability covenant. Every sale or lease of land that takes place under the SLA requires that an affordability covenant be recorded against the land. Land sold or leased to an affordable housing developer or local public entity that responded to the Notice of Availability (NOA) within 60 days following the issuance of an NOA must include an affordability covenant requiring at least 25% of the total units developed to be affordable to lower income households. (Gov. Code, § 54222.5.) In addition, a 15% affordability covenant is required on land sold or leased after no entity responds to the NOA during the 60-day period or after price or terms cannot be reached during the 90-day good faith negotiation period. (Gov. Code, §§ 54233, 54233.5.)

An affordability covenant should also be recorded for exempt surplus land dispositions that are put out to open, competitive bid by a local agency for affordable housing development



pursuant to Government Code section 54221, subdivision (f)(1)(F)(i) or mixed-use development pursuant subdivision (f)(1)(F)(ii). For dispositions of exempt surplus land pursuant to subdivision 54221(f)(1)(A), local agencies must record a regulatory agreement establishing the minimum affordability requirements.

#### **4. Are dispositions for exempt surplus land the same as dispositions for surplus land?**

No. The exempt surplus land disposition process requires much less documentation. To dispose of “exempt surplus” land, a local agency must submit a resolution with written findings supporting the exemption to HCD for review (SLA Guidelines section 400(e)(1)). After HCD reviews the resolution and written findings and concurs that the land qualifies as exempt surplus land, the local agency is free to sell or lease the land (SLA Guidelines section 400(e)).

HCD staff will also review a draft resolution and provide feedback as to whether the resolution addresses the requirements of “exempt surplus” land before the local agency presents it to its governing body. However, HCD review of a draft resolution is optional (SLA Guidelines section 400(e)(2)).

Greater details on exemptions are available in our Guide to Exemptions.

#### **5. Are properties in a Long-Range Property Management Plan subject to the SLA?**

Yes. All locally owned land, including land that has been designated in Long-Range Property Management Plans (LRPMP) approved by the Department of Finance (DOF) or the Community Redevelopment Property Trust, is subject to the SLA. (Gov. Code, § 54221, subd. (b)(2).) When disposing of surplus land in an LRPMP, HCD requests that the local agency includes two additional documents in its disposition paperwork: a copy of the LRPMP and the letter from the DOF approving the LRPMP.

#### **6. What if there was an exclusive negotiating agreement (ENA) or legally binding agreement to dispose of the land prior to September 30, 2019?**

Land is subject to the version of the SLA that existed on December 31, 2019 so long as the local agency entered into an exclusive negotiating agreement (ENA) or other legally binding agreement to dispose of land on or before September 30, 2019, and the disposition of the land is completed by December 31, 2022, to the party that entered into the ENA or other legally binding agreement or its successor or assign. (Gov. Code, § 54234, subd. (a)(1).)

#### **7. If a local agency leases agency-owned land that requires tenant improvements and repair work, would that be considered a “disposition of surplus land”?**

No. For the purposes of the SLA Guidelines, the term “disposition” excludes short-term leases for a term of less than five years, as well as leases where no demolition or development will



occur. A lease that allows tenant improvements and minor maintenance would not be considered a disposition of surplus land (SLA Guidelines section 102(h)).

## **Determining How the SLA May Apply to a Local Agency's Proposed Disposition of Land**

*Before a local agency considers selling or leasing locally owned land, it should consider if the land is surplus, exempt surplus, or not otherwise subject to the SLA. This section addresses frequently asked questions regarding those considerations.*

### **1. Our local agency is proposing to dispose of land for economic development purposes. We received grant funding from state or federal sources which prohibit us from developing housing on the land. Does this qualify the land for an exemption?**

Yes, if grant funding from another agency restricts the development from pursuing any residential uses, then the land may qualify for the exemption in Government Code section 54221(f), subdivision (1)(G). HCD recommends that the local agency contact HCD at [PublicLands@hcd.ca.gov](mailto:PublicLands@hcd.ca.gov) to confirm that the grant does in fact prohibit housing development before declaring the land “exempt surplus land” under Government Code section 54221(f), subdivision (1)(G).

### **2. Our city has surplus land in a commercial district. The development of housing would be subject to a conditional use permit. Would this exempt the land from the SLA?**

No, the city must abide by the SLA process of notifying all mandatory parties and negotiating in good faith with any interested parties proposing to develop affordable housing on the land. (Gov. Code, § 54223, subd. (b).)

### **3. For affordable housing exemptions using the no-bid affordable housing exemption (Gov. Code, § 54221, subd. (f)(1)(A)), does the city or county still have to declare the land as “exempt surplus” through an act of its governing board?**

Yes. All surplus land and exempt surplus land must be declared as such. (Gov. Code, § 54221, subd. (b)(1).)

### **4. Our agency is proposing to dispose of land that is not currently zoned for residential use. Can we declare it exempt surplus land for this reason?**

The land can only use the exemption in Government Code section 54221(f), subdivision (1)(G) if the restriction prohibiting housing is imposed by another agency. If the agency that owns the



land is a city or county that zoned the land for non-residential use, that designation cannot be used to qualify the land for this exemption.

## **Noticing Requirements for Land Disposed of as Surplus Land**

### **1. When must a local agency send out a Notice of Availability (NOA)?**

A local agency must send out a Notice of Availability (NOA) before selling or leasing surplus land or participating in negotiations to sell or lease surplus land. (Gov. Code, § 54222.) A local agency must give entities that are interested in purchasing or leasing the surplus land at least 60 days from the date the agency sends the NOA to notify the agency of its interest. (Gov. Code, § 54222, subd. (e).)

### **2. Who does a local agency disposing of surplus land need to notify that surplus land is being made available?**

The following entities must be notified (Gov. Code, § 54222):

- If the NOA is for developing low- and moderate-income housing, the local agency must notify:
  - HCD
  - Any local public entity within whose jurisdiction the surplus land is located. Local public entities include: any county, city, city and county, the duly constituted governing body of an Indian reservation or rancheria, tribally designated housing entity as defined in Section 4103 of Title 25 of the United States Code and Section 50104.6.5, redevelopment agency organized pursuant to Part 1 (commencing with Section 33000) of Division 24, or housing authority organized pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code, and also includes any state agency, public district, or other political subdivision of the state, and any instrumentality thereof, that is authorized to engage in or assist in the development or operation of housing for persons and families of low or moderate income. “Local public entity” also includes two or more local public entities acting jointly.
  - CalHFA-certified Housing Sponsors who have notified HCD of their interest in developing affordable housing on surplus land. (Gov. Code, § 54222, subd. (a)(1).) A link to the full list of developers can be found on the [Public Lands for Affordable Housing Development page](#) on HCD’s website. Those entities with an “X” in column C of the table are CalHFA-certified Housing Sponsors that are required to receive NOAs.
- If the NOA is for open space purposes, the local agency must notify: the State Resources Agency, any regional park authority having jurisdiction where the land is located, and the park or recreation department of the city and/or county in which the land is located. (Gov. Code, § 54222, subd. (b).)
- If the land is suitable for school facilities construction or for use by a school district for open-space purposes, the local agency must notify the school district in which the land is located. (Gov. Code, § 54222, subd. (c).)



- If the land is located in a transit village or infill opportunity zone, the local agency must notify the county, city, city and county, successor agency to a former redevelopment agency, public transportation agency, or housing authority within whose jurisdiction the surplus land is located. (Gov. Code, § 54222, subd. (d).)

### **3. Does a local agency disposing of surplus land need to send the NOA to mandatory parties via email or certified mail?**

Noticing via email where a local agency sends one email and “Bcc” all the required entities is acceptable. (Gov. Code, § 54222, subd. (a)(1).) Certified mail is also acceptable.

### **4. Are we required to notify all entities that have notified HCD of their interest in surplus land prior to disposing of surplus land?**

No, only the housing sponsors certified by the California Housing Finance Agency (CalHFA) must be notified from that list. (Gov. Code, § 54222, subd. (a)(1).) However, the local agency may notify any other housing developers in addition to the CalHFA-certified housing sponsors. Remember that the CalHFA list is being continually updated. Please check the HCD website to ensure you notice the up-to-date list.

Please be reminded that the local agency disposing the land must also notify other local public entities (LPEs) within whose jurisdiction the surplus land being disposed of is located. (Gov. Code, § 54222, subd. (a)(1).) The LPEs required to be noticed vary based on the location of the land and do not appear on HCD’s list. It is the local agency’s responsibility to determine all LPEs that must be sent an NOA.

### **5. If, at the conclusion of the 60-day noticing period, no qualified party submitted a Notice of Interest (NOI) for the surplus land we are disposing, do we have any other obligations under the SLA?**

Yes, the local agency must record a deed restriction requiring that, in the event 10 or more residential units are developed on the land, 15 percent of the units be set aside as affordable housing. A sample deed restriction can be found [here](#). The agency must also submit a copy of this deed restriction along with a summary of the disposition to HCD for review using the form [here](#). The local agency must wait for a letter from HCD before agreeing to terms to sell or lease the land. (Gov. Code, §§ 54230.5, 54233, 54233.5.)

## **Noticing Requirements for Land Disposed of as Exempt Surplus Land**

### **1. Who does a local agency need to notify when disposing of exempt surplus land pursuant to one of the competitive bid affordable housing exemptions (Gov. Code, § 54221, subd. (f)(1)(F)(i-ii))?**



If exempt surplus land is disposed of through an open, competitive bid pursuant to one of the affordable housing exemptions in Government Code section 54221, subdivisions (f)(1)(F)(i-ii), the following entities in Government Code section 54222, subdivision (a), must be notified and invited to participate:

- HCD
- Any local public entity within whose jurisdiction the surplus land is located
- CalHFA-certified Housing Sponsors who have notified HCD of their interest in developing affordable housing on surplus land. A link to the full list of developers can be found on the [Public Lands for Affordable Housing Development page](#) on HCD's website. Those entities with an "X" in column C of the table are CalHFA-certified Housing Sponsors that are required to receive NOAs.

## **2. Who does a local agency need to notify when disposing of land that is located within a coastal zone, adjacent to a historical unit of the State Parks System, listed on or eligible for the National Register of Historic Places, or within the Lake Tahoe region?**

Unless land was granted by the state in trust to a local agency pursuant to Government Code section 54221, subdivision (f)(1)(H), land that is located within a coastal zone, adjacent to a historical unit of the State Parks System, listed on or eligible for the National Register of Historic Places, or within the Lake Tahoe region is not exempt surplus land and the local agency must send a notice of availability for open space purposes to the following entities in Government Code section 54222, subdivision (b):

- The State Resources Agency
- Any regional park authority having jurisdiction where the land is located
- The park or recreation department of the city and/or county where the land is located

## **Good Faith Negotiating Period and Coming to Terms**

### **1. If one or more qualified parties submitted an NOI for the surplus land we are disposing of, but we were unable to come to terms with any of them at the conclusion of the 90-day good faith negotiation period, do we have any other obligations under the SLA?**

Yes. If after engaging in good faith negotiations for at least 90 days to dispose of the land for a housing development that includes at least 25 percent affordable units, the local agency cannot agree on price and terms, the agency must record a deed restriction requiring that, in the event 10 or more residential units are developed on the land, 15 percent of the units be set aside as affordable housing. A sample deed restriction can be found [here](#). The agency must also submit a copy of this deed restriction along with a summary of the disposition to HCD for review using the form [here](#). The local agency must wait for a letter from HCD before agreeing to terms to sell or lease the land. (Gov. Code, §§ 54230.5, 54233, 54233.5, 54230.5.)



## **2. Does the SLA require the disposing agency to sell or lease its surplus land at or below fair market value?**

No, local agencies may sell or lease surplus land at fair market value or below fair market value. However, local agencies are not required to sell or lease land below fair market value. (Gov. Code, § 54226.)