

Guide to Exemptions from the Standard Surplus Land Act Process

for Local Agencies (Cities, Counties, Special
Districts, Joint Powers Authorities, Successor
Agencies, etc.)



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Overview

The Surplus Land Act (SLA) is a statute that local agencies must follow when disposing of surplus land. It was amended by [Assembly Bill 1486](#) (Ting 2019) as well as other subsequent bills. These amendments modified the SLA to require local agencies across California to submit notices of availability of surplus land to the California Department of Housing and Community Development (HCD) for listing on the HCD website, and to notify interested developers and certain local public entities. The SLA also now requires that the surplus land remain available for 60 days after the notice of availability is sent to allow for affordable housing developers and local public entities to express interest before the land is made available to the broader public and non-affordable housing developers. Land declared exempt surplus may be exempted from some or all provisions of the SLA by meeting certain criteria. **This Guide serves to assist local agencies in the process of determining whether, under the SLA, land should be declared “surplus” or “exempt surplus.”**

Key Terms

Surplus land: Land owned in fee simple by the local agency, meaning the local agency holds the broadest possible interest in the land (as opposed to land that the local agency merely has a leasehold interest in or land to which the local agency has easement rights), that the agency takes formal action in a regular public meeting to declare is surplus and not necessary for the local agency’s use.

Exempt surplus land: Land determined by a local agency and verified by HCD to meet certain requirements prescribed by the SLA. The four main categories of exemptions from the SLA process detailed in this guide are:

- (1) “Grandfathering” land subject to pre-AB 1486 version of the SLA
- (2) Streamlining the process for disposing of land for affordable housing
- (3) Land dedicated for other public uses
- (4) Land not suitable for housing

Standard SLA process: The process by which local agencies:

- (1) Declare land surplus at a regular public meeting
- (2) Notice all interested CalHFA housing sponsors and certain local public entities (60 days)
- (3) Review responses to NOAs and determine affordability minimums
- (4) Negotiate in good faith (90 days)
- (5) Send proposed disposition to HCD for review
- (6) Address any HCD findings as needed
- (7) Dispose of the land and record an affordability covenant

Exempt Surplus Land Determination Process

Land must be declared either “surplus land” or “exempt surplus land,”¹ as supported by written findings, before a local agency may take any action to dispose of it consistent with statutory requirements, the SLA Guidelines, and a local agency's policies or procedures.

Official Exemptions from Standard SLA Process

HCD requires local agencies to provide a copy of the written findings declaring the land “Exempt Surplus” to ensure the exemption applies and the local agency is not subject to the standard SLA Process. HCD’s review of the “Exempt Surplus” written findings can save substantial time and can help prevent unintended violations.

Exemption Category 1

"Grandfathering"

The pre-AB 1486 version of the SLA applies if the local agency took certain action to dispose of property or issued a competitive request for proposals to dispose of the surplus land, and the disposition is complete, before a specific date.

Exemption Category 2

Land for affordable housing

Streamlines the process for disposing of land for affordable housing development. Must meet certain criteria in the SLA.

Exemption Category 3

Land dedicated for other public uses

Land dedicated for other public uses (parks, schools, etc.) transferred to federal/state government, land exchanged for other land to be used by the local agency, etc.

Exemption Category 4

Land not suitable for housing

Small parcels, former streets, parcels with legal restrictions that prohibit housing.

Figure 1: Overview of the main categories of exemptions from the standard SLA process

¹ **DISCLAIMER:** Pursuant to Government Code section, subdivision 54221(f)(2), land that is located within a coastal zone, land that is adjacent to a historical unit of the State Parks System, land that is listed on or eligible for the National Register of Historic Places, or land that is 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 park and recreation department of the county and any cities in which the land is located, any regional park authority having jurisdiction within the area in which the land is located, and to the State Resources Agency (unless the land was granted by the state in trust to a local agency pursuant to Government Code section 54221, subdivision (f)(1)(H)).

Overview: Process of determining exemption eligibility

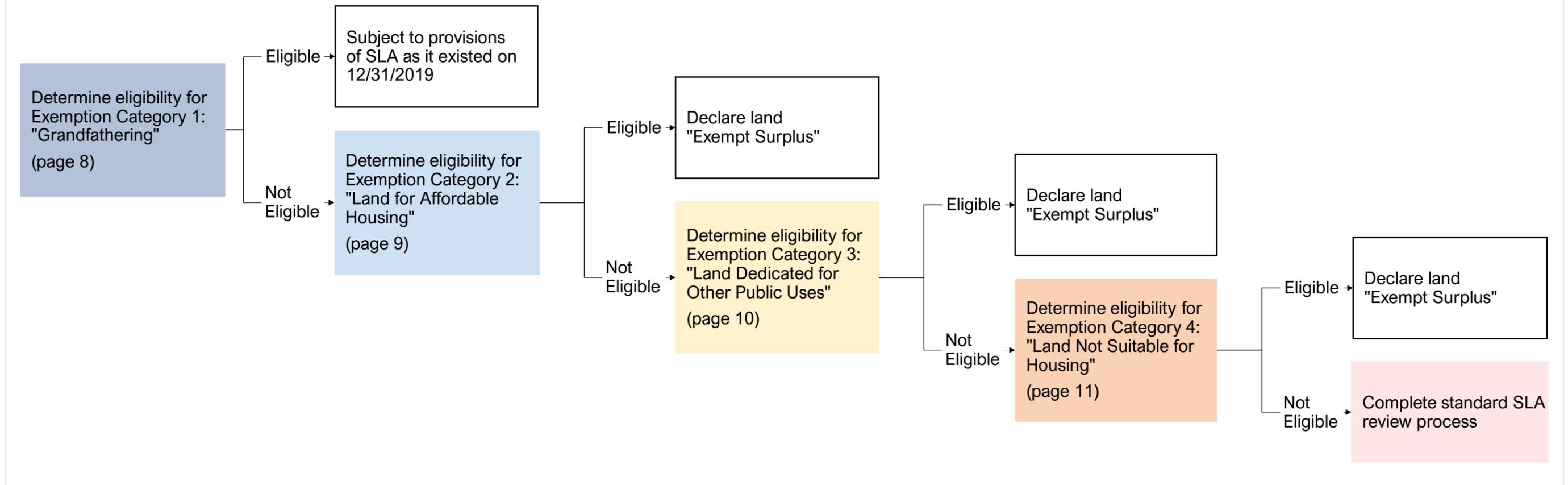


Figure 2: Order of determining eligibility for an exemption from the standard SLA process

**Process of determining eligibility for Exemption Category 1:
“Grandfathering”**

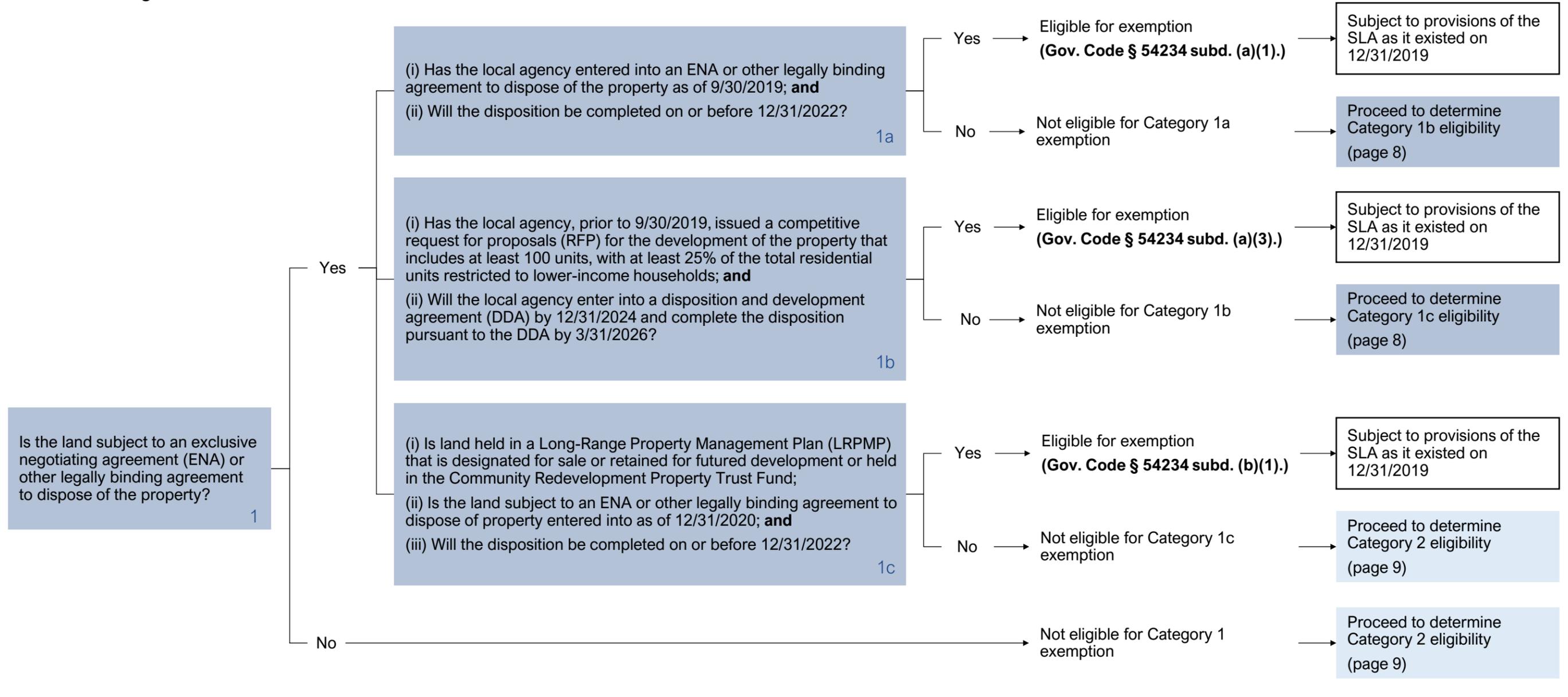


Figure 3: Detailed decision tree to determine eligibility for Exemption Category 1: “Grandfathering”

Process of determining eligibility for Exemption Category 2:
Land destined for affordable housing

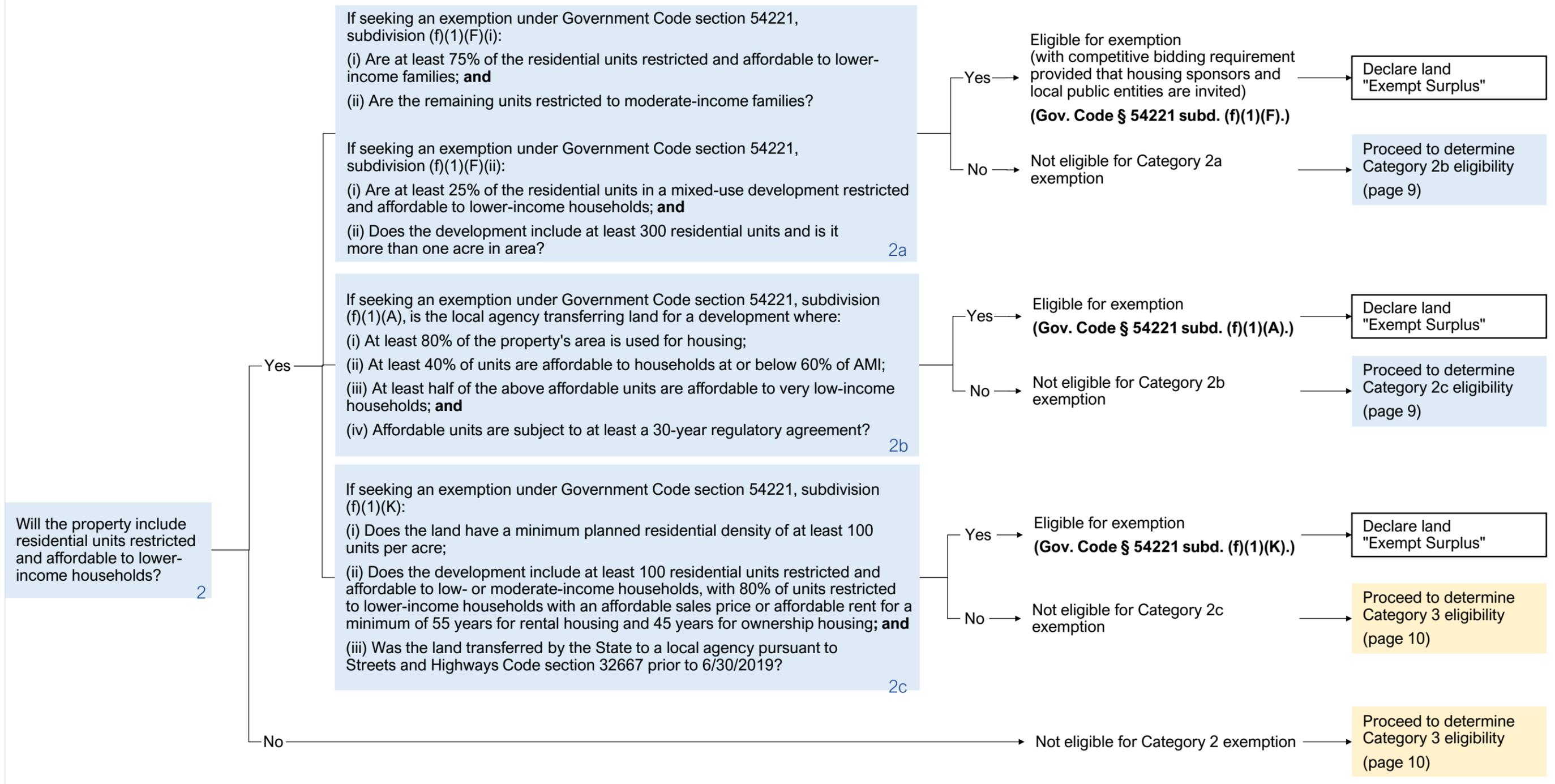


Figure 4: Detailed decision tree to determine eligibility for Exemption Category 2: Streamlining the process for disposing of properties destined for affordable housing

**Process of determining eligibility for Exemption Category 3:
Land dedicated for other public uses**

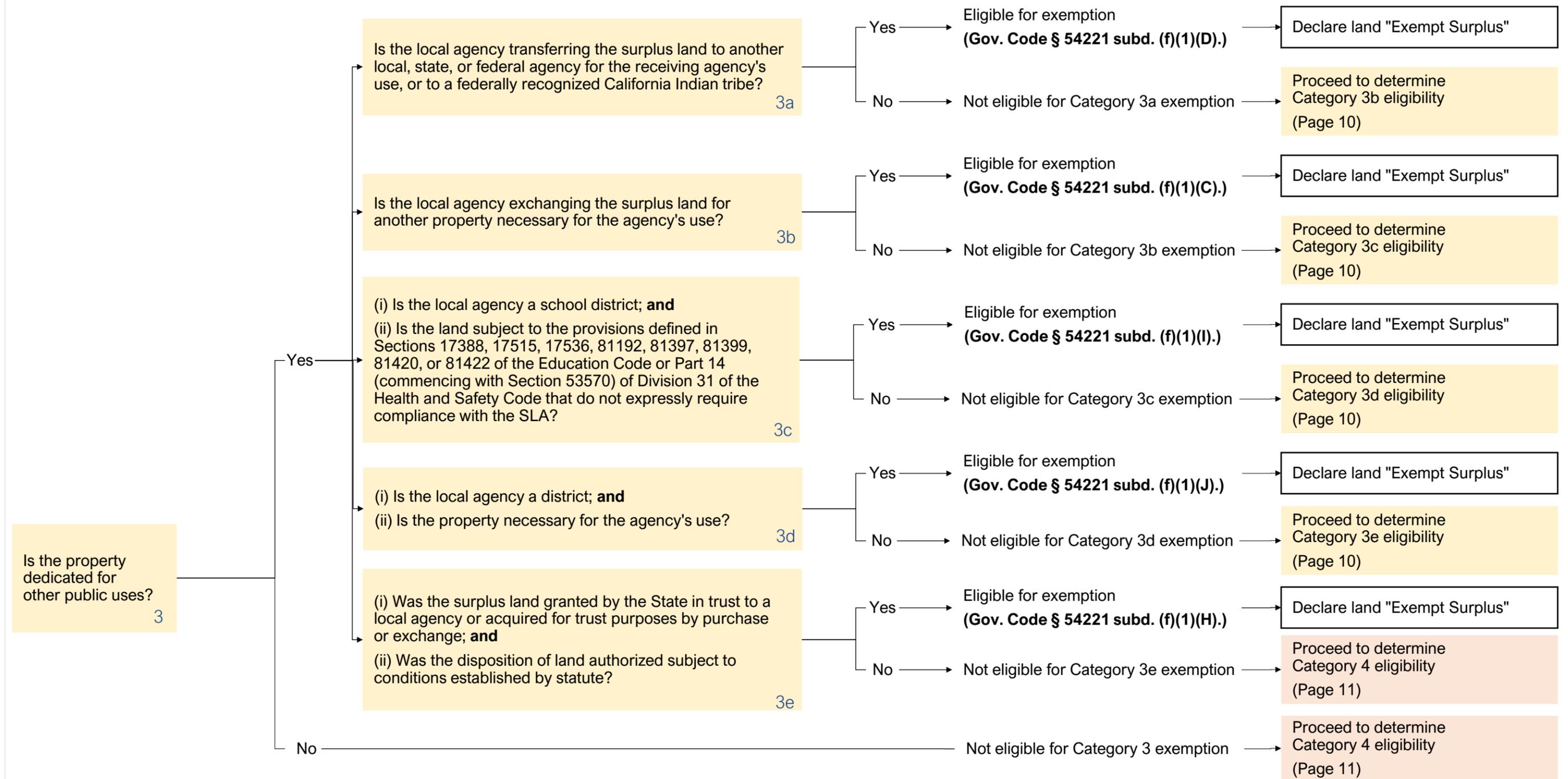


Figure 5: Detailed decision tree to determine eligibility for Exemption Category 3: Land dedicated for other public uses

Process of determining eligibility for Exemption Category 4:
Land not suitable for affordable housing

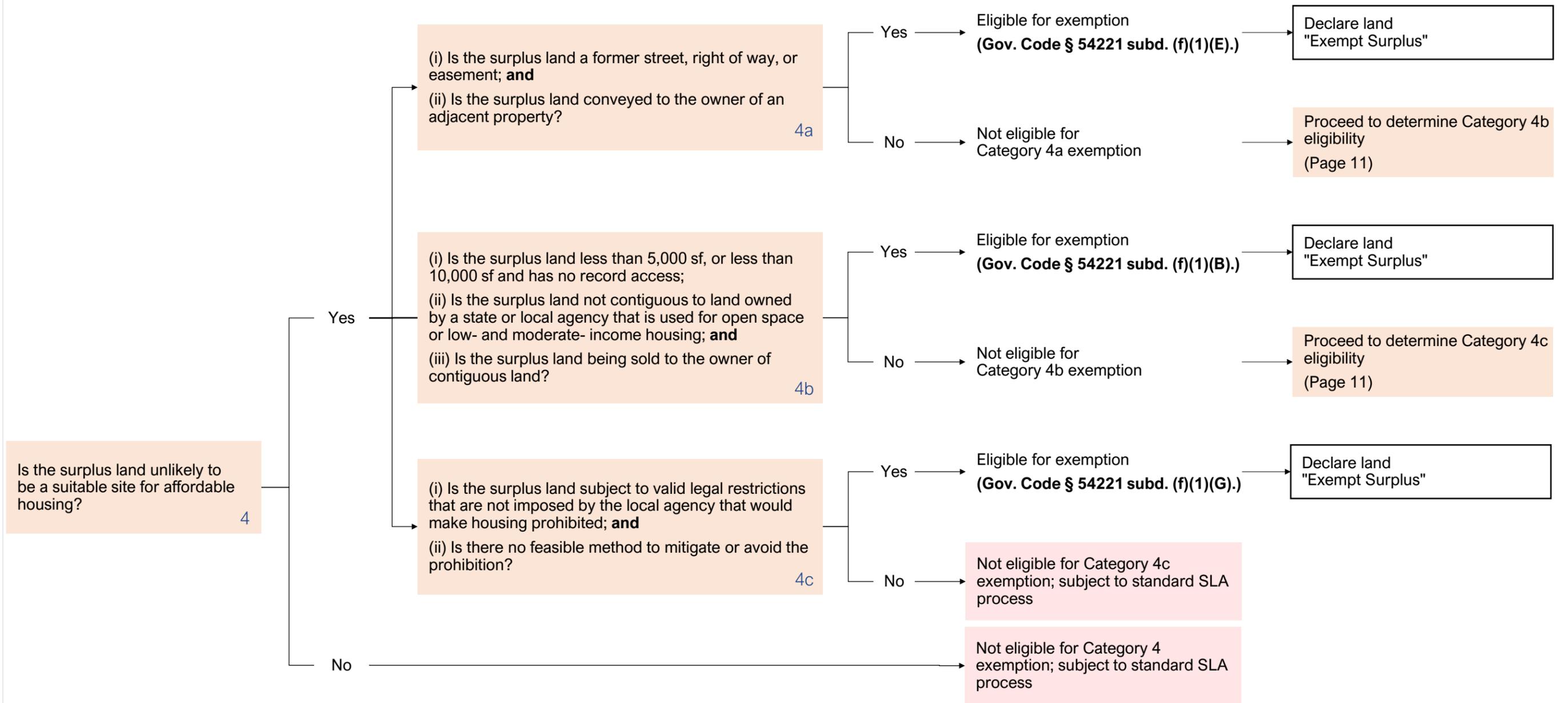


Figure 6: Detailed decision tree to determine eligibility for Exemption Category 4: Land unlikely to be suitable for affordable housing

Reporting Requirements for Properties Determined Exempt

Notice of Exemption Determination: Pursuant to Government Code section 54221, subdivision (b)(1), a local agency that determines that a property is exempt from the standard SLA process shall support such a determination with written findings, and pursuant to section 400(e) of the SLA Guidelines, the local agency shall provide a copy of the written determination to HCD at least 30 days prior to disposition.

- (1) Local agencies are encouraged to notify HCD at publiclands@hcd.ca.gov and share a draft resolution including their written findings supporting their exemption prior to having the resolution adopted. This allows HCD to assist in clarifying whether the land indeed qualifies as “exempt surplus” land.
- (2) A copy of the resolution declaring the property “exempt surplus” land that includes written findings supporting such a declaration will generally be considered sufficient documentation to meet this requirement.

Online Resources

The HCD website hosts a variety of resources, reference materials, and templates that will help you navigate the SLA:

- [SLA Guidelines](#)
- [List of Notices of Availability Received](#)
- [List of Developers Interested in Surplus Property](#)
- Sample [Notice of Availability](#) and [Covenant/Deed Restriction Forms](#)
- [Compliance Self-Assessment](#)

Questions?

Contact HCD at PublicLands@hcd.ca.gov

Appendix A: Definitions relevant to determining exemption eligibility

All terms not defined below shall, unless their context suggests otherwise, be interpreted in accordance with the meanings of terms provided in Government Code sections 65580 – 65589.11.

Affordable housing: Housing available at affordable housing cost, as defined in [Health and Safety Code section 50052.5](#), or affordable rent, as defined in [Health and Safety Code section 50053](#), to lower-income households as defined in [Health and Safety Code section 50079.5](#).

Affordable housing cost: As defined in [Health and Safety Code section 50052.5](#), for owner-occupied housing, the sales price at which the monthly ownership cost including principal, interest, taxes, insurance, and utilities equals:

- (1) For extremely low-income households the product of 30 percent times 30 percent of the area median income (AMI) adjusted for family size appropriate for the unit.
- (2) For very low-income households the product of 30 percent times 50 percent of the AMI adjusted for family size appropriate for the unit.
- (3) For lower-income households whose gross incomes exceed the maximum income for very low-income households and does not exceed 70 percent of the AMI adjusted for family size, the product of 30 percent times 70 percent of the AMI adjusted for family size appropriate for the unit. In addition, for any lower-income household that has a gross income that equals or exceeds 70 percent of the AMI adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 30 percent of the gross income of the household.
- (4) For moderate-income households, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of AMI adjusted for family size appropriate for the unit. In addition, for any moderate-income household that has a gross income that exceeds 110 percent of the AMI adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 35 percent of the gross income of the household.

Affordable rent: As defined in [Health and Safety Code section 50053](#), including a reasonable utility allowance, rent shall not exceed:

- (1) For extremely low-income households, the product of 30 percent times 30 percent of AMI adjusted for family size appropriate for the unit.
- (2) For very low-income households, the product of 30 percent times 50 percent of the AMI adjusted for family size appropriate for the unit.
- (3) For lower-income households whose gross incomes exceed the maximum income for very low-income households, the product of 30 percent times 60 percent of the AMI adjusted for family size appropriate for the unit. In addition, for those lower-income households with gross incomes that exceed 60 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of the gross income of the household.

- (4) For moderate-income households, the product of 30 percent times 110 percent of the AMI adjusted for family size appropriate for the unit. In addition, for those moderate-income households whose gross incomes exceed 110 percent of the AMI adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of the gross income of the household

Agency's use: Except as provided below, "agency's use" shall include, but not be limited to, land that is being used, or is planned to be used pursuant to a written plan adopted by the local agency's governing board for agency work or operations, including, but not limited to, utility sites, watershed property, land being used for conservation purposes, land for demonstration, exhibition, or educational purposes related to greenhouse gas emissions, and buffer sites near sensitive governmental uses, including, but not limited to, waste water treatment plants. (Gov. Code § 54221, subd. (c)(1).)

Agency's use shall not include commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development. Property disposed of for the sole purpose of investment or generation of revenue shall not be considered necessary for the agency's use. (Gov. Code § 54221, subd. (c)(2)(A).)

In the case of a local agency that is a district, excepting those whose primary mission or purpose is to supply the public with a transportation system, "agency's use" may include commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development, or be for the sole purpose of investment or generation of revenue if the agency's governing body takes action in a public meeting declaring that the use of the site will do one of the following (Gov. Code § 54221, subd. (c)(2)(B)):

- Directly further the express purpose of agency work or operations. (Gov. Code § 54221, subd. (c)(2)(B)(i).)
- Be expressly authorized by a statute governing the local agency, provided the district complies with Government Code section 54233.5 where applicable. (Gov. Code § 54221, subd. (c)(2)(B)(ii).)

Disposition of surplus land: The sale or lease of local agency-owned land formally declared surplus (Surplus Land Act Guidelines § 102, subd. (h)).

District: All districts within the state, including, but not limited to, all special districts, sewer, water, utility, and local and regional park districts, and any other political subdivision of the state that is a district. (Gov. Code § 54221, subd. (a)(2).)

Exclusive Negotiating Agreement (ENA): A legally binding agreement that binds a prospective buyer and seller under which the seller cannot make any similar deals with other potential buyers for a specified period (Surplus Land Act Guidelines § 102, subd. (j)).

Good faith negotiation: To deal honestly and fairly with the other party throughout the negotiation process whether or not the negotiation results in a contract (Surplus Land Act Guidelines § 102, subd. (m)).

Housing sponsor: For the purpose of housing assisted by HCD, any individual, joint venture, partnership, limited partnership, trust, corporation, limited equity housing cooperative, cooperative, local public entity, duly constituted governing body of an Indian reservation or rancheria, tribally designated housing entity, or other legal entity, or any combination thereof, certified by the California Housing Finance Agency pursuant to rules and regulations of the California Housing Finance Agency as qualified to either own, construct, acquire, or rehabilitate a housing development, whether for profit, nonprofit, or organized for limited profit, and subject to the regulatory powers of the California Housing Finance Agency pursuant to rules and regulations of the California Housing Finance Agency and other terms and conditions set forth in Division 31 of the Health and Safety Code. “Housing sponsor” also includes persons and families of low or moderate income who are approved by the California Housing Finance Agency as eligible to own and occupy a housing development and individuals and legal entities receiving property improvement loans through the California Housing Finance Agency, as defined by [Health and Safety Code section 50074](#). (Gov. Code § 54222, subd. (a)(1); Surplus Land Act Guidelines § 102, subd. (o).)

Local agency: Every city, whether organized under general law or by charter, county, city and county, district, including school, sewer, water, utility, and local and regional park districts of any kind or class, joint powers authority, successor agency to a former redevelopment agency, housing authority, or other political subdivision of this state and any instrumentality thereof that is empowered to acquire and hold real property. (Gov. Code § 54221, subd. (a)(1).)

Local public entity: 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, 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, as defined in [Health and Safety Code section 50079](#). (Gov. Code § 54222, subd. (a)(1).)

Lower-income households: Persons and families whose income does not exceed the qualifying limits for lower-income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, as defined in [Health and Safety Code section 50079.5](#). Lower-income households include very low-income households, as defined in [Health and Safety Code section 50105](#), and extremely low-income households, as defined in [Health and Safety Code section 50106](#) (Surplus Land Act Guidelines § 102, subd. (q)).

Open-space purposes: The use of land for public recreation, enjoyment of scenic beauty, or conservation or use of natural resources. (Gov. Code § 54221, subd. (d).)

Surplus land: Land owned in fee simple by the local agency, meaning the local agency holds the broadest possible interest in the land (as opposed to land that the local

agency merely has a leasehold interest in or land to which the local agency has easement rights), that the agency takes formal action in a regular public meeting to declare is surplus and not necessary for the local agency's use.

Unit: A residential unit that is used as a primary residence by its occupants, consistent with the definition of a unit as utilized by the US Census Bureau and the California Department of Finance, including efficiency units, residential hotel units, and units used as transitional housing (Surplus Land Act Guidelines § 102, subd. (z)).