

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

651 Bannan Street, Suite 400, Sacramento, CA 95811
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



November 18, 2024

Terry Thompson, Director
Real Estate Services Department
San Bernardino County
358 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415

SENT VIA EMAIL TO: Terry.Thompson@res.sbcounty.gov

Dear Terry Thompson:

RE: Utilization of the District's Agency's Use Exemption Found in Government Code section 54221, subdivision (f)(1)(N) – Letter of Technical Assistance

Thank you for communicating with the California Department of Housing and Community Development (HCD) regarding the San Bernardino County Flood Control District's (District) efforts to comply with the Surplus Land Act (SLA). Per the District's request, the purpose of this letter is to provide written technical assistance regarding how certain eligible districts may utilize the exemption found in Government Code section 54221, subdivision (f)(1)(N), commonly known as the district's agency's use exemption.¹

General Applicability of the SLA

The SLA generally applies to sales and certain leases of real property owned in fee simple by a local agency:

“‘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.’”²

¹ Prior to 2024, the district's agency's use exemption was found at Government Code section 54221, subdivision (f)(1)(K). As of January 1, 2024, the exemption is located at Government Code section 54221, subdivision (f)(1)(N).

² Gov. Code, § 54221, subd. (b)(1).

The following definition regarding the disposition of surplus land is outlined in the SLA:

“Dispose” means either of the following:

(A) The sale of the surplus land.

(B) The entering of a lease for surplus land, which is for a term longer than 15 years, inclusive of any extension or renewal options included in the terms of the initial lease, entered into on or after January 1, 2024.³

District’s Agency’s Use Exemption

The district’s agency’s use exemption states: “Real property that is used by a district for an agency’s use expressly authorized in subdivision (c).”⁴

Key sections from the referenced Government Code section 54221, subdivision (c), are as follows (emphasis added):

(c) (1) Except as provided in paragraph (2), “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, property owned by a port that is used to support logistics uses, watershed property, land being used for conservation purposes, land for demonstration, exhibition, or educational purposes related to greenhouse gas emissions, sites for broadband equipment or wireless facilities, and buffer sites near sensitive governmental uses [...]

“Agency’s use” by a local agency that is a district shall also include land disposed for uses described in subparagraph (B) of paragraph (2) [...]

(2) (A) “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.

(2)(B) 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:

³ Gov. Code, § 54221, subd. (d)(1).

⁴ Gov. Code, § 54221, subd. (f)(1)(N) (emphasis added).

- (i) Directly further the express purpose of agency work or operations.
- (ii) Be expressly authorized by a statute governing the local agency,
provided the district complies with Section 54233.5 if applicable.

The SLA notes specific examples of agency's use, such as land that is being used for utility sites and conservation purposes. Taken at the broadest level, the SLA generally does not view land disposed of for commercial or industrial uses or investment or revenue generation to be eligible activities under the category of "agency's use" for local agencies. However, within Government Code section 54221, subdivision (c)(2)(B), an exception to this general rule is given for districts, so long as their primary mission or purpose is not supplying the public with a transportation system.

The SLA outlines two pathways by which eligible districts can use the district's agency's use exemption, which allows land to be disposed of for commercial or industrial uses as well as investment or generation of revenue:

- 1) The first pathway is where the district's governing body (e.g., board of directors) takes formal action (e.g., passes a resolution) declaring that disposing of the land for the aforementioned purposes (e.g., commercial uses) would directly further the express purpose of the district's work or operations.⁵ HCD advises that districts include details in the formal action regarding the specific district work or operation to be affected.
- 2) The second pathway is where the district's governing body (1) takes formal action noting that the district is expressly authorized by a statute governing the district to dispose of land in the desired manner and (2) the district subsequently records an affordability covenant as outlined in Government Code section 54233.5.⁶ HCD advises that districts cite the specific relevant governing statute within the formal action. Section 54233.5 requires a 15-percent affordability covenant if 10 or more residential units are developed on the property.⁷ Otherwise, districts that use this pathway must provide a copy of the affordability covenant to HCD (see enclosure for HCD's Sample Covenant for Section 54233.5). This pathway is a key tool by which districts can both attend to their respective priorities while also supporting efforts to ensure some level of housing affordability on former publicly owned land.

An eligible district may use either pathway of the district's agency's use exemption, as long as the land does not meet the following criteria from Government Code section 54221, subdivision (f)(2): (1) within a coastal zone; (2) adjacent to a historical unit of the State Parks System; (3) listed on, or determined by the State Office of Historic

⁵ Gov. Code § 54221, subd. (c)(2)(B)(i).

⁶ Gov. Code § 54221, subd. (c)(2)(B)(ii).

⁷ This affordability covenant does not have to be recorded if the proposed project on the property involves certain types of health facilities or health services, as defined within subdivision (j) of Section 32121 of the Health and Safety Code.

Preservation to be eligible for, the National Register of Historic Places; or (4) within the Lake Tahoe region as defined in Government Code section 66905.5.

If any of the above criteria apply to the property, a Notice of Availability (NOA) for open-space purposes must first be sent via email or certified mail to the entities identified in Government Code section 54222, subdivision (b) and to HCD. If that NOA does not lead to good faith negotiations and subsequent agreement (for purchase or lease) with one of the noticed entities, a district may then dispose of the land pursuant to Government Code 54221, subdivision (f)(1)(N).⁸

Reference Materials

For the District's reference, the following are examples of findings letters accessible from the "Transparency" section of HCD's Public Lands webpage⁹ where HCD concluded that an agency's application of the district's agency's use exemption complied with the SLA:

- Reclamation District 784 (October 2023)¹⁰
- Napa Sanitation District (December 2023)¹¹
- San Francisco Unified School District (June 2024)¹²
- Sacramento-Yolo Port District (September 2024)¹³

These particular findings letters are also included in this letter's enclosures for your convenience.

⁸ SLA Guidelines, Section 103(d), available at <http://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/final-updated-surplus-land-act-guidelines-2024.pdf>.

⁹ Available at <http://www.hcd.ca.gov/planning-and-community-development/public-lands-affordable-housing-development>.

¹⁰ Available at <http://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/reclamation-district-784-exempt-review-101923.pdf>.

¹¹ Available at <http://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/napa-sanitation-district-exempt-review-120823.pdf>.

¹² Available at <http://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/sfusd-exempt-review-060424.pdf>.

¹³ Available at <http://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/sypd-exempt-review-091124.pdf>.

Conclusion

HCD is committed to supporting all local agencies, including the District, in achieving compliance with the Surplus Land Act. If you have any questions or need further technical assistance, please contact us via the Surplus Land Portal.¹⁴

Sincerely,



Laura Nunn
Senior Manager, Housing Accountability Unit
Housing Policy Development

Enclosures:

HCD's Sample Covenant for Section 54233.5
HCD's Findings Letter to Reclamation District 784 (October 19, 2023)
HCD's Findings Letter to Napa Sanitation District (December 8, 2023)
HCD's Findings Letter to San Francisco Unified School District (June 6, 2024)
HCD's Findings Letter to Sacramento-Yolo Port District (September 11, 2024)

¹⁴ Available at <http://www.hcd.ca.gov/planning-and-community-development/public-lands-affordable-housing-development>.

Sample Covenant or Restriction to be Recorded
(per Government Code Section 54233 and/or 54233.5)

If ten (10) or more residential units are developed on [insert APN/address] (Property), where local zoning permits, not less than 15 percent of the total number of residential units developed on the Property shall be sold or rented at affordable housing cost, as defined in Section 50052.5 of the California Health and Safety Code, or affordable rent, as defined in Section 50053 of the California Health and Safety Code, to lower income households, as defined in Section 50079.5 of the California Health and Safety Code. Rental units shall remain affordable to and occupied by lower income households for a period of 55 years for rental housing and 45 years for ownership housing. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with the provisions of paragraph (2) of subdivision (c) of 65915 of the California Government Code. These requirements shall be covenants or restrictions running with the land and shall be enforceable against any owner who violates a covenant or restriction and each successor-in-interest who continues the violation by any of the entities described in subdivisions (a) to (f), inclusive, of Section 54222.5 of the California Government Code.

Date: _____

_____ [LOCAL AGENCY NAME]

By: _____

Name: _____

Title: _____

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October 19, 2023

Jesse Barton, Attorney
Gallery & Barton
1112 I Street
Suite 240
Sacramento, CA 95814

Dear Jesse Barton:

**RE: HCD's Review of Reclamation District 784's Resolution No. 5325 Declaring
Property Located at the Southeast Corner of Heartland Drive and River
Oaks Boulevard (APN: 016-060-037-000) as "Exempt Surplus Land"**

Thank you for notifying the California Department of Housing and Community Development (HCD) of the Reclamation District 784's (District) determination of property located at the southeast corner of Heartland Drive and River Oaks Boulevard, also known as "Lot F" (Property) as "exempt surplus land." HCD reviewed Resolution No. 2023-10-02 (Resolution) pursuant to Section 400(e) of the Surplus Land Act Guidelines. As explained below, HCD finds that the Property qualifies as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(K).

Analysis

According to the Resolution, the District's Property is used for their drainage purposes. District staff has evaluated the Property for its potential to be used by other entities and believes it may be put to use by other entities consistent with its use for drainage purposes.

Conclusion

HCD finds that the Property qualifies as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(K). The District is permitted to proceed with the disposition of the Property as described in the Resolution.

Jesse Barton, Attorney
Page 2

If you have any questions or need additional technical assistance, please contact Sandra Mukasa, Housing Policy Specialist, at Sandra.Mukasa@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Laura Nunn". The signature is written in a cursive, flowing style.

Laura Nunn
Senior Manager, Housing Accountability Unit
Housing Policy Development

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December 8, 2023

Jon E. Goetz, Senior Of Counsel
Meyers Nave
707 Wilshire Boulevard, 24th Floor
Los Angeles, CA 90017

Dear Jon E. Goetz:

RE: HCD's Review of Napa Sanitation District's Resolution Declaring APNs 005-180-016 and -018 "Exempt Surplus Land"

Thank you for notifying the California Department of Housing and Community Development (HCD) of the Napa Sanitation District's (District) determination of Assessor's Parcel Numbers (APNs) 005-180-016 and -018 (Property), as "exempt surplus land."

HCD reviewed Resolution No. 23-020 (Resolution) provided with supporting documentation pursuant to Section 400 of the Surplus Land Act Guidelines. As explained below, HCD finds that the Property qualifies as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(K).

Analysis

According to the Resolution, the sale or lease of the Property to a third party would directly further the express purposes of the District's work and operations because the sale or lease would generate revenue to fund the District's operations.

Conclusion

Based on the documentation provided, HCD finds that the Property qualifies as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(K). The District is permitted to proceed with the sale or lease of the Property as described in the Resolution.

Jon E. Goetz, Senior Of Counsel
Page 2

If you have any questions or need additional technical assistance, please contact Lisa Krause, Senior Housing Policy Specialist, at lisa.krause@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Laura Nunn". The signature is written in a cursive, flowing style.

Laura Nunn
Senior Manager, Housing Accountability Unit
Housing Policy Development

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September 11, 2024

Amber Saiyasit, Senior Program Manager
City Manager's Office
City of West Sacramento
1110 West Capitol Avenue, 3rd Floor
West Sacramento, CA 95691

SENT VIA EMAIL TO: ambers@cityofwestsacramento.org

Dear Amber Saiyasit:

**RE: HCD's Review of the Sacramento-Yolo Port District's Resolution No. P24-4
Declaring Property Located in the Yolo Bypass (a 25.28-Acre Portion of
Yolo County APN 033-450-003) as "Exempt Surplus Land"**

Thank you for notifying the California Department of Housing and Community Development (HCD) of the Sacramento-Yolo Port District's (District) determination of property located in the Yolo Bypass (a 25.28-acre portion of Yolo County APN 033-450-003) (Property), as "exempt surplus land."

HCD reviewed Resolution No. P24-4 (Resolution) pursuant to Section 400 of the Surplus Land Act Guidelines. As explained below, HCD finds that the subject Property qualifies as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(N). Furthermore, on August 15, 2024, the District confirmed that none of the characteristics listed in Government Code section 54221(f)(2) apply to the Property.

Analysis

According to the Resolution, the proposed sale of the Property for the sole purpose of investment or generation of revenue would support District work and operations consistent with the 2013 Port of West Sacramento Business Plan. The District intends to sell the Property to Ecosystem Investment Partners.

Conclusion

Based on the documentation provided, HCD finds that the Property qualifies as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(N).

Amber Saiyasit, Senior Program Manager

Page 2

If you have any questions or need additional technical assistance, please contact Sandra Mukasa, Senior Housing Policy Specialist at Sandra.Mukasa@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Laura Nunn". The signature is written in a cursive, flowing style.

Laura Nunn
Senior Manager, Housing Accountability Unit
Housing Policy Development

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June 4, 2024

Kelly Rem San Francisco Unified School District
c/o Lozano Smith LLP
2001 N. Main Street, Suite 500
Walnut Creek, CA 94596

SENT VIA EMAIL TO: krem@lozanosmith.com

Dear Kelly Rem:

RE: HCD's Review of San Francisco Unified School District's Resolution No. 244-16Sp2 Declaring Properties Located at 95 Gough Street, San Francisco, CA 94102 as "Exempt Surplus Land"

Thank you for notifying the California Department of Housing and Community Development (HCD) of San Francisco Unified School District's (District) determination of the property located at 95 Gough Street, San Francisco, CA 94102 (Property) as "exempt surplus land."

HCD reviewed Resolution No. 244-16Sp2 (Resolution) pursuant to Section 400 of the Surplus Land Act Guidelines. As explained below, HCD finds that the Property qualifies as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(N), as amended effective on January 1, 2024.

Analysis

According to the Resolution, the Property will be for the sole purpose of investment or generation of revenue to directly further the express purpose of the District's work and operations, including enhancing District infrastructure and providing potential work force housing for teachers and staff. The District found and declared the Property "exempt" surplus property.

Conclusion

Based on the documentation provided, HCD finds that the Property qualifies as "exempt surplus land" under Government Code section 54221, subdivision (f)(1)(N). The Agency is permitted to proceed disposition of the Property as described in the Resolution.

Kelly Rem
Lozano Smith LLP
Page 2

If you have any questions or need additional technical assistance, please contact Helen Morales, Senior Housing Policy Specialist, at Helen.Morales@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Laura Nunn". The signature is written in a cursive, flowing style.

Laura Nunn
Senior Manager, Housing Accountability Unit
Housing Policy Development