

Surplus Public Land

What Local Agencies Need to Know

October 26, 2021



ASSOCIATION OF BAY AREA GOVERNMENTS
METROPOLITAN TRANSPORTATION COMMISSION



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Welcome

To learn more about our work on public land,
email Mark Shorett: mshorett@bayareametro.gov

HCD's Implementation of the Surplus Land Act

California Department of Housing &
Community Development

Division of Housing Policy
Development



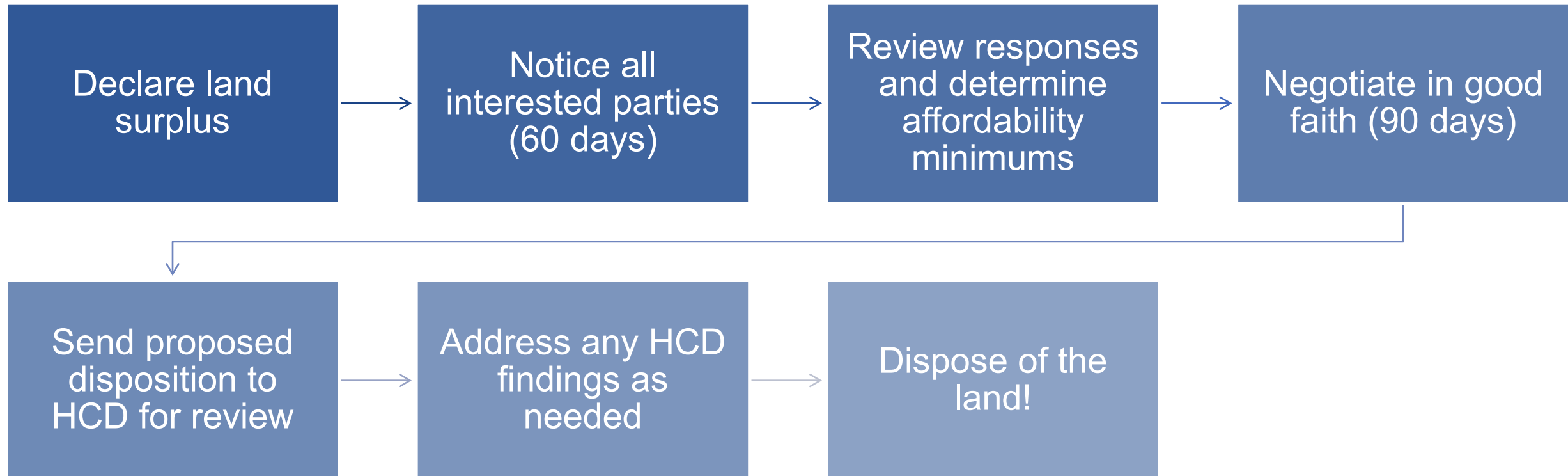


What is the Purpose of the Surplus Land Act?

- Provide more affordable housing options in all parts of the state
- Cities, counties, and special districts have land that can reduce cost barriers to housing development
- Surplus Land Act requires local agencies to make land available for affordable housing before selling or leasing the land for another purpose



Surplus Land Act Standard Process





Key considerations for compliance

- **Declare** the land surplus
- Surplus land must be **noticed** to HCD, affordable housing groups and other interested parties for 30 days
- **Affordability** component required for housing built on surplus land
 - 25% affordability minimum when responses include affordable options
 - No less than 15% affordability if no affordable interest in responses
- **90 Day Good Faith Negotiation Period**
- HCD reviews transactions prior to disposition of land
 - **30 days for HCD** to make findings
 - **60 days for local agency** to address findings
- Penalties for non-compliance with noticing (Re-notice the interested parties)
- **Penalties** for improper disposition
 - 30 percent of land cost for 1st violation
 - 50 percent of land cost for 2nd violation



Alternative Pathways

“Grandfathering”

The pre-AB 1486 version of the Surplus Land Act applies if there was an Exclusive Negotiating Agreement before September 2019

Streamlining for Properties Destined for Affordable Housing

Must meet certain criteria in the Surplus Land Act.

Official Exemptions from Standard Process

(Still requires HCD review and other requirements)

Land Unlikely to be Suitable for Affordable Housing

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

Land Restricted for Other Public Uses

Land restricted for another use (parks, schools, etc.) transferred to federal/state government, land traded for other land to be used by the local agency, etc.



Process for an Alternative Disposition

1. Identify property that may qualify for exemption from standard process
 - If the agency is unsure, it should consult HCD to confirm
2. Declare the publicly-owned land as **exempt** surplus
[Exempt from standard process not exempt from Surplus Land Act]
3. Notice according to the applicable alternative process
4. Dispose of the land according to the applicable alternative process



Other Cases that Lie Outside the Scope of the Surplus Land Act

Besides the 14 official exemptions from the standard process, the following transactions do not fall under the Surplus Land Act:

1. **“Agency’s use”** – Land that supports the core mission and operations of the agency that owns the land, and meet certain requirements. Generally excludes purely commercial or revenue-generating uses.
2. **Short-term leases** – Land leases for a term of less than five years
3. **Leases that do not allow demolition or redevelopment of the property**

Governing board does not need to pass a resolution to declare land as surplus or exempt surplus



Tips and Best Practices for Local Agencies

Develop basic in-house familiarity with the Surplus Land Act

Survey and catalogue the potential surplus properties

Have a general sense of whether and how the Surplus Land Act applies for each property

Gather documents and reach out to HCD to confirm understanding of Surplus Land Act applicability and process



Successes



Rendering of the Hollywood Arts Collective project under construction in Los Angeles; the project received an affordable housing exemption under the SLA.

- To date, HCD reviewed:
- 128 exempt surplus land declarations
 - 82 full dispositions
 - Overwhelming majority have been approved



Successes

- The Surplus Land Act is helping to create housing!
- Through the Surplus Land Act, HCD has approved:
 - **1986 housing units** (1502 affordable and 484 market rate)
 - **807 new units** of housing (**1176 affordable**) through alternative pathways; dispositions exempt from the standard process (e.g., 100 % Affordable Housing, Mixed Use)
 - **695 new units of affordable housing** through the standard process
- These new homes help jurisdictions and the state meet their housing goals (Regional Housing Need Allocations)



How can HCD help? – Technical Assistance

- HCD is committed to helping jurisdictions navigate this law.
We have:
 - Re-deployed policy staff to assist with responding to questions and developing informational materials
 - Brought in additional capacity for legal analysis
 - Forthcoming trainings to “de-mystify” the Surplus Land Act and proactively address stakeholder concerns



Website Resources Walkthrough

Our webpage hosts a variety of resources, reference materials, and templates that will help you navigate the Surplus Land Act:

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

Contact us at publiclands@hcd.ca.gov

- This inbox is staffed each weekday



Compliance Self-Assessment Form

Question #	Question	Answer	Compliance Warning	Applicable Gov Code	Supporting Documentation Needed
	Notice Timing Questions				
1	On what date was the land declared surplus?			54221(b)(1)	Resolution from governing board declaring the property surplus
2	On what date was the notice of availability sent?			54222(a)	Copy of email or certified mail receipt from date on which notices of availability were sent
3	Was the notice of availability sent to all local public entities, as defined in Section 50079 of the Health and Safety Code, within whose jurisdiction the surplus land is located and all housing sponsors, as defined by Section 50074 of the Health and Safety Code, that have notified the Department of Housing and Community Development of their interest in surplus land?			54222(a)	List of entities notified
	AB 1486 Exemption Question Numbers 4 and 5				
4	By September 30, 2019, did the local agency dispose of the surplus land site, contract to dispose of the site or enter into an exclusive negotiating agreement regarding the site?			54234(a)(1)	Please provide one of the following. A copy of a legally binding document to dispose of the property, a copy of an exclusive negotiating agreement, or a description of either document.
5	If you answered "Yes" to question #4, will the disposition be completed by December 31, 2022? (If you answered yes to both Questions 4 and 5, you do not need to fill out the remainder of this form. You are exempt from the changes made to the Surplus Land Act that took effect January 1, 2020, but still subject to the Surplus Land Act as it existed prior to that date.)			54234(a)(1)	Please provide one of the following. A copy of a legally binding document to dispose of the property, a copy of an exclusive negotiating agreement, or a description of either document. If you plan to use a lease option, or have a lease option in place, please contact HCD for guidance.
	Surplus Land Property Sale to Interested Entity Question Numbers 6 through 9				
6	After issuing a notice that surplus lands were available, did any entity express interest in purchase or lease of the land? If "No" skip Question 7.			54222(a)(1)	Copy of Notice of Availability/Copies of Notice of Interest if Available
7	Subsequent to good faith negotiations no longer than 90 days, is there an entity ready to purchase or lease the surplus land? If "Yes" skip Question 8.			54223(a)	Copy of the contract for lease or transfer or a description thereof.
	If no entity indicated interest, or no entity successfully negotiated a purchase or lease of the surplus land under Section 54222.5, will the				Copy of the contract for lease or transfer or a



Thank You!

Questions?



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Thank You

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Appendix A: Alternative Pathways from Standard Surplus Land Act Process

Category	Criteria
“Grandfathering” – Previous version of Surplus Land Act as it existed on December 31, 2019 still applies	<p>Land subject to Exclusive Negotiating Agreement or other binding agreement (Government Code Section 54234(a)) if:</p> <ul style="list-style-type: none">• Exclusive Negotiating Agreement/agreement was entered into on or before September 30, 2019.• AND disposition completed on or before December 31, 2022 <p>Land held in community redevelopment property trust or designated in long-range property management plan i (Government Code Section 54234(b)) if:</p> <ul style="list-style-type: none">• An Exclusive Negotiating Agreement/agreement to dispose was entered into on or before December 31, 2020.• AND disposition is completed on or before December 31, 2022

Category	Criteria
Land Dedicated to Affordable Housing – Must meet certain criteria	<p>Land transferred for affordable housing by a City or County (Government Code Section 37364 or 25539.4) if:</p> <ul style="list-style-type: none"> • 80 percent or more of the area is used for development of housing • 40 percent of the total number of those housing units affordable to households at 60 percent of AMI <ul style="list-style-type: none"> ○ Half of these affordable to very low income households • Affordability covenant of 30 years or more <p>Land put out to open, competitive bid for affordable housing (Government Code Section 54221(f)(1)(F)) if the proposed development is either:</p> <ul style="list-style-type: none"> • A housing development (w/ or w/o ground floor commercial) <ul style="list-style-type: none"> ○ 100 percent affordable to low or moderate income households ○ At least 75 percent affordable to lower income households ○ Maximum sales price or rent can't be higher than 20 percent below median market rents/sales prices <p>OR</p> <ul style="list-style-type: none"> • A mixed-use development <ul style="list-style-type: none"> ○ more than one acre in area ○ not less than 300 housing units ○ restricts at least 25 percent of the residential units to lower income households ○ Affordability covenant - 55 years for rental housing/45 years for ownership housing

Category	Criteria
<p>Land Unlikely to be Suitable for Affordable Housing</p> <p>– Small parcels, former streets, restrictions that prohibit housing</p>	<p>Land subject to valid legal restriction that prohibits housing (Government Code Section 54221(f)(1)(G))</p> <ul style="list-style-type: none"> e.g., Land within the boundary of a national park. <p>Small parcels sold to owner of contiguous land (Government Code Section 54221(f)(1)(B)) that are either:</p> <ul style="list-style-type: none"> Less than 5,000 square feet in area OR Has no record access and is less than 10,000 square feet in area AND is not contiguous to land owned by a state or local agency that is used for open-space or low- and moderate-income housing purposes <p>Former street, right of way or easement conveyed to owner of adjacent property (Government Code Section 54221(f)(1)(E))</p> <p>Former parking lot land that meets the following requirements (Government Code Section 54221(f)(1)(K)):</p> <ul style="list-style-type: none"> has been transferred before June 30, 2019, by the state to a local agency pursuant to Section 32667 of the Streets and Highways Code has a minimum planned residential density of at least one hundred dwelling units per acre includes 100 or more residential units that are restricted to persons and families of low or moderate income, with an affordable sales price or an affordable rent <ul style="list-style-type: none"> not more than 20 percent of the affordable units may be restricted to persons and families of moderate income at least 80 percent of the affordable units must be restricted to persons and families of lower income as defined in Section 50079.5 of the Health and Safety Code. for a minimum of 55 years for rental housing and 45 years for ownership housing.

Category	Criteria
Land Restricted for Other Public Uses – Parks, schools, transferred to federal/state government, etc.	<p>Exchange of land for another property necessary for the agency’s use (Government Code Section 54221(f)(1)(C))</p> <p>Land transferred to another local, state, or federal agency (Government Code Section 54221(f)(1)(D))</p> <p>School district land (Government Code Section 54221(f)(1)(I))</p> <p>Real property used by a district for agency’s use (Government Code Section 54221(f)(1)(J))</p> <p>Surplus land that was granted by the state in trust to a local agency or that was acquired by the local agency for trust purposes by purchase or exchange, and for which disposal of the land is authorized or required subject to conditions established by statute (Government Code Section 54221(f)(1)(H))</p>