



UNDERSTANDING THE SURPLUS LAND ACT

PUBLIC LAND FOR PUBLIC GOOD
FEDERAL RESERVE BANK, SF
NOVEMBER 15, 2019

OVERVIEW



Government Code
sections 54220 – 54234



Must offer first for
park/open space, school,
or affordable housing use



Must prioritize affordable
housing development on
surplus land

“SURPLUS LAND”

Land not necessary for a local agency's use.

Must be declared by formal action at a public meeting

Cannot dispose of land until it is declared either “surplus” or “exempt surplus”

“LOCAL AGENCY”



Cities and counties



School districts



Transit agencies



Special districts – water, hospital, cemetery, etc.



Redevelopment successor agencies

“AGENCY’S USE”



Land currently used, OR



Planned to be used pursuant to a written plan adopted by local agency’s governing board



For or in support of agency work or operations



Does not include commercial or industrial uses or activities



Does not include disposal of land for investment or generation of revenue

“EXEMPT SURPLUS LAND”



Small sites, within coastal zone or within 1,000 feet of historic sites



Land being exchanged or transferred to another agency



Former street or right-of-way conveyed to adjacent owner



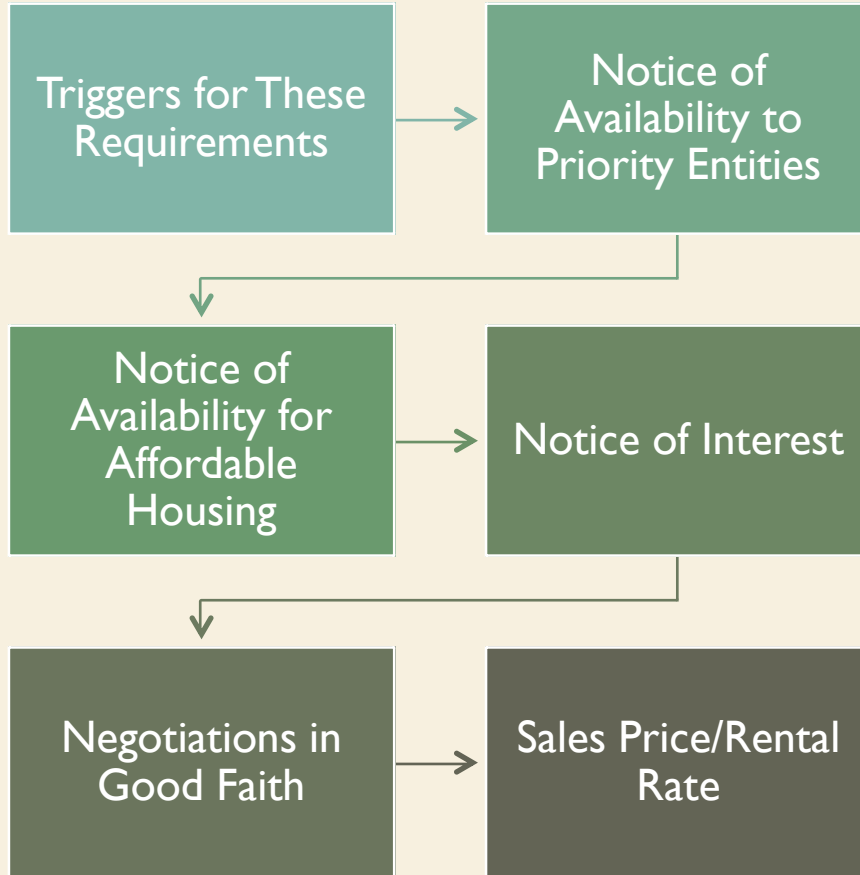
Land offered through competitive process for qualified affordable housing



Land subject to valid restrictions not imposed by the agency itself



Nonresidential land use designation or zoning does not make land exempt



DISPOSITION STEPS

WHEN DO REQUIREMENTS APPLY



“Prior to disposing of or participating in negotiations to dispose of surplus land”



Cannot start talking to potential buyers until these steps are followed



Some preliminary work is OK

NOTICE OF AVAILABILITY



Send notices to specified agencies



Public agencies and affordable housing developers (for affordable housing)



Parks and recreational districts and State Resources Agency (for parks/open space)



Local school districts (for schools)



Public entities in infill opportunity zones

NOTICE TO AFFORDABLE HOUSING ENTITIES



California Dept of Housing and
Community Development (HCD) –
maintains list on website



Public entities within the jurisdiction



Housing sponsors/developers listed
with HCD



Must contain at least 25% for lower
income households

NOTICE OF INTEREST



Interested qualified entities must notify disposing agency within 60 days of notice of availability

PRIORITY AMONG OFFERS



Most affordable units



Deepest level of
affordability (average
affordability)



May negotiate with all
housing entities
simultaneously

GOOD FAITH NEGOTIATIONS

Must negotiate in good faith for at least 90 days

Cannot prohibit residential use

Cannot reduce maximum density or lot coverage

Cannot require additional design standards if they have adverse impact on viability or affordability to lower or moderate income

SALE PRICE OR LEASE TERMS



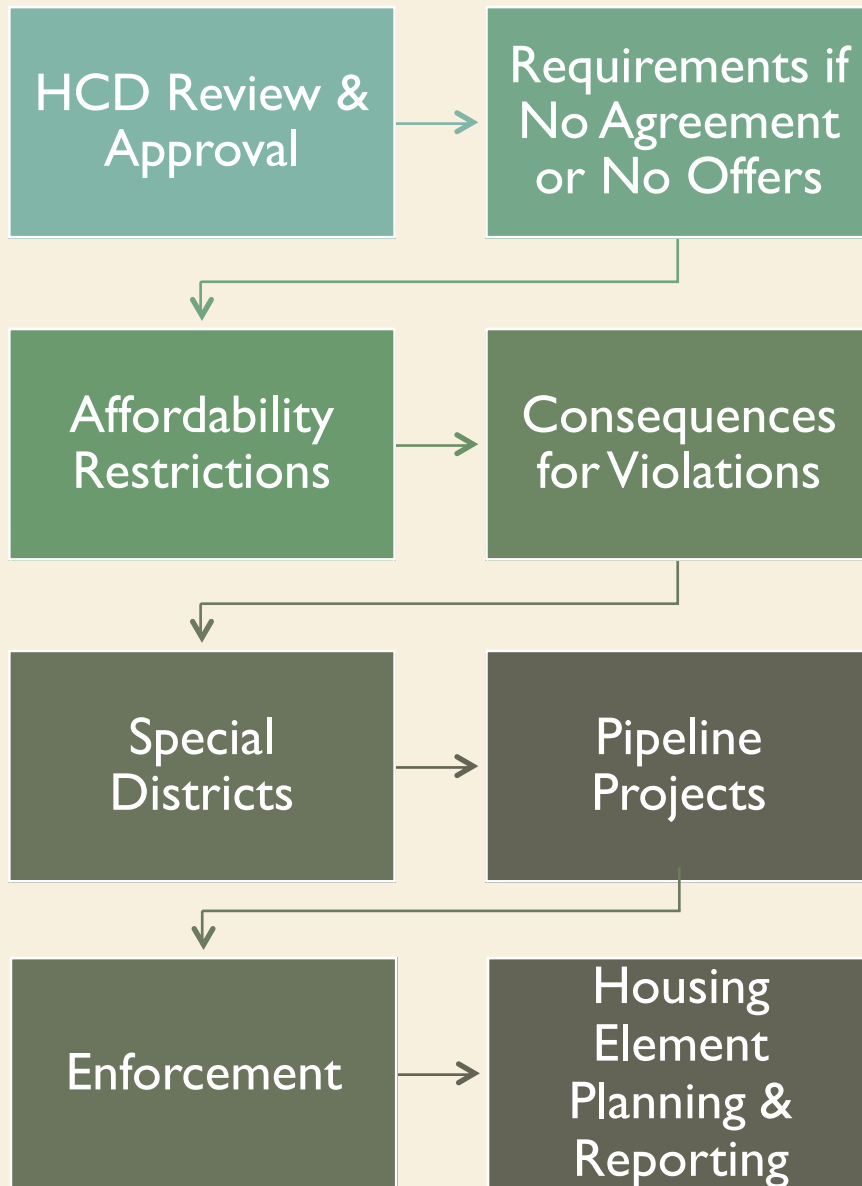
May sell or lease at full market value



May sell or lease for less than full market value



Not a gift of public funds



POST-NEGOTIATION AND OTHER REQUIREMENTS

HCD REVIEW AND APPROVAL

HCD review/approval required starting Jan 1, 2021

Description of notices and negotiations

Copy of affordability restrictions

HCD has 30 days to submit written findings to local agency

Agency has 60 days to respond

Must correct issues or provide findings why HCD's determination is incorrect

HCD may reject local agency findings and notify agency of violation

NO AGREEMENT OR NO OFFERS

May sell without further obligations under the act, except

If site is subsequently developed as residential with 10 or more units, at least 15% must be affordable to lower income

Must have recorded restrictions

AFFORDABILITY RESTRICTIONS

Rent not to exceed 30% of 60% of “area median income” (AMI)

55 year rental restrictions

Housing cost (mortgage, taxes, insurance, utilities, HOA fees) not to exceed 30% of 70% of AMI

Ownership units require an equity sharing agreement

CONSEQUENCES FOR VIOLATIONS

Cannot invalidate a sale

First offense – 30% of sales price

Subsequent offenses – 50% of sales price

Funds to local housing trust fund or State housing fund

SPECIAL DISTRICTS



Special districts (hospital, water, cemetery, etc.) are mostly not covered



If disposing of residential land must ensure 15% of housing units are affordable to lower income



Transit agencies **NOT** considered special district for this purpose

PARCELS NOT SUBJECT TO NEW AB 1486 PROVISIONS



ENAs prior to 9/20/19



Former RDA property –
ENAs prior to 12/31/20



Must complete disposition
by 12/31/22 to keep
exemption

ENFORCEMENT



HCD review



Challenging a disposition



Enforcing affordability restrictions

HOUSING ELEMENT PLANNING & REPORTING



Housing Element site inventory must describe any plans to dispose of jurisdiction's surplus land



Must describe how jurisdiction will comply with Surplus Land Act when disposing of identified sites



Annual Progress Report must include disposition status of any jurisdiction property included in site inventory

FOR MORE INFORMATION...

Jeffrey Levin

Policy Director

East Bay Housing Organizations

jeff@ebho.org

Michael Rawson

Director

Public Interest Law Project

mrawson@pilpca.org