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”**

<table>
<thead>
<tr>
<th>Land currently used, OR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planned to be used pursuant to a written plan adopted by local agency's governing board</td>
</tr>
<tr>
<td>For or in support of agency work or operations</td>
</tr>
<tr>
<td>Does not include commercial or industrial uses or activities</td>
</tr>
<tr>
<td>Does not include disposal of land for investment or generation of revenue</td>
</tr>
</tbody>
</table>
“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

1. Triggers for These Requirements
2. Notice of Availability to Priority Entities
3. Notice of Availability for Affordable Housing
4. Notice of Interest
5. Negotiations in Good Faith
6. Sales Price/Rental Rate
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
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 & Approval → Requirements if No Agreement or No Offers

Affordability Restrictions → Consequences for Violations

Special Districts → Pipeline Projects

Enforcement → Housing Element Planning & Reporting
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.
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 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