

Surplus Land Act: Know the Impact Before You Transact



LEAGUE OF
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What is the Surplus Land Act?

The Surplus Land Act (SLA), originally enacted in 1968, was modified in 2020 (AB1486), to ensure availability of property for affordable housing development.

Under the new SLA structure, public agencies that want to sell or lease a property must go through a structured sale disposition process that first requires exposing the property to a state published list of affordable housing developers and other interested parties.

Communities at Crossroads: An Opportunity to Use Surplus Properties for a Vital Future

Private sector investor momentum has shifted, and consumer preferences have changed.

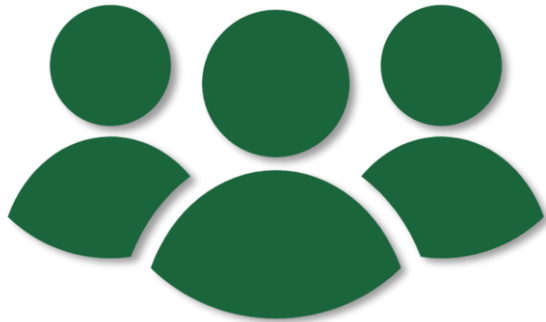
The post-COVID economy is a new world – retail is rightsizing from e-commerce, the office market is sideways from telework, industrial is booming, and housing is in high demand.

The housing shortage has led to an avalanche of state policy requirements imposing density, zoning standards, and *redirecting the disposition of local public agency owned real estate (aka...Surplus Land Act).*

Beyond SLA compliance, cities have a timely opportunity to review their property portfolio, leverage private sector momentum, and advance their community's objectives for economic development, resiliency, and housing.

What is the Reconfigured Economy?

The New Consumer / Investor / Policymaker Mindset.



Consumers driven by quality of life, cost of living and housing, amenities, essentials, and experiences

Want it all in a 15-Minute Community

Investors driven by new technology, shifting demand, supply chain anomalies, and new live / work patterns

Seeking value from new demand drivers

City Hall driven by resident and employer needs & new state policies which seek to install housing

Tension: Comply with state priorities vs. achieving community priorities in a post covid digital world (RHNA, Density Bonus, SLA)

Key Land Use Trends for Economic Development



Housing is Not a Loss Leader, it's a Growth Driver

Retail is Not Just Retail Anymore

Telework is Reconfiguring Office

Industrial / Distribution is Critical for Your Economy

Housing Creation as Economic Development

Retail Reimagination as Economic Development

Office Conversions as Economic Development

Industrial & Fulfillment as Economic Development

- New housing can generate significant new tax revenues and support local jobs
- Housing is not necessarily a net negative fiscal impact, especially at current property values

- US over-built on retail; ~25% of U.S. malls may close over next 5 years; COVID accelerated reuse
- Blended/mixed use projects integrate multiple uses (*housing, retail, open space, office, hotel*) onto one site

- Telework and work from home options are reshaping needs for office space & business districts
- Job redistribution tied to housing
- Vacancies can lead to reduced assessments and fiscal pressure

- Modern industrial is not “your father’s industrial” – not smokestacks
- Retail won't thrive without distribution
- Booming demand for distribution, e-commerce, and data centers, blending for fulfillment/delivery, job creators

Public Sector Perspectives

State Policy	Land Use	Economic Development
<p><u>State focused on housing production</u> especially in high-demand job centers and TOD</p> <p><u>New focus on housing policy enforcement</u> RHNA, Density Bonuses/HAA and SLA pressure cities to deliver homes</p> <p><u>SLA targets public agency owned property for affordable housing</u></p>	<p><u>Land use demands blending</u> retail centers w/ apartments; office conversions to residential; infill distribution for delivery</p> <p><u>Flexible zoning needed</u> for new integration</p> <p><u>Rethinking outdoor spaces</u> parks, green space, outdoor commercial, pedestrian orientation, entertainment, pop-up venues</p>	<p><u>Cities can't just focus on attracting large employers</u> make places with amenities, experiences, and housing that attracts workers</p> <p><u>Attracting workers and attractive housing is</u> as essential as job creation</p> <p><u>Strategy Matters</u> leveraging own resources and attracting state / local funds <u>Get ahead of the SLA by updating your asset plans</u></p>

Surplus Land Act (SLA) Overview

Origin

In a response to the massive Statewide housing shortage, State Legislature passed dozens of housing bills including AB 1486 (Surplus Land Act) to address this crisis.

Purpose

The SLA gives affordable housing developers a right of first refusal on all public agency owned land in the State of California. **Does not necessarily prevent agencies from ultimately selling or leasing property for other uses or fair market value.**

Mandate

Public Agencies in California (e.g., cities, counties, special districts, school districts, etc.), with certain exceptions, must follow this mandate prior to selling or leasing any public agency owned real estate.

Process

The SLA requires an up to 180-day request for proposal/bid process to either select or reject an affordable housing project/proposals. Once rejected, the property can be sold or leased to broader market.

New World of Surplus Land Act Requirements

The Old Days:

Want to sell / lease a City property? Just put out an RFP/Q

The New World Order:

The SLA requires public agencies to first go through a process of offering property to affordable housing developers before pursuing other opportunities.

Opportunity:

Public agencies should look at SLA as a “Value Capture”

Opportunity to more efficiently use public properties:

- Performance-based leases / ground leases
- Monetizing assets (such as civic centers, parking garages, etc.)
- Selling property to private sector – includes lease-back strategies, continued operation of existing use, redevelopment into new uses



HEADLINES

“Let’s Tap the Breaks.” San Diego Not Ready to Solicit Bids to Redo City Hall Complex
San Diego Union-Tribune, 1/9/23

[Santa Monica] Takes First Step Toward Offering Lease on Civic Auditorium, Other Site
Santa Monica Daily Press, 10/20/22

555 New Apartments Planned for South Natomas as Sacramento Sells Land to Developer
Sac Bee, 1/25/22

The Primary SLA Questions

What properties do you have?

What are they worth?

What is the highest and best use?

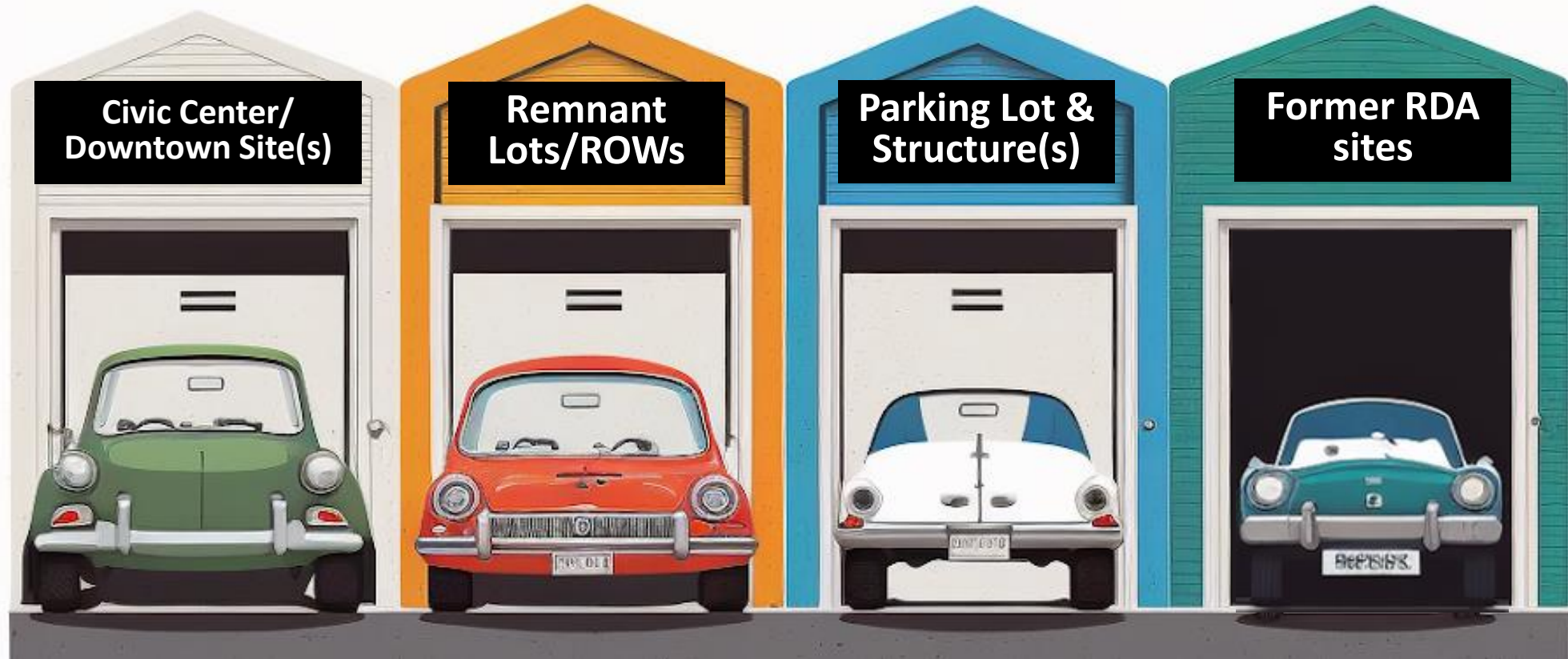
Do you want housing on these properties?

Do you want to use them for other purposes?

Public Use? Commercial Use? Special Conditions?

Is there an adjacent owner who wants the property?

The Big Question: What's in Your City's Property Garage?



And...what will it take to Get A Garage Sale Permit?

First, is Your Property Exempt?

Property can be declared “exempt surplus” if it falls under a few categories:

- **“Grandfathered” Land** – if City had agreement (e.g., ENA) in place prior to 9/2019, land is subject to a pre-AB1486 version of the SLA
- **Land Destined for Affordable Housing** - at least 75% units restricted for lower income families, or a mixed-use development with 300+ units and at least 25% restricted for lower income
- **Land Dedicated for Other Public Uses** – transferred to another agency or exchanged for another property for local agency’s use
- **Land Not Suitable for Affordable Housing** – former street, right-of-way, easement; small sites (less than 5k SF or less than 10k SF with no recorded accesses); sold to owner of contiguous land

The SLA Pathway to Affordable Housing

If Property is not “exempt surplus”, it must go through a noticing process to affordable housing developers and certain agencies:

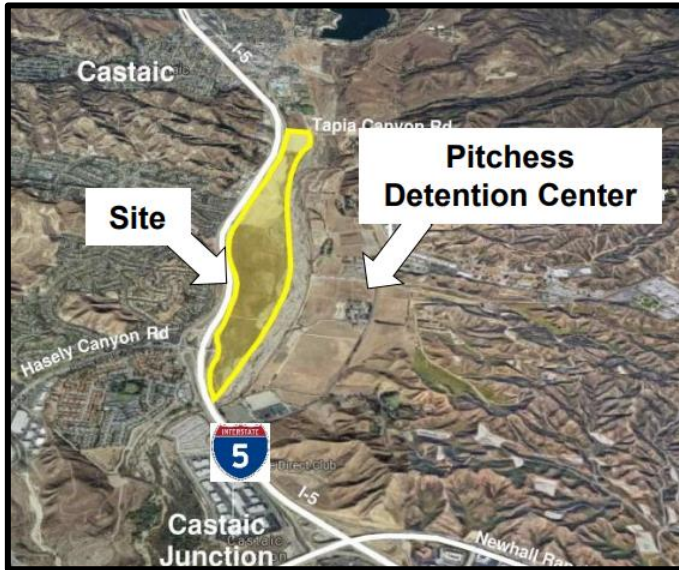
- Notice of Availability given to affordable housing developers
- Notice given to local agencies including school districts for school facilities and parks and recreation districts for open-space use (given priority to other proposals)
- Parties have 60 days to express interest and then provided 90 days to negotiate in good faith
- **City does not have to sell the property for less than fair market value**
- If agreement on price/terms not reached, then City can sell to other parties (Post HCD Approval)
- **Property that completes process is subject to covenant requiring any residential development w/10 or more units to provide at least 15% of units to lower income households**
- **Enforcement: If local agency does not comply with SLA, HCD will impose fine of 30% of final sale price for first violation, 50% of final sale price for second violation**

SLA: Steps for Disposition Process

Step 1	<ul style="list-style-type: none">• City declares property “surplus” or "exempt surplus" land• If exempt, then City pursues HCD concurrence by providing written findings• If not exempt, then City prepares Notice of Availability (NOA)
Step 2	<ul style="list-style-type: none">• City sends NOA to qualified affordable housing developers & other required public entities for 60 days
Step 3	<ul style="list-style-type: none">• If "Step 2" responses received, 90-day good faith negotiation period commences• If no responses received or negotiations at impasse (e.g. FMV), agency may negotiate with other non-affordable housing developers• Process will require HCD approval which can take up to 30 days for a Letter of Compliance
Step 4	<ul style="list-style-type: none">• Post HCD Approval, City may dispose of surplus land without regard to SLA• Agency must still record 15% affordability covenant, which is triggered if 10 or more units

Case Studies: SLA Compliance is Unique to Each Public Agency

Each Public Agency needs to devise a real estate disposition strategy that considers its own economic development priorities in light of SLA.



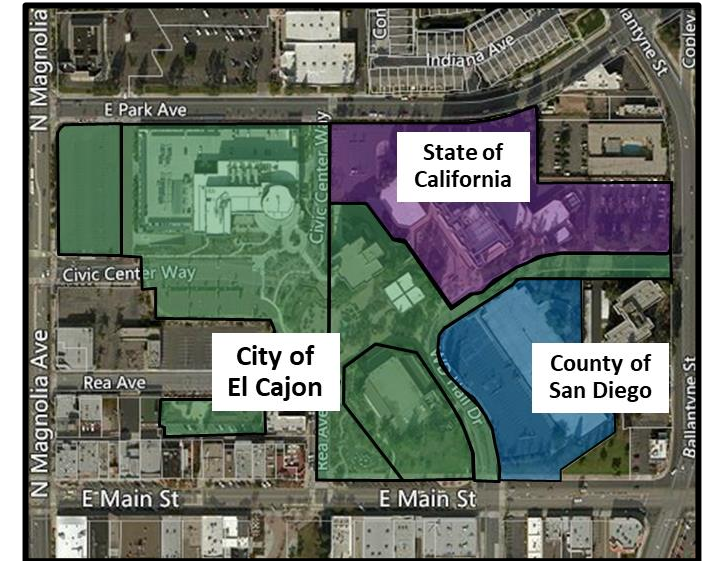
County of Los Angeles

- +/- 200 Acre Property
- Zoning: Heavy Agriculture
- \$229M flood risk mitigation, Adjacent to Detention Center
- **SLA Status:** Process completed, HCD certified, property brought to market via RFP



Moorpark Successor Agency

- +/- 1.8 Acre Property
- Zoning: Industrial
- Adjacent to Floodplain, Liquefaction issues
- Pre-Existing Agreement with Developer
- **SLA Status:** Pre-existing agreement did not close; property under City review



City of El Cajon

- +/- 20 Acre Property
- Zoning: Commercial, Downtown Master Plan
- Complex Civic Center Revitalization; County/State owners/users
- Reuse program requires public uses
- **SLA Status:** City reviewing alternatives

Compliance and Strategy: Key Steps to Successfully Navigate the SLA

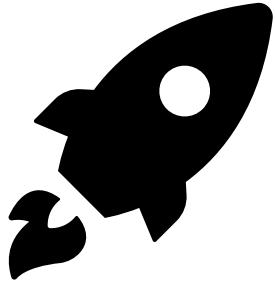
Strategy and execution go hand-in-hand with compliance. Cities need to act strategically and proactively to get the most out of their property assets and advance their goals.

1) Know Your Portfolio	2) Know Your Priorities	3) Know Your Strategies
<p>Understanding your agency's property portfolio is key</p> <p>Perform due diligence and prioritize potential portfolio of properties contemplated for disposition and/or development</p>	<p>Consider the variety of economic development priorities that you can use your properties to pursue:</p> <ul style="list-style-type: none">• Housing• Civic/Public amenity purposes• In conjunction with private projects• Other uses <p>Do you want to keep the property for public use or put into private service?</p>	<p>Make a strategic determination of which properties to keep or sell.</p> <p>Agencies can use a variety of strategies to increase market/reuse value of its land & comply with the SLA</p> <p>Be sure to consider CEQA / Entitlements & RHNA</p> <p>Align these property strategies with other economic development tools / approaches</p>

Primary Steps to SLA Success

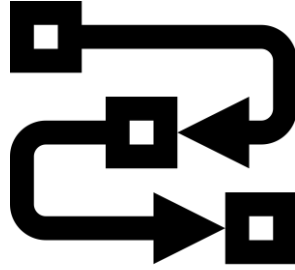
- 1 Property Inventory (*Start Early*)**
Identify priority properties and/or projects now that may be impacted by SLA & can be put into productive use.
- 2 Prioritize, Screen, & Select an Approach**
Confirm value, SLA applicability, Preferred Disposition Strategy/Use (e.g., asset monetization, sale or lease, public use, housing, etc.), Econ Dev Tools, & Financing Mechanisms.
- 3 Implementation (*Transparency is Key*)**
Execute preferred disposition (sale, lease, etc.) strategy that's done openly & fulfills community goals and objectives (job creation, tax revenues, housing)

Surplus Land Act: New Rules for Public Real Estate



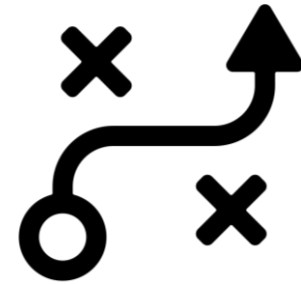
SLA Here to Stay

New rules being used for property disposition and housing creation



New Processes

Cities navigating evolving procedures and compliance



New Strategies

Time to be strategic: use property assets to pursue priorities

Sooner better than later. Cities should start NOW to review/evaluate property portfolio in alignment with econ. development goals/objectives

SLA is nuanced and circumstantial. Engaging HCD early in process is important to determination of compliance

Transparency is key. Promote the City's *repositioned* asset program to community to achieve HCD compliance

What's Next For SLA? There's More to Come

Bill	Sponsors	Summary
AB 480	Asm. Ting Sen. Umberg	Includes expanding exemptions, administrative process changes for declaring “exempt surplus land”, violation / penalty changes
AB 457	Asm. Patterson	Expand definition of “exempt surplus land” to include parcels smaller than 2 acres that are identified for future roadway development, are zoned / used for retail commercial use, and abut a state highway ROW
AB 837	Asm. Alvarez	Expands “exempt surplus land” to include land acquired by an agency to develop a university / innovation district in accordance with a plan (City of Chula Vista)
AB 983	Asm. Cervantes	Expands “exempt surplus land” to include land that is designated in an adopted downtown revitalization plan (area less than 1.1 square miles) and includes residential, commercial, office, civic and hospitality uses.
AB 510	Asm. Jackson	Exempts land placed into a local land trust / disposed out of a local land trust from the disposal requirements of the SLA
SB 747	Sen. Caballero	Administrative process for declaring property as “exempt surplus land”
SB 229	Sen Umberg	Open / public session for local agency to review notice of violation; prohibit agency’s governing body from taking final action to ratify/approve proposed disposal until a public session is held.
SB 34	Sen. Umberg Sen. Min Sen. Newman Asm. Quirk-Silva Asm. Ting	Makes legislative findings / declarations as to the necessity of a special statute for Orange County regarding notification / violation process
SB 693	Sen. Seyarto	Exempts specific parcels in the City of Murrieta from the SLA
AB 1734	Asm. Jones-Sawyer	Changes annual deadline of when cities must provide inventory of surplus land to HCD from April 1 st to March 1 st

What Needs to Get Done in Your Community?

How do I add housing, comply with RHNA, & address density?

How do I fix regional shopping centers and retail corridors ?

How do I replace sales tax?

How do I revitalize downtown?

How do I meet these escalating state requirements?

How do I meet the needs of today and prepare for the future?

How do I pay for constituent service demands?

Can sale or deployment of Surplus Assets help?