

IMPACT OF RECENT CHANGES TO THE SURPLUS LAND ACT

Karen Tiedemann

Erin Lapeyrolerie

Goldfarb & Lipman LLP

CalCities Fall 2021 Conference

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AGENDA

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- Statute and Guidelines Summary
- Greater Statutory Framework
- Efficacy of the Act
- Potential Changes

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STATUTE AND GUIDELINES SUMMARY

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THE SURPLUS LAND ACT

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- Government Code Sections 54220 et seq.
- HCD Guidelines, April 2021
- Recent amendments:
 - AB 1486
 - AB 1255
- Disposition and inventory of public property

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DISPOSITION PROCESS

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1. Declare land no longer necessary for “agency use” as surplus or exempt surplus at a regular public meeting
2. Provide notice of availability to specified agencies, including “housing sponsors,” (i.e., affordable housing developers) who have made requests to HCD for notice
3. Wait 60 days for responses and participate in negotiations for at least 90 days
4. Notice to HCD and cure or respond to deficiency findings
5. Finalize Agreement

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WHAT IS A DISPOSITION?

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- “Disposition of surplus land” means the sale or lease of agency-owned land formally declared surplus.
- For purposes of this subsection, “lease” shall not include a lease of land on which **no development or demolition will occur or which has a term that is less than five (5) years** (including any extensions, amendments or options). However, an enforceable option to lease, as defined by these Guidelines, will qualify as a lease for purposes of these Guidelines.

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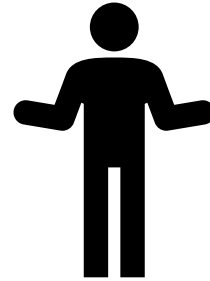
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1. SURPLUS OR EXEMPT SURPLUS

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Threshold process:

- Before disposing of any real property **no longer necessary for agency use**, a local agency must first declare the property **“surplus”** or **“exempt surplus”**
- The classification must be supported by written findings



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2. NOTICE OF AVAILABILITY (HOUSING)

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- Prior to negotiations or disposition, provide written notice of availability to:
 - HCD (to maintain a list)
 - Any local public agency within whose jurisdiction the surplus land is located
 - Housing sponsors
- For land in infill opportunity zone or transit plan, notice shall be sent to any county, city, city and county, successor agency to a former redevelopment agency, public transportation agency, or housing authority within whose jurisdiction the surplus land is located
- Also, notice specified entities for open space and land suitable for school facilities

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3. NEGOTIATIONS—RESPONSE TO NOTICE

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**Interested entity
respond within 60
days**



**Enter good faith negotiations
to determine satisfactory terms
over 90 days**

Multiple responses? Can negotiate
concurrently



**Proposed development
restricts at least 25%
of the units developed
for lower income
households**

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3. NEGOTIATIONS

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- If negotiations are successful, prior to finalizing terms for the disposition of surplus land, send HCD a description of the notices of availability sent and negotiations conducted with any responding entities, and a copy of any restrictions to be recorded against the property
- If no response or failed negotiations, disposition falls outside of the Act except if the land was ultimately sold for residential development of 10 or more units, then 15% inclusionary requirement

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HCD GUIDANCE

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- When to provide HCD notice:
 - Surplus Land
 - Notice of availability (includes reasonable conditions and restrictions)
 - Written notice of NOA withdrawal
 - Before straying from HCD's "sample negotiation process timeline"
 - Prior to finalizing agreements/disposition (description of NOA, description of negotiation, copy of restrictions recorded)
 - Exempt Surplus Land
 - 30 days prior to disposition of exempt surplus land (written findings)

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Penalties for Violation

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- Violations do not invalidate land dispositions
- 30% first violation and 50% for subsequent violations – to be used for affordable housing



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INVENTORIES

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- Inventory of surplus land requirement for cities and counties
- Report to HCD by April 1 annually

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GREATER STATUTORY FRAMEWORK

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SURPLUS LAND ACT-OTHER OPTIONS FOR DISPOSITION

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- Housing Authorities –
 - Regulated by the California Housing Authorities Law – Health and Safety Code Section 34200 et seq.)
 - Creates separate disposition process for properties if proceeds of sale are to be used directly to assist a low-income housing project
 - Specific language states that Housing Authority is not subject to any other statutes regarding disposition of property
 - Must hold a public hearing

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SURPLUS LAND ACT- OTHER OPTIONS FOR DISPOSITION

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- Surplus Real Property Act – Government Code Section 50568-
 - Lease or sell property for purposes of low and moderate income households
 - Must be sold or leased to nonprofits exclusively formed to provide affordable housing, limited dividend corporations, and housing corporations formed pursuant to the Community Land Chest Law
 - Deed must include a reversion of the land to the public agency when the ownership of the land is no longer held by an eligible entity
 - Required to hold a public hearing before disposition

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SURPLUS LAND ACT- OTHER OPTIONS FOR DISPOSITION

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- Government Code Section 25539.4 (Counties) and 37364 (Cities)
 - Property to be used for low and moderate income housing
 - At least 80% of the parcel must be used for housing
 - At least 40% of the housing units must be affordable:
 - 20% to low income households (50% of area median income)
 - 20% to households with incomes at or below 60% of area median income
 - Issues-
 - What constitutes the parcel – if property is subdivided after sale how is the 80% measured

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SURPLUS LAND ACT- OTHER OPTIONS FOR DISPOSITION?

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- Economic Development Conveyances- Government Code Section 52200-
 - Alternative disposition process for economic opportunity properties
 - Economic Opportunity- creates full time jobs, increases property taxes by at least 15%, creates affordable housing, meets GHG goals, transit priority projects
 - Public Hearing – reuse analysis
 - Statute states that process is an alternative to any authority to create an economic opportunity to sell or lease property found in law but does not limit or affect the application of any other such laws
 - Does Economic Development Conveyances conflict with SLA?

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EFFICACY OF THE SURPLUS LAND ACT

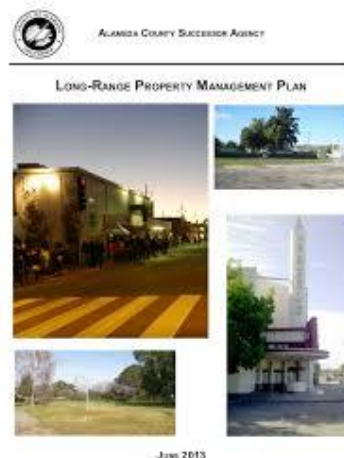
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Application of SLA – Former Redevelopment Sites

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SLA Amendments now explicitly cover former Redevelopment Agency properties covered in a long range development plan or held by the property trust

- ❑ Directly contradicts the dissolution statutes that require the disposition of property expeditiously and for maximum value or
- ❑ For development consistent with Redevelopment Plan



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Application of SLA - Former Military Bases

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- SLA Amendments appear to include disposition of former military base property transferred to local agencies
 - Conflict with economic development conveyance process under the federal Base Closure laws?
 - Impacts on short term leasing



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AMENDMENTS TO SLA - EXISTING AGREEMENTS

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- Amendments make special exceptions for Exclusive Negotiating Agreements or other binding agreements entered into before the Amendments but only if conveyance is completed before December 31, 2022
 - Are the Amendments Retroactive?
 - How do the Amendments impact long term disposition agreements?

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Contract negotiations

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- Limited grounds to reject an offer under Guidelines
 - Cannot agree on sales price or lease terms
 - Priority is given to a competing offer that includes a greater number of affordable units or, in case of a tie in the number of units, the lowest average level of affordability; or
 - Interested entity is not responsive to a local agency's reasonable conditions or restrictions as described in the NOA as reviewed by HCD

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PROMOTING AFFORDABILITY AND INTEGRATION

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- Financing projects on sites with restrictive covenants
 - Required form covenant
 - Inability to release form covenant
- No off-site option?

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PROPOSED CHANGES TO THE SLA

SURPLUS LAND ACT- LEGISLATIVE CHANGES

- AB 1271 – two year bill - military base exemption if 25% of the housing built is affordable
- SB 719 – two year bill - limited exception for Tustin Air Force Base
- SB 791 – on Governor’s desk - establishes California Surplus Land Unit within HCD
- AB 1180 – enacted – expands definition of exempt surplus land to include land transferred to a recognized tribe

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CONCLUSION

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TAKEAWAYS

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- Document findings, send requested information to HCD, and use HCD forms
- Provide information on key conditions and restrictions in NOA, if possible
- Pay attention to other laws that regulate land disposition

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THANK YOU!

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Karen Tiedemann (ktiedemann@goldfarblipman.com)
Erin Lapeyrolerie (elapeyrolerie@goldfarblipman.com)

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