

# *Surplus Land Act: Know the Facts Before You Transact*



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**CALIFORNIA  
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**League of California Cities**

**Kosmont Companies**

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# Session Overview

<b>Larry Kosmont</b> Chairman & CEO Kosmont Companies	Introduction, Overview & Trends
<b>David Zisser</b> Assistant Deputy Director CA Dept. of Housing & Community Development	SLA Implementation & Compliance
<b>Troy Brown</b> City Manager City of Moorpark	Public Agency Perspective
<b>Matthew Cody</b> Of Counsel Best Best & Krieger	SLA Transactions & Documentation



# Overview & Trends – Larry Kosmont

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The Surplus Land Act (SLA), originally enacted in 1968, was modified in 2020 (AB1486), to ensure availability of property for affordable housing development.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

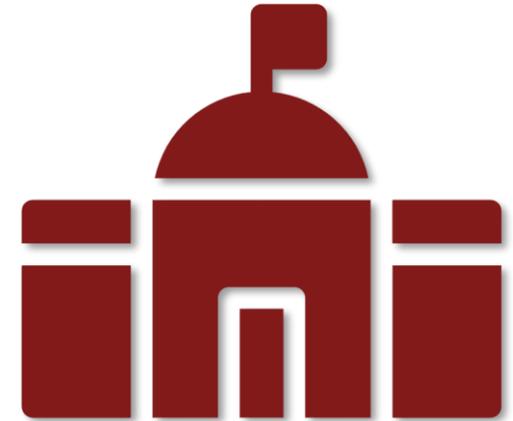
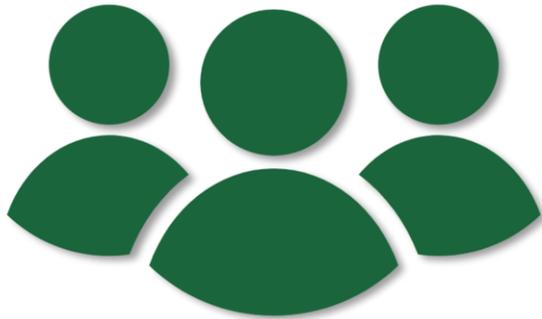
The post-COVID economy is a new world – retail is rightsizing from e-commerce, the office market is sideways from telework, industrial is booming, and housing is in high demand.

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

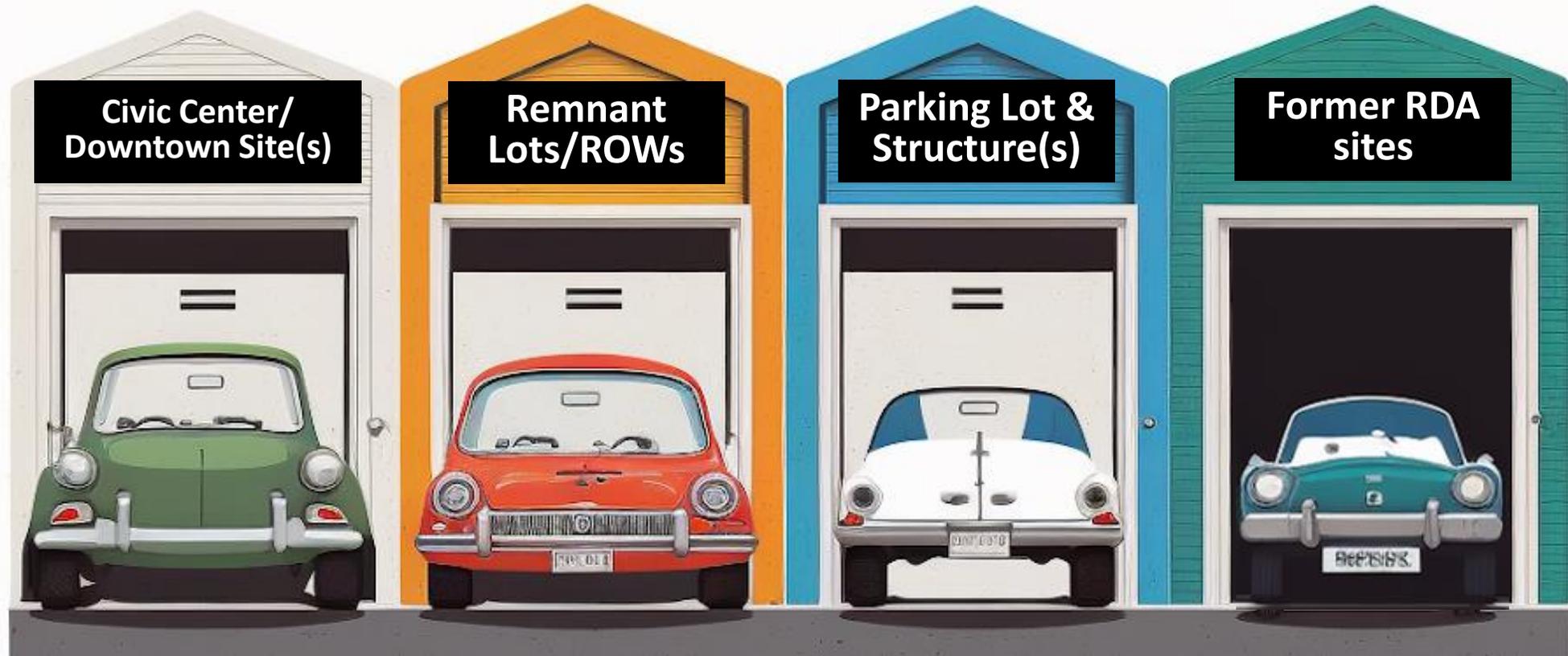
**Do you want housing on these properties?**

**Do you want to use them for other purposes?**

**Public Use? Commercial Use? Special Conditions?**

**Is there an adjacent owner who wants the property?**

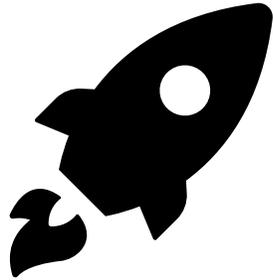
# The Big Question: What's in Your City's Property Garage?



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

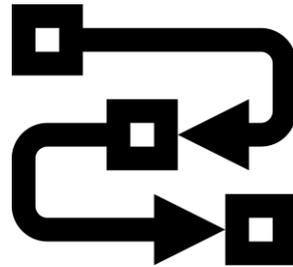
# Post COVID Economy: Opportune Time to Use Real Estate Tools

*New Rules & New Tools for Cities to Deploy Strategically and Proactively*



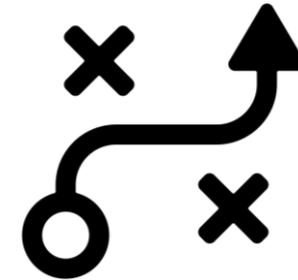
## SLA Taking Off

New rules being used for property disposition and housing creation



## New Processes

Cities navigating evolving procedures and compliance



## New Strategies

Cities using property assets strategically to pursue priorities

### *Today's Program*

**David Zisser** will provide insights re HCD's compliance & implementation

**Troy Brown** will explain the City of Moorpark's SLA approach

**Matthew Cody** will discuss SLA transactions, documentation, & key issues



HCD's Insights regarding SLA Implementation – David Zisser

# HCD's Implementation of the Surplus Land Act (SLA)

League of California Cities Conference

Sacramento, CA

April 13, 2023





## What is the Purpose of the Surplus Land Act (SLA)?

- 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
- SLA requires local agencies to make land available for affordable housing before selling or leasing the land for another purpose



# Successes



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

As of 3/17/23, HCD has received:

- 525 exempt surplus land declarations
- 237 full dispositions
- Overwhelming majority have been approved

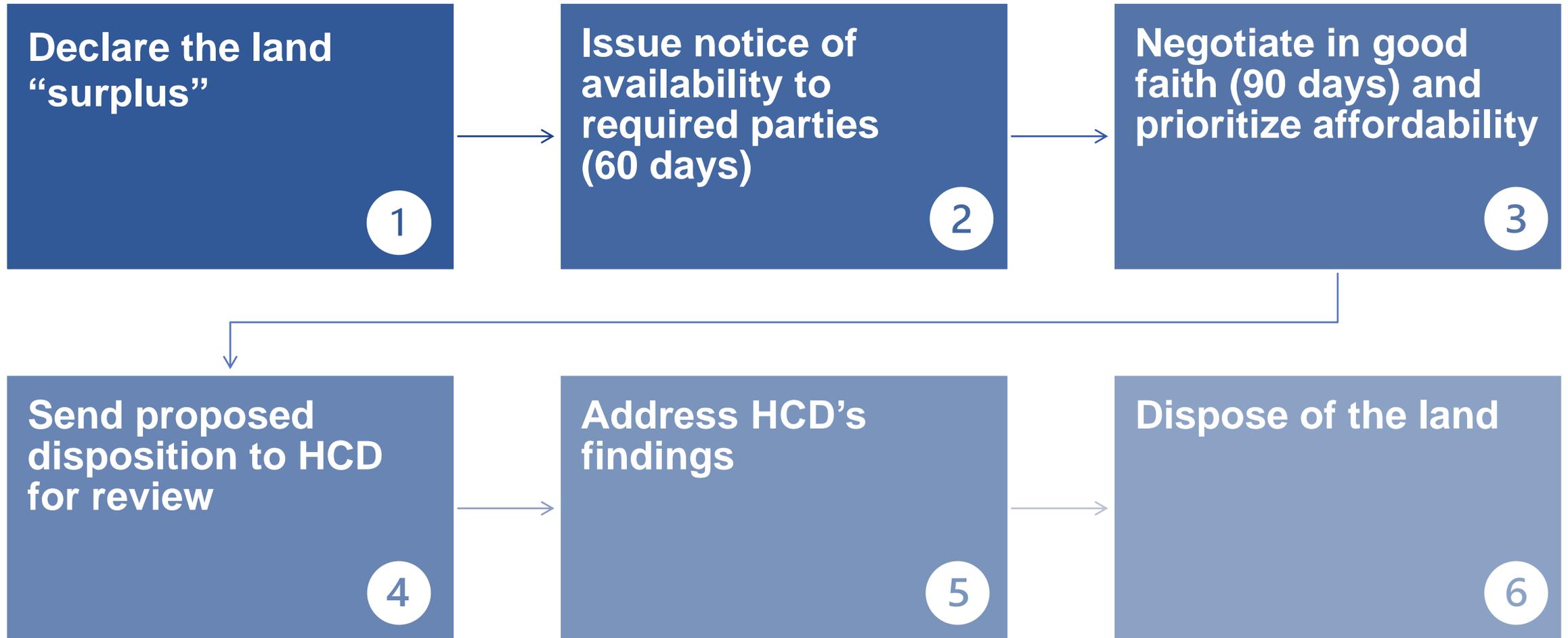


## Successes

- The SLA is helping to create housing!
- Through the SLA, HCD has approved dispositions as of 3/17/23 proposing:
  - **8,387 housing units (5,800 affordable)**
- These new homes help jurisdictions and the state meet their housing goals (Regional Housing Need Allocations)



# Standard SLA Process for Surplus Land





# Declaring property as “Exempt Surplus”

## “Grandfathering”

The version of the SLA in effect before 12/31/2019 applies if the local agency entered into an exclusive negotiating agreement or other legally binding agreement to dispose of property before a certain date

1

## Land for Affordable Housing

Must meet certain criteria in the SLA

2

### Exemptions from standard SLA process

*Still requires HCD review and other requirements*

## Land dedicated 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.

3

## Land not suitable for housing

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

4



# Other Cases that Lie Outside the Scope of the SLA

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

## **1. Short-term leases**

- Land leases for a term of less than five years

## **2. Leases that do not allow demolition or development of the property**

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



# Tips and Best Practices for Local Agencies

Develop basic in-house familiarity with the SLA

Survey and catalogue the potential surplus properties

Have a general sense of whether and how the SLA applies for each property

Gather documents and reach out to HCD to confirm understanding of SLA applicability and process



## Flexibility

- Notice of Availability may include “reasonable conditions or restrictions.”
- If the local agency does not agree to price and terms with an entity, then it may dispose of the property outside of the SLA.
- Exemptions.
- Meeting affordability requirements through multiple buildings.
- HCD is available to walk through the options with local agencies.



## How can HCD help? – Technical Assistance

- HCD is committed to helping jurisdictions navigate this law:
  - Assist with responding to questions
  - Develop informational materials
  - Provide legal analysis
  - Provide trainings to “de-mystify” the SLA and proactively address stakeholder concerns



# Updates and Resources Available

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

- [Guidelines](#) – **Updated guidelines expected this year**
- [SLA 101 PowerPoint](#), [FAQs](#), and [Exemption User Guide](#)
- Lists of [Notices of Availability Received](#) (w/map) and [Developers Interested in Surplus Property](#)
- Sample [Notice of Availability](#) and [Covenant/Deed Restriction](#) Forms
- [Compliance Self-Assessment](#)

## Contact us

- For requests for technical assistance, email [publiclands@hcd.ca.gov](mailto:publiclands@hcd.ca.gov)
- To report potential violations, email [compliancereview@hcd.ca.gov](mailto:compliancereview@hcd.ca.gov)



**Thank You!**



# City of Moorpark Perspective – Troy Brown

# Step 1

## Ask Yourself: How Did we Get Here?

Public Agencies acquire parcels for a variety of reasons. Understanding this will demystify the question of "why".

**Economic Development** – Purchase / acquisition of properties for strategic reasons.

**Remnant parcels** from planned development.

**Revitalization** – remove blight and hold for future development of adjacent parcels/properties.

**Public Uses** - Public Safety facilities, municipal facilities, parks, capital improvements, strategic open spaces.

**Affordable Housing** - acquire parcels through Redevelopment Agencies for future affordable housing and other Regional Housing Needs (RHNA).

**And More....**



# Step 2

## Open the Garage!

Identify and Analyze holdings

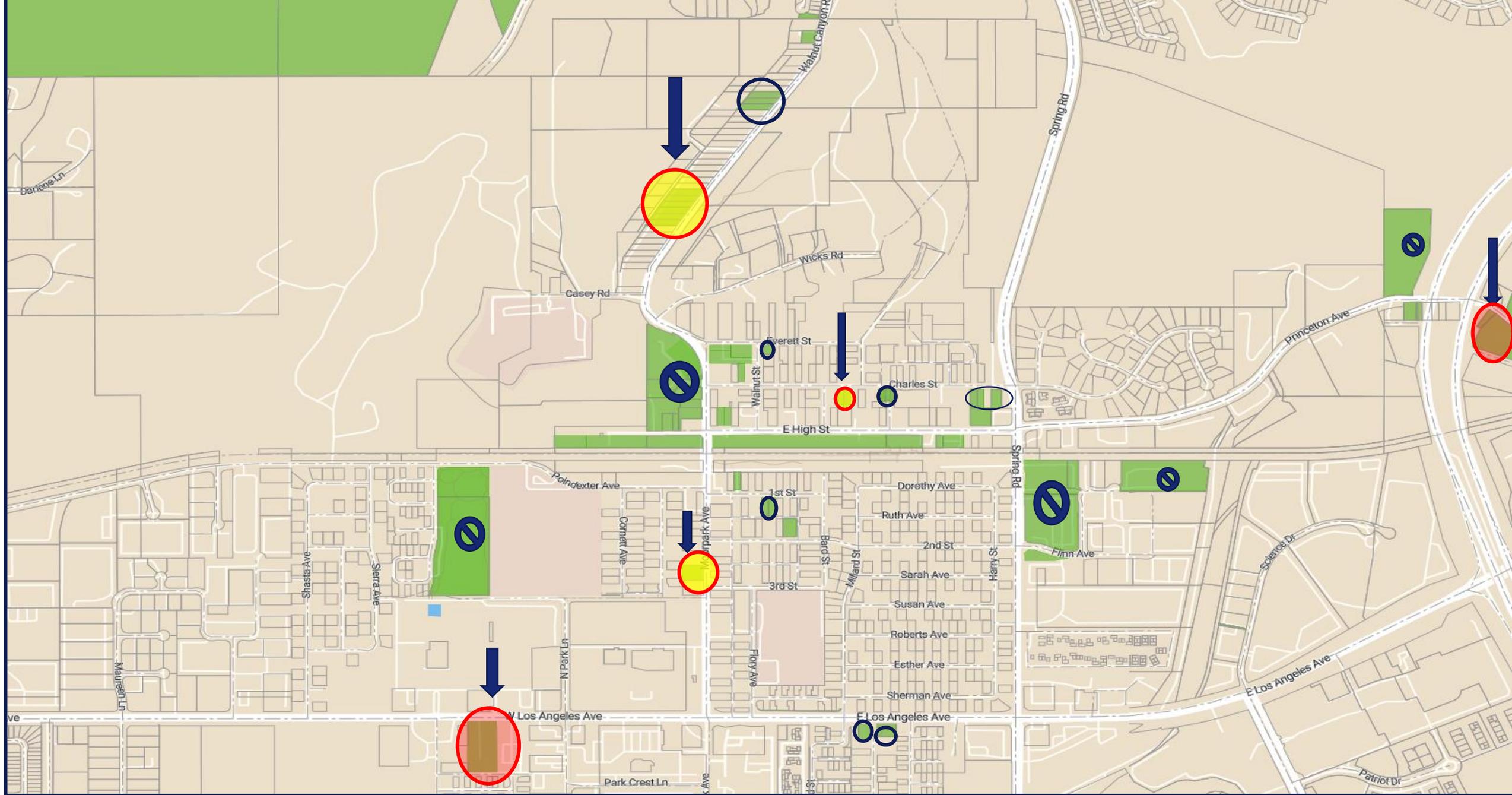
Review the extent of your inventory

Take stock in what exist and make preliminary findings

Part 1 - Assess current and future needs, forget about the past.

Part 2 - Fully grasp the gravity of your properties. Are there 20 parcels? 40? >60?





City of Moorpark Publicly Held Properties - 2019

# Step 3

## What Sources of Funds?

Understanding the source of funding used for property acquisitions will provide clarity in the anticipated use and help guide the disposal process.

### **General Fund**

**Redevelopment/Housing Set Aside** – see Long Range Property Management Plan (LRPMP)

**Grants / subversions** – Check for rules and restrictions

**Bonds** – Review covenants

**Enterprise Funds** – for capital improvements



# Step 4

## Develop the Story/Strategy

Organize what you know

Review Capital Improvement Plan for relevancy

Review Long Range Property Management Plan

Consider Successor (or other) Agency/bond implications

Identify priorities

Get versed in Surplus Land Act / coordinate with City Attorney

Finalize Strategy and Recommendations



# Final Step

## Review with Legislative Body

Prepare **briefing** memo and distribute in advance

**Answer any questions** in advance and if necessary meet individually to address questions

### Closed Session

List each property to be discussed – start with most urgent

Verify direction, timing and outcomes

Seek approval to begin process, negotiations

Determine any exceptions to be included in Notices



# Implement

Know the **side rails** established by City Council, funding sources, SLA etc.

Engage in **good faith** negotiations.

Expect the unexpected - have a **Plan B!**

Be **resolute** and make consistent **progress**

- If you don't have dedicated staff, get help.





# SLA Key Compliance Aspects and Processes – Matthew Cody



# Key Compliance Aspects and Processes

# Questions we've been hearing

---

- What if I declared the property surplus ages ago?
- Any tips for my Notice of Availability
- When negotiating, what latitude does a city have?
- What other laws do I need to think about?

# Property declared surplus pre-AB 1486

- Did you comply with the SLA that was in place at the time you declared it surplus?
  - Yes
    - you don't need to declare it surplus again and go through the NOA process
    - You will need to record the restrictive covenant against the property
  - No (declared it surplus but never issued the NOA)
    - You will need to go through the NOA process
- Tips
  - Find your staff report, notice of availability or any evidence of negotiations
  - Submit all the documentation you have to HCD to demonstrate compliance with the SLA at the time you declared it surplus

# Notice of Availability

- Accurately describe the property
  - Describe all its warts and limitations
- Identify the City's desires for the property
  - If you want a mixed use project, say so.
- Identify what you want in the developer's responsive notice of interest
  - You can't weigh proposals if all you get is "yes, I'm interested" from the developer
  - Ask for a description of what they will build. Number of units? Mixed use? Affordability levels?
  - You cannot determine order of priority without some details
  - Incomplete responses burn up negotiation time (90 days required)

# Negotiation Latitude

- What is “good faith negotiation?”
  - City can’t disallow residential use as a condition of disposal
  - City can’t reduce the number of units or max lot coverage below what is allowed by zoning or GP requirements
  - City can’t apply design stds or arch requirements that substantially effect the viability or affordability of the housing development
- City **DOES NOT** have to sell at below fair market value
- City **MAY** limit residential use or density if specific findings can be made

# Ending Negotiations

- Grounds to reject an offer:
  - If the city and buyer can't agree on a sales price or lease terms
  - When the city is giving priority to a competing offer that includes a greater number of affordable units, or if there is a tie in the number of units, then lowest average level of affordability
  - When the developer is not responsive to the city's reasonable conditions or restrictions as described in the NOA

# What else do I need to think about?

- CEQA
  - There is a CEQA exemption for selling surplus land but it doesn't apply if selling for a specific project.
- Relocation
  - Is the property occupied? You may need to pay relocation expenses
- Prevailing wages
  - Selling below market?
  - Developer funding sources?
- SB 330/SB 35/Density Bonus
  - Projects developed on surplus land can take advantage of other laws designed to facilitate housing development

# What else do I need to think about?

- Exemptions – Due Diligence and HCD Consultation
- Annual Inventory
  - Cities/counties must prepare by 12/31 each year an inventory of surplus land and all land in excess of cities/counties foreseeable needs
    - Surplus land : land no longer necessary for agency use and has been declared surplus
    - Excess land: land that is beyond an agency's foreseeable needs but has not been declared surplus yet
    - Available to anyone who requests it and submitted to HCD by 4/1 each year as part of the HE annual progress report
  - Inventory details
    - Address or location information
    - APN
    - Existing use
    - Whether site is surplus or excess
    - Size in acres

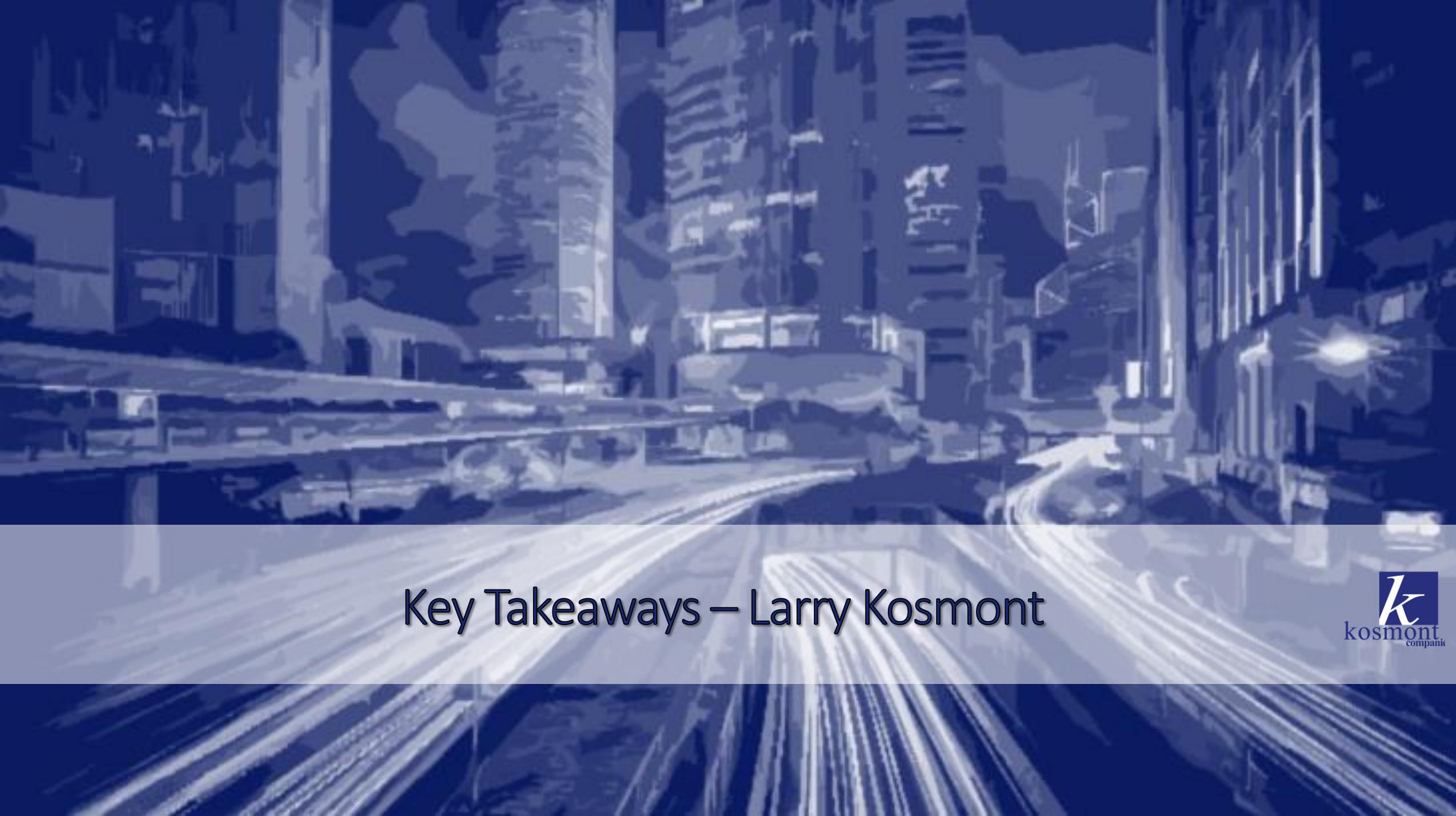


Questions?

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# Key Takeaways – Larry Kosmont

# Compliance and Strategy: Key Steps to Successfully Navigate the SLA

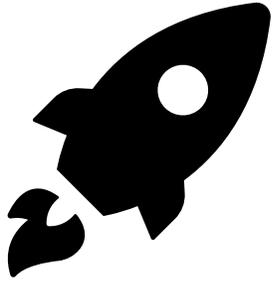
Strategy and execution go hand-in-hand with compliance. Cities need to act strategically and proactively to get the most out of their property assets and advance their goals.

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"> <li>• Housing</li> <li>• Civic/Public amenity purposes</li> <li>• In conjunction with private projects</li> <li>• Other uses</li> </ul> <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 &amp; comply with the SLA</p> <p>Be sure to consider CEQA / Entitlements &amp; RHNA</p> <p>Align these property strategies with other economic development tools / approaches</p>

# Primary Steps to SLA Success

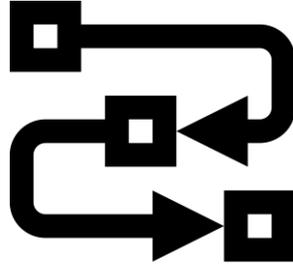
- 1 Property Inventory (*Start Early*)**  
*Identify priority properties and/or projects now that may be impacted by SLA & can be put into productive use.*
- 2 Prioritize, Screen, & Select an Approach**  
*Confirm value, SLA applicability, Preferred Disposition Strategy/Use (e.g., asset monetization, 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



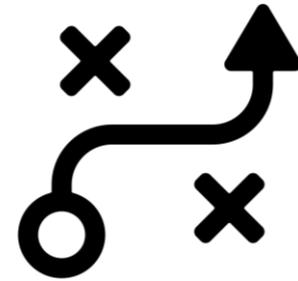
## SLA Here to Stay

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
<b>AB 480</b>	Asm. Ting Sen. Umberg	Includes expanding exemptions, administrative process changes for declaring “exempt surplus land”, violation / penalty changes
<b>AB 457</b>	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
<b>AB 837</b>	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)
<b>AB 983</b>	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.
<b>AB 510</b>	Asm. Jackson	Exempts land placed into a local land trust / disposed out of a local land trust from the disposal requirements of the SLA
<b>SB 747</b>	Sen. Caballero	Administrative process for declaring property as “exempt surplus land”
<b>SB 229</b>	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.
<b>SB 34</b>	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
<b>SB 693</b>	Sen. Seyarto	Exempts specific parcels in the City of Murrieta from the SLA
<b>AB 1734</b>	Asm. Jones-Sawyer	Changes annual deadline of when cities must provide inventory of surplus land to HCD from April 1 <sup>st</sup> to March 1 <sup>st</sup>

# 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?*

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