

ASSETS AND OPPORTUNITIES: Surplus Land Act

Genesis Crank
City of Barstow



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& Whatley, PC

The logo for Colantuono, Highsmith & Whatley, PC is a dark blue rectangular box containing the firm's name in white, serif, all-caps text, stacked in three lines.

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SURPLUS LAND ACT

- The Surplus Land Act regulates the sale and transfer of publicly owned property.
- Under the Surplus Land Act, City-owned land must first be designated “surplus land” or “exempt surplus land” before it can be sold or exchanged.

AB 1486 – Significant Amendments



Revised the definition of surplus land



Substantially expanded what property is exempt from the Surplus Land Act process – ‘Exempt Surplus Land’



Requires all dispositions be reported to the Department of Housing and Community Development

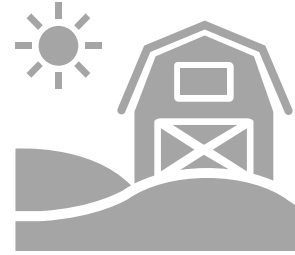


Continuing affordability requirements for 10+ units

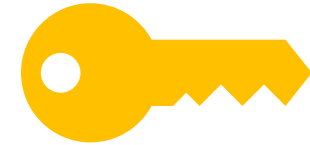
Surplus Land Requires Declaration



Definitions. Property owned by the City must be declared either “surplus land” or “exempt surplus land” before the City disposes of it, with certain exceptions.



“Surplus land” - is land owned by a local agency unnecessary for the agency’s use *and* declared surplus by the agency’s governing body through a formal action in a regular public meeting.



Key – Affirmative Decision to Declare Surplus

Exempt Surplus Land

- Small – generally less than 5,000 sq ft, or less than 10,000 sq ft if no record access, & conveyed to adjacent owner
- Government Agency Land Exchange
- Former street, right of way, or easement conveyed to an owner of an adjacent property.
 - Id. at subd. (f)(1)(E).
- Certain Competitively Bid Housing and Mixed Use Projects, if:
 - 100% low or moderate income affordable or mixed use over 300 units & 25% affordable
- Land subject to legal restrictions (not City imposed) prohibiting housing
- State trust lands



Exempt Surplus Land Process



**City declares land
exempt surplus land**



**Notification to HCD – 30
days before disposition**



**Dispose of exempt
surplus land as intended**

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Declaration of Surplus Land

- City Council must find the land is “not necessary for the agency’s use”
 - Assess current usage, mid and long term plans
 - Consider General Plan Consistency
- Document via Resolution declaring the property surplus and directing staff to take further steps to dispose of the land consistent with the Surplus Land Act

Notice of Availability.

Once a property is declared surplus land, the City must then send a notice of availability "for the purposes of developing low- and moderate income housing" to:

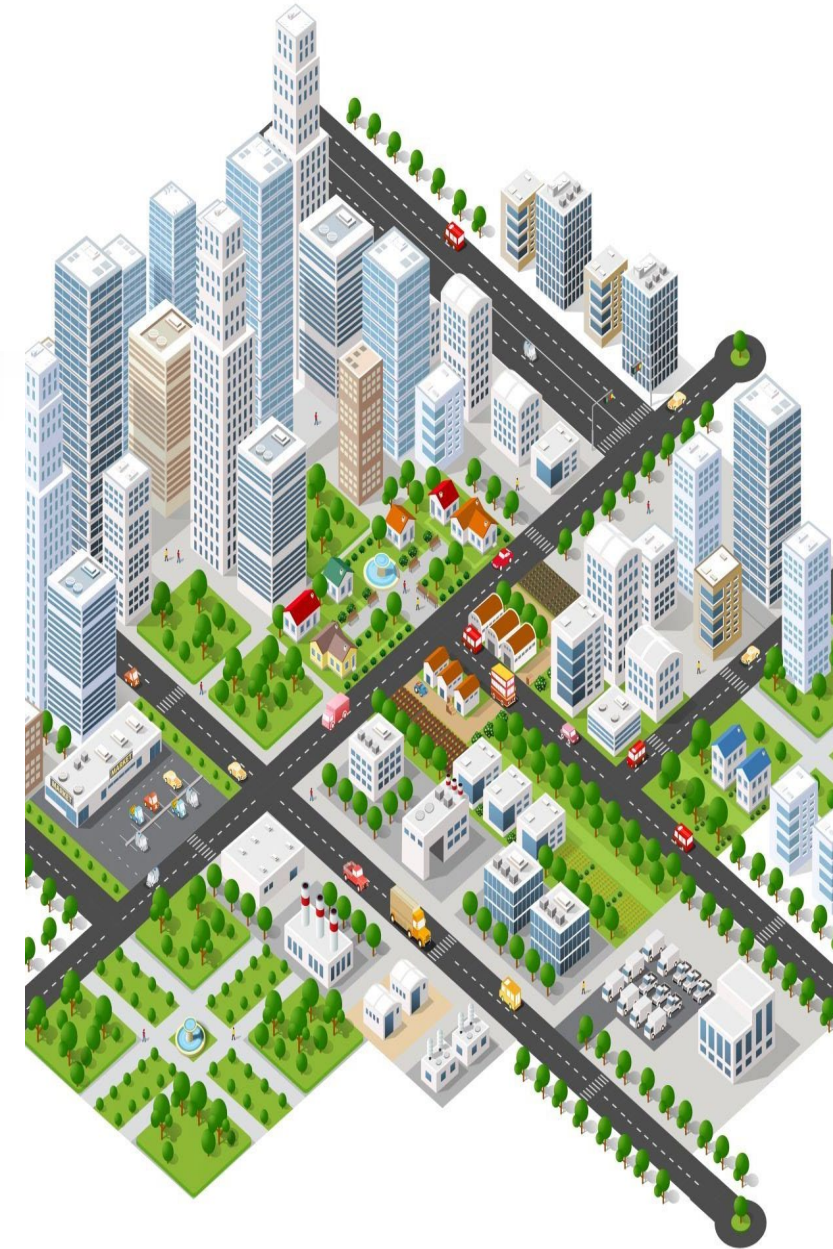
(1) Housing and Community Development

(2) certain local public entities whose jurisdiction covers the land,

(3) housing sponsors - developers of affordable multi-family rental housing certified by the California Housing Finance Agency per HCD list

Additional Notifications

- City must also notify these entities:
- For open-space, any park or recreation department of any city, county, any regional park authority, and the State Resources Agency;
- For land suitable for school facilities construction or use by a school district for open-space, any school district; and
- To develop property within an infill opportunity zone or covered by a transit village plan, any county, city, successor agency to a former redevelopment agency, public transportation agency, or housing authority.



Responses?



An entity desiring the surplus land must respond in writing within 60 days of the notice of availability.



City must enter into good-faith negotiations to determine mutually satisfactory price and terms – up to 90 days.



City cannot begin negotiations with others until after sending the notice of availability & cannot dispose until concluding any agency negotiations.

Affordable Housing Priority



City must give priority to affordable housing proposals.



Sort first by unit count, then by deepest average level of affordability.



If the notice of interest proposes development of low- or moderate-income housing, it must include at least 25 percent of the units developed affordable, with rental units set at affordable rates for at least 55 years.

Prohibited terms

- City Cannot:



- Disallow residential use of the site as a condition of the disposal
- Reduce the allowable number of residential units or the maximum lot coverage below zoning or general plan
- Require design standards with “a substantial adverse effect on the viability or affordability of” an affordable housing development beyond minimum general plan, zoning, and subdivision standards
- City retains authority to approve land use, zoning, and entitlement decisions
 - Consider Housing Accountability Act.

No Responses, or No Deal

- **If negotiations do not result in an agreement within 90 days, City may dispose of the land without further regard to the Surplus Land Act – except for:**
- **Notice to HCD**
- **Future Contingent Affordability Restrictions.**
 - If 10 or more residential units are developed on the property, at least 15 percent of the units must be sold or rented as affordable housing to lower income households for a period of at least 55 years for rental housing and 45 years for ownership housing.

Notice to HCD

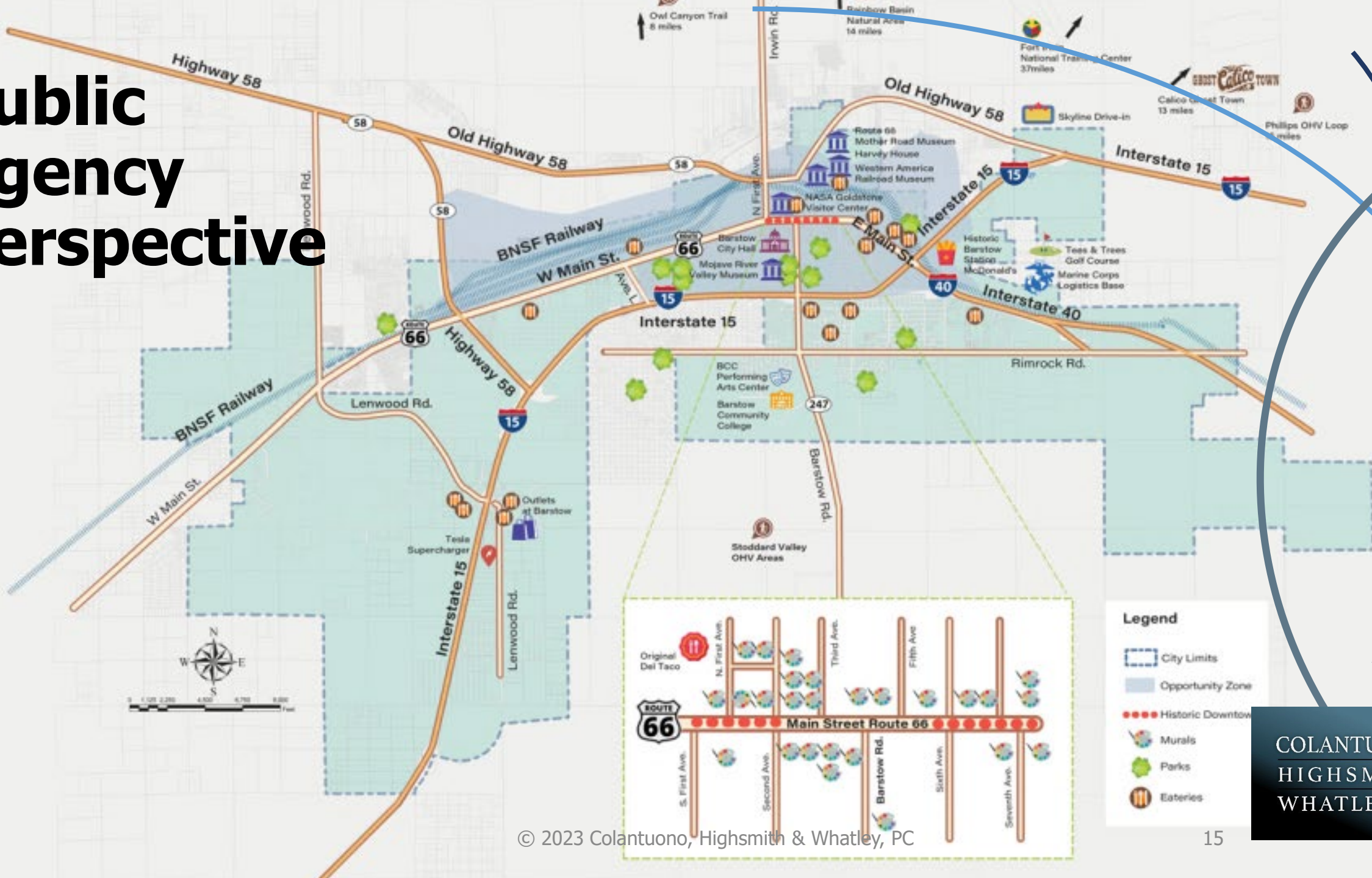
City must submit the notices of availability sent and information regarding negotiations conducted with any responding agencies

HCD has 30 day to submit written findings to the City

If HCD does not respond within 30 days, then the City may proceed with the sale.

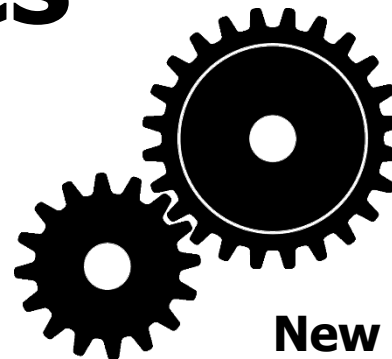
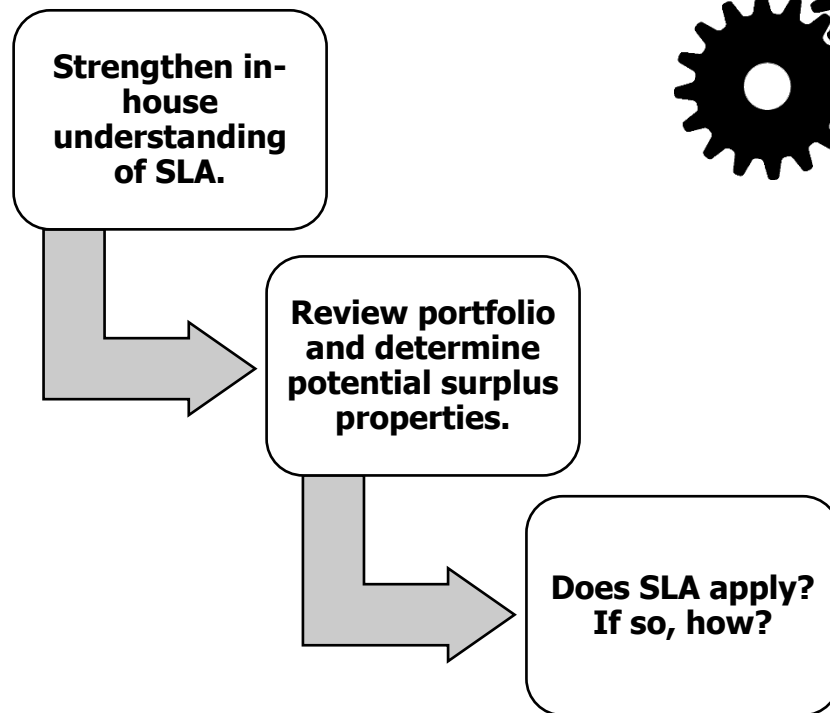
If HCD provides findings that the proposed disposal will violate law, then the City is given a reasonable time, at least 60 days, to respond to the findings before taking other action.

Public Agency Perspective



Public Agency Practices

- **The Surplus Land Act affords public agencies the opportunity to get the most out of their property assets and consider a variety of ways to better utilize the value of their properties.**

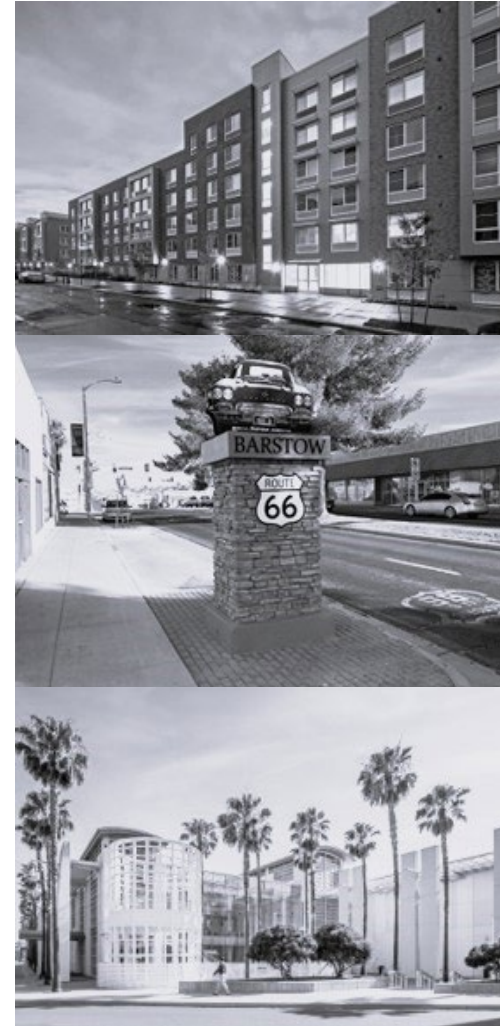


New strategies could lead to new opportunities to pursue current priorities.

Considering Community Needs

Following review of your agency's portfolio, consider the variety of development priorities that you can use your properties to pursue.

- Affordable housing.
- Public use versus private use.
- Public/Civic amenities.
- Monetizing assets.

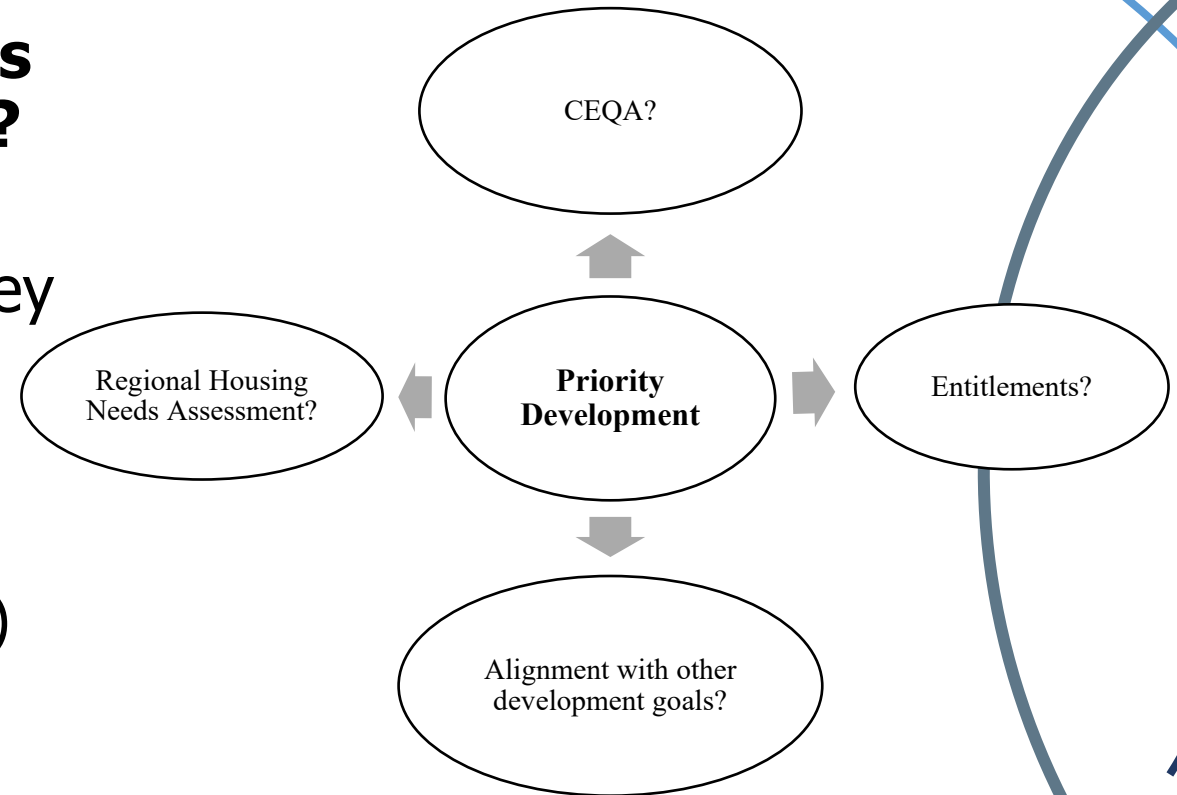


Understanding Agency Strategy

Your agency portfolio has been reviewed and community priorities have been discussed, what's next?

Once an agency determines which properties to keep and which to sell, key considerations should be discussed to formulate agency strategy, such as:

- Development entitlement process.
- CA Environmental Quality Act (CEQA) concerns and/or restrictions.
- Agency's Regional Housing Needs Assessment (RHNA).
- Does the development proposal meet both the needs of today and the future?



Surplus Land Act in Action

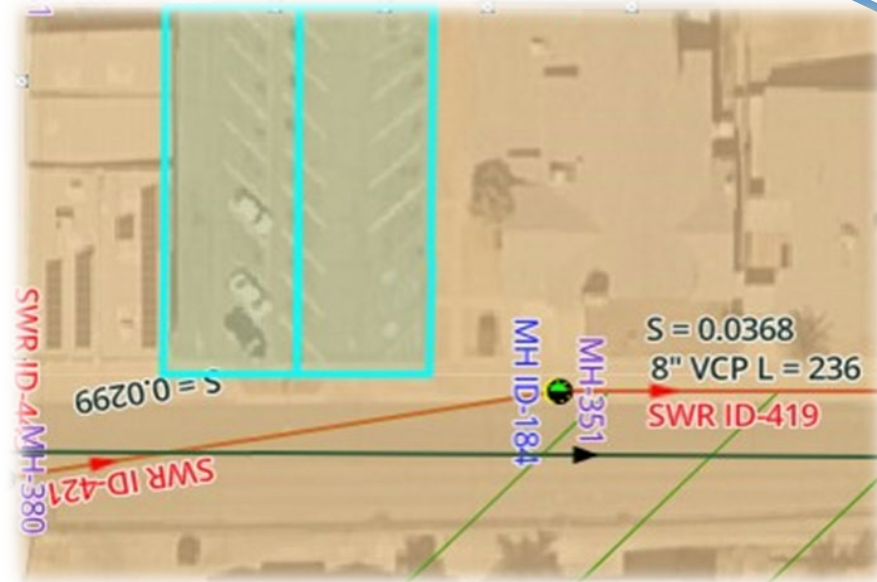
Following a recent review of our current portfolio, the City of Barstow declared nine (9) City owned properties as surplus land.

Parcel Characteristics:

- 0.1 – 0.2 acres.
- All currently used as off-site parking.
- Some contiguous.
- Public Facilities (PF) zoning district.

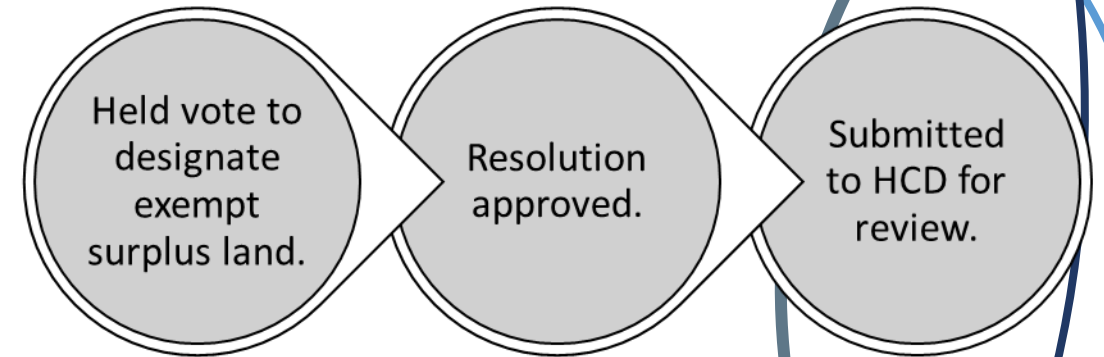
City Considerations:

- Within Downtown area.
- Current zoning versus future uses.
- City intends to market the vacant land for its highest and best use(s).



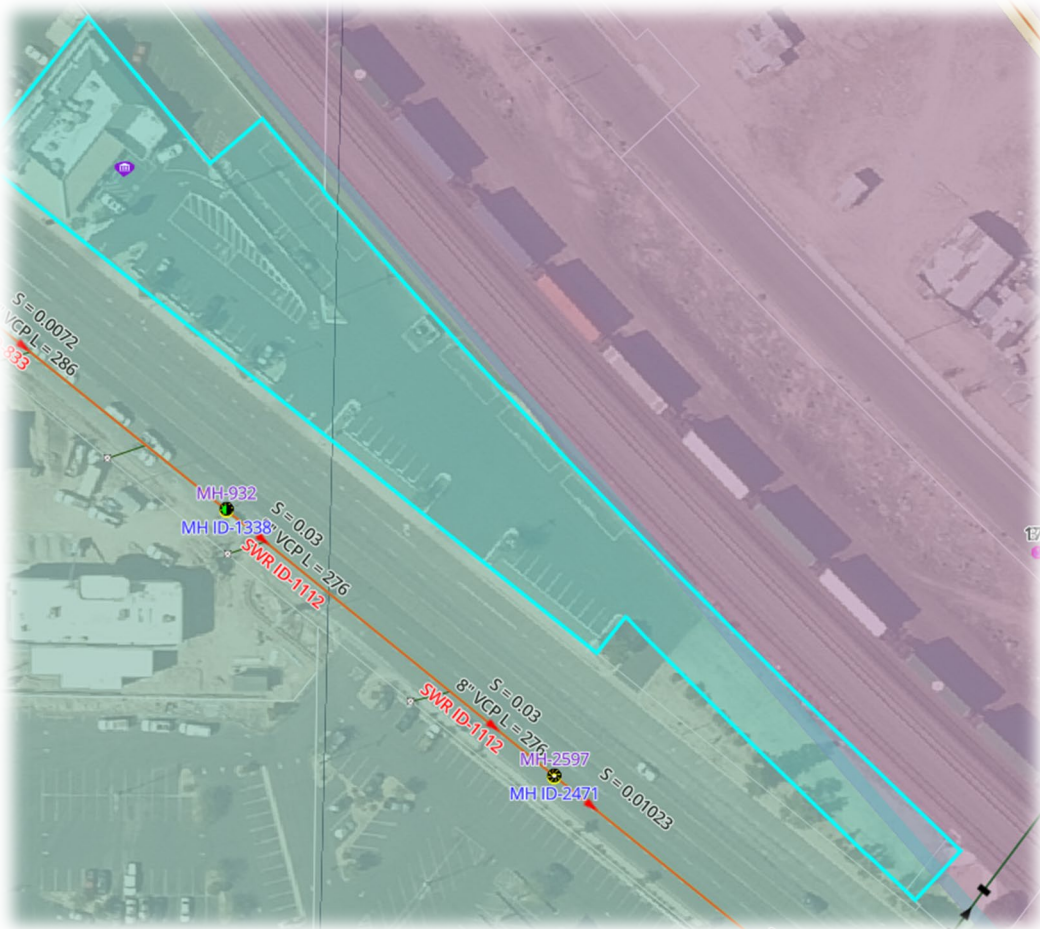
Exempt Surplus Land Case Study

- *November 7th, 2022* – City of Barstow declared a sole parcel *exempt surplus land*.
- **Parcel Characteristics:**
 - Approximately 4,410 square feet.
 - Zoned General Commercial (GC).
 - Irregular configuration.
 - Along City's Main Street, nearby Interstates 40 & 15 on and off-ramps.
 - Not contiguous to land owned by a state or local agency used for open-space or low- and moderate-income housing purposes.

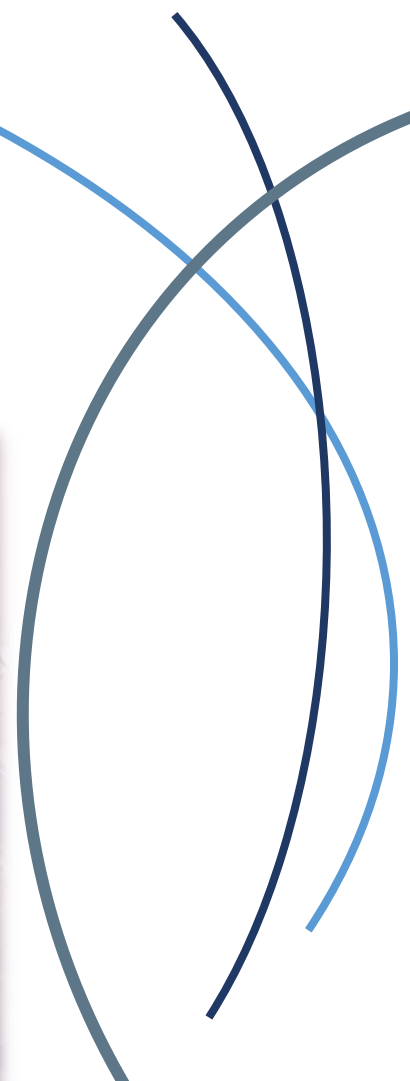
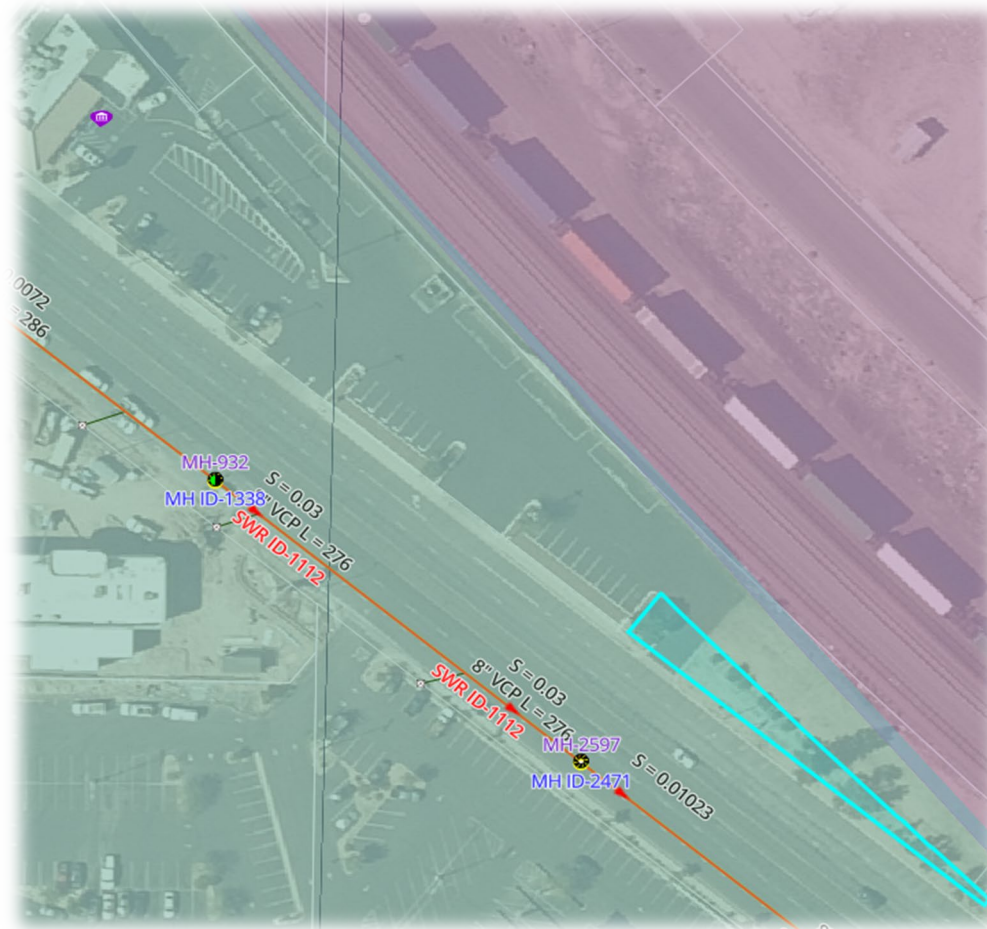


The Bigger Picture

Privately owned, 1.54 acre parcel with existing quick-serve restaurant.

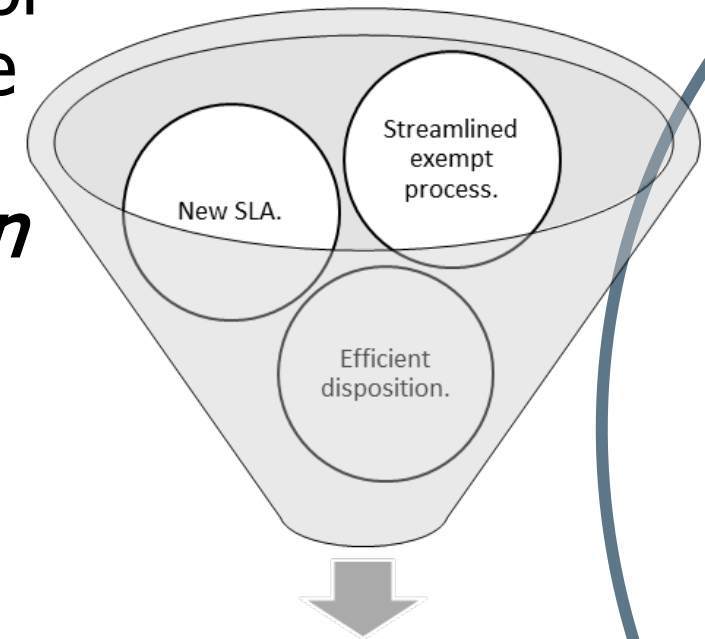


City owned 4,410 square foot parcel, declared exempt surplus land.



HCD Analysis & End Result

- Within six (6) weeks of submitting to HCD for review of the City's exempt surplus land, the City of Barstow was notified that the parcel qualified under *Government Code section 54221, subdivision (f)(1)(B)*.
- The disposition of the property was approved, allowing the City to sell to the adjacent land owner.
- Though the property was not deemed useful on its own, the transaction allows for the adjacent land owner to carry out the proposal of an additional restaurant project.



Advancement of economic development & increased employment goals.

Aligning Plans with Agency Goals

The Surplus Land Act is a tool for public agencies, however additional agency wide planning efforts and tasks should keep SLA in mind such as:

- **General Plan**

Land uses and zoning designations, do they allow for flexibility?

- **Economic Development Goals**

What will aid your community in increasing employers, employees, and overall growth? Housing? Amenities?

- **HCD Housing Element Annual Report**

Opportunity to assess excess and surplus agency lands.

Thank You!

**Genesis Crank
Planning & Community
Development Administrator
City of Barstow**



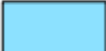


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General Plan






Many General Plans Call Out Agency Owned Lands as “institutional” or “public”

- Often no density/intensity standards
- Either no land use listing, or tightly controlled
- Varies by agency
- Default as there are limitations on what can be applied to other agencies

Public and Quasi-Public Designations

	Public and Institutional
	Open Space
	Transportation

COMMERCIAL

	Low Commercial (0.0-1.0 FAR)
	Med Commercial (0.0-2.0 FAR)
	High Commercial (0.0-3.0 FAR)
	R&D Flex Space (0.0-1.25 FAR)
	Institutional

Map Legends	
Zoning	
Major zoning groups:	
	Multiple Family
	Single Family
	Other Residential
	Commercial
	Industrial/Manufacturing
	Planned Development
	Public Facilities

Public and Quasi-Public Uses

The Public/Quasi-Public designation generally applies to major governmental, educational, cultural, and health care facilities located throughout the city. Properties may be developed with a variety of public and quasi-public uses, including community centers, recreation centers, government offices, hospitals, primary and secondary schools, college and university campuses, transit stations, and other related government facilities and services. Future changes to public and quasi-public properties are expected to include landscaping and building improvements, and the rehabilitation or redevelopment of older facilities to enhance public services and to accommodate the changing needs of the Hayward community.

Allowed Uses

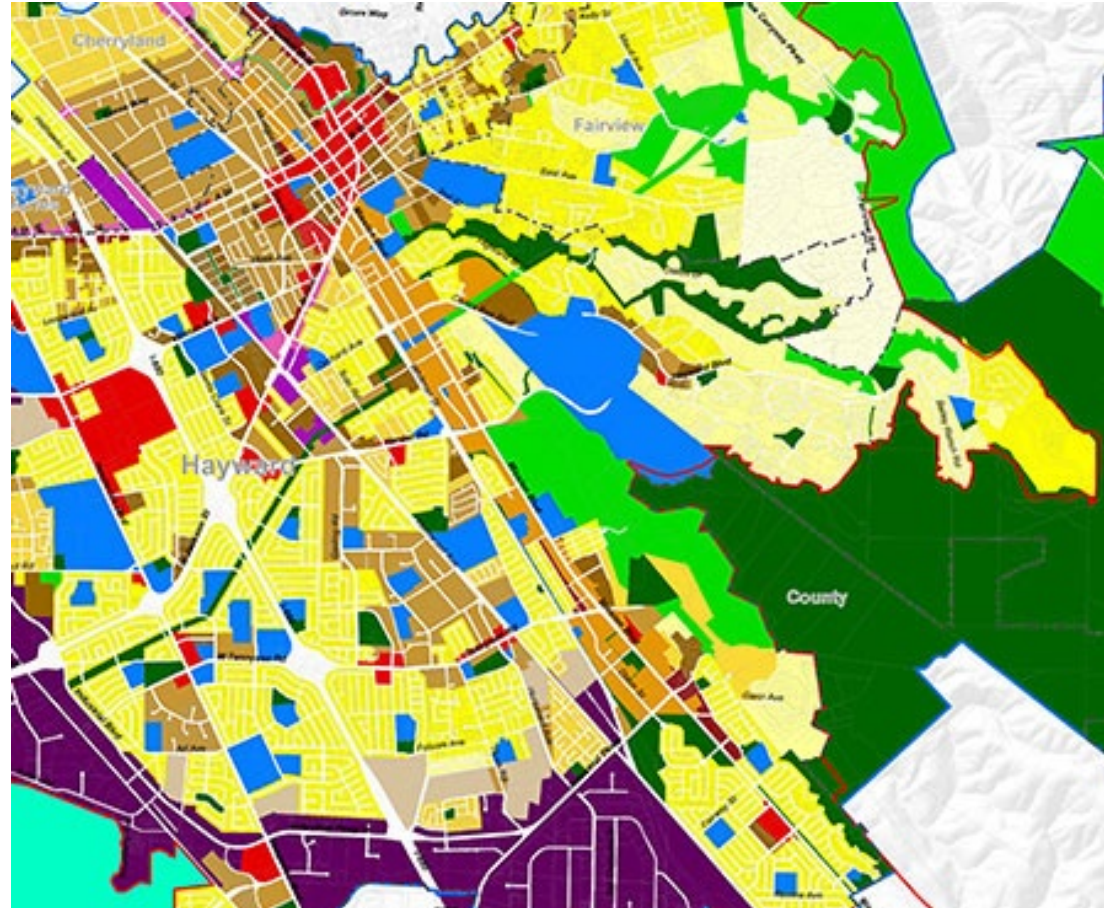
- Primary and secondary schools
- Colleges and universities
- Federal, state, and local government offices and facilities
- Police and fire stations
- Public utilities and facilities
- Public transportation facilities (BART and Amtrak stations, Hayward Executive Airport, etc.)
- Health care facilities and hospitals
- Community and recreation centers

Supporting Uses

- Parks, recreation facilities, open space, and trails
- Community gardens

Development Standards

- Density: Not applicable
- Maximum FAR: 1.5



Blue lands are public and quasi-public

Zoning Codes

- Unless specialty land use (airport) often no public agency zone requirements
- Often an allowable or conditional use in several or all zone districts

(7) Other Uses.

- (a) Banquet hall. (Where not abutting a residential district or property and where no alcohol is served)
- (b) Christmas tree or pumpkin patch lot. (See General Regulations Section 10-1.2735c. for standards)
- (c) Day Care Center. (Less than 24-hour care for children or adults, 15 or more persons, excluding staff. See definitions.)
- (d) Educational facility. (Small, generally less than 2,000 sq. ft. design to augment the education)
- (e) Public agency facilities.

Zoning

GOVT § 54223

(b) Residential use shall be deemed an acceptable use for the surplus land for the purposes of good faith negotiations with a local agency conducted pursuant to this article. Nothing in this subdivision shall restrict a local jurisdiction's authority or discretion to approve land use, zoning, or entitlement decisions in connection with the surplus land. Except as provided in subdivision (c), terms agreed to pursuant to the negotiations shall not do any of the following:

- (1) Disallow residential use of the site as a condition of the disposal.
- (2) Reduce the allowable number of residential units or the maximum lot coverage below what may be allowed by zoning or general plan requirements.
- (3) Require as a condition of disposal, any design standards or architectural requirements that would have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, other than the minimum standards required by general plan, zoning, and subdivision standards and criteria.

(c) Terms agreed to pursuant to the negotiations required by subdivision (a) may include limitations on residential use or density if, without the limitations, the residential use or density would have a specific, adverse impact, supported by written findings, upon the public health or safety or upon the operation or facilities of a local agency, and there is no feasible method to satisfactorily mitigate the impact.

CEQA Exemption? (Probably Not)

15312. SURPLUS GOVERNMENT PROPERTY SALES

Class 12 consists of sales of surplus government property except for parcels of land located in an area of statewide, regional, or areawide concern identified in Section 15206(b)(4). However, even if the surplus property to be sold is located in any of those areas, its sale is exempt if:

- (a) The property does not have significant values for wildlife habitat or other environmental purposes, and
- (b) Any of the following conditions exist:
 - (1) The property is of such size, shape, or inaccessibility that it is incapable of independent development or use; or
 - (2) The property to be sold would qualify for an exemption under any other class of categorical exemption in these Guidelines; or
 - (3) The use of the property and adjacent property has not changed since the time of purchase
by the public agency.

Things to ponder

- What if another agency wants to surplus their land?
 - Are your development standards current?
 - Does the General Plan contemplate private development?
 - As housing is likely, are there concerns with the location?
- Declaring land surplus is a discretionary act.
 - Opportune time to consider impacts.
 - Housing restriction only possible if another agency restricts the land use. (wetlands, slope, etc.)
 - Beware segmenting.

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Legend

- City Limits
- Opportunity Zone
- Historic Downtown
- Murals
- Parks
- Eateries

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