

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

California Department of Housing &
Community Development

Division of Housing Policy
Development



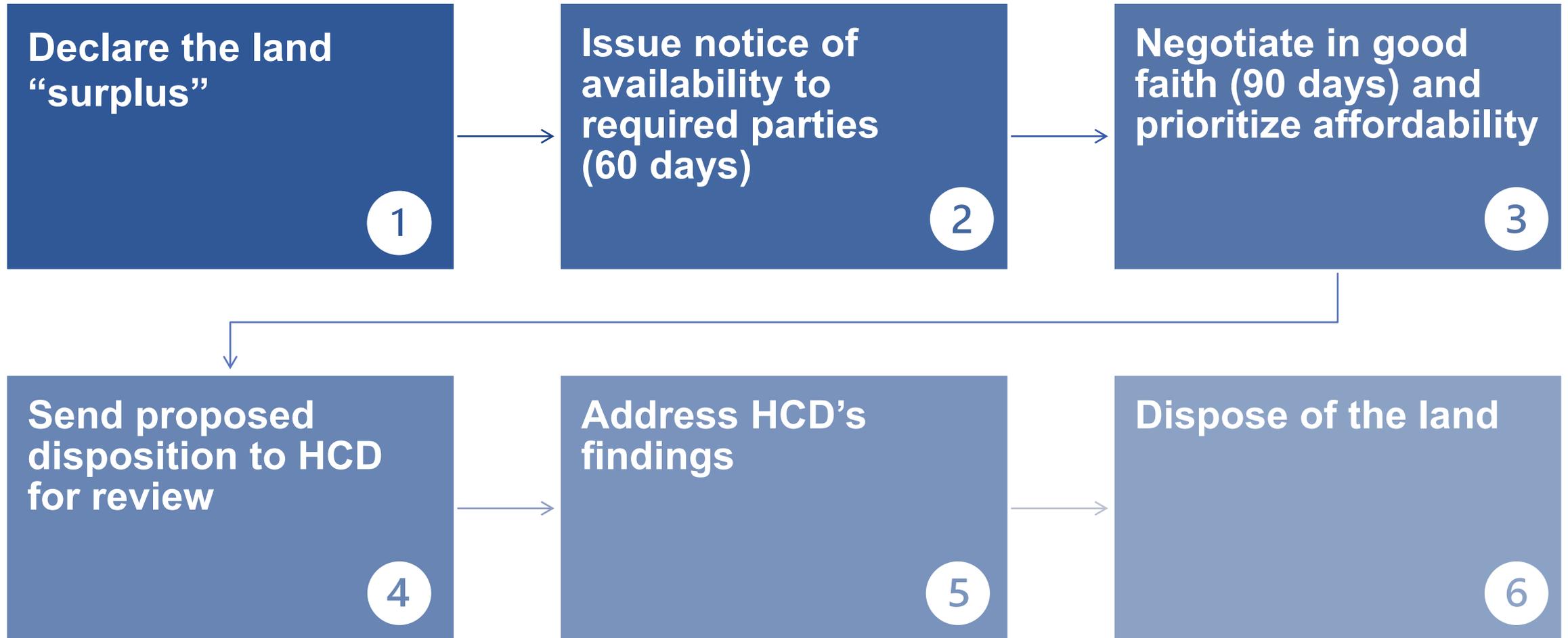


What is the Purpose of the Surplus Land Act (SLA)?

- 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



Standard SLA Process





Step 1

Declare the land “surplus”

- City council, board of supervisors, or district board of directors adopts a resolution at a regular public meeting to declare property surplus and no longer necessary for agency’s use
- Surplus land: Land owned in fee simple by the local agency, meaning the local agency holds the broadest possible interest in the land (as opposed to land that the local agency merely has a leasehold interest in or land to which the local agency has easement rights), that the agency takes formal action in a regular public meeting to declare is surplus and not necessary for the local agency’s use.

1 Declare surplus

2 Notice parties

3 Negotiate

4 HCD review

5 Address findings

6 Dispose of land



Step 2

Issue notice of availability

- Before selling or leasing surplus property, local agencies must send a Notice of Availability to the following groups of entities:
 - Housing sponsors (developers certified by CalHFA) that have expressed interest in surplus property to HCD by completing the survey on HCD's website:
<https://www.surveymonkey.com/r/ZRCC3FL>
 - Local public entities within whose jurisdiction the land is located. These are government entities that develop or operate housing for low/moderate income households. This group includes HCD but can also include Housing Authorities, tribes, cities, or counties.
 - City, County, Regional, and State park/recreational/resource agencies
- Local agencies can send notices to other affordable housing developers that are interested in surplus land
- Entities have 60 days to respond by sending a notice of interest to the agency

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Step 3

Negotiate in good faith and prioritize affordability

- Once the 60-day notice period is over, negotiations can begin
- Local agencies need to negotiate in good faith with any respondents for at least 90 days.
- During the negotiation period, the local agency cannot prohibit residential use on the property or reduce the allowable number of residential units below what is provided by zoning.
- When selecting a development partner, localities are generally required to prioritize affordable housing uses in the order provided in Government Code section 54227.
 - However, local agencies must prioritize parks and recreation on sites that are already being used for (or designated in the general plan for) park and recreational purposes.

1

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HCD review

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Dispose of land



Step 4

Submit proposed disposition to HCD for review

- Once negotiations have concluded but before agreeing to final sales price/lease terms, local agencies must submit the disposition to HCD for review using the description of disposition form at the following link:
https://www.hcd.ca.gov/community-development/docs/sla_ta_dispositiondescriptiontemplate.xlsx
- Once a complete package is submitted, HCD has 30 days to review
 - HCD will either send a letter approving the disposition or a letter indicating the corrections that must be made first



Declare surplus



Notice parties



Negotiate



HCD review



Address findings



Dispose of land



Step 5

Address HCD's findings

- Local agencies must correct any issues within 60 days
- While HCD is prepared to provide technical assistance to help local agencies resolve issues, if a local agency does not correct the issues HCD identifies, there are penalties:
 - 30 percent of the final sale price in the case of a first violation
 - 50 percent for any subsequent violation

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Step 6

Dispose of the land

- Execute a Purchase and Sale Agreement, Lease Agreement, or Lease Option Agreement, etc.
- SLA does not prohibit the local agency from disposing of their property for fair market value provided that the local agency follows the SLA process



1

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Alternative Pathways: Exemptions from standard SLA process

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 (or issued a competitive request for proposals that meets criteria on slide 19) 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



Process for an Alternative Disposition

1. Identify property that may qualify for exemption from standard SLA process
 - If the agency is unsure, consult HCD at publiclands@hcd.ca.gov to confirm
2. Declare the locally-owned land “**exempt surplus**”
 - Exempt from standard process, not from the provisions of the SLA
3. Send a notice of exemption determination to HCD
 - Include written findings that the property meets the criteria for an exemption (e.g., resolution with supporting documentation)
4. Notice according to the applicable alternative process
5. Dispose of the land according to the applicable alternative process



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



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



Website Resources Walkthrough

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

- [Guidelines](#)
- 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
- To report potential violations, email compliancereview@hcd.ca.gov



Thank You!



Appendix A: Alternatives to the Standard SLA Process

Still requires HCD review and other requirements

Exemption Category	Criteria
<p>“Grandfathering” *</p> <p>The version of the SLA in effect before 12/31/2019 applies if the local agency entered into an exclusive negotiating agreement (ENA) or issued a competitive request for proposals (RFP) before 9/30/2019 to dispose of the surplus land</p>	<p>Subject to provisions of SLA as it existed on 12/31/2019 if:</p> <p>1a The local agency entered into an ENA or other legally binding agreement to dispose of property as of 9/30/2019 and the disposition will be completed on or before 12/31/2022 (Gov. Code § 54234 subd. (a)(1))</p> <p style="text-align: center;">– or –</p> <p>1b The local agency issued a competitive RFP as of 9/30/2019 for the development of property including at least 100 residential units, with at least 25% of total units restricted to lower-income households; and entered into a disposition and development agreement (DDA) by 12/31/2024 and will complete the disposition by 3/31/2026 pursuant to the DDA (Gov. Code § 54234 subd. (a)(3))</p> <p>* Property held in the Community Redevelopment Property Trust Fund or a Long-Range Property Management Plan (LRPMP) that is designated for sale or retention is also subject to grandfathering provisions in the SLA. If land in a LRPMP is subject to an exclusive negotiating agreement or legally binding agreement for disposition entered into not later than 12/31/2020 and disposition is completed not later than 12/31/2022, the version of the SLA as it existed on 12/31/2019 applies. (Gov. Code § 54234 subd. (b)(1).)</p>

Exemption Category

Criteria

Streamlining the process for disposing of properties destined for affordable housing
Must meet certain criteria in the SLA

- Eligible for an exemption from standard SLA process if:**
- 2a*** At least 75% of residential units are restricted and affordable to lower-income households and the remaining are restricted to moderate-income households (Gov. Code § 54221 subd. (f)(1)(F)(i))

– or –
 - 2b** At least 80% of the property's area is used for housing; at least 40% of units are affordable to households at or below 60% of AMI; at least half of the above affordable units are affordable to very low-income households; **and** affordable units are subject to at least a 30-year affordability covenant (Gov. Code § 54221 subd. (f)(1)(A))

– or –
 - 2c*** At least 25% of residential units in a mixed-use development are restricted and affordable to lower-income households; **and** the development includes at least 300 residential units and more than one acre in area (Gov. Code § 54221 subd. (f)(1)(F)(ii))
 - 2d** The development has a planned residential density of 100+ units per acre, includes 100+ residential units restricted and affordable to low- or moderate-income households (with 80% of units restricted to lower-income households with an affordable sales price or rent subject to an affordability covenant), **and** the land was transferred by the state to a local agency pursuant to Streets and Highways Code section 32667 prior to 6/30/2019 (Gov. Code § 54221 subd. (f)(1)(K))

* Eligible for exemption provided there is a competitive bidding process and housing sponsors and local public entities specified in Government Code Section 54222 are invited to participate

Exemption Category

Criteria

Land restricted for other public uses

Land restricted for another use (parks, schools, etc.) transferred to federal/state government, land exchanged for other land to be used by the local agency, etc.

Eligible for an exemption from standard SLA process if:

- 3a** The local agency is transferring the surplus land to a local, state, or federal agency for the receiving agency's use, or to a federally recognized California Indian tribe **(Gov. Code § 54221 subd. (f)(1)(D))**

– or –
- 3b** The local agency is exchanging the surplus land for another property necessary for the agency's use **(Gov. Code § 54221 subd. (f)(1)(C))**

– or –
- 3c** The local agency is a school district **and** the land is subject to the provisions defined in Government Code section 54221, subdivision (f)(1)(I)

– or –
- 3d** The local agency is a district **and** the property is necessary for the agency's use **(Gov. Code § 54221 subd. (f)(1)(J))**

– or –
- 3e** The surplus land was granted by the state in trust to a local agency or acquired for trust purposes by purchase or exchange **and** the disposition of land was authorized subject to conditions established by statute **(Gov. Code § 54221 subd. (f)(1)(H))**

Exemption Category

Criteria

Land unlikely to be suitable for affordable housing
Small parcels, former streets, restrictions that prohibit housing

Eligible for an exemption from standard SLA process if:

4a The surplus land is a former street, right of way, or easement; **and** the surplus land is conveyed to the owner of an adjacent property (Gov. Code § 54221 subd. (f)(1)(E))

- or -

4b The surplus land is a small site within the limits defined in Government Code section 54221, subdivision (f)(1)(B); the surplus land is not contiguous to land owned by a state or local agency that is used for open space or low- and moderate- income housing; and the surplus land is being sold to the owner of contiguous land (Gov. Code § 54221 subd. (f)(1)(B))

- or -

4c The surplus land is subject to valid legal restrictions that are not imposed by the local agency that would make housing prohibited, and there is there no feasible method to mitigate or avoid the prohibition (Gov. Code § 54221 subd. (f)(1)(G))